

## II

*(Preparatory Acts)*

## COMMISSION

**Proposal for a council regulation on the statute for a European association**

(92/C 99/01)

COM(91) 273 final — SYN 386

*(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 European Parliament adopted a resolution of 13 March 1987 on non-profit-making associations in the European Communities <sup>(1)</sup>;

Whereas the Commission adopted a communication to the Council of 18 December 1989 <sup>(2)</sup>; whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990 <sup>(3)</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 associations in Europe help to promote the general interest and to develop many and various activities in fields such as education, culture, social work or development aid;

Whereas foundations are entities to which have been irrevocably allotted goods, rights and resources for carrying out work which is of public interest;

Whereas associations and foundations are therefore above all entities which act without the main intention of securing a profit and which operate in accordance with their own principles, which are different from those applying to other businesses;

Whereas today almost all associations and foundations, in pursuit of their aims, play a full part in the life of the economy, by engaging on a regular basis in some economic activity, as their main activity or as a secondary one;

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

Whereas the introduction of a European form of organization should enable all associations and foundations to operate outside their own national borders in all or part of the territory of the Community;

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

Whereas the Statute for a European company, as provided for in Regulation (EEC) No ... <sup>(4)</sup>, is not an

<sup>(1)</sup> OJ No C 99, 13. 4. 1987, p. 205.

<sup>(2)</sup> Businesses in the 'économie sociale' sector — Europe's frontier-free market: SEC(89) 2187 final.

<sup>(3)</sup> OJ No C 332, 31. 12. 1990, p. 81.

<sup>(4)</sup> OJ No

instrument which is suited to the specific features of associations and foundations;

Whereas the European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85 <sup>(1)</sup>, does allow certain activities to be carried on in common, while nevertheless preserving the independence of its members, but it does not meet the specific requirements of associations or foundations;

Whereas it is therefore fitting to establish at Community level adequate and specific rules which will permit the creation of European associations; whereas it seems appropriate to enable foundations to take advantage of these rules and so to set up European associations; whereas, nevertheless, any European association established by foundations will be governed, as regards its constitution and functioning, by the provisions of the said set of rules;

Whereas at Community level associations and foundations exemplify a People's Europe in that they help and encourage individuals to play an active role in the life of the Community; whereas it is fitting that natural persons should also be able to establish a European association *ab initio*;

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 share in the profits realized or exercise any rights over the assets of the European association;

Whereas the essential aim of the legal rules governing the European association implies that such an association may be constituted by natural persons coming from (and resident in) two Member States of the Community, or by legal entities from two different Member States and by transformation of a national association without first being wound up so long as the association has its registered office and central administration in the Community and an establishment in a Member State other than that in which it has its central administration; in this last case, the association must engage in genuine and effective cross-border activity;

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

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) No . . . supplementing the Statute for a European association with regard to the involvement of employees <sup>(2)</sup> in the European association and to put in place in advance the necessary machinery for securing the formation and operation of European associations 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 association has its registered office for the purpose of implementing directives on companies, by analogy for the European association in areas where the functioning of the association does not require uniform Community rules, such dispositions being appropriate to the arrangements governing the European association:

- 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 safeguards equivalent throughout the Community <sup>(3)</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>(4)</sup>, as last amended by Directives 90/604/EEC <sup>(5)</sup> and 90/605/EEC <sup>(6)</sup>,

<sup>(2)</sup> See page 14 of this Official Journal — Proposal.

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

<sup>(4)</sup> OJ No L 222, 14. 8. 1978, p. 11.

<sup>(5)</sup> OJ No L 317, 16. 11. 1990, p. 57.

<sup>(6)</sup> OJ No L 317, 16. 11. 1990, p. 60.

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

- Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts <sup>(1)</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>(2)</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>(3)</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>(4)</sup>;

Whereas recourse to this set of rules should be optional,

HAS ADOPTED THIS REGULATION:

## TITLE I

### GENERAL PROVISIONS

#### Chapter I

##### Formation of the European association

###### Article 1

(Form of the European association)

1. A European association (EA) shall be a permanent body whose members pool their knowledge or their activities either for a purpose in the general interest as understood in the legal system of the Member State in which the EA has its registered office or in order directly or indirectly to promote the trade or professional interests of its members.

The profits from any economic activity carried out by the EA shall be devoted exclusively to the pursuit of its objects, and may not be divided amongst the members.

