

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 285final

Brussels, 5 July 1993

Proposal for a

COUNCIL DECISION

**on the conclusion, on behalf of the Community,
of the Convention on the Protection of the
Marine Environment of the Baltic Sea Area**

(Helsinki Convention, as revised in 1992)

(presented by the Commission)

EXPLANATORY MEMORANDUM

Subject: Follow-up to the EP's opinions (Report produced by Mrs Vayssade (PE A3-1/93) approved at the January 1993 part-session) on the proposals relating to:

Regulation on the Statute for a European Association (COM(91)273 final Syn 386)
 Directive supplementing the Statute for a European Association with regard to the involvement of employees (COM(91)273 final - Syn 387)

Regulation on the Statute for a European cooperative society (COM(91)273 final - Syn 388)
 Directive supplementing the Statute for a European cooperative society with regard to the involvement of employees (COM(91)273 final - Syn 389)

Regulation on the Statute for a European mutual society (COM(91)273 final Syn 390)
 Directive supplementing the Statute for a European mutual society with regard to the involvement of employees (COM(91)273 final - Syn 391)

1. Content of the Commission's proposals

To create European statutes enabling cooperatives, mutuals and associations to take advantage of the freedom to provide services and enjoy the right of establishment throughout the Community in the same way as companies can, without having to forego their specific character as groupings of people.

2. Amendments acceptable to the Commission to the proposals for regulations and directives on the statutes for a European association, a European cooperative society and a European mutual society:

REGULATION ON THE STATUTE FOR A EUROPEAN ASSOCIATION (EA)

Amendments adopted unchanged:

1, 2, 3, 165, 6, 8, 15, 16, 22

Amendments adopted in part or in a modified form:

- 5: Incorporated in part so as not to destroy the link between founding legal entities and the annexes, and so as not to allow simply any legal entity, including limited-liability companies, to set up an EA.
- 9: The text has been brought into line with the European company text so as not to jeopardise the legal security of EA acts.
- 10: The text has been brought into line with the European company text.
- 14: Incorporated in the Regulation, albeit in a modified form.
- 20: Incorporated in a modified form so as to read: The EA is to have access to all forms of financing under the most favourable conditions applying to associations in the state in which it has its registered office and in the Member States in which it has its

establishments.

Amendments not adopted.

- 7: Art. 3(3) Article 20 mentions decisions affecting a particular category of members.
- 11: Art. 6(3) Not adopted as otherwise the applicable law would be the sum of national laws without any real European legal personality.
- 137: Art. 7(4) The problem is resolved by the Annex.
- 12: Art. 20 The statute provides for different categories of members (Art. 3(3)); consequently, the text of Article 20 must be consistent with what goes before.
- 13: Art. 20(2) as for amendment 12
- 17: Art. 37(1) pointless and redundant addition
- 18: Art. 38 redundant
- 19: Art. 39 redundant
- 21: Annex The linkage between Article 3 and the Annex is fundamental, otherwise any legal entity could set up an EA.

REGULATION ON THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY (SCE)

Amendments adopted unchanged:

46, 47, 51, 56, 59, 60, 62, 63, 65, 66, 69, 74.

Amendments adopted in part or in a modified form:

- 53: Modified on the grounds that destroying all links with legal entities listed in the Annex is not acceptable; it would amount to allowing any legal entity, including limited-liability companies, to create an SCE.
- 58: Incorporated in modified form: the minimum capital where a cooperative is set up by natural persons is ECU 50 000 rather than ECU 15 000.
- 68/70: Although these amendments are redundant, they are still acceptable, given that compliance with the provisions in question is an essential condition for the creation of an SCE.
- 71: Reference to branches is a technical error; these are fully-fledged legal persons, which means that they are de facto subject to the law of the country in which they are located. As far as establishments are concerned, the fact that any entity has free access to the capital market makes such reference superfluous.

Other amendments not adopted.

- 48: Art.3(2)(1) The Commission text is consistent with Article 4. If Article 4 were to be amended, consideration could be given to the amendment.
- 49: Art. 4(1) This amendment would jeopardize the legal security of SCE acts. However, it has been brought into line with the European company

text.

- 50: Art. 4(2) The Commission text is consistent. However, it has been brought into line with the European company text.
- Art. 4(4)(2) Redundant. This Regulation has no effect on sectoral regulations.
- 52: Art. 5(5) This amendment creates greater security vis-a-vis third parties, but its effect would be to make the responsibility of persons who have taken steps in the name of an SCE greater than is required under the European company arrangements.
- 54: Art. 9(2a)(new) The possibility of merger provided for in this amendment does not exist even for companies with share capital, as the Directive is still blocked at the EP. Anyway, the amendment would be inadequate as numerous articles would be needed to define the merger conditions.
- 55: Art. 11(4) The amendment is incomplete.
- 57: Art. 13(1) This amendment might create certain privileges.
- 61: Art. 18(1) 25% seems reasonable, especially as this percentage can be reduced by the statutes.
- 67: Art. 28 The Commission text is more flexible and refers back to the statutes regarding the application arrangements.
- 72: Art. 51a This text should be incorporated into the EP's opinion, if appropriate, since all it does is to set out guidelines.
- 73: Art. 54(2)(3) This problem could be resolved by the organization's statutes.
- 75: Annex I The linkage between Article 9 and the Annex is fundamental. Otherwise any legal entity could set up an SCE.

REGULATION ON THE STATUTE FOR A EUROPEAN MUTUAL SOCIETY

Amendments adopted:

163/corr., 98, 100, 102, 104, 105, 107, 111, 114.

Amendments adopted in part or in a modified form:

164/corr., 106, 108, 109

- 103: The introduction of a criterion linked to the number of members in respect of the conversion of an establishment or a subsidiary has been looked at with a view to not making it virtually impossible to set up an ME in this way; the 500-member criterion has been retained.

Other amendments not adopted.

- 101: Art. 1(5) The Regulation does not affect the basic obligatory social security schemes run in some cases by provident mutuals, nor does it affect the freedom of Member States to decide whether or not - and subject to what conditions - to allow European mutuals to run such schemes.

- 110: Art. 44 This amendment would make it difficult - not to say impossible - to keep a check on the obligations arising from the insurance and banking directives.

DIRECTIVES SUPPLEMENTING THE STATUTES FOR EA, SCE AND ME

Amendments adopted unchanged:

- 25, 39, 40, 43 (EA)
- 79, 87, 88, 89, 90, 93, 94 (SCE)
- 116, 130, 131, 134, 135 (ME)

Amendments adopted in modified form:

- 37, 41 (EA)
- 91, 155 (SCE)
- 129 and 156, 132 and 161 (ME)

Other amendments not adopted:

- 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 42, 44, 45 (EA)
- 76, 77, 78, 80, 81, 82, 83, 84, 85, 152, 86, 153, 154, 92, 95, 96 (SCE)
- 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 157, 127, 158, 128, 159, 160, 133, 136 (ME)

Political option on the part of the Commission:

- The Commission's proposal (Article 2) makes reference to national provisions governing the participation of employees in the supervisory or administrative boards of national associations, cooperatives and mutuals. However, where the Member State hosting the registered office has no rules and regulations on the participation of workers, or does not intend to apply such provisions to EAs, SCEs and MEs, it must at least comply with the minimum requirements as set out in Articles 3, 4, 5, 6 and 7 of the directives concerning information and consultation.
- The EP's amendments, on the other hand, impose information, consultation and participation procedures for the creation of EAs, SCEs and MEs.
- The Commission is restricting the scope of the directives to consultation and information procedures, leaving the Member States a free hand as regards participation or to establish norms for participation which will be equivalent to those concerning information and consultation.

Amended proposal for a Council regulation on the statute for a European association

SYN 386

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 on 13 March 1987 on non-profit-making associations in the European Communities⁽¹⁾;

Whereas the Commission adopted a communication to the Council of 18 December 1989⁽²⁾; whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990⁽³⁾;

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;

(AMENDMENT No 1)

Whereas today many 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;

(1) OJ No C 99, 13.4.1987, p. 205.

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

(3) OJ No C 332, 31.12.1990, p. 81.

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 . . .⁽⁴⁾, is not an 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⁽⁵⁾, 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 the European associations (hereinafter referred to as the EA) exemplifies a People's Europe in helping and encouraging 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 EA;

Whereas the essential aim of the legal rules governing the EA 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,

(4) OJ No

(5) OJ No L 199, 31.7.1985, p. 1.

- 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 the Council Directive supplementing the Statute for a European association with regard to the involvement of employees⁽⁶⁾ in the EA and to put in place in advance the necessary machinery for securing the formation and operation of EAs 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 EA in areas where the functioning of the association does not require uniform Community rules, such dispositions being appropriate to the arrangements governing the EA:

- 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⁽⁷⁾ 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⁽⁸⁾, as last amended by Directives 90/604/EEC⁽⁹⁾ and 90/605/EEC⁽¹⁰⁾,
- Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts⁽¹¹⁾ 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⁽¹²⁾,
- 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⁽¹³⁾,
- 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⁽¹⁴⁾;

Whereas recourse to this set of rules should be optional,

(6) OJ L
 (7) OJ No L 65, 14.3.1968, p. 8.
 (8) OJ No L 222, 14.8.1978, p. 11.
 (9) OJ No L 317, 16.11.1990, p. 57.
 (10) OJ No L 317, 16.11.1990, p. 60.
 (11) OJ No L 193, 18.7.1983, p. 1.
 (12) OJ No L 126, 12.5.1984, p. 20.
 (13) OJ No L 19, 24.1.1989, p. 16.
 (14) OJ No L 395, 30.12.1989, p. 36.

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Chapter I

Formation of the European association

Article 1

(Form of the European association)

1. (AMENDMENT No 2)

A European association (EA) shall be a permanent grouping of natural and/or legal persons whose members pool their knowledge or their activities either for a purpose in the general interest or in order to promote the trade or professional interests of its members in the most diverse areas.

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.

(AMENDMENT No 3)

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.

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. (AMENDMENT No 165)

An EA's legal personality shall include in particular the following rights 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, including through appeals to public generosity;
- 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:

(AMENDMENT No 5, in part)

- 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 7 natural persons resident in at least two Member States;
- one or more legal entities, listed in the Annex, in agreement with seven or more natural persons resident in at least two Member States.

2. (AMENDMENT No 6)

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, for at least two years, had an establishment in a Member State other than that of its central administration. Such conversion shall not result in the association being wound up or in the creation of a new legal person.

The registered office may not be transferred from one Member State to another on the occasion of such conversion.

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 inputs 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. (AMENDMENT No 8)

The registered office of an EA may be transferred to another Member State in accordance with paragraphs 2 to 9 below. Such transfer shall not result in the EA being wound up or in the creation of a new legal person.

2. A transfer proposal shall be drawn up by the management or executive committee and be published in accordance with Article 7, without prejudice to any additional form of publicity provided for by the Member State in which the registered office is situated. This proposal shall include details of:

- a) the registered office proposed for the EA,
- b) the statutes proposed for the EA including, where appropriate, its new title,
- c) the timetable proposed for the transfer.

