

**Proposal for a Council Regulation on the statute for a European mutual society**

(92/C 99/05)

*COM(91) 273 final — SYN 390**(Submitted by the Commission on 6 March 1992)*

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas the Commission adopted a communication to the Council of 18 December 1989 <sup>(1)</sup>; whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990 <sup>(2)</sup>;

Whereas the completion of the internal market means that there must be full freedom of establishment for all activities which contribute to the objectives of the Community, irrespective of the form taken by the body which carries them on;

Whereas, therefore, the Community, which is concerned to respect equal terms of competition and to contribute to its economic development, should provide mutual societies, which are a form of organization generally recognized in most Member States, with adequate legal instruments capable of facilitating the development of their transnational activities;

Whereas by the attainment of their objectives and the form of their operations mutual societies play a full part in the life of the economy;

Whereas the statute for a European company, as provided for in Regulation (EEC) No ... /... <sup>(3)</sup>, is not an instrument which is suited to the specific features of mutual societies;

Whereas the European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No

2137/85 <sup>(4)</sup>, does allow groupings to promote certain of their activities in common, while nevertheless preserving their independence, but it does not meet the specific requirements of mutual societies;

Whereas respect for the principle of the primacy of the individual is reflected in the specific rules on membership, resignation and expulsion, where the one-man, one-vote rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the society;

Whereas mutual societies are essentially groups of persons operating in accordance with their own principles, which are different from those applying to other businesses;

Whereas cross-border cooperation between mutual societies in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers;

Whereas the introduction of a European form of organization which would be available to mutual societies, based on common principles but taking account of their specific features, and in particular of the fact that they may operate in the general interest, should enable them to operate outside their own national borders in all or part of the territory of the Community;

Whereas the essential aim of the legal rules governing the European mutual society implies that such a society may be set up by legal entities from different Member States, or by transformation of a national mutual society into the new form, without first being wound up, so long as the mutual society has its registered office and central administration in the Community and an establishment or subsidiary in a Member State other than that in which it has its central administration; in this last case, the mutual society must engage in genuine and effective cross-border activity;

<sup>(1)</sup> Businesses in the 'économie sociale' sector — Europe's frontier-free market: SEC(89) 2187 final, 18. 12. 1989.

<sup>(2)</sup> OJ No C 332, 31. 12. 1990, p. 81.

<sup>(3)</sup> OJ No L ...

<sup>(4)</sup> OJ No L 199, 31. 7. 1985, p. 1.

Whereas European mutual societies should hold a formation fund;

Whereas the rules on accounting are intended to ensure more effective management and to forestall any possible difficulty;

Whereas this Regulation does not affect basic obligatory social security schemes managed in certain Member States by mutual provident societies and the liberty of Member States to decide whether or not and under what conditions to entrust the management of these schemes to mutual societies;

Whereas, on matters not covered by this Regulation, the provisions of the law of the Member States and of Community law are applicable, for example with regard to:

- rules on employee involvement in the decision-making process,
- employment law,
- taxation law,
- competition law,
- intellectual and industrial property law,
- rules on insolvency and suspension of payments;

Whereas the application of this Regulation must be deferred so as to enable each Member State to incorporate into its national law the provisions of Council Directive .../.../EEC supplementing the Statute for a European mutual society with regard to the involvement of employees <sup>(1)</sup> and to put in place in advance the necessary machinery for securing the formation and operation of European mutual societies having their registered office in its territory, so that the Regulation and the Directive may be applied concomitantly;

Whereas work on the approximation of national company law has made substantial progress so that reference may be made to certain dispositions made by the Member State where the European mutual society has its registered office for the purpose of implementing directives on companies, by analogy for the European mutual society in areas where the functioning of the society does not require uniform Community rules, such dispositions being appropriate to the arrangements governing the European mutual society:

- Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safe-

guards equivalent throughout the Community <sup>(2)</sup>, as last amended by the Act of Accession of Spain and Portugal,

- Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies <sup>(3)</sup>, as last amended by Directives 90/604/EEC <sup>(4)</sup> and 90/605/EEC <sup>(5)</sup>,
- Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts <sup>(6)</sup>, as last amended by Directives 90/604/EEC and 90/605/EEC,
- Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents <sup>(7)</sup>,
- Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration <sup>(8)</sup>,
- Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State <sup>(9)</sup>;

Whereas the activities in the field of financial services and notably as they concern establishments and insurance enterprises have been the subject of legislative measures pursuant to the following Directives:

- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions <sup>(10)</sup>,
- Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC <sup>(11)</sup>,
- Council Directive .../.../EEC of ... on the coordination of laws, regulations and administrative

<sup>(2)</sup> OJ No L 65, 14. 3. 1968, p. 8.

<sup>(3)</sup> OJ No L 222, 14. 8. 1978, p. 11.

<sup>(4)</sup> OJ No L 317, 16. 11. 1990, p. 57.

<sup>(5)</sup> OJ No L 317, 16. 11. 1990, p. 60.

<sup>(6)</sup> OJ No L 193, 18. 7. 1983, p. 1.