2. Subject to the application at national level of the legal and administrative rules governing the carrying

on of an activity or the exercise of a profession, the EA shall be free to determine the activities necessary for the pursuit of its objects, provided they are compatible with the objectives of the Community, Community public policy and the public policy of the Member States. It shall pursue them in accordance with the principles which derive from its character as a grouping of persons, and shall be managed in a disinterested fashion.

###### Article 2

(Legal personality)

1. An EA 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 7 (3).

2. An EA's legal personality shall entitle it in particular to perform any of the following acts, provided they are necessary for the pursuit of the EA's objects:

- a) to conclude contracts and perform other legal acts;
- b) to acquire movable and immovable property;
- c) to receive donations and legacies;
- d) to employ staff;
- e) to be a party to legal proceedings.

3. The liability of the EA shall be limited to its assets.

###### Article 3

(Formation and rules)

1. The following may form an EA:

- two or more legal entities, formed under the law of a Member State, set out in the Annex and having their registered office and central administration in at least two Member States,
- at least 21 natural persons being nationals of at least two Member States.

2. An association 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 EA by converting into EA form if it has an establishment 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 association being wound up or in the creation of a new legal person.

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

<sup>(2)</sup> OJ No L 126, 12. 5. 1984, p. 20.

<sup>(3)</sup> OJ No L 19, 24. 1. 1989, p. 16.

<sup>(4)</sup> OJ No L 395, 30. 12. 1989, p. 36.

The executive committee of such an association shall draw up a proposal for conversion covering the legal and economic aspects of the conversion.

The conversion to EA form and the EA's statutes shall be approved by the general meeting of the members in accordance with the requirements laid down for amendment of its statutes in Article 19.

3. The statutes of the EA must include:

- its name, preceded or followed by the abbreviation 'EA',
- a precise statement of its objects,
- the name, address, occupation and nationality of the founder members, where these are natural persons,
- the name, objects and registered offices of the founder members, where these are legal entities,
- the address of the EA's registered office,
- the conditions and procedures for the admission, expulsion and resignation of members,
- the rights and obligations of members, and the different categories of member if any, and the rights and obligations of members in each category,
- the powers and responsibilities of the executive committee, and the extent of its authority to represent the EA in dealings with third parties,
- provisions governing the appointment and removal of the members of the executive committee,
- the majority and quorum requirements,
- the conditions for the initiation of proceedings on behalf of the EA under Article 34,
- the grounds for winding up.

4. For the purposes of this Regulation the 'statutes' of the EA comprise both the instrument of incorporation and, where they are set out in a separate document, the EA's statutes properly so-called.

#### *Article 4*

(Registered office)

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

#### *Article 5*

(Transfer of registered office)

1. The registered office of an EA may be transferred within the Community. Such transfer shall not result in the EA 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 6 (1) (b), a transfer proposal shall be published in accordance with Article 7.

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 EA and the resulting amendment to its statutes shall take effect from the date of registration of the EA, in accordance with Article 7 (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 EA from the register for its previous registered office may not be effected until evidence has been produced that the EA 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 8.

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

#### *Article 6*

(Applicable law)

1. An EA 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 EA;

failing this:

- b) — by the law of the Member State in which the EA has its registered office, as determined by that State,
  - by the provisions freely determined by the parties in the statutes of the EA, in accordance with the law of the Member State in which the EA 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 EA shall have the same rights, powers and obligations as an association formed under the law of the Member State in which the EA has its registered office.

#### Article 7

##### (Registration and disclosure requirements)

The founder members shall draw up the statutes of the EA in accordance with the provisions for the formation of associations laid down by the law of the State in which the EA 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 ensure that this act complies with the requirements for the formation of an EA, and in particular those set out in Articles 1 to 4.

3. Member States shall designate the register in which EA's must be registered and shall determine the rules governing it. They shall lay down the procedures for filing the EA's statutes. No EA may be registered until the measures provided for in Directive .../EEC [supplementing the Statute for a European association 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 EA, 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 EA in dealings with third parties and in legal proceedings,
  - take part in the administration, supervision or control of the EA;
- (d) 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;
- (e) any proposal to transfer the registered office as referred to in Article 5 (2);

(f) the winding-up and liquidation of the EA and the decision to continue the EA's activities taken pursuant to Article 42;

(g) any declaration of nullity of the EA by a court;

(h) the appointment of liquidators, particulars of such liquidators and their respective powers, the termination of their office.

(i) the conclusion of the liquidation of the EA and the removal of the EA from the register.

