

**Opinion on:**

- the proposal for a Council Regulation (EEC) on the Statute for a European Association, and
- the proposal for a Council Directive supplementing the Statute for a European Association with regard to the Involvement of Employees <sup>(1)</sup>

(92/C 223/16)

The Council decided on 26 March 1992, in accordance with Articles 54 and 100 A of the EEC Treaty, to ask the Economic and Social Committee for an Opinion on the abovementioned proposals.

The Section for Industry, Commerce, Crafts and Services, which was responsible for the preparatory work, adopted its Opinion on 6 May 1992. The Rapporteur was Mr Ramaekers and the Co-Rapporteur Mr Panero Florez.

At its 297th Plenary Session (meeting of 26 May 1992) the Economic and Social Committee adopted the following Opinion by a majority, with 11 votes against and 16 abstentions.

I. The Committee approves the proposal for a regulation subject to the following comments:

solely to encourage the harmonious development and operation of associations in Europe.

**1. Introduction**

1.1. The Commission has previously acknowledged two fundamental roles played by associations at Community level, namely their capacity to develop economic activity and their task of promoting the general interest and activity in individual sectors in the Citizens' Europe.

1.4. The Committee thus hopes to contribute towards the drafting of a instrument which is vital to the affirmation of the right of association as a basic freedom and manifestation of European citizenship.

1.2. The ESC underlined this recognition in its Opinion of 19 September 1990 on the Commission Communication to the Council concerning social economy enterprises and the achievement of a frontier-free European market.

1.5. The Committee considers it absolutely essential that the three regulations on the statutes for a European association, a European mutual society and a European cooperative be examined and adopted simultaneously.

1.2.1. This Opinion, the main lines of which are set out below, is a valuable guide because of the very broad consensus reached on it: there were no votes against and only three abstentions.

1.6. The Committee urges maintenance of the 'gangways' principle, which it also considers essential, i.e. the possibility of setting up one of these three European entities through a national association, mutual society or cooperative.

1.2.2. Among the wishes expressed by the Committee, one is specific to associations and should be particularly emphasised: that is the idea of a single Community legal Statute for all European associations, so as not to introduce any divergencies into the associations sector.

1.7. To take account of the evolutionary nature of the matters dealt with by the regulation, the Committee would like it to include a flexible revision clause enabling, for instance, the exhaustive annexes to be modified.

1.2.3. The Committee is pleased that the Commission proposal for a regulation has taken so much account of the remarks made in the Opinion of September 1990.

1.8. Moreover, because of the frequent referrals the draft regulation makes to Member States' legislation, the Committee urges the Commission to continue its comparative studies into the different national laws.

1.3. The proposals for changes which follow are a logical continuation of the Opinion and are intended

**2. Main recommendations of the ESC Opinion on 19 September 1990**

2.1. Specific situation of associations: creation of a single Community legal Statute for all European associations.

<sup>(1)</sup> OJ No C 99, 21. 4. 1992, pp. 1-14.

2.2. Establishment of an optional, alternative specific legal instrument [given the loopholes and limits of the European Economic Interest Grouping (EEIG) and the European Company]. This instrument will also take account of the specific nature of enterprises in the social economy sector.

2.3. Clarification of financing techniques for consolidating or boosting own funds.

2.4. Compliance with the 'one member, one vote' principle, adaptable for legal persons.

2.5. Provision, in the event of liquidation, for the distribution of assets to bodies pursuing similar objectives.

2.6. Accessibility of the statute to both natural and legal persons.

2.7. The possibility of establishing a European company of this type by merger, setting-up a subsidiary, conversion of a national company or from scratch.

### 3. Responses contained in the proposed Council Regulation

3.1. The Committee notes that the desire of associations for recognition and the possibility of operating throughout the EC, on the basis of a single statute, has been heeded in Article 1 (text of the actual statute and Explanatory Memorandum), but more particularly in the fifth and seventh recitals preceding the actual provisions of the proposed regulation.

3.2. The Committee is pleased that certain recitals (eleventh and twelfth) recognize that neither the European Company nor the EEIG are suitable cross-border cooperation instruments for associations or foundations.

3.2.1. Consequently the Commission—which is to be congratulated—has drafted this proposal for a regulation, which is a vital basic component in confirming the right of association as a fundamental freedom and expression of European citizenship.

3.3. Article 41 provides that the EA may make use of all forms of financing in the State in which it has its registered office under the same conditions as those applying to the legal entities which founded it.

3.3.1. This wording calls for two comments:

— firstly, the Committee thinks Article 41 should mention natural persons as well as the EA's founding entities, since both may set up an EA, and

— secondly, this linkage with the State in which the EA has its registered office does not seem an appropriate criterion since it would lead to inequalities between EAs with their registered offices in different EC Member States.