<sup>(7)</sup> OJ No L 126, 12. 5. 1984, p. 20.

<sup>(8)</sup> OJ No L 19, 24. 1. 1989, p. 16.

<sup>(9)</sup> OJ No L 395, 30. 12. 1989, p. 36.

<sup>(10)</sup> OJ No L 372, 31. 12. 1986, p. 1.

<sup>(11)</sup> OJ No L 386, 30. 12. 1989, p. 1.

<sup>(1)</sup> See page 57 of this Official Journal — Proposal.

provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (1);

Whereas this form of organization should be optional,

HAS ADOPTED THIS REGULATION:

## TITLE I

### GENERAL PROVISIONS

#### CHAPTER I

#### FORMATION OF THE EUROPEAN MUTUAL SOCIETY

##### *Article 1*

(Form of the European mutual society)

1. Mutual societies may be formed throughout the Community in the form of a European mutual society (ME) on the conditions and in the manner set out in this Regulation. The name of an ME shall specify the nature of the activity engaged in, whether concerned with providence, insurance, health assistance, credit, or otherwise.

2. An ME:

- shall guarantee its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorized by its statutes; and
- shall not remunerate its managers or administrators, unless otherwise provided in its statutes.

3. An ME shall operate with a formation fund and reserves which shall serve exclusively to cover its debts.

4. An ME shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 8 (3).

5. This Regulation does not prejudice the competence of each Member State to regulate access on its territory to the management of basic obligatory social security schemes as well as the operations of provident or assistance organizations the services of which will vary according to available resources and in which the contributions of members is determined by contract, as well as the carrying out of the activities and operations.

##### *Article 2*

(Formation)

1. An ME may be formed by:

- (a) either any two or more of the legal entities which are listed in Annex I which are formed under the law of a Member State provided that at least two of them have their registered office and central administration in different Member States; in this case, the ME will be able to exercise all activities appropriate to a mutual society of the type of those mentioned in Article 1 (1);
- (b) or any two or more of the legal entities which are listed in Annex 2 and which are formed under the law of a Member State provided that at least two of them have their registered office and central administration in different Member States; in this case, in conformity with Article 1 (5), the ME will not be able to be formed and carry out its activities except to the extent allowed by Member States to the founding entities.

2. A mutual society which has been formed in accordance with the law of a Member State and has its registered office and central administration in the Community may form an ME by converting into ME form if it has an establishment or subsidiary in a Member State other than that of its central administration, and can demonstrate that it is carrying on genuine and effective cross-border activities.

Such conversion shall not result in the society being wound up or in the creation of a new legal person.

The administrative or management board of such a society shall draw up a proposal for conversion covering the legal and economic aspects of the conversion.

The conversion to ME form and the ME's statutes shall be approved by the general meeting of members in accordance with the requirements laid down for amendment of its statutes by Article 22.

(1) COM(90) 348 final — SYN 291.

*Article 3*

## (The statutes of the ME)

1. The statutes of the ME must include:
  - the name of the ME, specifying the nature of the activity engaged in, and preceded or followed by the abbreviation 'ME',
  - a precise statement of the objects of the ME,
  - the name, objects and registered offices of the founder members, where these are legal entities;
  - the address of the ME's registered office;
  - the conditions and procedures for the admission, expulsion and resignation of members,
  - the rights and obligations of members and of the ME,
  - the subscriptions payable by natural or legal persons, and, where appropriate, provisions as to arrears,
  - the management structure,
  - the powers and responsibilities of each of the governing bodies of the ME,
  - provisions governing the appointment and removal of the members of the governing bodies,
  - the majority and quorum requirements,
  - a definition of the governing bodies, or members of those bodies, having authority to represent the ME in dealings with third parties,
  - the conditions for the initiation of proceedings on behalf of the ME under Article 42,
  - the grounds for winding up.
2. For the purposes of this Regulation the 'statutes' of the ME comprise both the instrument of incorporation and, where they are set out in a separate document, the ME's statutes properly so-called.
3. For the purposes of this Regulation a 'member' of any ME means any legal person who took part in the foundation of the ME or who acquired membership later.

*Article 4*

## (Formation fund)

1. The formation fund shall be not less than ecu 100 000 or the equivalent in national currency.
2. Where the law of a Member State requires a higher amount in the case of mutual societies engaged in certain types of activity, the same requirement shall apply to MEs which have their registered office in that State.

*Article 5*

## (Registered office)

The registered office of an ME shall be situated at the place specified in its statutes, which must be within the Community. It must be the same as the place where the ME has its central administration.

*Article 6*

## (Transfer of registered office)

1. The registered office of an ME may be transferred within the Community. Such transfer shall not result in the ME being wound up or in the creation of a new legal person.

2. Where the transfer of the registered office results in a change of the law applicable pursuant to Article 7 (1) (b), a transfer proposal shall be published in accordance with Article 9.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken under the conditions laid down for the amendment of the statutes. The transfer of the registered office of the ME and the resulting amendment to its statutes shall take effect from the date of registration of the ME, in accordance with Article 8 (3), in the register for the new registered office. That registration may not be effected until evidence has been produced that the proposed transfer of the registered office has been published.

