


Procedure file

Basic information		
CNS - Consultation procedure Directive	1991/0389(CNS)	Procedure completed
Statute for a European cooperative society: involvement of employees		
Subject 3.45.07 Social economy, mutual societies, cooperatives, associations 4.15.10 Worker information, participation, trade unions, works councils		

Key players			
European Parliament			
Council of the European Union			
	Council configuration	Meeting	Date
	Agriculture and Fisheries	2524	22/07/2003
	Employment, Social Policy, Health and Consumer Affairs	2512	02/06/2003
	Employment, Social Policy, Health and Consumer Affairs	2431	03/06/2002
	Competitiveness (Internal Market, Industry, Research and Space)	2426	21/05/2002
	Employment, Social Policy, Health and Consumer Affairs	2357	11/06/2001
	Social Affairs	2102	04/06/1998
	Social Affairs	2081	07/04/1998
	Competitiveness (Internal Market, Industry, Research and Space)	2079	30/03/1998
	Social Affairs	2060	15/12/1997
	Competitiveness (Internal Market, Industry, Research and Space)	2051	27/11/1997
	Competitiveness (Internal Market, Industry, Research and Space)	2007	21/05/1997
	Social Affairs	1999	17/04/1997
	Social Affairs	1892	05/12/1995
	Competitiveness (Internal Market, Industry, Research and Space)	1886	23/11/1995

Key events			
04/03/1992	Legislative proposal published	COM(1991)0273	Summary
10/04/1992	Committee referral announced in Parliament		
03/12/1992	Vote in committee		Summary
02/12/1992	Committee report tabled for plenary, 1st reading/single reading	A3-0001/1993	
19/01/1993	Debate in Parliament		

20/01/1993	Decision by Parliament	T3-0015/1993	Summary
05/07/1993	Modified legislative proposal published	COM(1993)0252	Summary
23/11/1993	Vote in committee		
22/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0364/1993	
02/12/1993	Decision by Parliament	T3-0681/1993	Summary
23/11/1995	Debate in Council	1886	
05/12/1995	Debate in Council	1892	
17/04/1997	Debate in Council	1999	
21/05/1997	Debate in Council	2007	
27/11/1997	Debate in Council	2051	
15/12/1997	Debate in Council	2060	
30/03/1998	Debate in Council	2079	
07/04/1998	Debate in Council	2081	
04/06/1998	Debate in Council	2102	
11/06/2001	Debate in Council	2357	
11/07/2002	Amended legislative proposal for reconsultation published	09924/2002	Summary
11/10/2002	Formal reconsultation of Parliament		
24/04/2003	Vote in committee		Summary
23/04/2003	Committee report tabled for plenary, reconsultation	A5-0127/2003	
13/05/2003	Debate in Parliament		
14/05/2003	Decision by Parliament	T5-0207/2003	Summary
22/07/2003	Act adopted by Council after consultation of Parliament		
22/07/2003	End of procedure in Parliament		
18/08/2003	Final act published in Official Journal		

Technical information

Procedure reference	1991/0389(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC before Amsterdam E 054; EC Treaty (after Amsterdam) EC 308; EC Treaty (after Amsterdam) EC 044
Stage reached in procedure	Procedure completed

Documentation gateway					
Legislative proposal		COM(1991)0273	05/03/1992	EC	Summary
Economic and Social Committee: opinion, report		CES0640/1992 OJ C 223 31.08.1992, p. 0042	26/05/1992	ESC	
Committee report tabled for plenary, 1st reading/single reading		A3-0001/1993 OJ C 042 15.02.1993, p. 0003	03/12/1992	EP	
Text adopted by Parliament, 1st reading/single reading		T3-0015/1993 OJ C 042 15.02.1993, p. 0075-0109	20/01/1993	EP	Summary
Modified legislative proposal		COM(1993)0252	06/07/1993	EC	Summary
Reconsultation		COM(1993)0570	10/11/1993	EC	
Committee final report tabled for plenary, 1st reading/single reading		A3-0364/1993 OJ C 342 20.12.1993, p. 0002	23/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading		T3-0681/1993 OJ C 342 20.12.1993, p. 0015-0030	02/12/1993	EP	Summary
Amended legislative proposal for reconsultation		09924/2002	12/07/2002	CSL	Summary
Committee final report tabled for plenary, reconsultation		A5-0127/2003	24/04/2003	EP	
Text adopted by Parliament after reconsultation		T5-0207/2003 OJ C 067 17.03.2004, p. 0136-0168 E	14/05/2003	EP	Summary
Follow-up document		COM(2010)0481	16/09/2010	EC	Summary

