

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	1991/0390(COD) Procedure lapsed or withdrawn
Statute for a European mutual society	
Subject 3.45.07 Social economy, mutual societies, cooperatives, associations	

Key players			
European Parliament			
Council of the European Union			
	Council configuration	Meeting	Date
	Social Affairs	<a href="#">2102</a>	04/06/1998
	Social Affairs	<a href="#">2081</a>	07/04/1998
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2079</a>	30/03/1998
	Social Affairs	<a href="#">2060</a>	15/12/1997
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2051</a>	27/11/1997
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2007</a>	21/05/1997
	Social Affairs	<a href="#">1999</a>	17/04/1997
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">1970</a>	26/11/1996
European Commission	Commission DG	Commissioner	
	<a href="#">Internal Market, Industry, Entrepreneurship and SMEs</a>		

Key events			
04/03/1992	Legislative proposal published	COM(1991)0273	Summary
10/04/1992	Committee referral announced in Parliament, 1st reading		
03/12/1992	Vote in committee, 1st reading		Summary
02/12/1992	Committee report tabled for plenary, 1st reading	A3-0001/1993	
19/01/1993	Debate in Parliament		
20/01/1993	Decision by Parliament, 1st reading	T3-0016/1993	Summary
05/07/1993	Modified legislative proposal published	COM(1993)0252	Summary
23/11/1993	Vote in committee, 1st reading		

22/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0364/1993	
02/12/1993	Decision by Parliament, 1st reading	T3-0681/1993	Summary
26/11/1996	Debate in Council	<a href="#">1970</a>	Summary
17/04/1997	Debate in Council	<a href="#">1999</a>	
21/05/1997	Debate in Council	<a href="#">2007</a>	
27/11/1997	Debate in Council	<a href="#">2051</a>	
15/12/1997	Debate in Council	<a href="#">2060</a>	
30/03/1998	Debate in Council	<a href="#">2079</a>	
07/04/1998	Debate in Council	<a href="#">2081</a>	
04/06/1998	Debate in Council	<a href="#">2102</a>	
27/10/1999	Debate in Parliament		Summary
17/03/2006	Additional information		Summary

### Technical information

Procedure reference	1991/0390(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/3/05021; JURI/3/03640

### Documentation gateway

Legislative proposal	COM(1991)0273	05/03/1992	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES0641/1992</a> <a href="#">OJ C 223 31.08.1992, p. 0048</a>	26/05/1992	ESC	Summary
Committee report tabled for plenary, 1st reading/single reading	A3-0001/1993 <a href="#">OJ C 042 15.02.1993, p. 0003</a>	03/12/1992	EP	
Text adopted by Parliament, 1st reading/single reading	T3-0016/1993 <a href="#">OJ C 042 15.02.1993, p. 0075-0114</a>	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 <a href="#">OJ C 342 20.12.1993, p. 0002</a>	23/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading	T3-0681/1993 <a href="#">OJ C 342 20.12.1993, p. 0015-0030</a>	02/12/1993	EP	Summary

## Statute for a European mutual society

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**PURPOSE** : to establish a European statute for European mutual societies, taking account of their specific nature, notably their work of general interest and to provide this sector with an appropriate legal instrument.

**PROPOSED ACT** : Council Regulation

**CONTENT** : the proposal aims to establish a European legal instrument for the benefit of mutual society having transnational activities and comprised of members from at least two Member States. The proposed statute will confer on European mutual societies (EMS) a legal personality throughout the Community.

Basic principle: the European mutual society (EMS) is defined as a grouping of persons which guarantees to its members, against the payment of subscriptions, the full settlement of contractual duties undertaken within the framework of activities authorised by its articles, particularly provident, insurance, healthcare and credit.

The EMS will have legal personality from the time of its registration in the register designated by the State where it has its headquarters.

The Regulation does not affect compulsory social security systems which are managed in some Member states by provident societies, nor does it affect the rights of Member States to decide to entrust the management of these systems to EMSs.