3. The removal of the ME from the register for its previous registered office may not be effected until evidence has been produced that the ME has been registered in the register for its new registered office.

4. The fact of the new registration and the fact of the removal of the old registration shall both be published in the Member States concerned in accordance with Article 9.

5. The new registration of the registered office of the ME may be relied on as against third parties from publication. However, until the removal of the ME from the register for its previous registered office has been published third parties may continue to rely on the old registered office unless the ME proves that such third parties were aware of the new registered office.

*Article 7*

## (Applicable law)

1. An ME shall be governed:
  - (a) — by the provisions of this Regulation,
  - where expressly authorized by this Regulation, by the provisions freely determined by the parties in the statutes of the ME;

failing this:

- (b) — by the provisions of the law of the Member State in which the ME has its registered office governing domestic mutual societies engaging in comparable activities,

- by the provisions freely determined by the parties in the statutes of the ME, in accordance with the same conditions as for mutual societies engaging in comparable activities and governed by the law of the Member State in which the ME has its registered office.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under point (b) of paragraph 1.

3. In each Member State and subject to the express provisions of this Regulation, an ME shall have the same rights, powers and obligations as a mutual society formed under the law of the State in which the ME has its registered office.

4. The following shall apply to an ME:

- the provisions of Community law and national law adopted in conformity with them,
- and
- in the absence of community legislation, national provisions regulating access or the exercise of certain activities such as credit or insurance.

#### *Article 8*

##### *(Registration and disclosure requirements)*

1. The founder members shall draw up the statutes of the ME in accordance with the provisions for the formation of mutual societies laid down by the law of the State in which the ME has its registered office. The statutes must at least be in writing and signed by the founder members.

2. In those Member States whose legislation does not provide for any precautionary supervision, whether administrative or judicial, at the time of formation, the statutes shall be adopted by notarial act. The supervisory authority shall seek to ensure that this act complies with the requirements for the formation of an ME, and in particular those set out in Articles 1, 2, 3 and 5.

3. Member States shall designate the register in which MEs must be registered and shall determine the rules governing it. They shall lay down the procedures for fil-

ing the ME's statutes. No ME may be registered until the measures required by Directive .../.../EEC [supplementing the statute for a European mutual society with regard to the involvement of employees] have been adopted.

4. Member States shall take the measures required to ensure that the following documents and particulars are disclosed as provided for in paragraph 3:

- (a) the statutes of the ME, any amendments to them, and the complete text of the statutes in its up-to-date form;
- (b) the opening or closing of any establishment;
- (c) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:
  - are authorized to represent the ME in dealings with third parties and in legal proceedings,
  - take part in the administration, supervision or control of the ME;
- (d) at least once a year, the amount of the formation fund, unless any increase in the formation fund requires an amendment to the rules;
- (e) the balance sheet and the profit and loss account for each financial year; the document containing the balance sheet shall give particulars of the persons who are required by law to certify it;
- (f) any proposal to transfer the registered office as referred to in Article 6 (2);
- (g) the winding-up and liquidation of the ME and the decision to continue the ME's activities taken under Article 49;
- (h) any declaration of nullity of the ME by a court;
- (i) the appointment of liquidators, particulars of such liquidators, and their respective powers, the termination of their office;
- (j) the conclusion of the liquidation of the ME and the removal of the ME from the register.

5. If, prior to its acquisition of legal personality, steps have been taken in the name of an ME, and the ME does not assume the obligations arising from those steps, the persons who took them shall be jointly and severally liable therefor, unless otherwise agreed.

#### *Article 9*

##### *(Publication of documents and particulars relating to the ME in the Member States)*

1. Member States shall ensure that the documents and particulars referred to in Article 8 (4) are disclosed in

the appropriate official gazette in the Member State in which the ME has its registered office, and shall determine by which persons the disclosure formalities are to be carried out. Disclosure shall be effected by publication either of an extract or of a reference to the entry in the register.

Member States shall also ensure that anyone may consult the documents referred to in Article 8 (4) in the register referred to in Article 8 (3), and may obtain a copy of the whole or any part, by post if requested.

Member States shall take the necessary measures to avoid any discrepancy between what is disclosed by publication and what appears in the register. However, in cases of discrepancy, the text published may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the ME proves that they had knowledge of the text entered in the register.

Member States may require payment of a fee for the services referred to in the preceding subparagraphs, but the fee may not exceed the administrative cost.

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of a ME opened in a Member State other than that in which it has its registered office.

3. Documents and particulars may be relied on by the ME as against third parties only after they have been disclosed in accordance with paragraph 1, unless the ME proves that the third party had knowledge thereof. However, they may not be relied on in respect of transactions which take place before the 16th day after publication as against third parties who prove that they could not have had knowledge thereof.