2(a) The management or executive committee shall draw up a report explaining and justifying the legal and economic aspects of the transfer for the attention of members and workers.

2(b) The members and creditors of the EA shall, at least one month prior to the general meeting called to decide on the transfer, have the right to examine, at the registered office of the EA, the transfer proposal and the report drawn up by virtue of 2(a) and to obtain copies of these documents free of charge on request.

2(c) A Member State may, in respect of EAs registered on its territory, adopt provisions to ensure appropriate protection for members in the minority who voted against the transfer.

3. No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be governed by the conditions laid down for the amendment of the statutes.

4. The creditors and holders of other rights vis-à-vis the EA which predated publication of the transfer proposal may require the EA to constitute an appropriate guarantee in their favour. Exercise of this right shall be governed by national law in the State in which the EA had its registered office prior to transfer.

A Member State may extend the application of the above provision to include debts made by the EA with public entities prior to the date of transfer.

5. In the Member State in which the EA has its registered office, a court, notary or other competent authority shall issue a certificate to the effect that the acts and formalities required prior to transfer have been properly completed.

6. The new registration may not be effected until the certificate provided for in (5) has been produced and evidence has been furnished of completion of the formalities required for registration in the country of the EA's new registered office.

6(a) Transfer of the EA's registered office and the resulting change of statutes shall take effect on the date on which the EA is registered in the register for its new registered office, in accordance with Article 7.

7. 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.

8. 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.

9. 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.

10. A Member State's legislation may, in respect of EAs registered in that country, provide for any transfer of registered office giving rise to a change in the applicable law not to take effect where, within the period of two months specified in (3), a competent authority from that country lodges an objection. Such objection may only be lodged for reasons of public interest. It must be possible to appeal against any such ruling to a judicial body.

11. An EA which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

Article 6

(Applicable law)

(AMENDMENT No 9, aligned with European Company terms)

1. An EA shall be governed:

a) - by the provisions of this Regulation,

b) - where expressly authorized by this Regulation, by the provisions in the statutes of the EA;

c) - for matters not dealt with by this Regulation or, where a matter is dealt with only partially, for the aspects not covered by this Regulation:

- the legal provisions adopted by the Member States in application of Community measures dealing specifically with EAs;
- the legal provisions in Member States applying to the legal entities set out in the Annex and constituted in conformity with the legislation of the Member State in which the EA has its registered office;
- the provisions of statutes under the same conditions as for the legal entities set out in the Annex and constituted in accordance with the legislation of the Member State in which the EA has its registered office.

2. (AMENDMENT No 10, aligned with European Company)

Where a Member 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 Member State for the purposes of identifying the law applicable under this paragraph.

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 one of the legal entities set out in the Annex and formed under the law of the Member State in which the EA has its registered office.

Article 7

(Registration and disclosure requirements)

1. 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 the Directive [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,
- the Directive [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)

1. Each member shall have one vote.
2. The statutes may make allowance for postal voting and shall lay down the appropriate procedures.

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. (AMENDMENT No 14, modified)

With the exception of the election of the employees' representatives pursuant to Directive .../.../EEC, 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 applicable to the legal entities set out in the Annex 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 applicable to the legal entities set out in the Annex 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. The statutes of the EA shall set out the categories of operation requiring an express decision on the part of the executive committee.
2. A Member State may lay down the minimum categories of operation which must feature in the statutes of an EA registered on its territory.

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. (AMENDMENT No 15)

All members of the executive committee shall carry out their functions in the interests of the EA and in pursuit of its objectives.

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. (AMENDMENT No 16)

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, each member of the EA's executive committee shall be personally liable for loss or damage sustained by the association where proven to be 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, consolidated accounts, auditing, means of financing and disclosure

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)**

1. 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.

2. Where EAs are not subject, under the law of the Member State in which the EA has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC, the EA must at least make the accounting documents available to the public at its registered office. Copies of these documents must be obtainable on request. The price charged for these copies must not exceed the administrative cost.

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)****(AMENDMENT No 20, modified)**

An EA may avail itself of all forms of financing under the most favourable conditions applying to associations in the State in which it has its registered office and in the Member States in which it has its establishments.

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 the legal entities set out in the Annex 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 applicable to the legal entities set out in the Annex 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. 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**

(Measures to be applied in the event of a breach of rules)

Each Member State shall specify the appropriate measures 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 1994 and shall forthwith inform the Commission thereof.

Article 47

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels,

For the Council

The President

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)

(AMENDMENT No 22)

- In the United Kingdom

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

Amended proposal for a Council Directive supplementing the statute for a European association with regard to the involvement of employees

SYN 387

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 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 in order to attain the objectives set out in Article 8a of the Treaty, Regulation (EEC) No . . .⁽¹⁾ establishes a Statute for a European association (EA);

Whereas there are in the Member States laws, regulations and administrative provisions concerning the provision of information to and the consultation of the employees of undertakings, whatever their legal form; whereas in some Member States, there are provisions concerning the participation of employees in certain legal entities;

Whereas it is desirable to coordinate information and consultation arrangements at Community level in order to develop dialogue between the executive committee of EAs and employees;

Whereas the realization of the internal market is giving rise to a process of concentration and conversion of associations; whereas in order to ensure a harmonious development of economic activities, EAs carrying on crossborder activities must adopt, if appropriate, a participation model, or, failing this, inform and consult employees on decisions which concern them;

Whereas this Directive determines the minimum areas where there must be information and consultation, without prejudice to the application of the following Directives:

- Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾, as amended by Directive . . ./EEC⁽³⁾,
- Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses⁽⁴⁾, and
- Council Directive . . ./EEC on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees⁽⁵⁾;

(1) OJ No L

(2) OJ No L 48, 22.2.1975, p. 29.

(3) COM(91) 292 final, 15.7.1991.

(4) OJ No L 61, 5.3.1977, p. 26.

(5) COM(90) 581 final.

(AMENDMENT No 25)

Whereas appropriate provisions must be adopted to ensure that the employees of EAs are properly informed and consulted without undue delay where decisions likely to affect their interests or which have a potential impact on the prospects of the EA and the conditions of employment are taken in a Member State other than that in which they are employed;

Whereas the laws, regulations and administrative provisions of the Member States governing the participation of employees in certain national legal entities may be made applicable to EAs;

Whereas an EA may not be registered until a participation model or, in the absence thereof, an employee information and consultation system and in particular a separate committee has been chosen;

Whereas the natural persons who founded the EA or, where no agreement is reached prior to registration of the EA, the founder entities should propose to the general meeting called to approve the formation of the EA certain requirements with respect to informing and consulting employees;

Whereas the information and consultation committee or any other alternative body must be informed and consulted about decisions on the part of the EA capable of affecting employees' interests;

Whereas in order to ensure the proper functioning of the internal market and avoid any inequality in the terms of competition, the employees of the EA should be guaranteed equivalent levels of information and consultation;

Whereas in order to allow for more flexibility with respect to small EAs, Member States need not provide for employee representation in EAs employing fewer than 50 workers;

Whereas the provisions of this Directive form an indissociable supplement to those of Regulation (EEC) No . . . [on the Statute for a European association]; whereas it is therefore necessary to ensure that the two sets of provisions are applied concomitantly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive coordinates the laws, regulations and administrative provisions of the Member States concerning the involvement of employees in the EA.

This Directive is an essential supplement to Regulation (EEC) No . . . [on the Statute for a European association].

No EA may be registered until a participation model or, in the absence thereof, an information and consultation system has been chosen in accordance with the provisions of this Directive.

TITLE I**Participation****Article 2**

The laws, regulations and administrative provisions of a Member State governing the participation of employees in the supervisory or administrative boards of national companies may be made applicable to an EA whose registered office is in its territory.

Where such provisions are not applied the Member State shall take the necessary measures to ensure at least that the employees of the EA are informed and consulted in accordance with Articles 3, 4 and 5.

TITLE II**Information and consultation arrangements****Article 3**

1. The executive committees of the founder entities and the representatives of the employees of those entities provided for by the laws and practices of the Member States shall agree arrangements for informing and consulting the employees of the EA. The agreement must be concluded in writing before the EA is registered.

2. Where the EA is formed solely by natural persons, those persons shall lay down information and consultation procedures on the basis of the requirements with respect to informing and consulting employees set out in Article 4 (1); those procedures must be submitted to the general meeting called to approve the formation of the EA.

3. Where in the circumstances described in paragraph 1 no agreement can be reached, the representatives of the employees of the founder entities may make a written statement setting out why in their opinion the formation of the EA is contrary to the employees' interests and what measures should be taken with respect to the employees.

4. The executive committees of the founder entities shall draw up for submission to the general meeting called to approve the formation of the EA a report to which is attached either:

- the text of the agreement referred to in paragraph 1, or
- the statement by the employees' representatives referred to in paragraph 3.

5. The general meeting called to approve the formation of the EA shall ratify the information and consultation arrangements embodied in the agreement referred to in paragraph 1, or, where no agreement has been reached, shall decide on the arrangements which are to apply to the EA in the light of the report and of the statement referred to in paragraphs 3 and 4.

6. The arrangements chosen may subsequently be replaced by other arrangements agreed between the EA's executive committee and the representatives of the employees of the EA. The agreement must be submitted to the general meeting for approval.

7. The procedure laid down in this Article shall apply in the event of conversion pursuant to Article 3 (2) of the Regulation (EEC) . . . / . . [on the Statute for a European association].

(AMENDMENT No 37, modified)

8. In the event of the registered office of a EA being transferred to another Member State, the information and/or consultation arrangements in existence before the transfer may be altered only by agreement between the executive committee of the EA and the representatives of its employees.

Article 4

1. The executive committee of the EA shall inform and consult in good time the employees of that entity at least in the following areas:

(AMENDMENT No 39)

(a) any proposals which might significantly affect the interests of the employees of the EA, or which have a potential impact on the prospects of the EA and the conditions of employment and especially all matters concerning working conditions and all decisions requiring the approval of the executive committee, without prejudice to the Community provisions concerning information and consultation, and in particular Directives 75/129/EEC, 77/187/EEC and . . . /EEC [on the establishment of a European Works Council];

(b) any question concerning conditions of employment, in particular changes affecting the organization of the EA and the introduction of new working methods or new products and/or services;

(c) all documents submitted to the EA's general meeting;

(d) the operations referred to in Article 30 (1) of the Regulation (EEC) . . . [on the Statute for a European association];

(AMENDMENT No 40)

(e) the development and organization of vocational training undertaken in the EA and any matter affecting the health and safety of employees, with equal and joint participation in the development of health and safety programmes and policies in the EA.

2. The employees of the EA shall be informed and consulted:

- within a separate committee representing the employees of the EA, or

- within any other structure agreed between the executive committees of the founder entities and the representatives of the employees of those entities.

A Member State may restrict this range of information and participation arrangements in the case of EAs having their registered head office in its territory.

