

## II

(Preparatory Acts)

## COMMISSION

**Amended proposal for a Council Regulation (EEC) on the European Cooperation Grouping (ECG) (1)**

*(Submitted by the Commission to the Council pursuant to the second paragraph of Article 149 of the EEC Treaty on 12 April 1978)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,  
Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas a harmonious development of economic activities throughout the Community and a continuous and balanced expansion must be brought about by the establishment of a common market in which conditions will be the same as those on a national market; whereas, to attain this objective, the legal conditions under which persons, firms and companies carry on business there must be such as to facilitate the adaptation of their activities to the economic conditions of an enlarged market; whereas for this purpose it is necessary that such persons, firms and companies should have at their disposal not only the appropriate legal machinery for restructuring their undertakings, but also the means whereby cooperation can take place between them irrespective of frontiers;

Whereas cooperation of this nature would at present be fraught with legal, fiscal and psychological difficulties; whereas the various forms under which it could take place under the national laws are insufficient for cooperation at Community level precisely because they are the creatures of national legal systems;

Whereas it appears therefore that action should be taken by the Community to attain the Community objectives referred to above;

Whereas these problems could not be dealt with by harmonizing national provisions as provided for by the Treaty; whereas, in particular, this would not solve the problem posed by a legal instrument which is supposed to be operating at multinational level and with undertakings from several countries remaining subject exclusively to the national law of the country to which the member undertakings belong; whereas a new legal instrument should be introduced into Community law to enable such cooperation to take place in a satisfactory manner, particularly among small and medium-sized undertakings; whereas the most suitable means of achieving this end is the introduction of a vehicle for cooperation with a contractual basis under the form of a 'European Cooperation Grouping'; whereas the formation and operation of such an instrument would remain subject to the Community rules on competition and the measures taken for their implementation;

Whereas the Treaty does not provide the necessary powers for the creation of this legal instrument;

Whereas to ensure flexibility for the grouping its founders should have wide powers to organize its functioning; whereas a subsidiary law must be applicable in respect of any matter for which this Regulation or the constitutive contract makes no provision;

Whereas the interests of employees must be protected, particularly when the grouping is formed or voluntarily wound up;

(1) OJ No C 14, 15. 2. 1974, p. 30.

Whereas, to enable the employees or their representatives to assess the effects of the formation of the grouping on the interests of employees, it is necessary to inform them before the grouping is formed; whereas if the employees or their representatives consider that their interests will be adversely affected, the measures to be taken for their benefit must be formulated primarily through negotiations;

Whereas similar principles must apply in the case of the voluntary winding-up of the grouping; whereas negotiations must therefore be opened with the employees or their representatives before winding-up is resolved; whereas any agreement on the measures to be taken as regards the employees must in such cases be set down in writing;

Whereas, in the event of the failure of negotiations and particularly if it has been decided to wind up the grouping, in both cases the provisions on the protection of the rights and privileges of employees in the case of mergers, takeovers and amalgamations in force in the Member State whose rules govern the employment relationship in question must be applied;

Whereas the grouping must not in any way be a substitute for firms or companies, commercial or otherwise, since the purpose, objects and legal structure of the latter are completely different; whereas its activities should derive from those of its members and should remain co-terminous with them and ancillary to them;

Whereas, since there are in the Community a large number of undertakings owned by individuals, the grouping should be available to natural persons as well as firms and companies;

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ORIGINAL TEXT

*Article 1*

1. European Cooperation Groupings may be formed by contract for a fixed term, upon and subject to the terms and conditions and in the manner and with the effects laid down by this Regulation.
2. Where in respect of any matter no provision is made by this Regulation, the law applicable thereto shall be the law in force in the State where the head office as specified by the contract forming the grouping is situated.

Whereas the grouping should be a vehicle for cooperation between undertakings carrying on business on the territory of different Member States;

Whereas, since the object of the grouping is to promote cooperation between its members, their involvement must of necessity be on a basis of equal rights;

Whereas, to enable the grouping to accomplish effectively the tasks set for it by the law and by the contract, it should be endowed with legal capacity;

Whereas, as a counterbalance to the fact that, whilst no capital is required, the grouping nonetheless has legal capacity, third parties should be protected by ensuring that liability on the part of its members is personal and joint and several, and that the affairs of the grouping are subject to disclosure;

Whereas the grouping must be able to have its own financial resources, to be contributed in the normal way by the members in cash or otherwise; whereas it should under no circumstances issue debentures or invite investment by the public;

Whereas the contract forming the grouping is one which is very much personal to the members, and their rights should therefore not be transferable without the agreement of members in general meeting;