4. Third parties may rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

#### *Article 10*

(Notice in the Official Journal)

Member States shall ensure that a notice stating that an ME has been registered or that the liquidation of an ME has been concluded is published for information purposes in the *Official Journal of the European Communities*, stating the number, date and place of registration of the ME, the date and place of publication and the title of the publication, the address of the ME and a summary of its objects, and that these particulars are

forwarded to the Office for Official Publications of the European Communities within one month of the date of the publication in the official gazette of the Member State in which the ME has its registered office pursuant to Article 9 (1).

Where the registered office of the ME is transferred in accordance with Article 6 (2) a notice shall be published containing the information provided for in the first paragraph, together with that relating to the new registration.

#### *Article 11*

(Particulars to be stated in the ME's documents)

Letters and documents sent to third parties shall state legibly:

- (a) the name of the ME, preceded or followed by the abbreviation 'ME';
- (b) the place of the register in which the ME is registered in accordance with Article 8 (3), and the number of the ME's entry in that register;
- (c) the address of the ME's registered office;
- (d) the fact that the ME is in liquidation or under the administration of the courts if that is so.

### CHAPTER II

#### GENERAL MEETING

#### *Article 12*

(Competence)

The general meeting shall decide on:

- (a) matters for which it has sole responsibility under this Regulation;
- (b) matters for which the management board, supervisory board or administrative board do not have sole responsibility as a result of:
  - this Regulation,
  - Directive ... [supplementing the Statute for a European mutual society with regard to the involvement of employees],
  - the law of the State where the ME has its registered office,
  - the statutes of the ME.

#### *Article 13*

(Holding of general meeting)

- 1. A general meeting shall be held at least once a year, not later than six months after the end of the ME's financial year.

2. General meetings may be convened at any time by the management board or the administrative board. The management board is bound to convene the general meeting at the request of the supervisory board.

3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and of the appropriation of the profit or treatment of the loss and the approval of the annual report referred to in Article 46 of Directive 78/660/EEC, to be submitted by the management or administrative board.

4. The statutes of an ME with a management board and a supervisory board may provide that a decision on approval of the annual accounts is to be taken jointly by the two boards, in separate votes, and that the general meeting is to pass a resolution only if the boards are unable to reach agreement.

#### *Article 14*

(Meeting called by a minority of members)

1. Not less than 25% of the members of the ME, which proportion may be reduced by the statutes, may request that the general meeting be convened and its agenda set.

2. The request for a meeting shall give the reasons for convening it and the items to be included on the agenda.

3. If, following a request made under paragraph 1, the necessary steps have not been taken within one month, the court or competent authority within the State where the ME's registered office is situated may order the convening of a general meeting or authorize either the members who have requested it or their representative to convene the meeting.

4. A general meeting may during a meeting decide that a further meeting be convened and set the date and the agenda.

#### *Article 15*

(Notice of meeting)

1. The general meeting shall be convened:

- by a notice published in the national gazette appointed by the Member State in which the ME has its registered office in accordance with Article 3 (4) of Directive 68/151/EEC,

- by a notice published in one or more newspapers with a large circulation in the Member States,
- or by a notice in writing sent to every member of the ME by any available means.

2. The notice calling the general meeting shall contain the following particulars, at least:

- the name and the registered office of the ME,
- the place and date of the meeting,
- the type of general meeting (ordinary, extraordinary or special),
- a statement of the formalities, if any, prescribed by the rules for attendance at the general meeting and for the exercise of the right to vote,
- the agenda, showing the subjects to be discussed and the proposals for resolutions.

3. The period between the date of publication of the notice or the date of dispatch of the communication referred to in paragraph 1 and the date of the opening of the general meeting shall be not less than 30 days.

#### *Article 16*

(Addition of items to the agenda)

Not less than 25 % of the members of the ME, which proportion may be reduced by the statutes, may, within ten days of receipt of the notice convening a general meeting, request the addition of one or more items to the agenda.

#### *Article 17*

(Attendance and proxies)

1. Only members shall be entitled to speak and vote at the general meeting.

2. Persons entitled to vote shall be entitled to appoint a proxy to represent them at the general meeting in accordance with procedures to be laid down in the statutes.

3. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

#### *Article 18*

(Sectional meetings)

Where the ME has several establishments, or where its activities span more than one territorial unit, the statutes may provide for the holding of sectional meetings to consider the same agenda separately before the general meeting is held. These meetings shall elect delegates, who shall in their turn be convened as the gen-

eral meeting. The statutes shall lay down the division into sections, the number of delegates for each section, and the procedures to be followed.

#### Article 19

##### (Right to information)

All members of the ME shall have an equal right of access to information both before and at general meetings.

This information shall be made available to members at the ME's registered office at least one month before the holding of the meeting.

In particular, before the general meeting that follows the end of the financial year, members may examine any accounting documents that must be drawn up in accordance with the national measures adopted pursuant to Directives 78/660/EEC and 83/349/EEC.

#### Article 20

##### (Voting rights)

Each member of the ME shall have one vote.

#### Article 21

##### (Normal majority)

Except where this Regulation or the statutes lay down majority requirements, decisions of the general meeting shall be taken by a majority of the votes of the members present or represented.