Additional information	
European Commission	EUR-Lex

Final act
Directive 2003/72 OJ L 207 18.08.2003, p. 0025-0036 Summary

Statute for a European cooperative society: involvement of employees

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Statute for a European cooperative society: involvement of employees

The European Parliament gave its opinion at first reading on three Commission proposals for regulations concerning the statutes for a European cooperative society, a European mutual society and a European association and on three proposals for directives supplementing these statutes in relation to the role of workers. Parliament gave its backing to these proposals with some amendments relating, in particular, to the names of the entities, the criteria governing their formation, the methods for the calling of meetings and the statutory powers of the general meetings as well as their legal and financial capacities. Parliament also expressed its support as regards the role of workers but tabled several amendments relating to worker information, consultation and participation. ?

Statute for a European cooperative society: involvement of employees

The Commission adopted, in whole or in part, 9 of the 25 amendments proposed by Parliament, in particular: - those broadening the scope of consultation and information: .to include proposals having a potential impact on the future prospects of the ECS, on terms of employment and

working conditions, and on any decision requiring approval by the administrative board; .vocational training and questions of safety within the ECS, and workers' participation, on a joint basis, in the development of health and safety programmes and policies within the ECS; - that allowing workers to bring in experts to advise them during the consultation procedures; - that designed to enable the workers' representatives to perform their duties during working hours and to protect them against discrimination, improper dismissal and other penalties applied as a consequence of the exercise of their mandate. On the other hand, the Commission rejected all the amendments proposing that participation be imposed as an alternative model to the consultation/information procedures. ?

Statute for a European cooperative society: involvement of employees

To recall, the Commission submitted its first proposal for two instruments governing the European Cooperative Society (SCE) in March 1992 and amended proposals in July 1993. The proposals were inspired by those on the two instruments governing the European Company (SE), proposed initially by the Commission in 1970. After agreement had been reached on the SE in December 2000, the Swedish Presidency presented revised texts of the two instruments governing the European Cooperative Society in March/April 2001, largely based on those agreed for the SE. The Regulation governs the statute of the European Cooperative Society. The Directive governs the involvement of employees in the society. On 6 June 2001 the Council agreed on a general approach in respect of the two instruments. The Commission's proposals for the Regulation and the Directive were based on Article 100a (now 95) TEU, and Article 54 (now 44) TEC respectively. At the time, these articles provided for the co-operation procedure. Once the Maastricht Treaty came into force, proposals made under them became subject to the co-decision procedure. On this basis, the European Parliament delivered its first opinion on 20 January 1993, confirmed them on 2 December 1993 and once again on 27 October 1999. This reconsultation of the proposed Council Regulation on the Statute for a European Cooperative Society has been published to make clear to the Parliament that these proposals shall now use Article 308 as their legal basis which provides for Council unanimity and the consultation of the European Parliament. ?

Statute for a European cooperative society: involvement of employees

The committee adopted the report by Proinsias DE ROSSA (PES, IRL) amending the draft Council directive under the consultation procedure (renewed consultation). The committee reiterated Parliament's previously-stated priorities regarding employee involvement in the context of the European Company Statute and also added several new elements. The main amendments were as follows: - Article 137 of the EC Treaty must be deemed to be the correct - and specific - legal basis rather than Article 308; - the right to negotiations on worker participation should not be limited to the period in which an SCE is being created. Where there are substantial structural changes (e.g. mergers or the integration of other undertakings and companies), it should be possible to re-open negotiations; - the definition of "participation" was amended to reflect the fact that participation is an ongoing task and not just a one-off right to recommend, nominate and/or reject representatives in the administrative or supervisory boards; - worker representatives on administrative/supervisory boards should be elected/appointed according to national law governing the election or appointment of employees to the bodies of national cooperatives; - the Member States should ensure that the methods used to nominate, appoint or elect employee representatives promote gender balance; - corporate social responsibility should be included among the subjects to be discussed at annual meetings between management and employee representatives; - the clause allowing Member States an opt-out from employee participation where an SCE is established through the merger of two cooperatives should be deleted. ?