3. In an EA with fewer than 50 employees the two parties to the negotiations may decide that simplified information and consultation arrangements should

be laid down, subject to compliance with paragraph 1.

Article 5

1. The representatives of the employees of the EA shall be elected, and shall be provided with such facilities as are necessary to enable them to perform their duties properly, in accordance with the laws and practices of the Member States and in compliance with the following principles:

(a) employees' representatives must be elected in each Member State in which the EA has establishments;

(b) the number of representatives so elected must as far as possible be in proportion to the number of employees they represent;

(c) all employees must be able to participate in the vote irrespective of their length of service or the number of hours they work per week;

(d) the election must be by secret ballot.

2. The employees' representatives elected in accordance with paragraph 1 may perform their functions within the EA irrespective of the rules governing qualification as an employees' representative in the law of the Member State in which the EA has its registered office.

(AMENDMENT No 43)

The elected representatives may carry out their duties during working hours. No disciplinary measures may be taken against them in relation to actions connected with the performance of their duties. They may not be routinely dismissed during their period of office.

TITLE III

Final provisions

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Amended proposal for a
COUNCIL REGULATION (EEC)

SYN 388

on the Statute for a European cooperative society

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 resolutions on 13 April 1983 on cooperatives in the European Community⁽¹⁾ and on 9 July 1987 on the contribution of cooperatives to regional development⁽²⁾;

Whereas the Commission adopted a communication to the Council of 18 December 1989⁽³⁾; whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990⁽⁴⁾;

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 cooperatives, which are a form of organization generally recognized in all Member States, with adequate legal instruments capable of facilitating the development of their transnational activities;

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

Whereas the Statute for a European company, as provided for in Regulation (EEC) No . . . (5), is not an instrument which is suited to the specific features of cooperatives;

Whereas the European Economic Interest Grouping (EEIG), as provided for in Council Regulation (EEC) No 2137/85⁽⁶⁾, does allow undertakings to promote certain of their activities in common, while nevertheless preserving their independence, but it does not meet the specific requirements of cooperative enterprise;

(AMENDMENT No 46)

Whereas cooperatives are primarily groups of persons with particular operating principles which are different from those of other economic agents;

(1) OJ No C 128, 16.5.1983, p. 51.

(2) OJ No C 246, 14.9.1987, p. 94.

(3) Businesses in the 'économie sociale' sector - Europe's frontier-free market: SEC(89) 2187 final, 18.12.1989.

(4) OJ No C 332, 31.12.1990, p. 81.

(5) OJ No L

(6) OJ No L 199, 31.7.1985, p. 1.

Whereas these particular principles notably include the principle of the primacy of the individual which 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 cooperative;

Whereas cross-border cooperation between cooperatives 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 cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community;

(AMENDMENT No 47)

Whereas the essential aim of the legal rules governing the European cooperative society (hereinafter referred to as the SCE) implies that an SCE may be set up by legal entities or persons established under the laws of different Member States, or by transformation of a national cooperative into the new form without first being wound up, so long as the cooperative 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 cooperative must engage in genuine and effective cross-border activity;

Whereas cooperatives have a share capital, and may have among their members some who are also customers or suppliers; whereas cooperatives may also have among their members a specified proportion of members who do not use their services, or of third parties who benefit by their activities or carry out work for the cooperative's account;

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 the Council Directive supplementing the Statute for a European cooperative society with regard to the involvement of employees⁽⁷⁾ and to put in place in advance the necessary machinery for securing the formation and operation of SCEs having their registered office in its territory, so that the Regulation and the Directive may be applied concomitantly;

(7) OJ No L

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 SCE has its registered office for the purpose of implementing directives on companies, by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such dispositions being appropriate to the arrangements governing the SCE;

- 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⁽⁸⁾, 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⁽⁹⁾, as last amended by Directives 90/604/EEC⁽¹⁰⁾ and 90/605/EEC⁽¹¹⁾,

- Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts⁽¹²⁾, 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⁽¹³⁾,

- 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⁽¹⁴⁾,

- 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⁽¹⁵⁾;

Whereas the activities in the field of financial services and notably as they concern credit 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⁽¹⁶⁾,

- 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⁽¹⁷⁾;

(8) OJ No L 65, 14.3.1968, p. 8

(9) OJ No L 222, 14.8.1978, p.

(10) OJ No L 317, 16.11.1990, p.

(11) OJ No L 317, 16.11.1990, p.

(12) OJ No L 126, 12.5.1984, p.

(13) OJ No L 126, 12.5.1984, p.

(14) OJ No L 19, 24.1.1989, p. 1

(15) OJ No L 395, 30.12.1989, p.

(16) OJ No L 372, 31.12.1986, p.

(17) OJ No L 386, 30.12.1989, p.

- Council Directive . . . / . . . /EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC(18);

Whereas it must be possible to form an SCE either with at least five natural persons resident in at least two Member States; or at least five natural persons and at least one legal entity; or at least two legal entities of a cooperative nature;

Whereas this form of organization should be optional,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER I

FORMATION OF THE EUROPEAN COOPERATIVE SOCIETY

Article 1

(Form of the European cooperative society)

1. Cooperative societies may be formed throughout the Community in the form of a European cooperative society (SCE) on the conditions and in the manner set out in this Regulation.
2. The capital of the SCE shall be divided into shares.
3. The SCE shall have as its object to satisfy its members' needs and to develop their activities, economic, social or both.
4. The number of members and the capital of the SCE shall be variable.
5. The liability of the members for the debts and obligations of the SCE shall be limited to their shares in the capital. Its statutes may extend this liability to a multiple of the capital subscribed or to another stated amount.
6. An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.
7. An SCE 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 5 (3).

Article 2

(Registered office)

The registered office of an SCE shall be situated within the Community in the Member State in which the SCE has its central administration.

Article 3

(Transfer of registered office)

1. The registered office of an SCE may be transferred to another Member State in accordance with paragraphs 2 to 9 below. Such transfer shall not result in the SCE being wound up or in the creation of a new legal person.

2. A transfer proposal shall be drawn up by the management or administrative board and be published in accordance with Article 6, without prejudice to any additional form of publicity provided for by the Member State in which the registered office is situated. This proposal shall include details of:

- a) the registered office proposed for the SCE,
- b) the statutes proposed for the SCE including, where appropriate, its new title,
- c) the timetable proposed for the transfer.

2(a) The management or administrative board shall draw up a report explaining and justifying the legal and economic aspects of the transfer for the attention of members and workers.

2(b) The members and creditors of the SCE shall, at least one month prior to the general meeting called to decide on the transfer, have the right to examine, at the registered office of the SCE, the transfer proposal and the report drawn up by virtue of 2(a) and to obtain copies of these documents free of charge on request.

2(c) A Member State may, in respect of SCEs registered on its territory, adopt provisions to ensure appropriate protection for members in the minority who voted against the transfer.

3. No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be governed by the conditions laid down for the amendment of the statutes.

4. The creditors and holders of other rights vis-à-vis the SCE which predated publication of the transfer proposal may require the SCE to constitute an appropriate guarantee in their favour. Exercise of this right shall be governed by national law in the State in which the SCE had its registered office prior to transfer.

A Member State may extend the application of the above provision to include debts made by the SCE with public entities prior to the date of transfer.

5. In the Member State in which the SCE has its registered office, a court, notary or other competent authority shall issue a certificate to the effect that the acts and formalities required prior to transfer have been properly completed.

6. The new registration may not be effected until the certificate provided for in (5) has been produced and evidence has been furnished of completion of the formalities required for registration in the country of the SCE's new registered office.

6(a) Transfer of the SCE's registered office and the resulting change of statutes shall take effect on the date on which the SCE is registered in the register for its new registered office, in accordance with Article 5(3).

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

8. 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 6.

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

10. A Member State's legislation may, in respect of SCEs registered in that country, provide for any transfer of registered office giving rise to a change in the applicable law not to take effect where, within the period of two months specified in (3), a competent authority from that country lodges an objection. Such objection may only be lodged for reasons of public interest. It must be possible to appeal against any such ruling to a judicial body.

11. An SCE which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

Article 4

(Applicable law)

1. SCEs shall be governed:

(AMENDMENT No 49, aligned with European Company terms)

- (a) - by the provisions of this Regulation,
- (b) - where expressly authorized by this Regulation, by the provisions in the statutes of the SCE;
- (c) - for matters not dealt with by this Regulation or, where a matter is dealt with only partially, for the aspects not covered by this Regulation:
 - by the legal provisions adopted by the Member States in application of Community measures dealing specifically with SCEs;
 - by the legal provisions in Member States applying to a cooperative in conformity with the legislation of the Member State in which the SCE has its registered office;
 - by the provisions of rules under the same conditions as for a cooperative constituted in accordance with the legislation of the Member State in which the SCE has its registered office.

2. **(AMENDMENT No 50, aligned with European Company)**

Where a Member 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 Member State for the purposes of identifying the law applicable under this paragraph.

3. In each Member State and subject to the express provisions of this regulation, an SCE shall have the same rights, powers and obligations as a

cooperative society formed under the law of the State in which the SCE has its registered office.

Article 5

(Registration and disclosure requirements)

1. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the State in which the SCE 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 SCE, and in particular those set out in Articles 1, 2, 9 and 10.

3. Member States shall designate the register in which SCEs must be registered and shall determine the rules governing it. They shall lay down the procedures for filing the SCE's statutes. No SCE may be registered until the measures required by the Directive [supplementing the Statute for a European cooperative 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 SCE, 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:

(AMENDMENT No 51)

- are authorized to represent the SCE, individually or jointly, in dealings with third parties and in legal proceedings,

- take part in the administration, supervision or control of the SCE;

(d) at least once a year, the amount of the capital subscribed;

(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 3 (2);

(g) the winding up and liquidation of the SCE and the decision to continue the SCE's activities taken under Article 61;

(h) any declaration of nullity of the SCE 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 SCE and the removal of the SCE from the register.

5. If, prior to its acquisition of legal personality, steps have been taken in the name of an SCE and the SCE 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 6

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

1. Member States shall ensure that the documents and particulars referred to in Article 5 (4) are published in the appropriate official gazette in the Member State in which the SCE 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 5 (4) in the register referred to in Article 5 (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 SCE 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 an SCE 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 SCE as against third parties only after they have been disclosed in accordance with paragraph 1, unless the SCE 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 7

(Notice in the Official Journal)

Member States shall ensure that a notice stating that an SCE has been registered or that the liquidation of an SCE 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 SCE, the date and place of publication and the title of the publication, the address of the SCE 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 SCE has its registered office under Article 6 (1).

Where the registered office of the SCE is transferred in accordance with Article 3 a notice shall be published containing the information provided for in the first paragraph, together with that relating to the new registration.

Article 8

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

Letters and documents sent to third parties shall state legibly:

- (a) the name of the SCE, preceded or followed by the abbreviation SCE;
- (b) the place of the register in which the SCE is registered in accordance with Article 5 (3), and the number of the SCE's entry in that register;
- (c) the address of the SCE's registered office;
- (d) the fact that the SCE is in liquidation or under the administration of the courts if that is so.