#### Article 22

##### (Special majority)

The general meeting shall have sole power to amend the statutes of the ME; any such resolution shall be passed by a majority of two-thirds of the votes of the members present or represented.

A Member State may provide that the management or administrative board is to amend the statutes where it is ordered to do so by a court or administrative authority whose authorization is required for amendments to the statutes.

#### Article 23

(Actions to have resolutions of general meeting declared void)

Resolutions of the general meeting may be declared void on the grounds that they infringe this Regulation or the statutes of the ME in the following manner:

- an action for such a declaration may be brought by any member provided he can show that he has an interest in having the infringed provision observed,
- the action for such a declaration shall be brought within three months, before the court within whose jurisdiction the ME has its registered office; the procedure in the action shall be governed by the law of the State in which the ME has its registered office,
- having heard the ME, the court may suspend application of the contested resolution; it may also require the applicant to lodge security for the damage which may result from the suspension of application of the resolution, if the application is ultimately dismissed as inadmissible or unfounded; judgments declaring a resolution void or ordering that its application be suspended shall be effective *erga omnes*, without prejudice to claims on the ME acquired in good faith by third parties.

#### Article 24

##### (Disclosure of decisions of a court)

Decisions of a court declaring a resolution of the general meeting void or non-existent shall be the subject of disclosure in accordance with Article 9.

### CHAPTER III

#### MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

#### Article 25

##### (Structure)

Under the conditions laid down by this Regulation the statutes of the ME shall organize the structure of the ME either according to a two-tier system (management board and supervisory board) or according to a one-tier system (administrative board); a Member State may, however, require that MEs having their registered office in its territory adopt either the two-tier or the one-tier system as it shall determine.

#### Section I

##### Two-tier system

##### Subsection 1

##### Management board

#### Article 26

(Functions of the management board; appointment of members)

1. The management board shall manage the ME. The member or members of the management board shall



have the power to represent the ME in dealings with third parties and in legal proceedings in accordance with the measures adopted pursuant to Directive 68/151/EEC by the Member State in which the ME has its registered office.

2. The member or members of the management board shall be appointed and removed by the supervisory board.

3. No person may at the same time be a member of the management board and of the supervisory board.

However, the supervisory board may nominate one of its members to exercise the function of member of the management board in the event of a vacancy. During such a period the function of the person concerned as member of the supervisory board shall be suspended.

4. The number of members of the management board shall be laid down in the statutes of the ME.

#### *Article 27*

(Chairmanship, convening of meetings)

1. The statutes may provide that the management board is to elect a chairman from among its members.

2. Meetings of the management board shall be convened in accordance with the statutes of the ME or the rules of procedure of the board. In any event any member of the board may convene a meeting where urgency requires, stating his reasons.

#### *Subsection 2*

#### **Supervisory board**

#### *Article 28*

(Functions of the supervisory board; appointment of members)

1. The supervisory board shall supervise the duties performed by the management board. It may not itself exercise the power to manage the ME. The supervisory board may not represent the ME in dealings with third parties. It shall represent the ME in dealings with members of the management board, or one of them, in respect of litigation or the conclusion of contracts.

2. The members of the supervisory board shall be appointed and removed by the general meeting. However, the members of the first supervisory board may be

appointed in the statutes. This provision shall apply without prejudice to national law permitting a minority of shareholders to appoint some of the members of a board.

3. The number of members of the supervisory board shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory board for MEs registered in its territory.

#### *Article 29*

(Right to information)

1. The management board shall report to the supervisory board at least once every three months on the state and foreseeable prospects of the ME's affairs, taking particular account of any information relating to undertakings controlled by the ME that may significantly affect those affairs.

2. The management board shall communicate to the supervisory board without delay any information which may have an appreciable effect on the ME.

3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the ME.

4. The supervisory board may undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to carry out this task and may call in the help of experts.

5. Each member of the supervisory board shall be entitled to examine all information communicated by the management board to the supervisory board.

#### *Article 30*

(Chairmanship, calling of meetings)

1. The supervisory board shall elect a chairman from among its members.

2. The chairman shall convene a meeting of the supervisory board under the conditions laid down in the statutes, on his own initiative, or at the request of at least one third of the members of the supervisory board, or at the request of the management board. The request must indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within fifteen days the meeting of the supervisory board may be called by those who made the request.

## Section II

**The one-tier system***Article 31*

(Functions of the administrative board; appointment of members)

1. The administrative board shall manage the ME. The member or members of the administrative board shall have the power to represent the ME in dealings with third parties and in legal proceedings in accordance with the measures adopted pursuant to Directive 68/151/EEC by the Member State in which the ME has its registered office.
2. The administrative board shall have at least three members within limits fixed by the statutes.
3. The administrative board may delegate to one or more of its members the power of management. It may also delegate certain management responsibilities to one or more persons not members of the board; such management responsibilities may be revoked at any time. The statutes, or if the statutes are silent the general meeting, shall lay down the conditions within which such delegation shall operate.
4. The member or members of the administrative board shall be appointed and removed by the general meeting.