Whereas, since the rules governing the liabilities of the grouping are strict, rules should be laid down to govern the consequences of a member entering or leaving the grouping;

Whereas, in view of the limitations imposed on its objects, the grouping should not in principle make profits; whereas, however, the possibility cannot be excluded that profits may arise in certain cases; whereas, since the grouping does not constitute an economic entity separate from its members, any profits arising should be taxed only in the hands of the members,

HAS ADOPTED THIS REGULATION:

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AMENDED TEXT

*Article 1*

1. European Cooperation Groupings may be formed by contract for a limited period, upon and subject to the terms and conditions and in the manner and with the effects laid down by this Regulation.
2. unchanged

## ORIGINAL TEXT

3. A grouping shall, from the date of its registration as provided by Article 4 (2) of this Regulation, have the capacity to enjoy and be bound by rights and obligations, to make contracts or accomplish other legal acts, and to sue and to be sued.

*Article 2*

1. The purpose of groupings shall be to facilitate or develop the business of their members and to improve or increase the results of such business. Groupings shall not seek to make profits for themselves.

The object of a grouping shall be defined in the contract forming the grouping and must conform to the requirements of paragraph 2 below.

2. The activities of a grouping shall be limited to:

- the provision of services exclusively to its members,
- the processing of goods, or the packaging of finished products, exclusively for the purposes of its members.

## AMENDED TEXT

3. unchanged

*Article 1 a*

1. The employees concerned, or their representatives, shall be notified in good time before a grouping is formed.

2. If the employees concerned are of the opinion that their interests will be adversely affected by the formation of a grouping, the management bodies of the companies concerned, or the persons seeking to form a grouping, shall at the request of the employees or their representatives agree with them on the measures to be taken as regards the employees.

3. If no agreement is reached between the parties, the provisions to be applied shall be those on the protection of the rights and advantages of employees in the case of mergers, takeovers and amalgamations in force in the Member State whose regulations govern the working conditions of the employees concerned.

*Article 2*

1. The purpose of groupings shall be to facilitate or develop the business of their members and to improve or increase the results of such business.

Its activities shall be organically related to the business of its members. The aim of the grouping shall not be to make profits for itself and, in accordance with this principle, profits which actually accrue from the activities of the grouping shall rank proportionately as the profits of the members and shall be accounted for on this basis in the proportion provided for in the contract or, in the absence of any provision, in equal parts.

The object of a grouping shall be defined in the contract forming the grouping and shall conform to the requirements of paragraph 2 below.

2. The activities of a grouping shall be limited to:

- the provision of services exclusively to its members,
- the production, processing or packaging of goods exclusively for the purposes of its members.

ORIGINAL TEXT	AMENDED TEXT
3. A grouping may not exercise management functions in respect of the business of its members.	3. unchanged
4. A grouping may not have more than 250 employees.	4. A grouping may not have more than 500 employees.
<i>Article 3</i>	
1. A grouping shall consist of at least:	1. unchanged
(a) two companies or firms, within the meaning of Article 58 of the Treaty establishing the European Economic Community, established under the laws of different Member States;	
(b) two natural persons each of whom operates an industrial, commercial, small craft or agricultural undertaking and whose respective businesses are carried on principally in different Member States;	
(c) a natural person carrying on one of the activities specified in subparagraph (b) above and a company or firm established under the law of another Member State.	
2. Every member of a grouping must be resident in a Member State for tax purposes.	2. unchanged
<i>Article 4</i>	
1. The contract forming a grouping shall designate the head office thereof, which must be situated within the Community.	1. unchanged
The contracts shall furthermore contain at least the following:	
(a) the name of the grouping;	
(b) the object for which the grouping is formed;	
(c) the names, business names, if any, legal form, permanent address or registered office, and, where appropriate, the number and place of registration, of each member of the grouping;	
(d) the term for which the grouping is formed.	
2. The grouping shall be entered in a register designated for that purpose by the Member State where the head office is situated. The contract shall be filed at the time of registration; any subsequent amendments shall be filed also.	2. The grouping shall be entered in a register designated for that purpose by the Member State where the head office is situated. The contract shall be filed at the time of registration; any subsequent amendments shall be filled also.
The matters referred to in paragraph 1 above shall be published in accordance with formalities to be adopted pursuant to Article 19 of this Regulation and any change in such matters shall be published in like manner. The same shall apply in respect of the	The matters referred to in paragraph (1) above shall be published in the form to be adopted pursuant to Article 19 of this Regulation and any change in such matters shall be published in like manner. The same shall apply in respect of the names and addresses of

## ORIGINAL TEXT

names and addresses of the persons referred to in Article 7 (1) of this Regulation and, where appropriate, the indication that they must act jointly.