Article 9

(Formation)

(AMENDMENT No 53, modified)

1. An SCE may be formed as follows:

- by natural persons only, viz. five or more natural persons resident in at least two different Member States;
- by five or more natural persons resident in at least two different Member States and one or more legal entities governed by public or private law and formed under the law of a Member State which are listed in the Annex. In this case the statutes shall determine whether the majority at general meetings must be constituted by the natural persons;
- by two or more legal entities formed under the law of a Member State which are listed in the Annex, having their registered office and central administration in at least two different Member States.

2. A cooperative 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 SCE by converting into SCE form if it has, for at least two years, had 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 SCE form and the SCE's statutes shall be approved by the general meeting in accordance with the requirements laid down for amendment of its statutes in Article 24.

Article 10

(The statutes of the SCE)

1. The statutes of the SCE must include:

- the name of the SCE, preceded or followed by the abbreviation SCE,
- a precise statement of the objects of the SCE,
- the name, objects and registered offices of the founder members of the SCE, where these are legal entities,
- the address of the SCE'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 nominal value of the shares and the amount of the capital, an indication that the capital is variable, and the extent of the liability of members of governing bodies and officials,
- the management structure,
- the powers and responsibilities of each of the governing bodies of the SCE,
- 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 SCE in dealings with third parties,
- the conditions for the initiation of proceedings on behalf of the SCE under Article 47,
- the reasons for expelling members,
- the grounds for winding up.

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

Article 11

(Acquisition of membership)

1. The acquisition of membership in the SCE shall be subject to the approval of the management or administrative board. Applications for admission shall be in writing, and shall include an undertaking to hold a stake in the capital and to accept the statutes without reservation.

The statutes may provide that persons who do not expect to use the SCE's services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting, to be decided by the majority required for amendment of the statutes.

Members who are legal entities shall be deemed to be users by virtue of the fact that they represent their own members.

2. In view of the special nature of the relationship between a cooperative society and its members, the statutes may make admission subject to other conditions, in particular:

- subscription of a minimum amount to the capital,
- conditions related to the objects of the SCE.

3. Except where the statutes provide otherwise, applications for a supplementary stake in the capital shall also require the approval of the management or administrative board.

4. An alphabetical index of all members holding shares shall be kept at the registered office of the SCE, showing their addresses and the number and class, if any, of the shares they hold. Any interested party may inspect the index on request, and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof.

5. Any transaction which affects the manner in which the capital is ascribed or allotted, or increased or reduced, shall be entered on the index of members referred to in paragraph 4 no later than the month following that in which the change occurs.

6. The transactions referred to in paragraph 5 shall not take effect with respect to the SCE or third parties until they are entered on the index referred to in paragraph 4.

7. The holders of the shares affected shall on request be given a written statement certifying that the change has been entered.

Article 12

(Loss of membership)

(AMENDMENT No 56)

1. Membership shall be lost:

- upon resignation,
- upon expulsion, where the member commits a serious breach of his obligations,

- upon assignment of all shares held, where this is authorized by the statutes,
- upon winding up in the case of a member legal entity,
- upon death or insolvency,
- and in any other cases provided for in the statutes.

2. The decision to expel a member shall be taken by the administrative or management body, after the member has been heard. The member may appeal against the decision to the general meeting.

3. Where a legal entity is wound up, its membership shall terminate at the end of the financial year in which it took place, unless the statutes provide otherwise.

4. Shares may be assigned or sold with the agreement either of the general meeting or of the management or administrative body, and in accordance with the statutes.

5. The SCE may not subscribe for its own shares, purchase them or accept them as security, either directly or through a person acting in his own name but on behalf of the SCE.

However, the SCE's own shares may be accepted as security in the ordinary transactions of credit institutions.

Article 13

(Financial entitlements of members in the event of resignation or expulsion)

1. Except where shares are assigned, loss of membership shall entitle the member to repayment of the capital he has subscribed, reduced in proportion to any losses charged against the capital of the SCE.

The statutes may provide that a member leaving the SCE shall be entitled to a payment in proportion to his share in the capital from a reserve established for the purpose.

2. The value of shares shall be calculated by reference to the balance sheet for the financial year in which the entitlement to repayment arose.

3. The statutes shall lay down the time in which repayment is to be made.

4. Paragraphs 1, 2 and 3 shall apply where only a part of a member's shareholding is to be repaid.

5. A member who has left the SCE or who has exercised his entitlement to partial repayment shall continue to be bound by all the obligations towards the SCE and towards third parties which were incumbent upon him at the end of the financial year by reference to which his entitlements were calculated, up to his previous shareholding and any sums received from the reserves, until the approval of the accounts of the fifth financial year following the financial year of reference.

Article 14

(Minimum capital)

1. The capital of the SCE shall be denominated in ecus or in national currency.

2. (AMENDMENT No 58, modified)

The capital of an SCE shall amount to not less than ECU 100 000 or the equivalent in national currency if the SCE has been formed by legal persons governed by public or private law.

The capital of an SCE shall amount to not less than ECU 50 000 or the equivalent in national currency if the SCE has been formed by natural persons and/or the statutes lay down that members who are natural persons shall constitute the majority at general meetings.

3. The statutes shall lay down a sum below which the capital may not be allowed to fall as a result of the withdrawal of the capital previously subscribed by members who resign or are expelled.

4. The sum referred to in paragraph 3 shall be no less than the sum laid down by the law of the Member State in which the SCE has its registered office, and, failing any such legal provision, no less than one tenth of the highest figure reached by the capital since the SCE was formed. In no case may it be less than the sum required by paragraph 2.

Article 15

(Capital of the SCE)

1. The capital of the SCE shall be represented by the members' shares referred to in paragraphs 3 and 4, denominated in ecus or in national currency, and, where appropriate, by other forms of own capital and quasi-equity. More than one class of share may be issued.

The statutes may provide that different classes of share are to carry different entitlements with regard to the distribution of surpluses. Shares carrying the same entitlements shall constitute one class.

2. Shares must be held by named persons. The nominal value of shares in a single class shall be identical. It shall be laid down in the statutes. Shares may not be issued at a price lower than their nominal value.

3. Shares issued for cash must be paid up on the day of the subscription to not less than 25 % of their nominal value. The balance must be paid up within a period of no more than five years.

4. Shares issued otherwise than for cash must be fully paid up at the time of subscription.

5. (AMENDMENT No 59)

The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at general meetings must be constituted by members who are natural persons and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share. They shall also lay down the

S 2

maximum proportion of the capital which any one member is entitled to hold.

6. The capital shall be variable. It may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to Article 14 (2).

Variations in the amount of the capital shall not require amendment of the statutes or disclosure.

When it considers the accounts for the financial year, the general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.

(AMENDMENT No 60)

At the proposal of the administrative board or management board, the capital may be increased by the capitalization of all or part of the reserves available for distribution, following a decision of the general meeting, in accordance with the quorum and majority requirements for an amendment of the statutes.

7. The nominal value of shares may be increased by consolidating the shares issued. Where such an increase necessitates a call for supplementary payments from the members under provisions laid down in the statutes, the decision shall be taken by the general meeting, in accordance with the quorum and majority requirements for an amendment of the statutes.

Members voting against the decision may exercise their right to resign, in which case their shares shall be repaid in accordance with Articles 13 (1) and 14 (3).

8. The nominal value of shares may be reduced by subdividing the shares issued.

CHAPTER II

GENERAL MEETING

Article 16

(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 does not have sole responsibility as a result of:

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

Article 17

(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 SCE'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 SCE 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 18

(Meeting called by a minority of members)

1. Not less than 25 % of the members of the SCE, 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 SCE'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 19

(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 SCE 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 SCE 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 SCE,

(AMENDMENT No 62)

- the place, date and time 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. (AMENDMENT No 63, modified)

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. However, it may be reduced to 10 days in very urgent cases.

Article 20

(Addition of items to the agenda)

Not less than 25 % of the members of the SCE, 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 21

(Attendance and proxies)

1. Only members shall be entitled to speak and vote at the general meeting.
2. Members of the management board, authorized representatives acting for the holders of non-voting, shares, members of the administrative board to whom management responsibilities have been delegated and salaried managers may attend the general meeting, and shall be entitled to speak but not to vote unless they are members of the SCE.
3. 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.
4. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

Article 22

(Voting rights)

1. Each member of the SCE shall have one vote, irrespective of the number of shares he holds.

2. (AMENDMENT No 65)

The statutes may allow members to have more than one vote when the SCE does not consist of natural persons only. The statutes shall, in that event, lay down the circumstances in which a member may have more than one vote; this must depend either on the measure to which the member takes part in the SCE's activities or, solely in the case of the non-user members referred to in Article 11(1), on the proportion of capital held. The statutes must lay down limits on the number of votes which may be cast by a single member to ensure that no member personally controls more than a tenth of the votes at each general meeting. They must also lay down the number of other members for whom a member may act as proxy.

3. Members who do not expect to use the services of the SCE ('non-user' members) may together have voting rights amounting to no more than one third of those of all the members.

Article 23

(Rules of conduct)

The detailed rules governing the conduct of general meetings shall be laid down in the statutes.

Article 24

(Right to information)

1. Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative board on the affairs of the SCE arising from items on the agenda or concerning matters on which the general meeting may take a decision in accordance with Article 25 (2).

2. The management or administrative board may refuse to supply such information only where:

- it would be likely to be seriously prejudicial to the SCE,
- its disclosure would be incompatible with a legal obligation of confidentiality.

3. A member to whom information is refused may require that his question and the grounds for refusal be entered in the minutes of the general meeting.

4. A member to whom information is refused may challenge the validity of the refusal in the court within whose jurisdiction the SCE has its registered office. Application to the court shall be made within two weeks of the closure of the general meeting.

5. 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 25

(Decisions)

1. The general meeting shall not pass any resolution concerning items which have not been communicated or published in accordance with Article 19 (2).

2. Paragraph 1 shall not apply when all the members are present or represented at the general meeting and no member objects to the matter in question being discussed.
3. The statutes shall lay down the quorum and majority requirements which are to apply to ordinary general meetings.
4. The calculation of votes cast shall not include abstentions or spoilt or blank votes.
5. A general meeting may amend the statutes the first time it is convened only if the members present or represented represent at least half of the number of members on the date the general meeting is convened, and the second time it is convened only if they make up or represent at least one quarter of that number. At least two thirds of the votes of the members present or represented must be cast in favour. A general meeting may pass a resolution to wind up the SCE only in accordance with the same requirements.

The third time the meeting is convened no quorum shall be necessary.

The general meeting shall act by majority of the votes held by the members present or represented.