Statute for a European cooperative society: involvement of employees

The European Parliament adopted a resolution drafted by Proinsias DE ROSSA (PES, Ireland) and made some amendments to the draft directive. (Please refer to the document dated 24/04/03.) In addition, Parliament inserted a clause stating that Member States must ensure that the methods used to nominate, appoint or elect employee representatives promote gender balance. ?

Statute for a European cooperative society: involvement of employees

PURPOSE : to regulate the involvement of employees in the affairs of European Cooperative Societies (SCEs). LEGISLATIVE ACT : Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees. CONTENT : Council Regulation 1435/2003/EC establishes a Statute for a European Cooperative Society (SCE). That Regulation aims at creating a uniform legal framework within which cooperatives and other entities and natural persons from different Member States should be able to plan and carry out the reorganisation of their business in cooperative form on a Community scale. In order to promote the social objectives of the Community, this Directive makes special provisions in the field of employee involvement, aimed at ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement existing within the entities participating in the establishment of an SCE. This Directive establishes a set of rules in this field, supplementing the provisions of Regulation 1435/2003/EC. The great diversity of rules and practices existing in the Member States as regards the manner in which employees' representatives are involved in decision-making within cooperatives made it inadvisable to set up a single European model of employee involvement applicable to the SCE. The following key points should be noted: - information and consultation procedures at transnational level must be ensured in all cases of creation of an SCE, with the necessary adaptation for SCEs formed ex novo where this is justified by their size, as measured in terms of employment. - if participation rights exist within one or more entities establishing an SCE, they should in principle be preserved through their transfer to the SCE, once established, unless the parties decide otherwise; - the concrete procedures of employee transnational information and consultation, as well as participation, to apply to each SCE will be defined primarily by means of an agreement between the parties concerned, and if there is no agreement, through the application of a set of subsidiary rules; - Member States still have the option of not applying the standard rules relating to participation in the case of a merger, given the diversity of national systems for employee involvement; - the voting rules within the special body representing the employees for negotiation purposes, in particular when concluding agreements providing for a level of participation lower than the one existing within one or more of the participating entities, will be proportionate to the risk of disappearance or reduction of existing systems and practices of participation. That risk is greater in the case of an SCE established by way of transformation or merger than by way of creating an ex novo SCE. - in the absence of an agreement subsequent to the negotiation, certain

standard rules will apply to the SCE, once it is established. already established to implement these procedures if a significant number of employees so requests. ENTRY INTO FORCE : 18/08/03. DATE FOR TRANSPOSITION : 18/08/06.?

Statute for a European cooperative society: involvement of employees

The Commission presents a report on the review of Council Directive 2003/72/EC supplementing the Statute for a European cooperative society with regard to the involvement of employees. Council Regulation (EC) No 1435/2003 establishes a Statute for a European Cooperative Society (?SCE?) with a view to creating a uniform legal framework enabling cooperatives from different Member States to plan and carry out the reorganisation of their business on a Community scale. Council Directive 2003/72/EC (?the Directive?) supplements the Regulation as far as the involvement of employees is concerned, with the aim of providing for arrangements for the involvement of employees in every SCE, thereby ensuring that the establishment of an SCE does not entail the disappearance or reduction of practices of employee involvement that exist within the entities participating in its creation.

Given the major similarities between the Directive and Council Directive 2001/86/EC on the involvement of employees in the European Company (the SE Directive) and the fact that certain Member States have transposed the Directive in the same instrument or by amendments to the legislation transposing Directive 2001/86/EC, the Commission refers to its review of the latter (COM(2008)0591). On horizontal issues relating to information and consultation rights, such as protection and guarantees to employee representatives or confidential information, the Commission also refers to its review of Directive 2002/14/EC establishing a general framework for informing and consulting employees COM(2008)0146.