The regulation provides for the constitution of an EMS by national legal bodies.

The founding members must ensure the transnational character of the EMS at the time of its constitution, by verifying that the following conditions are fulfilled: the mutual societies or the comparable legal bodies should be constituted in accordance with the law of a Member State and have their statutory headquarters and their central administration within different Member States.

The Regulation also provides for constitution by conversion, without this conversion giving rise to dissolution or to the creation of a new legal body. This takes place when the EMS has an establishment or a subsidiary in a Member State other than that where its central administration is located and the EMS shows the effective and real exercise of a transnational activity.

The minimum amount of funds required to establish an EMS is EUR 100000 or its equivalent in national currency.

The headquarters of the EMS, fixed by its articles, must be situated within the Community and must correspond to the place where its central administration is located.

Operation: the statutes of the EMS stipulate the following bodies :

-a general assembly: this must be convened at least once a year, by the management or administrative body or at the request of 25% of its members;

-a management body and a supervisory body (dual system): in this system, the management body takes charge of the management of the EMS. The member or members of the administrative body have the power to direct the EMS with regard to third parties and to represent it at law. Furthermore, they are appointed or dismissed by the supervisory body. The roles of member of the management body and member of the supervisory body may not be carried out at the same time within the same EMS. However, the supervisory body may, in case of vacancy, designate one of its members to exercise the tasks of member of the management body;

OR

-an administrative body (single system): in this system, the administrative body takes charge of the management of the EMS. The member or members of the administrative body have the power to direct the EMS with regard to third parties and to represent it at law. Only the management of the European society may be delegated by the administrative body to one or several of its members. The following operations require the authorisation of the supervisory body or the consideration of the administrative body:

-closure or relocation of a significant office or of an important part of such an office;

-restriction, extension or modification of the activity of the EMS in a significant way;

-a significant change in the organisation of the EMS;

-the establishment of a long-term and significant venture with other persons or the ending of such a venture;

-recourse to credit for operations exceeding the ceiling fixed by the statutes.

Specific provisions: the EMS is subject to the legislation of the State of its headquarters in matters regarding the control and publication of its annual accounts and the consolidated accounts of the exiting community provisions. It is subject to the Fourth Directive 78/660/EEC on annual accounts, the seventh directive 83/349/EEC, the eighth directive 84/253/EEC of the Council concerning the accreditation of persons entrusted with the legal control of accounting documents, as well as the Council Directive concerning a general system of recognition of diplomas on profession training lasting a minimum of 5 years

The dissolution of the EMS is declared, either by the decision of the general assembly, particularly at the expiry of the term fixed by statute or the diminution of capital below the fixed minimum, or when the seat of the EMS is relocated outside the Community. If EMSs are placed under liquidation or insolvency procedures, they are subject to the national provisions of the Member State where they have their headquarters.

It should be noted that the instrument proposed by the Commission is optional.

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By adopting the report by Mrs Vayssade (Soc, F), the Committee on Legal Affairs amended and supplemented the package of three regulations and three directives on Statutes for European cooperative societies, mutual societies and associations and on the involvement of employees in these three types of society. These proposals had been made by the Commission in response to the requests made by the EP in 1986 (Fontaine report) and 1990 (Vayssade report) to give undertakings in the mutual sector an optional legal instrument in order to allow these companies to retain their individuality and their competitiveness in a frontier-free market. The Committee on Legal Affairs followed the line taken by the rapporteur, adopting around 140 amendments, including 17 compromise amendments. The aim of the amendments tabled by the rapporteur was to make these regulations into instruments capable of enabling undertakings in the mutual sector to establish better mutual cooperation at European level, in particular through grouping and mergers, and to develop effectively in the market in competition with conventionally capitalised firms. The following were among the most important amendments: - European association (EA) could be a 'grouping of natural and/or legal persons', which was not clear from the wording of the article proposed by the Commission. An EA could be formed by two or more Community legal entities, at least 7 natural persons residing in at least two Member States or one or more legal entities in agreement with two or more natural persons resident in at least two Member States; - a European cooperative society (SCE) could be formed: a) by natural persons only, viz. five or more natural persons in at least two different Member States; b) by five or more natural persons in at least two different Member States and one or more legal persons governed by public or private law; c) by two or more legal entities governed by public or private law having their registered office and central administration in at least two different Member States. In addition, an SCE could be formed by means of merger of national cooperatives and/or SCEs and, in general, could merge with other SCEs or national cooperatives where permitted under their legal statutes; - for European mutual societies, the adopted amendment provided that they could be formed by two or more legal entities essentially pursuing insurance activities (an annex contained a list of recognised entities in each State), or by two or more legal entities solely pursuing providence activities as defined in the Member States of origin; - lastly, with regard to the three proposals for directives on the involvement of employees, the Committee on Legal Affairs adopted a number of amendments tabled by the Committee on Social Affairs. ?