3.3.2. Theoretically the ideal solution from an EC angle would be to allow EAs access to all forms of financing available to the national legal entities listed in the Annex. But the Committee is well aware that this approach could give rise to many practical difficulties in applying a particular system, besides distorting competition between EAs and national associations.

3.3.3. However, the whole aim of a European statute is to transcend the national dimension and establish a genuinely European association on which the State chosen for establishment of the EA's registered office should have as little influence as the location of a national office's registered office in one town rather than another within the country concerned.

3.3.4. Nevertheless, the Committee feels that a system of referral could be found which avoids any distortion of competition between different EAs, or between national and European associations: the laws of the country in which a particular activity is carried out could serve as reference.

3.3.5. Obviously the Committee is aware that this method has its drawbacks, such as the difficulty of locating the activity and differences in the forms of financing available to the EA according to the countries to which it extends its activities.

3.3.6. Having briefly mentioned these different systems, each with its strong and weak points, the Committee can only recommend the most 'European' solution to provide associations with the most operational cross-border legal instrument possible.

3.3.7. The Committee also wonders if the forms of financing referred to in Article 41 include both subsidies and the possibility of an EA appealing to public generosity.

3.3.8. If it does not, the Committee would like the Commission to see that such sources of finance are included in this provision.

3.3.9. Finally, the Committee would like the proposed regulation to indicate that an EA can call upon the various European instruments and forms of financing, and under the best terms possible.

3.4. Article 17 currently provides for the 'one member, one vote' system. The Committee thinks it would be preferable to provide for the possibility of weighting

this voting right (up to a stated maximum limit) to take account of the fact that (a) the EA may consist of natural or legal persons and (b) the latter may differ in nature.

3.4.1. The Committee therefore proposes that Article 17 be amplified to read:

'Each member of the EA shall have one vote subject to multiple voting rights limited by the rules.'

3.5. Article 44 (3) specifies that net assets shall be distributed as stipulated in the rules and, failing such provision, in accordance with the laws applying to the EA in the Member State in which it has its registered office.

3.5.1. The Committee considers that this would completely contradict one of the fundamental principles of social economy, namely the way in which remaining assets should be distributed; it would like the proposed regulation to take account of this principle, even if certain national legal systems lay down solutions which are different from or opposed to it.

3.5.2. The Committee therefore proposes the following wording for Article 44 (3):

'the net assets, after the creditors have been paid in full, shall be distributed either to other EAs or to one or more bodies having the same or similar purposes.'

3.6. The Committee considers it a positive step that the statute has been made accessible to natural persons (especially as this is not yet the case for SCEs and MEs) in line with the wishes expressed in the ESC Opinion of September 1990.

3.6.1. However, the Committee feels that the minimum requirement of 21 natural persons is too high, particularly as this threshold was set to take account of only one country's laws; it therefore proposes that an EA may be formed from a minimum of 7 natural persons.

3.6.2. As regards the formation of an EA by two legal persons, the Committee thinks that theoretically the best solution would be for the EA to be formed by any legal entity, thereby taking account of the fact that the nature of the European association is not necessarily that of its members.

3.6.3. If that is not feasible, the Committee trusts that, at the very least, cooperative and mutual societies must, along with any form of association, have access to the EA as soon as it is created in order to foster closer ties and cooperation between these three types of enterprise.

3.7. Article 3 allows direct formation of an EA by natural or legal persons or the conversion of a national

association. The Committee regrets that, in the latter case, the regulation seems to require some kind of 'prior authorization'. A national association wishing to become an EA will have to 'show that it is carrying on a genuine cross-border activity'.

3.7.1. The Committee wonders why this requirement is laid down for the conversion of a national association when no comparable requirement is stipulated for the other ways of forming an EA.

3.7.2. The Committee considers that the imposition of such a procedure is tantamount to 'putting the cart before the horse', for surely the very reason that national associations will want to chose the European statute is because they intend to carry out future cross-border activities.

#### 4. Proposed Changes to Certain Provisions in the Proposal for a Regulation

##### *Article 1 (1)*

4.1. The Committee would like to draw the Commission's attention to the words 'general interest', which in reality may mean different things in different Member States, and to the need to exercise care when translating the different language versions.

##### *Article 2*

4.2. As the Committee has already pointed out previously in connection with Article 3, it would be dangerous to establish a system of prior constraint: in the case of Article 2 (2) the rights conferred by legal personality will not be granted unless they are necessary for the pursuit of the EA's objects.