5. If, prior to its acquisition of legal personality, steps have been taken in the name of an EA and the EA 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 8

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

1. Member States shall ensure that the documents and particulars referred to in Article 7 (4) are published in the appropriate official gazette in the Member State in which the EA 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 7 (4) in the register referred to in Article 7 (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 EA proves that they had knowledge of the texts entered in the register.

Member States may require payment of a fee for the services referred to in the preceding subparagraph, 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 an EA 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 EA as against third parties only after they have been disclosed in accordance with paragraph 1, unless the EA 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 9

(Notice in the Official Journal)

Member States shall ensure that a notice stating that an EA has been registered or that the liquidation of an EA 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 EA, the date and place of publication and the title of the publication, the address of the EA 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 EA has its registered office pursuant to Article 8 (1).

Where the registered office of the EA is transferred in accordance with Article 5 a notice shall be published containing the information provided for in the first paragraph, together with that relating to the new registration.

#### Article 10

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

Letters and documents sent to third parties shall state legibly:

- (a) the name of the EA, preceded or followed by the abbreviation 'EA';
- (b) the place of the register in which the EA is registered in accordance with Article 7 (3), and the number of the EA's entry in that register;
- (c) the address of the EA's registered office;
- (d) the fact that the EA is in liquidation or under the administration of the courts if that is so.

## Chapter II

### General meeting

#### Article 11

(Competence)

The general meeting shall decide on:

- (a) matters for which it has sole responsibility under this Regulation;

(b) matters for which the executive committee does not have sole responsibility as a result of:

- this Regulation,
- Directive .../.../EEC [supplementing the Statute for a European association with regard to the involvement of employees],
- the law of the State where the EA has its registered office,
- the statutes of the EA.

#### Article 12

(Rules applicable to the convening, organization and conduct of general meeting)

Subject to this Regulation, the convening, organization and conduct of general meetings shall be governed by the statutes adopted in accordance with the laws, regulations and administrative provisions concerning the legal entities of the Member State in which the EA has its registered office set out in the Annex hereto.

#### Article 13

(Convening of general meeting)

1. A general meeting shall be held at least once a year, not more than six months after the end of the EA's financial year.
2. General meetings may be convened by the executive committee at any time either on its own initiative or at the request of at least 25 % of the members; the statutes may set a lower proportion.
3. The request for a meeting shall state the reasons for convening it and the items to be included on the agenda.
4. If, following a request made pursuant to paragraph 2, the necessary steps have not been taken within a month, the competent judicial or administrative authority of the State where the EA'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.
5. A general meeting may, during a meeting, decide that a further meeting be convened and set the date and the agenda.
6. 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, the approval of the budget estimates, and, if applicable, the approval

of the annual report referred to in Article 46 of Directive 78/660/EEC, to be submitted by the executive committee.

*Article 14*

(Addition of items to the agenda)

Not less than 25 % of the members of the EA, 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 15*

(Attendance and proxies)

Each member shall be entitled to attend the general meeting; he may appoint another member to represent him. A member may not represent more than two others.

*Article 16*

(Right to information)

All members of the EA shall have an equal right of access to information, particularly on accounting matters, both before and at general meetings.

This information shall be made available to members at the EA'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 17*

(Voting rights)

Each member shall have one vote.

*Article 18*

(Normal majority)

Decisions shall be taken by a majority of the votes of the members present or represented.

*Article 19*

(Special majority)

The general meeting shall have sole power to amend the statutes of the EA; 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 executive committee 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 20*

(Resolutions affecting the rights of a class of member)

Where a resolution of the general meeting would affect the rights of a particular class of member, it must be approved by those members by a separate vote.

Where the statutes are to be amended in a way which affects a particular class of member, those members shall decide by a majority of two thirds of the votes cast.

*Article 21*

(Actions challenging resolutions of the general meeting)

Decisions of a court or competent authority declaring a resolution of the general meeting void or non-existent shall be the subject of disclosure in accordance with Article 8.

### Chapter III

#### The executive committee

*Article 22*

(Functions of the executive committee; appointment of members)

1. The executive committee shall manage the EA. The member or members of the executive committee shall have the power to represent the EA 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 EA has its registered office.

2. The executive committee shall have at least three members, with the maximum number fixed by the statutes.

3. The executive committee may delegate to a committee composed of 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 executive committee; 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 executive committee shall be appointed and removed by the general meeting.

#### Article 23

(Holding of meetings and right to information)

1. The executive committee shall meet at least once every three months, at intervals laid down by the statutes, to discuss the progress and foreseeable prospects of the EA's affairs.