Article 26

(Minutes)

1. Minutes shall be drawn up for every general meeting. The minutes shall contain the following particulars:
 - the place and date of the meeting,
 - the resolutions passed,
 - the result of the voting.
2. There shall be annexed to the minutes the attendance list, the documents relating to the convening of the general meeting, and the reports submitted to the members on the items on the agenda.
3. (AMENDMENT No 66)

The minutes and the documents annexed thereto shall be retained for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request, in return for payment of the administrative cost.

Article 27

(Actions to have resolutions of general meeting declared void)

1. Resolutions of the general meeting may be declared void on the grounds that they infringe this Regulation or the statutes of the SCE 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 SCE has its registered office; the procedure in the action shall be governed by the law of the State in which the SCE has its registered office,

- having heard the SCE, 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 SCE acquired in good faith by third parties.

2. 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 6.

Article 28

(Sectional meetings)

Where the SCE carries on several distinct activities, or where it has several establishments, or where its activities span more than one territorial unit, or where it has more than 500 members, 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 general meeting. The statutes shall lay down the division into sections, the number of delegates for each section, and the procedures to be followed.

Article 29

(Resolutions adversely affecting the rights of a class of member)

Where a resolution of the general meeting would adversely affect the rights of a particular class of member, it must be approved by those members by a separate vote, to which the voting rules referred to in Article 22 shall apply mutatis mutandis.

Where the statutes are to be amended in a way which adversely affects a particular class of member, those members shall vote according to the majority rules referred to in Article 25 (5).

CHAPTER III

MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

Article 30

(Structure)

Under the conditions laid down by this Regulation the statutes of the SCE shall organize the structure of the SCE 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 SCEs having their registered office on 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 31**

(Functions of the management board; appointment of members)

1. The management board shall manage the SCE. The member or members of the management board shall have the power to represent the SCE 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 SCE 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 SCE.

Article 32

(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 SCE 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 33**

(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 SCE. The supervisory board may not represent the SCE in dealings with third parties. It shall represent the SCE in dealings with members of the management board, or one of them, in respect of litigation or the conclusion of contracts.

2. (AMENDMENT No 68, modified)

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 Article 40(3) and with the exception of the employees' representatives pursuant to Directive .../.../EEC.

2a) (AMENDMENT No 69)

Non-user members may be appointed to serve on the supervisory board, taking up to a third of the posts available.

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 SCEs registered in its territory.

Article 34

(Right to information)

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

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

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

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 35

(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 15 days the meeting of the supervisory board may be called by

those who made the request.

Section II**The one-tier system****Article 36**

(Functions of the administrative board; appointment of members)

1. The administrative board shall manage the SCE. The member or members of the administrative board shall have the power to represent the SCE 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 SCE has its registered office.
2. The administrative board shall have at least three members within limits fixed by the statutes. Non-user members may be appointed to the administrative board, but may not form a majority.
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. (AMENDMENT No 70, modified)

With the exception of the employees' representatives pursuant to Directive .../.../EEC, the member or members of the administrative board shall be appointed and removed by the general meeting.

Article 37

(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 SCE's affairs, taking particular account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE.
2. The administrative board shall meet to deliberate on the operations referred to in Article 43.
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 38

(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 15 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 39

(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 40

(Conditions of membership)

1. The statutes of the SCE may permit a legal person or any other legal entity to be a member of a board, provided that the law of the State in which the SCE has its registered office does not provide otherwise in respect of domestic cooperative societies.

That legal person or other legal entity 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 SCE 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.

3. This Regulation shall not affect national laws which allow a minority of members or other persons or authorities to appoint some of the board members.

Article 41

(Rules of procedure)

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

Article 42

(Power of representation; liability of the SCE)

1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 31 (1) and 36 (1), is conferred on two or more members of governing bodies, those persons shall exercise that authority collectively.

2. However, the statutes of the SCE may provide that the SCE 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 6.

3. Acts performed by members of the governing bodies of the SCE shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, 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 SCE shall not be bound where such acts are outside the objects of the SCE, 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 SCE must be disclosed in accordance with Article 6. The information disclosed must state whether these persons are authorized to bind the SCE individually or whether they must act jointly.

Article 43

(Operations requiring authorization)

1. The statutes of the SCE shall set out the categories of operation requiring authorization for the administrative board by the supervisory board, under the two-tier system, or requiring an express decision from the administrative board under the one-tier system.

However, a Member State may provide that, under the two-tier system, the supervisory board may itself make certain categories of operation subject to authorization.

2. A Member State may lay down the minimum categories of operation which must feature in the statutes of SCEs registered on its territory.

Article 44

(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 SCE, 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 SCE.

Article 45

(Conduct of business on boards)

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

Where the 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 members present or represented.

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

Article 46

(Civil liability)

1. Members of the management, supervisory or administrative board shall be liable for loss or damage sustained by the SCE as a result of breach of the obligations attaching 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 SCE; 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 47

(Proceedings on behalf of the SCE)

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 SCE, to establish liability under Article 46 (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 SCE. They shall appoint a special representative to conduct the action.

Article 48

(Limitation of actions)

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

CHAPTER IV**CAPITAL, OWN FUNDS AND BORROWING****Article 49**

(Holders of non-voting shares)

1. The statutes may provide for the issue of shares whose holders are to have no voting rights, to be subscribed for by members or by non-members interested in the progress of the SCE.
2. Holders of shares which do not carry voting rights may be given special advantages.
3. The total nominal value of such shares held may not exceed a figure laid down in the statutes.
4. The statutes must include provisions ensuring that the interests of holders of non-voting shares can be represented and defended.

In particular, the statutes shall provide for special meetings of such shareholders. Before any decision of the general meeting is taken, a special meeting may state its opinion, which shall be brought to the attention of the general meeting by the representatives which the special meeting appoints.

This opinion shall be recorded in the minutes of the general meeting.

Article 50

(Non-user investor members)

Where the statutes authorize persons who do not expect to use the SCE's services to subscribe for voting shares, the statutes may lay down special provisions for the benefit of such non-user members with regard to the distribution of surpluses.

Article 51

(Financing)

(AMENDMENT No 71, modified)

An SCE may avail itself of all forms of financing under the most favourable conditions applying to cooperatives in the State in which it has its registered office and in the Member States in which it has its establishments.

Article 52

(Dividend)

The statutes may provide for the payment of a dividend to members in proportion to their business with the SCE, or the services they have performed for it, in accordance with the law governing cooperative societies in the State in which the SCE has its registered office.

Article 53

(Legal reserve)

1. The statutes shall provide for the mode of application of the surplus for each financial year.
 2. Where there is a surplus the statutes shall require the establishment of a legal reserve funded out of the surplus before any further allocation.
- Until such time as the legal reserve is equal to the capital of the SCE, the amount allocated to it may not be less than 15 % of the surplus.
3. Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve.

Article 54

(Allocation of the available surplus)

1. The balance of the surplus after deduction of the allocation to the legal reserve and of any sums paid out in dividends, with the addition of any surpluses carried over from previous years, shall constitute the surplus available for distribution.
2. The general meeting which considers the accounts for the financial year may allocate the surplus in the order and proportions laid down by the statutes, and in particular:
 - carry them forward to the next account,
 - appropriate them to any ordinary or extraordinary non-statutory reserve fund,
 - provide a return on paid-up capital and own funds and quasi-equity, payment being made in cash or shares.
3. The statutes may also prohibit any distribution.

CHAPTER V

ANNUAL ACCOUNTS, CONSOLIDATED ACCOUNTS, AUDITING AND DISCLOSURE

Article 55

(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 SCE 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 SCE 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 56

(Auditing)

The annual accounts of the SCE, and its consolidated accounts, if any, shall be statutorily audited by one or more persons authorized to do so in the Member State in which the SCE 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 57

(Internal audit body)

The statutes may provide for the establishment of an internal body whose members, elected from among the members of the SCE, shall be responsible for auditing the SCE's accounts and monitoring its management on a continuous basis. They shall report on their activities each year to the general meeting. Where the law of the State in which the SCE has its registered office requires that the accounts of cooperative societies be statutorily audited by persons outside the society, an internal audit body cannot replace the persons performing the statutory audit.

Article 58

(System of auditing)

1. An SCE must accept and submit to a system of auditing where the law of the State in which the SCE has its registered office requires such a system for all cooperatives covered by the law of that State, without prejudice to Article 56.

2. In Member States where the law governing national cooperative societies requires an audit by one or more audit bodies, those bodies shall be authorized to audit the consolidated accounts provided the parent society has its registered office in one of those States.

Article 59

(Disclosure of accounts)

1. 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 SCE has its registered office pursuant to Article 3 of Directive 68/151/EEC.
2. Where SCEs are not subject, under the law of the Member State in which the SCE has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the accounting documents available to the public at its registered office. Copies of these documents must be obtainable on request. The price charged for these copies must not exceed the administrative cost.

Article 60

(Credit or financial institutions and insurance undertakings)

SCEs 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 SCE has its registered office pursuant to Directive 86/635/EEC, or, as the case may be, pursuant to Council Directive 91/674/EEC⁽¹⁹⁾.

CHAPTER VI

WINDING UP AND LIQUIDATION

Section I

Winding up

Article 61

(Winding up by the general meeting)

1. An SCE 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 25 (5).

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 SCE:

- where the period fixed in the statutes has expired,
- where the subscribed capital has been reduced below the minimum capital laid down in the statutes,
- where the disclosure of accounts has not taken place in the SCE's last three financial years,

(19) OJ No L

- where the number of members is below the minimum required by this Regulation or by the SCE's statutes,

- on any grounds laid down either in the law governing the legal entities which founded the SCE, in the State in which the SCE has its registered office, or in the statutes.

The general meeting shall decide:

- either to wind up the SCE in accordance with Article 25 (7),
- or, in accordance with Article 25 (5), that the SCE shall continue its activities.

Article 62

(Winding up by the court)

On an application by any person concerned or any competent authority, the court of the place where the SCE has its registered office must order the SCE to be wound up where it finds that the registered office has been transferred outside the Community, or that the SCE's activities are being carried on contrary to public policy in the Member State in which the SCE has its registered office, or in breach of Article 1 (2) or (3) or of Article 9 (1).

The court may grant the SCE 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.

1. Where an SCE no longer fulfils the obligation set out in Article 2, the Member State in which the SCE has its registered office shall take appropriate measures to require the SCE to rectify the situation within a fixed time:

- either by reestablishing its central administration in the Member State in which its registered office is situated,
- or by transferring the registered office according to the procedure set out in Article 8.

2. Should the SCE fail to comply with these measures, the court or other competent authority in the Member State in which the registered office is situated shall declare that the SCE is being wound up and proceed with its liquidation.

3. The Member State in which the registered office is situated shall institute legal proceedings against any infringement of Article 2. Such proceedings shall have suspensory effect on the procedures provided for in the foregoing paragraphs.

4. Where it is found, on the initiative of the authorities or of any interested party, that an SCE has its central administration in the territory of a Member State in violation of Article 2, the authorities in this Member State shall forthwith inform the Member State in which the registered office is situated.