The report notes that the Directive has been transposed in all Member States only since March 2009. There is therefore a lack of experience in the practical application of the Directive. Furthermore, it is not a stand-alone piece of legislation. It complements the SCE Regulation and shows striking similarities with other directives governing the involvement of employees, such as the SE Directive. The Commission considers that the outcome of the evaluation of these directives and of the Regulation needs to be taken into account before launching any future revision process. These conclusions are shared by all Member States and social partner⁴ who have expressed their views in the consultation process to draw up this report. It is necessary to inquire into the reasons for the very low take-up of the EU legal framework for cooperatives, before considering any moves towards a revision of the Directive.

The report has identified some issues that merit further consideration. These are as follows:

Absence of experience: as far as the Commission is aware, only seventeen SCEs had been established by 8 May 2010, none of which had a significant number of employees. Even if, according to organisations representing cooperatives, other SCEs were to be established, experience of both the implementation and the application of the Directive is lacking.

Complexity of the provisions: understanding the national implementing provisions of both the Regulation and the Directive may present a challenge to smaller organisations. As for the Directive, the existence of two different routes governing the involvement of employees in the SCE ? negotiation or national rules - as well as the specific provisions on the participation in general assemblies needs to be properly understood. However, as Member States have quite literally transposed the Directive in specific laws, the implementation does not add to complexity. Moreover, social actors involved in the cooperative movement and in the trade union movement stress that the complexity lies instead in the statute, and they have taken actions since 2006, often with the financial support of the Union, designed to prepare the setting up of mechanisms for information, consultation and participation in SCEs.

Specificities of cooperatives: cooperatives differ from limited companies in several respects. They have their own legislation, which is different from company law in some Member States, and they may even be qualified as civil associations rather than companies under national law, with some specific laws applying to certain types of cooperatives (agricultural, housing, credit or health). As regards individual employment relationships, there are no apparent differences for the most relevant aspects. However, there are some specific features as regards collective relations, to account for the difference between workers who are members of the cooperative and those who are not. While these specificities raise no particular problems as regards information and consultation, they do present a more complex picture with regard to collective agreements or board-level participation. Some concerns have been raised by national cooperative movements that SCE may undermine the cooperative principles, but these concerns focus on the statute itself, not on employee involvement. Independent experts have identified a positive impact of the transposition of the Directive on labour law and on cooperative law. The Commission also notes that the implementation of the Directive has acted as an incentive for joint work and developments between trade unions and the organisations representing the cooperatives at national and European levels.

Common issues on transnational involvement of employees: some issues are common to the various directives dealing with transnational involvement of employees and in particular to the Directive 2001/86/EC (the SE Directive). As to the misuse of procedures, the independent experts point out that several

Member States have not transposed Article 13 of the Directive which requires Member States to take appropriate measures with a view to preventing the misuse of an SCE for the purpose of depriving employees of rights to employee involvement or of withholding such rights. As it had been the case for the SE Directive, the Commission deems this to be a potential cause of concern.

The protection of participation rights where a European company or cooperative society converts into a company or cooperative of national statute has been raised in the context of the review of the SE Directive. To address this issue, Directive 2005/56/EC on cross-border mergers obliges the company to adopt a legal form that allows for the exercise of participation rights. Independent experts point to the absence of provisions in the Directive as regards the enforceability of the agreement on employee involvement. The recast of the Directive on European Works Councils led to fresh approaches in this area, as employee representatives will have the means required to apply the rights arising from the Directive to collectively represent the employees' interests. Issues relating to the key definitions of the Directive, such as "employees' representatives", "involvement of employees", "information", "consultation", "participation", and "?participating legal entities" are raised in the same way as for other directives, particularly the SE Directive 2001/86/EC. There is a case for a more coherent approach to these definitions across the directives.

The Commission will continue monitoring the correct implementation of the Directive, and promoting capacity-building of stakeholders.