3. Failing completion of the formalities of registration and publication required by this Regulation the matters which should be published may not be relied upon against third parties who may however themselves rely on such matters.

*Article 5*

1. A judicial decision shall be necessary for the contract forming a grouping to be declared void.

2. Such a decision may be relied upon against third parties only with effect from the date of publication of the judgment in the official journal referred to in Article 19 (1) of this Regulation, unless it can be proved that the third parties knew at the time when they entered into contractual relations with the grouping that the contract forming the grouping was void.

*Article 6*

1. Subject to paragraphs 2 to 5 below and to Article 7 of this Regulation, the organs and the internal regulations of a grouping shall be determined by the contract.

2. The widest powers to pass any resolution or execute or do any act or thing for the purpose of achieving the object of the grouping shall be vested in the members of the grouping in general meeting.

3. Resolutions shall be passed in accordance with the provisions of the contract or of this Regulation.

Unless otherwise provided by the contract, resolutions of the general meeting to amend the contract, for the winding up of the grouping before the expiry of the contractual term or for the extension of the term of the grouping shall be taken unanimously.

4. Each member shall have at least one vote. The contract may however give more than one vote to certain members.

## AMENDED TEXT

the persons referred to in Article 7 (1) of this Regulation and, where appropriate, the indication that they must act jointly.

Notice of the formation of a grouping together with the date and place of publication shall be given in the *Official Journal of the European Communities* within one month of its publication in the national official publications.

3. unchanged

*Article 5*

1. unchanged

2. unchanged

*Article 6*

1. Subject to paragraphs 2 to 6 below and to Article 7 of this Regulation, the organs and the internal regulations of a grouping shall be determined by the contract.

2. unchanged

3. unchanged

4. unchanged

5. The contract may provide for decisions of the general meeting to be adopted by written procedure on certain matters which are expressly referred to in

## ORIGINAL TEXT

## AMENDED TEXT

5. A general meeting shall be convened at the request of a manager of the grouping or of at least one-quarter of the members of the grouping.

the contract, always excluding the matters referred to in paragraph 3.

6. A general meeting shall be convened at the request of a manager of the grouping or of at least two of the members of the grouping.

*Article 7**Article 7*

1. A grouping shall be managed by one or more natural persons appointed by the contract or by the general meeting.

1. unchanged

2. The acts of a manager shall be binding on the grouping as against third parties even where they do not fall within the objects of the grouping. The contract may however provide that the grouping may be validly bound only by two or more managers acting jointly. Any other limitation on their powers, whether under the contract or a decision of the general meeting, may not be relied upon against third parties, even if it is published.

2. The acts of a manager shall be binding on the grouping as against third parties when he is acting on behalf of the grouping even where they do not fall within the objects of the grouping. The contract may however provide that the grouping may be validly bound only by two or more managers acting jointly. Any other limitation on their powers, whether under the contract or a decision of the general meeting, may not be relied upon against third parties, even if it is published.

3. The name and address, or names and addresses, of the person or persons referred to above, and, where appropriate, an indication that they must act jointly, shall be published in accordance with the rules on publicity contained in Article 4 of this Regulation.

3. unchanged

*Article 8**Article 8*

1. The contract may require the members to make contributions in cash, in kind or by way of services. It may also lay down the terms and conditions on which the members are to make contributions, where necessary, to meet any excess of expenditure over revenue. If no such provision is made by the contract, such terms and conditions shall be laid down by the general meeting, failing which such contribution shall be made in equal shares.

1. unchanged

2. Any assignment of a member's rights shall be subject to authorization by the general meeting. Unless otherwise expressly provided by the contract, such decision shall be taken unanimously by the members of the grouping and shall be published in accordance with the rules on publicity contained in Article 4 of this Regulation.

2. Any assignment of a member's rights shall be subject to authorization by the general meeting. Unless otherwise expressly provided by the contract, such decision shall be taken unanimously by the members of the grouping and shall be published in accordance with the rules on publicity contained in Article 4 of this Regulation.

The assignment by members acting as individuals of part of their membership rights shall not be permitted.