2. The executive committee shall meet to deliberate on the operations referred to in Article 30.

3. Each member of the executive committee shall be entitled to examine all reports, documents and information supplied to the committee concerning the activities of the EA.

#### Article 24

(Chairmanship, calling of meetings)

1. The executive committee shall elect a chairman from among its members.

2. The chairman shall convene a meeting of the executive committee 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.

#### Article 25

(Term of office)

1. Members of the executive committee shall be appointed for a period laid down in the statutes not exceeding six years.

2. Members may be reappointed one or more times for the period laid down in accordance with paragraph 1.

#### Article 26

(Conditions of membership)

1. The statutes of the EA may permit a legal entity to be a member of the executive committee provided that the law of the State in which the EA has its registered office does not provide otherwise.

That legal entity shall designate a natural person as its representative to exercise its functions on the board

concerned. 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 the executive committee 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 EA 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 executive committee, or management, or supervisory board of a legal entity.

#### Article 27

(Inability to continue in office)

The statutes of the EA may provide for the appointment of an alternate member where a member of the executive committee is permanently prevented from continuing in office. The term of office of the alternate member shall expire no later than the end of the term of office of the member whom he has replaced. However, a new full member may be appointed at any time.

#### Article 28

(Rules of procedure)

The executive committee may draw up rules of procedure under the conditions laid down by the statutes of the EA. Any member of the EA or competent authority may consult those rules of procedure at the registered office of the EA.

#### Article 29

(Power of representation; liability of the EA)

1. Where the authority to represent the EA in dealings with third parties, in accordance with Article 22 (1), is conferred on two or more members, those persons shall exercise that authority collectively.

2. However, the statutes of the EA may provide that the EA 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 7.

3. Acts performed by members of the governing body of the EA shall bind the EA *vis-à-vis* third parties even



where the acts in question are not in accordance with the objects of the EA, providing they do not exceed the powers conferred on them by the law or which the law allows to be conferred on it.

However, Member States may provide that the EA shall not be bound where such acts are outside the objects of the EA, 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 EA must be disclosed in accordance with Article 7. The information disclosed must state whether these persons are authorized to bind the EA individually or whether they must act jointly.

#### *Article 30*

##### (Operations requiring authorization)

1. A decision of the executive committee shall be required to authorize any of the following operations:

- (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 EA;
- (c) making substantial organizational changes within the EA;
- (d) establishing cooperation with other legal entities which is both long-term and of importance to the activities of the EA, or terminating such cooperation;
- (e) raising loans in respect of operations in excess of a ceiling laid down in the statutes, issuing securities and assuming or guaranteeing liabilities of a third party;
- (f) acquiring movable or immovable property.

2. The statutes of the EA 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 EAs registered in its territory under the same conditions as those applying to associations governed by the law of that State.

4. A Member State may provide that the executive committee of EAs registered in its territory may itself

make certain categories of operation subject to authorization or deliberation under the same conditions as those applying to associations governed by the law of that State.

#### *Article 31*

##### (Rights and obligations)

1. Within the scope of the functions attributed to them by this Regulation each of the members of the executive committee shall have the same rights and obligations as the other members.

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

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

#### *Article 32*

##### (Conduct of business in the executive committee)

1. The executive committee shall conduct business under the conditions and in the manner set out in the statutes of the EA.

Where these statutes are silent, the executive committee shall not conduct business validly unless its members were properly convened at least three weeks in advance, and at least one third of its members are present at the discussions. The notice convening the meeting may indicate an alternative date on which a meeting is to be held if the quorum is not reached on the first date indicated. Decisions shall be taken by majority of the members present or represented.

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

#### *Article 33*

##### (Civil liability)

1. Members of the executive committee shall be liable for loss or damage sustained by the EA as a result of breach of the obligations attaching to their functions.

2. Where the executive committee is composed of more than one member, all the members shall be jointly and severally liable for loss or damage sustained by the EA. However, a member may be relieved of liability if he can prove that he is not in breach of the obligations attaching to his functions.

*Article 34*

## (Proceedings on behalf of the EA)

1. The general meeting, by a majority of the votes cast, shall take the decision to initiate proceedings, in the name and on behalf of the EA, to establish liability pursuant to Article 33 (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 EA. They shall appoint a special representative to conduct the action.

*Article 35*

## (Limitation of actions)

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

## Chapter IV

**Annual accounts and consolidated accounts and means of financing***Article 36*

## (Budget estimates)

The EA shall draw up budget estimates for the forthcoming financial year.