## Statute for a European mutual society

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The European Parliament voted at first reading on three Commission proposals for regulations on the statutes for a European cooperative society, a European mutual society and a European association and on three proposals for directives supplementing these statutes with regard to the involvement of employees. Parliament supported these proposals, but made several amendments relating, inter alia, to the name of these entities, the criteria for their formation, the arrangements for convening general meetings and the statutory powers of those meetings, and legal and financial capacity. As far as the involvement of employees was concerned, Parliament was also in favour, but made a few amendments relating to employee information, consultation and participation. ?

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The Commission accepted, in full or in part, 14 of Parliament's 16 amendments, including: - the introduction of a distinction, in their name and method of formation, between mutual provident societies and other mutual societies; - the absolute prohibition on the allocation of surpluses to their directors; - the possibility for 500 natural persons to set up a mutual society carrying on activities other than provident activities; - various amendments specifying the operation of the organs of the mutual society. In addition, the Commission, under pressure from the Member States, tightened up the criteria and methods for the transfer of the registered place of business of a mutual society from one State to another, and related the provisions applicable to mutual societies to those on the 'Societas Europaea' (SE).

## Statute for a European mutual society

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In its first reading under the codecision procedure, the European Parliament confirmed its vote of 20 January 1993. ?

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The Council took note of the progress that had been made on the amended proposal for a regulation on a statute for a European mutual society and the amended proposal for a directive supplementing the statutes in respect of the involvement of employees. From the first reading of the proposal, which was begun under the Irish Presidency while awaiting a resolution of the main problem, namely the involvement of employees, it appeared that certain delegations were not convinced of the need for introducing a statute for a European mutual society, while others underlined the value of such a legal instrument. Although most of the delegations had still to complete their examination of the regulations at national government level, the technical discussions had raised a number of important points and questions concerning basic objectives. The main questions that had arisen to date concerned: the appropriateness of the legal basis being proposed by the Commission, namely Article 100a of the Treaty; the need for an evaluation of the exact nature and scope of the European mutual society, since the activities of national mutual societies varied enormously from one Member State to the next. On the same lines there was a need for a clear definition of the nature of the members comprising the European mutual society. The following general trends emerged in the course of the discussions:

national law should be responsible for those matters that were unconnected with the 'European' character of the mutual society; the text relating to the European mutual society should be brought into line with the proposals adopted for the European cooperative society and the European association, according to requirements.

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The European Parliament confirmed as its first reading the text voted on 20.01.1993 on a proposal for a Regulation on the Statute for a European mutual society the number of the legal base of which changed with the entry into force of the Amsterdam Treaty.?

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?Following the screening exercise of proposals pending undertaken as part of its effort for better regulation in the framework of the Partnership for Growth and Jobs in the European Union, the Commission has decided to withdraw certain proposals on which the Legislator has not yet reached a decision and which were found not to be consistent with the Lisbon and Better Regulation criteria, unlikely to make further progress in the legislative process or found to be no longer topical for objective reasons?. (OJ C64 of 17.03.2006, pages 3-10).