*Article 32*

(Holding of meetings and right to information)

1. The management board shall meet at least once every three months, at intervals laid down by the statutes to discuss the progress and foreseeable prospects of the ME's affairs, taking particular account of any information relating to undertakings controlled by the ME that may significantly affect the progress of the ME.
2. The administrative board shall meet to deliberate on the operations referred to in Article 38.
3. Each member of the administrative board shall be entitled to examine all reports, documents and information supplied to the board concerning the matters referred to in paragraph 1.

*Article 33*

(Chairmanship, calling of meetings)

1. The administrative board shall elect a chairman from among its members.

2. The chairman shall convene a meeting of the administrative board under the conditions laid down in the statutes, either on his own initiative or at the request of at least one-third of the members. The request must indicate the reasons for calling the meeting. If the request is not satisfied within fifteen days, the meeting of the administrative board may be called by those who made the request.

## Section III

**Rules common to the one-tier and two-tier board systems***Article 34*

(Term of office)

1. Members of the governing bodies shall be appointed for a period laid down in the statutes not exceeding six years.
2. Board members may be reappointed one or more times for the period laid down in accordance with paragraph 1.

*Article 35*

(Conditions of membership)

1. A mutual society which is a member of a board shall designate a natural person as its representative to exercise its functions on the board in question. The representative shall be subject to the same conditions and obligations as if he were personally a member of the board.

2. No person may be a member of a management, supervisory or administrative board nor a representative of a member within the meaning of paragraph 1, nor have conferred on him powers of management or representation, who:

- under the law applicable to him, or
- under the law of the State in which the ME has its registered office, or
- as a result of a judicial or administrative decision delivered or recognized in a Member State,

is disqualified from serving on the management, supervisory or administrative board of any legal person.

*Article 36*

(Rules of procedure)

Each governing body may draw up rules of procedure under the conditions laid down by the statutes of the ME. Any member of the ME or competent authority may consult those rules of procedure at the registered office of the ME.

*Article 37*

## (Power of representation; liability of the ME)

1. Where the authority to represent the ME in dealings with third parties, in accordance with Articles 26 (1) and 31 (1), is conferred on two or more members of governing bodies, those persons shall exercise that authority collectively.

2. However, the statutes of the ME may provide that the ME shall be validly bound either by each of the members acting individually or by two or more of them acting jointly. Such a clause may be relied upon against third parties where it has been disclosed in accordance with Article 9.

3. Acts performed by members of the governing bodies of the ME shall bind the ME *vis-à-vis* third parties, even where the acts in question are not in accordance with the objects of the ME, providing they do not exceed the powers conferred on them by law or which the law allows to be conferred on them.

However, Member States may provide that the ME shall not be bound where such acts are outside the objects of the ME if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

4. The appointment, termination of office and particulars of the persons who may represent an ME must be disclosed in accordance with Article 9. The information disclosed must state whether these persons are authorized to bind the ME individually or whether they must act jointly.

*Article 38*

## (Operations requiring authorization)

1. The following operations shall require the authorization of the supervisory board or the deliberation of the administrative board:

- (a) closing or transferring a large establishment or a substantial part of such an establishment;
- (b) substantially reducing, extending or altering the activities of the ME;
- (c) making substantial organizational changes within the ME;
- (d) establishing cooperation with other legal entities which is both long-term and of importance to the

activities of the ME, or terminating such cooperation;

- (e) raising loans in respect of operations in excess of the ceiling laid down in the statutes, issuing securities and assuming or guaranteeing liabilities of a third party.

2. The statutes of the ME may provide that paragraph 1 shall also apply to other operations.

3. A Member State may determine the categories of operation referred to in paragraph 1 for MEs registered in its territory under the same conditions as those applying to mutual societies governed by the law of that State.

4. A Member State may provide that the supervisory or administrative board of MEs registered in its territory may itself make certain categories of operation subject to authorization or deliberation under the same conditions as those applying to mutual societies governed by the law of that State.

*Article 39*

## (Rights and obligations)

1. Within the scope of the functions attributed to them by this Regulation, each of the members of a board shall have the same rights and obligations as the other members of the board of which he is a member.

2. All board members shall carry out their functions in the interests of the ME, having regard in particular to the interests of the members and the employees.

3. All board members shall exercise a proper discretion, even after they have ceased to hold office, in respect of information of a confidential nature concerning the ME.

*Article 40*

## (Conduct of business on boards)

1. Boards of the ME shall conduct business under the conditions and in the manner set out in the statutes of the ME.

Where these statutes are silent, a board shall not conduct business validly unless at least half of its members are present at the discussions. Decisions shall be taken by majority of the votes of the members present or represented.

2. The chairman of each board shall have a casting vote in the event of a tie.

*Article 41*

## (Civil liability)

1. Members of the management, supervisory or administrative board shall be liable for loss or damage sustained by the ME as a result of breach of the obligations attached to their functions.

2. Where the board concerned is composed of more than one member, all the members shall be jointly and severally liable for loss or damage sustained by the ME; however, a member may be relieved of liability if he can prove that he is not in breach of the obligations attached to his functions.