3. A grouping may not issue debentures or invite investment by the public.

3. unchanged

ORIGINAL TEXT	AMENDED TEXT
<i>Article 9</i>	<i>Article 9</i>
<p>1. The members of a grouping shall be jointly and severally liable out of their own property for the debts thereof.</p> <p>2. Creditors of the grouping may not proceed for repayment against an individual member unless they have first made a written demand for payment from the grouping and failed to obtain satisfaction.</p> <p>3. If a member is proceeded against in respect of debts of the grouping he may rely on any defence which would be available to the grouping itself.</p>	<p>1. unchanged</p> <p>2. Creditors of the grouping may not proceed for repayment against an individual member unless they have first made a formal demand for payment from the grouping.</p> <p>3. unchanged</p>
<i>Article 10</i>	<i>Article 10</i>
<p>On letters and orders issued by a grouping there shall be indicated legibly:</p> <ul style="list-style-type: none"><li>— the name of the grouping, followed by the words 'European Cooperation Grouping';</li><li>— the number under which the grouping is registered as provided by Article 4 (2) of this Regulation and the name of the register in which it is entered;</li><li>— the place where the grouping has its head office.</li></ul>	unchanged
<p>If the grouping is in liquidation, this fact shall also be indicated.</p>	
<i>Article 11</i>	<i>Article 11</i>
<p>1. Unless otherwise expressly provided by the contract, a unanimous resolution of the members of the grouping in general meeting shall be required for the admission of new members,</p> <p>2. Every new member shall be responsible, in accordance with Article 9, for the debts of the grouping, including those incurred prior to his admission.</p>	<p>1. unchanged</p> <p>2. unchanged</p>
<i>Article 12</i>	<i>Article 12</i>
<p>1. The contract may provide for members to be able to withdraw by resigning. If it does so, it shall lay down precisely the terms and conditions on which resignation may take place, failing which the clause providing for resignation shall be void.</p>	1. unchanged

ORIGINAL TEXT	AMENDED TEXT
<p>2. The members of the grouping in general meeting may expel any member who is regularly in breach of his obligations, or whose conduct disturbs the smooth running of the grouping. The decision shall be taken in accordance with the relevant provisions of the contract or, failing those, by the other members of the grouping unanimously.</p>	2. unchanged
<p>3. If a member resigns or is expelled the grouping shall continue to exist amongst the remaining members on the terms and conditions contained in the contract or laid down by the general meeting.</p>	3. unchanged
<i>Article 13</i>	<i>Article 13</i>
<p>1. A grouping shall be wound up:</p> <p>(a) upon the attainment or the extinction of its object;</p> <p>(b) upon the expiry of its term;</p> <p>(c) by a resolution passed by the members in accordance with Article 6 (3) of this Regulation;</p> <p>(d) if the number of members falls below two.</p>	1. unchanged
<p>2. A grouping which has come to consist exclusively of members subject to the law of one Member State shall be wound up, unless within six months it once more satisfies the requirements of Article 3 (1).</p>	2. unchanged
<p>3. Unless otherwise provided by the contract, a grouping shall also be wound up:</p> <p>(a) if one of its members being a natural person is declared bankrupt or being a company goes into liquidation by reason of insolvency;</p> <p>(b) upon any other judicial or administrative measure being taken as the consequence of insolvency or suspension of payment of debts by one of its members;</p> <p>(c) upon the death or incapacity of one of its members being a natural person or upon the winding up of one of its members being a company;</p> <p>(d) upon the abandonment by one of its members of his or its business as mentioned in Article 3 (1) (b) or (c) or of his or its residence with in the Community for tax purposes.</p>	3. unchanged
<p>4. If the contract provides in any of the cases referred to in paragraph 3 above that the grouping is to continue in existence, the member concerned shall cease to be a member of the grouping. The latter shall continue to exist amongst the remaining members on the terms and conditions contained in the contract or laid down by the general meeting.</p>	4. unchanged



ORIGINAL TEXT	AMENDED TEXT
<i>Article 14</i>	<i>Article 14</i>
1. Where the object of a grouping as defined by the contract, or the business of a grouping, does not conform to the provisions of Article 2 of this Regulation, the court shall on application by any person who proves a legitimate interest order the winding-up of the grouping.	1. unchanged
2. On application by a member, the court may order the winding-up of a grouping if it is just and equitable to do so.	2. unchanged
<i>Article 15</i>	<i>Article 15</i>
1. If one of the members of a grouping ceases to be a member thereof, a valuation shall be made of the assets of the grouping in order to determine the value of claims by or on that member. Unless the contract expressly provides otherwise, this valuation shall be carried out by the manager or managers, who shall be responsible for settling the position of the outgoing member.	1. unchanged
2. A member who ceases to be a member of a grouping shall for a period of five years from the date of publication of such cessation, in accordance with the rules on publicity contained in Article 4 of this Regulation, remain responsible, in accordance with Article 9, for debts of the grouping which have arisen prior to such publication.	2. unchanged
3. The provisions of paragraph 1 shall not apply in the case of an assignment of the rights of a member in accordance with Article 8 (2) of this Regulation.	3. unchanged
<i>Article 16</i>	<i>Article 16</i>
1. Upon the winding-up of a grouping being resolved or ordered its liquidation shall be commenced. Unless otherwise expressly provided by the contract or resolved by the general meeting, liquidation shall be carried out by the manager or managers for the time being in office. Where winding-up is ordered by the court pursuant to Article 14, or on an application, stating the reasons on which it is based, by one of the members, a liquidator or liquidators may be appointed by the court.	1. unchanged
2. The grouping shall retain its capacity within the meaning of Article 1 (3) of this Regulation so far as is necessary for the purposes of the liquidation. A grouping in liquidation shall be represented by its liquidators.	2. unchanged