4.2.1. This condition too must be struck out so as to ensure equality between European associations, irrespective of the country they choose as their headquarters.

4.2.2. This is because, in view of the number of referrals by the regulation to the laws of the Member States, it is important that Article 2 actually enables all EAs to carry out their business throughout the Community.

4.2.3. The condition should therefore be removed from Article 2 (2) as it contradicts Article 6 (3).

##### *Article 3*

4.3. The Committee would like the second indent of Article 3 (1) to read '...being nationals of or resident in

at least two Member States' so that people living in different Member States but having the same nationality may be allowed to form an EA.

#### Article 6

4.4. The Committee wishes to ensure equality between European and national associations and therefore wishes to reduce the risk of an EA which develops its activities in different countries enjoying better legal rights and capabilities than those available to national associations in the countries concerned.

4.4.1. To reduce this risk it might be a good idea to include in the regulation Article 2 (2) of the Council of Europe Convention on the recognition of the legal personality of international non-governmental organisations, viz.:

'However, when they are required by essential public interest, restrictions, limitations or special procedures governing the exercise of the rights arising out of the legal capacity and laid down by the legislation of the State in which the EA carries out its activities, contracts or enters in relations with third parties shall be applicable.'

4.4.2. This could be added to Article 6 (3) of the proposal, stipulating that its terms apply as an exception to those in Article 2 (2).

#### Article 15

4.5. The Committee wonders if it is necessary for a member's representative at the general meeting to be a member of the EA.

#### Article 23

4.6. The Committee thinks that the minimum frequency of executive committee meetings laid down in Article 23 (1) is too strict; it could be extended to once every six months.

#### Article 31 (2)

4.7. The Committee asks the Commission to redraft this Article so that UK charities may also make use of the Statute.

In any event the second paragraph of Article 31 should read:

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

II. The Committee approves the proposal for a directive, subject to the following comments:

1. The ESC welcomes the Commission's desire to take appropriate account of the role of employees when supplementing the Statute for a European association.

The proposed directive coordinates national provisions concerning the participation of employees, the provision to them of information and their consultation and constitutes an indispensable complement to the Statute for a European association.

1.1. This directive is an important component of a policy to promote economic and social cohesion in the Community.

1.2. Through this directive employees should be provided with an information and consultation process and be involved in the corporate planning of the European association.

1.3. The ESC considers it absolutely vital that the proposed regulation and directive both come into force at the same time.

2. Even in its Opinion on the Statute for a European Company the ESC repeatedly affirmed its agreement in principle and stressed that the involvement of employees is an important precondition for the development of a democratic society and a Citizens' Europe.

2.1. In this connection the ESC affirms once again that employees must be assured of joint representation of their interests within the enterprise and be involved in certain business decisions, though without influencing the responsibility or efficiency of management. The ESC has already stated this view in its Opinions of 25 October 1972, 29 May 1974 and 28 March 1989 on the European Company.

2.2. However, in view of the political, social, historical and philosophical concepts of the different Member States, employee involvement has neither taken the same forms nor reached the same stage in all Member States.

3. The Committee also believes that, as in many other fields, it will initially be impossible to achieve uniformity as regards European associations.

3.1. To this extent the Commission's suggestion of making a flexible offer which takes account of actual

legal circumstances in the Member States can be accepted.

3.2. Efforts should therefore be made to see that the co-determination options proposed by the Commission are equivalent as regards content.

Done at Brussels, 26 May 1992.

*The Chairman  
of the Economic and Social Committee*

Michael GEUENICH

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APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which received at least one quarter of the votes cast, were rejected during the proceedings:

**Point 1.2.4 (new)**

'The Committee thinks, however, that the Statute follows the proposals for the European Company too closely. Unlike the legal form for the European Company, the Association pursues only ideal and socially beneficial goals; the Association Statute therefore could be simplified considerably in the interests of greater flexibility. This applies particularly to all the costly provisions concerning internal bodies, which could in part be governed by the Rules of Procedure set out in Article 28.'

*Reason*

The European Association Statute proposed by the Commission is very similar to that of a large industrial company. The proposed provisions are too detailed and bureaucratic for the everyday needs of an association. They also completely ignore the principle of statutory autonomy enshrined in the laws governing associations. Most of the laws governing associations in force in the Member States get by with far fewer provisions. This legal form, as currently proposed, would scarcely be used.

*Voting*

For: 28, against: 58, abstentions: 9.

**Part II, point 1**

Add the following to the first sentence:

'... although it would stress that in the context of the emphasis on subsidiarity this would primarily be a matter for agreement between the employers and employees of the individual organisations.'

*Voting*

For: 27, against: 53, abstentions: 11.

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