*Article 42*

## (Proceedings on behalf of the ME)

1. The general meeting, by a majority of the votes of the members present or represented, shall take the decision to initiate proceedings, in the name and on behalf of the ME, to establish liability pursuant to Article 40 (1).

The general meeting shall appoint a special representative to conduct the action.

2. Not less than one-fifth of the members may likewise decide to initiate proceedings to establish liability in the name and on behalf of the ME. They shall appoint a special representative to conduct the action.

*Article 43*

## (Limitation of actions)

No proceedings on the ME's behalf to establish liability may be initiated more than five years after the act giving rise to loss or damage.

## CHAPTER IV

FINANCING, ANNUAL ACCOUNTS AND  
CONSOLIDATED ACCOUNTS*Article 44*

## (Financing)

An ME may make use of all forms of financing in the State in which it has its registered office under the same conditions as those applying to the legal entities which founded it.

*Article 45*

## (Preparation of annual accounts and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the

annual report accompanying them and their auditing and disclosure, the ME shall be subject to the measures adopted in the State in which it has its registered office under Directives 78/660/EEC and 83/349/EEC.

2. The ME may draw up its annual accounts, and its consolidated accounts if any, in ecus. In this event, the bases of conversion used to express in ecus those items included in the accounts which are or were originally expressed in another currency must be disclosed in the notes to the accounts.

*Article 46*

## (Auditing)

The annual accounts of the ME, and its consolidated accounts if any, shall be audited by one or more persons authorized to do so in the Member State in which the ME has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC. Those persons shall also verify that the annual report is consistent with the annual accounts, and the consolidated accounts if any, for the same financial year.

*Article 47*

## (Disclosure of accounts)

The annual accounts, the consolidated accounts if any, duly approved, and the annual report and audit report shall be disclosed in accordance with the measures adopted by the Member State in which the ME has its registered office pursuant to Article 3 of Directive 68/151/EEC.

*Article 48*

## (Credit or financial institutions and insurance undertakings)

MEs which are credit or financial institutions or insurance undertakings shall comply, as regards the drawing-up, auditing and disclosure of annual accounts and consolidated accounts, with the rules laid down by the measures adopted in the Member State in which the ME has its registered office pursuant to Directive 86/636/EEC or, as the case may be, pursuant to Council Directive .../.../EEC of ... [on the annual accounts and consolidated accounts of insurance undertakings] (1).

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## CHAPTER V

## WINDING UP AND LIQUIDATION

## Section I

## Winding up

*Article 49*

## (Winding up by the general meeting)

1. An ME may be wound up by a decision of the general meeting ordering its winding up, taken in accordance with the rules laid down in the first paragraph of Article 22.

However, the general meeting may decide in accordance with the same rules, to annul the decision to wind up, as long as there has been no distribution on the basis of the liquidation.

2. The management or administrative board must convene a general meeting to take a decision on the winding up of the ME:

- where the period fixed in the statutes has expired,
- where the subscribed formation fund has been reduced below the minimum laid down in the statutes,
- where the disclosure of accounts has not taken place in the ME's last three financial years,
- where the number of members is below the minimum required by this Regulation or by the ME's statutes,
- on any grounds laid down either in the law governing the legal entities which founded the ME, in the State in which the ME has its registered office, or in the statutes.

The general meeting shall decide:

- either to wind up the ME in accordance with Article 21,
- or, in accordance with the first paragraph of Article 22, that the ME shall continue its activities.

*Article 50*

## (Winding up by the court)

On an application by any person concerned or any competent authority, the court of the place where the ME has its registered office must order it to be wound up where it finds that the registered office has been transferred outside the Community, or that the ME's activities are being carried on contrary to public policy

in the Member State in which the ME has its registered office, or in breach of Articles 1, 2 (1) or 4.

The court may grant the ME a period of time to rectify the situation. If it fails to do so within the time allowed the court shall order it to be wound up.

## Section II

## Liquidation

*Article 51*

## (Liquidation)

1. The winding up of an ME shall entail its liquidation.

2. The liquidation of an ME and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office.

3. An ME in liquidation shall continue to have legal personality until the conclusion of the liquidation.

4. Following the liquidation, the books and records relating to the liquidation shall be lodged at the register referred to in Article 8 (3). Any interested party may examine such books and records.

*Article 52*

## (Distribution)

After the creditors have been paid in full, and anything due to beneficiaries designated in the rules has been distributed, the assets of the ME shall, except where otherwise stated in the statutes, be distributed by decision of the general meeting either to other MEs or mutual societies governed by the law of a Member State or to one or more bodies having as their object the support and promotion of mutual societies.

## CHAPTER VI

## INSOLVENCY AND SUSPENSION OF PAYMENTS

*Article 53*

## (Insolvency and suspension of payments)

1. The ME shall be subject to the law of the State in which it has its registered office in respect of insolvency and suspension of payments.