## ORIGINAL TEXT

## AMENDED TEXT

3. The fact that a grouping is being wound up, together with the name or names of the liquidator or liquidators, shall be registered and published in accordance with Article 4 of this Regulation.

3. unchanged

*Article 16 a*

1. If the employees or their representatives consider that the interests of employees will be adversely affected by the proposed winding-up of a European Cooperation Grouping, the manager or managers of the grouping shall, before the decision to wind up is taken at the general meeting, agree with the employees or their representatives on the measures to be taken in favour of the employees (social plan).

2. Any agreement on the social plan shall be made in writing.

3. The manager or managers shall inform the general meeting of the outcome of the negotiations on the social plan.

4. If no agreement is reached in the negotiations on the social plan and the general meeting has decided to wind up the grouping, the subsequent procedure shall be subject to the provisions on the protection of the rights and advantages of employees in the case of mergers, takeovers and amalgamations in force in the Member State whose regulations govern the working conditions in question.

*Article 17*

1. The liquidators shall complete current transactions, recover the debts, and realize the assets to such extent as may be necessary for the purpose of meeting liabilities and of any distributing of assets among members. Any balance of assets remaining after the debts have been paid shall be distributed amongst the members of the grouping in accordance with the provisions of the contract. In the absence of such provisions, such distribution shall be in equal shares.

2. The liquidators shall place on deposit or otherwise secure any sums of money, or other property, due to any creditor to whom they are unable to make payment or to any member to whom they are unable to distribute.

3. If any legal proceedings are commenced in connection with the distribution of the assets, the liquidators shall, as regards the sums in question, suspend the distribution until a judgment or other pronouncement is given or made by the court having jurisdiction.

4. The liquidators shall register and publish the completion of the liquidation in accordance with the provisions of Article 4 of this Regulation.

*Article 17*

1. unchanged

2. unchanged

3. unchanged

4. unchanged

## ORIGINAL TEXT

## AMENDED TEXT

*Article 18*

1. Rights of action against a grouping, or by a grouping against one of its members in connection with the performance of the contract forming the grouping, shall be barred five years after the publication of the completion of the liquidation of the grouping.

2. This period of limitation shall run from the date of publication of the completion of the liquidation as provided by Article 17 (4) of this Regulation.

*Article 19*

1. Member States shall take all necessary steps to ensure that the rules of this Regulation on publicity are applied.

They shall ensure that the matters referred to in Article 4 (1), and any changes in such matters, and in addition any other matters which this Regulation requires to be publicized, are published in the official journal for the publication of matters relating to companies in the State in which the grouping has its head office. They shall also ensure that all persons have access to the register designated under Article 4 (2) of this Regulation and to the documents filed therein.

2. Member States shall take appropriate steps to penalize:

(a) the unlawful use of the description 'European Cooperation Grouping', or of any other expression likely to give rise to confusion therewith, by any grouping which is not constituted in accordance with the provisions of this Regulation;

(b) any offence against Article 10.

*Article 20*

Any profits made by a grouping shall only be taxable in the hands of its members.

*Article 18*

1. unchanged

2. unchanged

*Article 19*

1. Member States shall take all necessary steps to ensure that the rules of this Regulation on publicity are applied.

They shall ensure that the matters referred to in Article 4 (1), and any changes in such matters, and in addition any other matters which this Regulation requires to be publicized, are published in the official journal for the publication of matters relating to companies in the State in which the grouping has its head office. They shall also ensure that all persons have access to the register designated under Article 4 (2) of this Regulation and to the documents filed therein.

Member States shall take all necessary steps to transmit in good time to the competent institutions of the European Communities the information to be published in the *Official Journal of the European Communities* pursuant to Article 4 of this Regulation.

2. unchanged

*Article 20*

unchanged

ORIGINAL TEXT

AMENDED TEXT

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*Article 21*

Member States shall implement the requirements of Article 19 within 12 months of the adoption of this Regulation.

*Article 22*

This Regulation shall enter into force 12 months following the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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