Section II

Liquidation

Article 63

(Liquidation)

1. The winding up of an SCE shall entail its liquidation.
2. The liquidation of an SCE and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office.
3. An SCE 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 5 (3). Any interested party may examine such books and records.

Article 64

(Distribution)

(AMENDMENT No 74)

After the creditors have been paid in full, and anything due to designated beneficiaries has been distributed, net assets shall be distributed in accordance with the principle of disinterested distribution, i.e. distribution to other SCEs or cooperative societies governed by the law of a Member State or to one or more bodies having as their object the support and promotion of cooperative societies.

However, two exceptions to the above principle shall be admissible:

- any other type of distribution may be provided for in the instrument of incorporation;
- on a proposal from the management board or administrative board, the general meeting, acting by a two-thirds majority, may adopt a different form of distribution.

CHAPTER VII

INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 65

(Insolvency and suspension of payments)

1. The SCE 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 5 (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 the 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 5 (3).

4. Particulars registered pursuant to paragraphs 2 and 3 shall be published in the manner referred to in Article 6.

TITLE II

FINAL PROVISIONS

Article 66

(Measures to be applied in the event of a breach of rules)

Each Member State shall specify the appropriate measures 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 1994 and shall forthwith inform the Commission thereof.

Article 67

This Regulation shall enter into force on 1 January 1994.

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

Done at Brussels,

For the Council
The President

ANNEX

Legal entities referred to in Article 9

In Belgium

cooperative societies governed by Sections 141 to 164 of the Consolidated Commercial Companies Act; mutual insurance associations within the scope of Section 2 of the Insurance Act of 11 June 1874 and Section 11 of the Act of 9 July 1975 on the Supervision of Insurance Undertakings; and mutual societies within the scope of the Act of 6 August 1990 on Mutual Societies and National Unions of Mutual Societies

In Denmark

cooperative societies and associations as defined and recognized under the principles formulated by the International Cooperative Alliance (ICA), and entities such as the Supplementary Health Insurance Fund and mutual societies

In Spain

cooperatives within the scope of Act No 3/1987 of 2 April 1987; credit cooperatives within the scope of the Act of 26 May 1989; workers limited companies within the scope of the Act of 25 April 1986; cooperatives within the scope of the following legislation of the autonomous communities:

- Basque country: the Act of 11 February 1982,
- Catalonia: the Act of 9 March 1983,
- Andalusia: the Act of May 1985,
- Valencia: the Act of 25 October 1985,

and the social providence bodies, industrial accident mutual societies and mutual societies governed by the Act of 2 August 1984 on the Regulation of Private Insurance

In France

cooperatives within the scope of the Cooperative Statute of 10 September 1947; mutual insurance societies governed by R. 322-42 et seq. of the Insurance Code; and mutual societies governed by the Mutual Societies Code of 25 July 1985

In Greece

cooperatives within the scope of Act No 1541 of 1985; and entities within the scope of the law on mutual societies

In Ireland

cooperatives and other societies within the scope of the Industrial and Provident Societies Acts of 1893, the Friendly Societies Acts, the amendment to the 1893 Industrial and Provident Societies Act 1978, the Credit Union Act 1966, public limited companies, and the Voluntary Health Insurance Board governed by the Voluntary Health Insurance Act 1957

In Italy

cooperative societies and mutual insurance societies governed by Title VI of the Civil Code; the cooperatives referred to by legislation and regulations specific to certain categories; and the mutual insurance societies and mutual societies within the scope of the Mutual Societies Code of 15 April 1886

In Luxembourg

cooperative societies governed by Sections 113 et seq. of the Commercial Companies Act of 10 August 1915; mutual insurance associations governed by Section 2 of the Act of 16 May 1891; mutual assistance societies and mutual societies governed by the Act of 7 July 1961 and the Grand-Ducal Regulation of 31 July 1961

In the Netherlands

cooperative unions governed by Title III on associations, of the Second Book of the Civil Code; mutual guarantee societies provided for in the regulations on mutual guarantee societies; and the health insurance funds (Association of Dutch Health Insurers (VNZ) and the Silver Cross (Zilverenkruis), within the scope of the Act of 1 January 1966 or of the General Act on Special Health Expenses

In Portugal

cooperatives governed by Decree-Law No 454/80 of 9 October 1980, and cooperatives referred to by the Code and governed by laws dealing specifically with certain sectors; mutual societies and associations within the scope of Decree-Law No 72/90 of 3 March 1990; charitable institutions (misericordias) within the scope of Sections 167 to 194 of the Civil Code, on associations and foundations; and mutual insurance societies

In Germany

cooperatives governed by the Act of 1 May 1889 (RGBl. S. 55) published on 20 May 1898 (RGBl. S. 369, 810) as amended in particular by the Amending Act of 8 October 1973 (BGBl. I S. 1451) and the Company Accounts Directives Transposition Act of 19 December 1985 (BGBl. I S. 2355); mutual insurance associations within the scope of the Insurance Undertakings Supervision Act of 6 June 1931, as amended on 1 July 1990

In the United Kingdom

cooperatives governed by the Industrial and Provident Societies Acts 1876; all other forms of company or partnership recognized under the cooperative principles laid down by the International Cooperative Alliance; and societies within the scope of the Friendly Societies Acts, the Building Societies Acts, and the Credit Unions Act 1979

Amended proposal for a Council Directive supplementing the statute for a European cooperative society with regard to the involvement of employees

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

SYN 389

Having regard to the Treaty establishing the European Economic Community and in particular Article 54 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, in order to attain the objectives set out in Article 8a of the Treaty, Regulation (EEC) No . . .⁽¹⁾ establishes a statute for a European cooperative society (SCE);

Whereas there are in the Member States laws, regulations and administrative provisions concerning the provision of information to and the consultation of the employees of undertakings, whatever their legal form; whereas in some Member States, there are provisions concerning the participation of employees in cooperatives;

Whereas it is desirable to coordinate information and consultation arrangements at Community level in order to develop dialogue between the management boards and administrative boards of SCEs and employees;

Whereas the realization of the internal market is giving rise to a process of concentration and conversion of cooperatives; whereas in order to ensure a harmonious development of economic activities, SCEs carrying on cross-border activities must adopt, if appropriate, a participation model, or, failing this, inform and consult employees on decisions which concern them;

Whereas this Directive determines the minimum areas where there must be information and consultation, without prejudice to the application of the following Directives:

- Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾, as amended by Directive .../.../EEC⁽³⁾,

- Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings businesses or parts of businesses⁽⁴⁾,

- Council Directive .../.../.../EEC of ... on the establishment of a European Works Council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees⁽⁵⁾;

(1) OJ No L

(2) OJ No L 48, 22.2.1975, p. 29.

(3) COM(91) 292 final, 15.7.1991.

(4) OJ No L 61, 5.3.1977, p. 26.

(5) COM(90) 581 final.

(AMENDMENT No 79)

Whereas appropriate provisions must be adopted to ensure that the employees of SCEs are properly informed and consulted without undue delay where decisions likely to affect their interests or which have a potential impact on the prospects of the SCE and the conditions of employment are taken in a Member State other than that in which they are employed;

Whereas the laws, regulations and administrative provisions of the Member States governing the participation of employees in national cooperatives may be made applicable to SCEs;

Whereas an SCE may not be registered until a participation model or, in the absence thereof, an employee information and consultation system and in particular a separate committee has been chosen;

Whereas, however, the natural persons who founded the SCE or, where no agreement is reached prior to registration of the SCE, the founder entities should propose to the general meeting called to approve the formation of the SCE certain requirements with respect to informing and consulting employees;

Whereas the information and consultation committee or any other alternative body must be informed and consulted about decisions on the part of the SCE capable of affecting the employees' interests;

Whereas in order to ensure the proper functioning of the internal market and avoid any inequality in the terms of competition, the employees of the SCE should be guaranteed equivalent levels of information and consultation;

Whereas in order to allow for more flexibility with respect to small SCEs, Member States need not provide for employee representation in SCEs employing fewer than 50 workers;

Whereas the provisions of this Directive form an indissociable supplement to those of Regulation (EEC) No . . . / . . . [on the statute for a European cooperative society]; whereas it is therefore necessary to ensure that the two sets of provisions are applied concomitantly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive coordinates the laws, regulations and administrative provisions of the Member States concerning the involvement of employees in the SCE.

This Directive is an essential supplement to Regulation (EEC) No .../.../... [on the statute for a European cooperative society].

No SCE may be registered until a participation model or, in the absence thereof, an information and consultation system has been chosen in accordance with the provisions of this Directive.

TITLE I**Participation**

Article 2

The laws, regulations and administrative provisions of a Member State governing the participation of employees in the supervisory or administrative boards of national cooperative societies may be made applicable to an SCE whose registered office is in its territory.

Where such provisions are not applied the Member State shall take the necessary measures to ensure at least that the employees of the SCE are informed and consulted in accordance with Articles 3, 4 and 5.

TITLE II

Information and consultation arrangements

Article 3

1. The management boards or administrative boards of the founder entities and the representatives of the employees of those entities provided for by the laws and practices of the Member States shall agree arrangements for informing and consulting the employees of the SCE. The agreement must be concluded in writing before the SCE is registered.

(AMENDMENT No 87)

2. Where no such agreement can be reached the representatives of the employees of the founder entities may make a written statement setting out the reasons for the failure to reach agreement.

3. Where the SCE is formed solely by natural persons, those persons shall lay down information and consultation procedures on the basis of the requirements with respect to informing and consulting employees set out in Article 4(1); those procedures must be submitted to the general meeting called to approve the formation of the SCE.

4. The management boards or administrative boards of the founder entities shall draw up for submission to the general meeting called to approve the formation of the SCE a report to which is attached either

- the text of the agreement referred to in paragraph 1, or
- the statement by the employees' representatives referred to in paragraph 2.

5. The general meeting called to approve the formation of the SCE shall ratify the information and consultation arrangements embodied in the agreement referred to in paragraph 1, or where no agreement has been reached, shall decide on the arrangements which are to apply to the SCE in the light of the report and of the statement referred to in paragraphs 2 and 3.

6. The arrangements chosen may subsequently be replaced by other arrangements agreed between the SCE's management board or administrative board and the representatives of the employees of the SCE. The agreement must be submitted to the general meeting for approval.

7. The procedure laid down in this Article shall apply in the event of conversion pursuant to Article 9 (2) of the Regulation (EEC) . . . / . . . [on the statute for a European cooperative society].

(AMENDMENT No 88)

8. In the event of the registered office of an SCE being transferred to another Member State, the information and consultation arrangements in existence before the transfer may be altered by agreement between the management board or the administrative board of the SCE and the representatives of the employees of the SCE.