2. The opening of insolvency or suspension of payment proceedings shall be notified by the person appointed to conduct the proceedings for entry in the register referred to in Article 8 (3). The entry in the register shall show the following:

- (a) the nature of the proceedings, the date of the order, and the court making it;

- (b) the date on which payments were suspended, if the court order provides for this;
- (c) the name and address of the administrator, trustee, receiver, liquidator or any other person having power to conduct the proceedings, or of each of them where there are more than one;
- (d) any other information considered necessary.

3. Where a court finally dismisses an application for the opening of the proceedings referred to in paragraph 2 owing to want of sufficient assets, it shall, either of its own motion or on application by any interested party, order its decision to be noted in the register referred to in Article 8 (3).

4. Particulars registered pursuant to paragraphs 2 and 3 shall be disclosed in the manner referred to in Article 9.

## TITLE II

### FINAL PROVISIONS

#### *Article 54*

##### (Penalties)

Each Member State shall specify penalties to be imposed in the case of breach of the provisions of this Regulation and, where appropriate, of any relevant national measures; the penalties must be effective, proportionate and dissuasive.

Each Member State shall take the necessary measures before 1 January 1993 and shall forthwith inform the Commission thereof.

#### *Article 55*

This Regulation shall enter into force on 1 January 1993.

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

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*ANNEX I***Legal entities mentioned in Article 2 (1) (a)***For Belgium*

Association of mutual insurance, coming under Article 2 of the Law of 11 June 1874 on insurance and Article 11 of the Law of 9 July 1975 on the control of insurance enterprises; cooperative societies coming under Articles 141 to 164 of the consolidated law on commercial companies as it affects cooperative societies

*For Denmark*

Fortsættelsessygekasse; Gensidige selskaber

*For Germany*

Versicherungsverein auf Gegenseitigkeit (VVaG), coming under the law of 6 June 1931 on the control of insurance enterprises, in the version of 1 July 1990

*For France*

Mutuals coming under the Code de la mutualité (the Law of 25 July 1985); mutual insurance societies coming under the Code des Assurances; Caisse de Mutualité Agricole, regulated by the Code Rural

*For Ireland*

Voluntary Health Insurance Board coming under the Voluntary Health Insurance Act of 5 February 1957; companies limited by guarantee; societies registered under the Industrial and Provident Societies Acts; societies registered under the Friendly Societies Acts

*For Italy*

Mutuals coming under the Law of 15 April 1886; cooperative societies, coming under Section VI of the Civil Code relating to cooperative and mutual societies as well as the cooperatives and mutuals covered by legislation or regulations for certain categories

*For Luxembourg*

Societies of mutual assistance and mutuals coming under the Law of 7 July 1961 and Grand Duchy Regulation of 31 July 1961; associations of mutual insurance coming under Article 2 of the Law of 16 May 1891

*For the Netherlands*

Entities coming under Section 3 'association' (vereniging) of the second Book of the Burgerlijk Wetboek on cooperative union

*For the United Kingdom*

Companies limited by guarantee having as their principal object the maintenance of a provident fund; mutual companies; societies registered under the Industrial and Provident Societies Acts; societies registered under the Building Societies Acts; societies registered under the Friendly Societies Act

*For Greece*

Entities coming under the law for mutuals; Allelasphalistikos Sunetairismos

*For Spain*

Entidades de Prevision Social, coming under the Law of 2 August 1984 establishing the regulation of private insurance; Mutuas des Acc. de Trabajo, coming under the Law of 2 August 1984 establishing the regulation of private insurance; Sociedad mutua, coming under the Law of 2 August 1984 establishing the regulation of private insurance; Sociedad cooperativa, coming under the Law of 2 April 1987 and regional laws

*For Portugal*

Mutualidades, Associações Mutualistas, coming under the decree law No 72/90 of 3 March 1990; Misericordias, coming under Articles 167 to 194 of the Civil Code relating to associations and foundations; Mutua de seguros

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*ANNEX II*

**Legal entities referred to in Article 2 (1) (b) which manage obligatory social security schemes as well as provident and mutual assistance organizations, the services of which vary according to the resources available and in which the contribution of members is determined by contract**

*For Belgium*

Mutuals coming under the Law of 6 August 1990 relating to mutuals and to national unions of mutuals

*For Denmark*

Fortsættelsessygkasse

*For France*

Mutuals coming under the Code de la Mutualité (Law of 25 July 1985)

*For Ireland*

Voluntary Health Insurance Board coming under the Voluntary Health Insurance Act of 5 February 1957

*For Italy*

Mutuals coming under the Law of 15 April 1886

*For Luxembourg*

Mutual assistance societies and mutuals coming under the Law of 7 July 1961 and Grand Duchy Regulation of 31 July 1961

*For the Netherlands*

Ziekenfonds (Vereniging van Nederlandse Zorgverzekeraars — VNZ — and Zilverenkruis) coming under the Law of 1 January 1966 or the Algemene Wet Bijzondere Ziektekosten

*For Greece*

Entities coming under the law for mutuals

*For Spain*

Entidades de Prevision Social, coming under the Law of 2 August 1984 establishing the regulation of private insurance

*For Portugal*

Mutualidades, Associações Mutualistas coming under the Decree-Law No 72/90 of 3 March 1990/90

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