*Article 37*

## (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 publication, the EA shall be subject to the measures adopted in the State in which it has its registered office pursuant to Directives 78/660/EEC and 83/349/EEC.

2. The EA 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 38*

## (Auditing)

The annual accounts of the EA, 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 EA 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 39*

## (Disclosure of accounts)

The annual accounts, the consolidated accounts if any, duly approved, and the annual report and audit report shall be disclosed in the manner provided for by the law of the Member State in which the EA has its registered office, in accordance with Article 3 of Directive 68/151/EEC.

*Article 40*

## (Audit)

The statutes shall lay down the form of audit of the accounts and supervision of the EA. The auditors shall report on their activities each year to the general meeting.

*Article 41*

## (Financing)

An EA may avail itself of all forms of financing under the most favourable conditions as those applying to the EA's founding entities in the State in which it has its registered office.

## Chapter V

**Winding up***Article 42*

## (Winding up by the general meeting)

1. An EA may be wound up by a decision of the general meeting ordering its winding up, taken in accordance with the rules laid down in Article 19.

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 executive committee must convene a general meeting to take a decision on the winding up of the EA:

- where the period fixed in the statutes has expired,
- where the disclosure of accounts has not taken place in the EA's last three financial years,
- where the number of members is below the minimum required by this Regulation or by the EA's statutes,
- on any grounds laid down either in the law relating to national associations of the State in which the EA has its registered office or in the statutes.

The general meeting shall decide:

- either to wind up the EA in accordance with Article 18,
- or, in accordance with the procedures for amending the statutes, that the EA shall continue its activities.

#### Article 43

(Winding up by the court)

On an application by any person concerned or any competent authority, the court of the place where the EA 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 EA's activities are being carried on contrary to public policy in the Member State in which the EA has its registered office or in breach of Articles 1 and 3 (1).

The court may grant the EA 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.

### Chapter VI

#### Liquidation

##### Article 44

(Liquidation)

1. The winding up of an EA shall entail its liquidation.
2. The liquidation of an EA and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office.

3. After the creditors have been paid in full, the net assets shall be distributed in accordance with the law applying to the EA in the State in which it has its registered office unless otherwise stipulated in the statutes.

4. An EA in liquidation shall continue to have legal personality until the conclusion of the liquidation.

5. Following the liquidation, the books and records relating to the liquidation shall be lodged at the register referred to in Article 7 (3). Any interested party may examine such books and records.

### Chapter VII

#### Insolvency and suspension of payments

##### Article 45

(Insolvency and suspension of payments)

1. The EA 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 payments proceedings shall be notified by the person appointed to conduct the proceedings, for entry in the register referred to in Article 7 (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 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. The court 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 7 (3).

4. Particulars registered pursuant to paragraphs 2 and 3 shall be published in the manner referred to in Article 8.

### TITLE II

#### FINAL PROVISIONS

##### Article 46

(Penalties)

Each Member State shall specify the 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 47*

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***Legal entities mentioned in Article 3***— In Belgium*

Not-for-profit associations and organizations recognized as being of public benefit coming under the Law of 25 October 1919 and the Law of 27 June 1921

*— In Denmark*

Associations and foundations coming under the Law of 6 June 1984

*— In Spain*

Associations and foundations coming under, respectively, the Law of 24 December 1964 and under Articles 35 and following of the Civil Code

*— In France*

Not-for-profit associations coming under the Law of 1 July 1901 and paragraph 4 of Articles 21 to 79 of the Local Civil Code of Alsace and Moselle, and foundations coming under the Law of 23 July 1987, modified by the Law of 4 July 1990

*— In Greece*

Associations and foundations coming under Article 78 of the Greek Civil Code

*— In Ireland*

Companies limited by guarantee, organizations incorporated by Royal Charter or Act of Parliament, industrial and provident societies or friendly societies

*— In Italy*

Associations and foundations coming under Articles 14 to 35 of the Italian Civil Code

*— In Luxembourg*

Not-for-profit associations and organizations recognized as of public benefit coming under the Law of 21 April 1928

*— In the Netherlands*

Associations and foundations coming under, respectively, Section II and Articles 286 to 304 of the Civil Code

*— In Portugal*

Associations and foundations coming under Articles 167 to 194 of the Civil Code

*— In Germany*

Associations and foundations coming under Articles 21 to 88 of the Civil Code (BGB)

*— In the United Kingdom*

Companies limited by guarantee, organizations incorporated by Royal Charter or Act of Parliament, industrial and provident societies or friendly societies, and all institutions established for exclusively charitable purposes

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