Article 4

1. The management board or the administrative board of the SCE shall inform and consult in good time the employees of that entity at least in the following areas:

(AMENDMENT No 89)

(a) any proposals which might significantly affect the interests of the employees of the SCE or which have a potential impact on the prospects of the SCE and the conditions of employment and especially all matters concerning working conditions and all decisions requiring the approval of the management board or the administrative board, without prejudice to the Community provisions concerning information and consultation, and in particular Directives 75/129/EEC, 77/187/EEC and . . . / EEC [on the establishment of a European works council];

(b) any question concerning conditions of employment, in particular changes affecting the organization of the SCE and the introduction of new working methods or new products and/or services;

(c) all documents submitted to the SCE's general meeting;

(d) the operations referred to in Article 43 (1) of the Regulation (EEC) . . . [on the statute for a European cooperative society];

(AMENDMENT No 90)

(e) the development and organization of vocational training undertaken in the SCE and any matter affecting the health and safety of employees, with equal and joint participation in the development of health and safety programmes and policies in the SCE.

(AMENDMENTS Nos 155 and 91, modified)

2. The employees of the SCE shall be informed and consulted:

- within a separate committee representing the employees of the SCE, or
- within any other structure agreed between the management boards or administrative boards of the founder entities and the representatives of the employees of those entities.

These procedures must be completed in good time before any decision is reached, so that any objections raised by the employees' representatives may be taken into account.

In addition, by way of preparation for the consultation procedure, experts may be called in as advisers and the management board or administrative board shall make available all appropriate facilities thereto.

A Member State may restrict this range of information and consultation arrangements in the case of SCEs having their registered head office in its territory.

3. In an SCE with fewer than 50 employees the two parties to the negotiations may decide that simplified information and consultation arrangements should be laid down, subject to compliance with paragraph 1.

Article 5

1. The representatives of the employees of the SCE shall be elected, and shall be provided with such facilities as are necessary to enable them to perform their duties properly, in accordance with the laws and practices of the Member States and in compliance with the following principles:

(a) employees' representatives must be elected in each Member State in which the SCE has establishments or subsidiaries;

(b) the number of representatives so elected must as far as possible be in proportion to the number of employees they represent;

(c) all employees must be able to participate in the vote irrespective of their length of service or the number of hours they work per week;

(d) the election must be by secret ballot.

2. The employees' representatives elected in accordance with paragraph 1 may perform their functions within the SCE irrespective of the rules governing qualification as an employees' representative in the law of the Member State in which the SCE has its registered office.

(AMENDMENT No 93)

The employees' representatives shall not be discriminated against in any way on grounds of their activities. They shall enjoy protection against dismissal, unless there are exceptional grounds for their dismissal. They shall also enjoy protection against other penalties imposed on account of anything they do, say or write in connection with the performance of their duties.

(AMENDMENT No 94)

The elected employees' representatives may carry out their duties during working hours.

TITLE III**Final provisions**

Article 6

The provisions of Titles I and II shall not be applicable where the majority of the employees of the SCE are also members thereof.

Article 7

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the main provisions of

national law which they adopt in the field covered by this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

Amended proposal for a
COUNCIL REGULATION (EEC)

on the Statute for a European mutual society

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⁽¹⁾; whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990⁽²⁾;

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 . . . / . . .⁽³⁾, 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⁽⁴⁾, 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;

(1) Businesses in the 'économie sociale' sector - Europe's frontier-free market: SEC(89) 2187 final, 18.12.1989.

(2) OJ No C 332, 31.12.1990, p. 81.

(3) OJ No L

(4) OJ No L 199, 31.7.1985, p. 1.

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;

(AMENDMENT No 163/corr)

Whereas the introduction of a European form of organization which would be available to mutual societies, based on common principles but taking account of the specific features of, on the one hand, mutual societies carrying on providence activities and, on the other, mutuals engaged in other activities, in particular insurance, 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;

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;

(AMENDMENT No 98)

Whereas this Regulation does not affect basic obligatory social security schemes managed in certain Member States by mutual 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 the Council Directive supplementing the Statute for a European mutual society with regard to the involvement of employees⁽⁵⁾ 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 safeguards equivalent throughout the Community⁽⁶⁾, 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⁽⁷⁾, as last amended by Directives 90/604/EEC⁽⁸⁾ and 90/605/EEC⁽⁹⁾,
- Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts⁽¹⁰⁾, 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⁽¹¹⁾,
- 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⁽¹²⁾,
- 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⁽¹³⁾;

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:

(5) OJ No L

(6) OJ No L 65, 14.3.1968, p. 8.

(7) OJ No L 222, 14.8.1978, p. 11.

(8) OJ No L 317, 16.11.1990, p. 57.

(9) OJ No L 317, 16.11.1990, p. 60.

(10) OJ No L 193, 18.7.1983, p. 1.

(11) OJ No L 126, 12.5.1984, p. 20.

(12) OJ No L 19, 24.1.1989, p. 16.

(13) OJ No L 395, 30.12.1989, p. 36.

- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions(14),
- 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(15),
- Council Directive . . . / . . . /EEC of . . . on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (16);

Whereas this form of organization should be optional,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER I

FORMATION OF THE EUROPEAN MUTU

Article 1

(Form of the European mutual socie

1. (AMENDMENT No 164/corr, modifie

Mutual societies may be formed th:
European provident mutual society or a European mutual (ME) carrying out other activities 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, indicating whether, for example, it is an insurance activity or purely a providence activity.

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

(AMENDMENT No 100, modified)

- shall not remunerate its managers or administrators, or assign them a share of the operating surplus. However, managers and administrators may be reimbursed for expenses incurred in performing their duties.

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).

(14) OJ No L 372, 31.12.1986, p. 1.

(15) OJ No L 386, 30.12.1989, p. 1.

(16) COM(90) 348 final - SYN 291.

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)

(AMENDMENT No 102)

1. An ME may be formed by:

(a) any two or more of the legal entities essentially pursuing activities other than providence which are listed in Annex 1 which are formed under the law of a Member State provided at least two of them have their registered office and central administration in different Member States;

(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 and that they solely pursue providence activities as defined in the Member States of origin of the founding entities;

c) or at least 500 natural persons resident in at least two Member States where the ME is essentially carrying on activities other than providence.

(AMENDMENT No 103, modified)

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 at least 500 members in another Member State and is carrying on genuine and effective activities there or can demonstrate that it will meet the above twofold condition if it changes form.

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.

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 within the Community in the Member State in which the ME has its central administration.

Article 6

(Transfer of registered office)

1. The registered office of an ME may be transferred to another Member State in accordance with paragraphs 2 to 9 below. Such transfer shall not result in the ME being wound up or in the creation of a new legal person.
2. A transfer proposal shall be drawn up by the management or administrative board and be published in accordance with Article 9, without prejudice to any additional form of publicity provided for by the Member State in which the registered office is situated. This proposal shall include details of:
 - a) the registered office proposed for the ME,
 - b) the statutes proposed for the ME including, where appropriate, its new title,
 - c) the timetable proposed for the transfer.
- 2(a) The management or administrative board shall draw up a report explaining and justifying the legal and economic aspects of the transfer for the attention of members and workers.
- 2(b) The members and creditors of the ME shall, at least one month prior to the general meeting called to decide on the transfer, have the right to examine, at the registered office of the ME, the transfer proposal and the report drawn up by virtue of 2(a) and to obtain copies of these documents free of charge on request.
- 2(c) A Member State may, in respect of MEs registered on its territory, adopt provisions to ensure appropriate protection for members in the minority who voted against the transfer.
3. No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be governed by the conditions laid down for the amendment of the statutes.
4. The creditors and holders of other rights vis-à-vis the ME which predated publication of the transfer proposal may require the ME to constitute an appropriate guarantee in their favour. Exercise of this right shall be governed by national law in the State in which the ME had its registered office prior to transfer.

A Member State may extend the application of the above provision to include debts made by the ME with public entities prior to the date of transfer.
5. In the Member State in which the ME has its registered office, a court, notary or other competent authority shall issue a certificate to the effect that the acts and formalities required prior to transfer have been properly completed.
6. The new registration may not be effected until the certificate provided for in (5) has been produced and evidence has been furnished of completion of the formalities required for registration in the country of the ME's new registered office.

6(a) Transfer of the ME's registered office and the resulting change of statutes shall take effect on the date on which the ME is registered in the register for its new registered office, in accordance with Article 8.

7. 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.

8. 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.

9. 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.

10. A Member State's legislation may, in respect of MEs registered in that country, provide for any transfer of registered office giving rise to a change in the applicable law not to take effect where, within the period of two months specified in (3), a competent authority from that country lodges an objection. Such objection may only be lodged for reasons of public interest. It must be possible to appeal against any such ruling to a judicial body.

11. An ME which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

Article 7

(Applicable law)

1. An ME shall be governed:

(AMENDMENT, aligned with European Company terms)

- (a) - by the provisions of this Regulation,
- (b) - where expressly authorized by this Regulation, by the provisions in the statutes of the ME;
- c) - for matters not dealt with by this Regulation or, where a matter is dealt with only partially, for the aspects not covered by this Regulation:
 - the legal provisions adopted by the Member States in application of Community measures dealing specifically with MEs;
 - the legal provisions in Member States applying to the legal entities set out in the Annex and constituted in conformity with the legislation of the Member State in which the ME has its registered office;
 - the provisions of statutes under the same conditions as for the legal entities set out in the Annex and constituted in accordance with the legislation of the Member State in which the ME has its registered office.

2. (AMENDMENT, aligned with European Company)

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 this paragraph.

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.

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 filing the ME's statutes. No ME may be registered until the measures required by the Directive [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)****(AMENDMENT No 105)**

1. The general meeting shall consist either of all the members or of delegates appointed under the conditions laid down in the statutes.
2. Where the ME has several establishments, or where its activities span more than one region, or where it has more than 500 members, 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 general meeting. The statutes shall lay down the division into sections, the number of delegates for each section, and the procedures to be followed.
3. Persons entitled to attend the general meeting may appoint a proxy to deputize for them under the conditions laid down in the statutes.
4. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

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)****(AMENDMENT No 106, modified)**

Each member of the ME shall have one vote. If an ME has been formed by legal persons, its statutes may regulate voting rights according to the number of members and the activities of each legal person who is a member. The statutes must restrict the representation rights of legal persons in order to prevent any one legal person from enjoying an absolute majority of votes.

Article 21**(AMENDMENT No 107)**

The statutes may allow members to have more than one vote. The statutes shall, in that event, lay down the circumstances in which a member may have more than one vote; this must depend on the extent to which the member takes

part in the ME's activities. The statutes must lay down limits on the number of votes which may be cast by a single member and the number of other members for whom a member may act as proxy.

Article 22

(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 23

(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.

Amendments to the statutes shall be published in accordance with the provisions of Article 9.

Article 24

(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 25

(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 26

(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 27

(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 28

(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 29

(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.

(AMENDMENT No 108, modified)

2. With the exception of the employees' representatives pursuant to Directive .../.../EEC, 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 30

(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 31

(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 32

(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. (AMENDMENT No 109, modified)

With the exception of the employees' representatives pursuant to Directive .../.../EEC, the member or members of the administrative board shall be appointed and removed by the general meeting.

Article 33

(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 34

(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 35

(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 36

(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 37

(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 38

(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 39

(Operations requiring authorization)

1. The statutes of the SCE shall set out the categories of operation requiring authorization for the administrative board by the supervisory board, under the two-tier system, or requiring an express decision from the administrative board under the one-tier system.

However, a Member State may provide that, under the two-tier system, the supervisory board may itself make certain categories of operation subject to authorization.

2. A Member State may lay down the minimum categories of operation which must feature in the statutes of SCEs registered on its territory.

Article 40

(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 41

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

Article 42

(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 43

(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 44

(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, CONSOLIDATED ACCOUNTS, AUDITING AND DISCLOSURE

Article 45

(Financing)

An ME may avail itself of all forms of financing under the most favourable conditions applying to mutual societies in the State in which it has its registered office and in the Member States in which it has its establishments.

Article 46

(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 47

(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 48

(Disclosure of accounts)

1. 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.

2. Where MEs are not subject, under the law of the Member State in which the ME has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC, the ME must at least make the accounting documents available to the public at its registered office. Copies of these documents must be obtainable on request. The price charged for these copies must not exceed the administrative cost.

Article 49

(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 91/674/EEC⁽¹⁷⁾.

CHAPTER V

WINDING UP AND LIQUIDATION

Section I

Winding up

Article 50

(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,

(17) OJ No L

- 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.

(AMENDMENT No 111)

The general meeting shall decide either to wind up the ME or that the ME shall continue its activities in accordance with Article 22.

Article 51

(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 52

(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 53

(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 54

(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 (1).
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 55

(Measures to be applied in the event of a breach of rules)

Each Member State shall specify the appropriate measures 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.

Article 56

This Regulation shall enter into force on 1 January 1994.

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

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;

(AMENDMENT by the rapporteur and the ESC)

Statutory health insurance funds within the scope of the Social Code (SGBV); Accident insurance associations within the meaning of Articles 545 and 762 of the Insurance Regulations (RVO)

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

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 Germany

(AMENDMENT by the rapporteur and the ESC)

Statutory health insurance funds within the scope of the Social Code (SGBV); Accident insurance associations within the meaning of Articles 545, 632, 719a and 762 of the Insurance Regulations (RVO)

For France

(AMENDMENT No 114)

Mutuals coming under the Code de la Mutualité (Law of 25 July 1985); Mutual insurance societies within the scope of the Insurance Code; Agricultural mutual funds governed by the Rural Code

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

Amended proposal for a Council Directive supplementing the Statute for a European mutual society with regard to the involvement of employees

SYN 391

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 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 in order to attain the objectives set out in Article 8a of the Treaty, Regulation (EEC) No . . . / . . .⁽¹⁾ establishes a statute for a European mutual society (ME);

(AMENDMENT No 116)

Whereas there are in the Member States laws, regulations and administrative provisions concerning the provision of information to and the consultation of the employees of undertakings, whatever their legal form; whereas in some Member States, there are provisions concerning the participation of employees in mutuals, whatever their type of activity;

Whereas it is desirable to coordinate information and consultation arrangements at Community level in order to develop dialogue between the management boards and administrative boards of MEs and employees;

Whereas the realization of the internal market is giving rise to a process of concentration and conversion of mutuals; whereas in order to ensure a harmonious development of economic activities, MEs carrying on cross-border activities must adopt, if appropriate, a participation model, or, failing this, inform and consult employees on decisions which concern them;

Whereas this Directive determines the minimum areas where there must be information and consultation, without prejudice to the application of the following Directives:

- Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies⁽²⁾, as amended by Directive .../.../EEC⁽³⁾,

- Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfer of undertakings, businesses or parts of businesses⁽⁴⁾, and

- Council Directive .../.../EEC of ... on the establishment of a European works council in Community-scale undertakings or groups of undertakings for the purposes of informing and consulting employees⁽⁵⁾;

Whereas appropriate provisions must be adopted to ensure that the employees of MEs are properly informed and consulted where decisions likely to affect their interests are taken in a Member State other than that in which they are employed;

(1) OJ No L

(2) OJ No L 48, 22.2.1975, p. 29.

(3) COM(91) 292 final, 15.7.1991.

(4) OJ No L 61, 5.3.1977, p. 26.

(5) COM(90) 581 final.

Whereas the laws, regulations and administrative provisions of the Member States governing the participation of employees in national mutuals may be made applicable to MEs;

Whereas an ME may not be registered until a participation model or, in the absence thereof, an employee information and consultation system and in particular a separate committee has been chosen;

Whereas, however, the natural persons who founded the ME or, where no agreement is reached prior to registration of the ME, the founder entities should propose to the general meeting called to approve the formation of the ME certain requirements with respect to informing and consulting employees;

Whereas the information and consultation committee or any other alternative body must be informed and consulted about decisions on the part of the ME capable of affecting the employees' interests;

Whereas in order to ensure the proper functioning of the internal market and avoid any inequality in the terms of competition, the employees of the ME should be guaranteed equivalent levels of information and consultation;

Whereas in order to allow for more flexibility with respect to small MEs, Member States need not provide for employee representation in MEs employing fewer than 50 workers;

Whereas the provisions of this Directive form an indissociable supplement to those of Regulation (EEC) No . . . / . . . /EEC [on the statute for a European mutual society]; whereas it is therefore necessary to ensure that the two sets of provisions are applied concomitantly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive coordinates the laws, regulations and administrative provisions of the Member States concerning the involvement of employees in the ME.

This Directive is an essential supplement to Regulation (EEC) No . . . / . . . [on the statute for a European mutual society].

No ME may be registered until a participation model or, in the absence thereof, an information and consultation system has been chosen in accordance with the provisions of this Directive.

TITLE I

Participation

Article 2

The laws, regulations and administrative provisions of a Member State governing the participation of employees in the supervisory or administrative

boards of national mutual societies may be made applicable to an ME whose registered office is in its territory.

Where such provisions are not applied the Member State shall take the necessary measures to ensure at least that the employees of the ME are informed and consulted in accordance with Articles 3, 4 and 5.

TITLE II

Information and consultation arrangements

Article 3

1. The management boards or administrative boards of the founder entities and the representatives of the employees of those entities provided for by the laws and practices of the Member States shall agree arrangements for informing and consulting the employees of the ME. The agreement must be concluded in writing before the ME is registered.

2. Where the ME is formed solely by natural persons, those persons shall lay down information and consultation procedures on the basis of the requirements with respect to informing and consulting employees set out in Article 4(1); those procedures must be submitted to the general meeting called to approve the formation of the ME.

3. Where no such agreement can be reached the representatives of the employees of the founder entities may make a written statement setting out why, in their opinion, the formation of the ME is contrary to the employees' interests and what measures should be taken with respect to the employees.

4. The management boards or administrative boards of the founder entities shall draw up for submission to the general meeting called to approve the formation of the ME a report to which is attached either

- the text of the agreement referred to in paragraph 1, or
- the statement by the employees' representatives referred to in paragraph 2.

5. The general meeting called to approve the formation of the ME shall ratify the information and consultation arrangements embodied in the agreement referred to in paragraph 1, or where no agreement has been reached, shall decide on the arrangements which are to apply to the ME in the light of the report and of the statement referred to in paragraphs 2 and 3.

6. The arrangements chosen may subsequently be replaced by other arrangements agreed between the ME's management board or administrative board and the representatives of the employees of the ME. The agreement must be submitted to the general meeting for approval.

7. The procedure laid down in this Article shall apply in the event of conversion pursuant to Article 2 (2) of the Regulation (EEC) . . . / . . . [on the statute for a European mutual society].

(AMENDMENT Nos 129 and 156, in part)

8. In the event of the registered office of an ME being transferred to another Member State, the information and consultation arrangements in existence before the transfer may be altered only by agreement between the management board or the administrative board of the ME and the

124

representatives of the employees of the ME.

Article 4

1. The management board or the administrative board of the ME shall inform and consult in good time the employees of that entity at least in the following areas:

(AMENDMENT No 130)

(a) any proposals which might significantly affect the interests of the employees of the ME or which have a potential impact on the prospects of the ME and the conditions of employment and especially all matters concerning working conditions and all decisions requiring the approval of the management board or the administrative board, without prejudice to the Community provisions concerning information and consultation, and in particular Directives 75/129/EEC, 77/187/EEC and . . . / . . . /EEC [on the establishment of a European works council];

(b) any question concerning conditions of employment, in particular changes affecting the organization of the ME and the introduction of new working methods or new products and/or services;

(c) all documents submitted to the ME's general meeting;

(d) the operations referred to in Article 38 (1) of the Regulation (EEC) . . . / . . . [on the statute for a European mutual society];

(AMENDMENT No 131)

(e) the development and organization of vocational training undertaken in the ME and any matter affecting the health and safety of employees, with equal and joint participation in the development of health and safety programmes and policies in the ME.

(AMENDMENT Nos 132 and 161, in part)

2. The employees of the ME shall be informed and consulted:

- within a separate committee representing the employees of the ME, or
- within any other structure agreed between the management boards or administrative boards of the founder entities and the representatives of the employees of those entities.

These procedures must be completed in good time before the final decision is reached, so that any objections raised by the employees' representatives may be taken into account.

In addition, by way of preparation for the consultation procedure, experts may be called in as advisers and the management board or administrative board shall make available all appropriate facilities thereto.

A Member State may restrict this range of participation and information arrangements in the case of MEs having their registered head office in its territory.

3. In an ME with fewer than 50 employees the two parties to the negotiations may decide that simplified information and consultation arrangements should be laid down, subject to compliance with paragraph 1.

Article 5

1. The representatives of the employees of the ME shall be elected, and shall be provided with such facilities as are necessary to enable them to perform their duties properly, in accordance with the laws and practices of the Member States and in compliance with the following principles:

(a) employees' representatives must be elected in each Member State in which the ME has establishments or subsidiaries;

(b) the number of representatives so elected must as far as possible be in proportion to the number of employees they represent;

(c) all employees must be able to participate in the vote irrespective of their length of service or the number of hours they work per week;

(d) the election must be by secret ballot.

2. The employees' representatives elected in accordance with paragraph 1 may perform their functions within the ME irrespective of the rules governing qualification as an employees' representative in the law of the Member State in which the ME has its registered office.

(AMENDMENT No 135)

The elected employees' representatives may carry out their duties during working hours. No disciplinary measures may be taken against them in relation to actions connected with performance of their duties. They may not be routinely dismissed during their period of office.

(AMENDMENT No 134)

Article 5a

Member States shall impose appropriate sanctions should an ME fail to comply with the provisions of this Directive. In particular, Member States shall give the employees' representatives the right to request the courts or other competent national authorities to take interim protective measures to safeguard their interests.

TITLE III

Final provisions

Article 6

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1994. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

Article 7

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

ISSN 0254-1475

COM(93) 252 final

DOCUMENTS

EN

10 01

Catalogue number : CB-CO-93-281-EN-C

ISBN 92-77-56324-9

Office for Official Publications of the European Communities
L-2985 Luxembourg