

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL REGULATION (EEC) SYN 386

on the Statute for a European association

Proposal for a
COUNCIL DIRECTIVE SYN 387

supplementing the Statute for a European association
with regard to the involvement of employees

Proposal for a
COUNCIL REGULATION (EEC) SYN 388

on the Statute for a European cooperative society

Proposal for a
COUNCIL DIRECTIVE SYN 389

supplementing the Statute for a European cooperative
society with regard to the involvement of employees

Proposal for a
COUNCIL REGULATION (EEC) SYN 390

on the Statute for a European mutual society

Proposal for a
COUNCIL DIRECTIVE SYN 391

supplementing the Statute for a European mutual
society with regard to the involvement of employees

(presented by the Commission)

EXPLANATORY MEMORANDUM

STATUTE FOR A EUROPEAN ASSOCIATION

The Regulation on the Statute for a European association has been drawn up to enable associations to take advantage of the single market in the same way as companies can, without having to forego their specific character as groupings of people.

The Regulation aims to meet the concerns expressed by associations through their representatives at European level and by the European Parliament and the Economic and Social Committee.

The Regulation will be relevant to organizations which may take different forms in different Member States, but which carry on the same type of activities under the same principles; the categories of legal entity concerned are listed in the Annex.

Like cooperatives and mutual societies, associations became important in all European countries at the end of the last century, in response to the needs of particular groups of people, especially the poorest. They took different shapes depending on the traditions of the country and the particular circumstances of the time. The legal mechanisms adopted were not the same from one country to another. Cooperatives, mutual societies and associations are different forms, but in practice they may amount to much the same thing.

As a result, national legislation has not always drawn hard and fast demarcation lines between the forms taken by these bodies or between the types of activity in which they may engage.

This Regulation contains no fiscal provisions. Fiscal problems which may arise in the time when the EA is formed or when it is active, including those relating to the transfer of its registered office from one Member State to another will have to be dealt with by Directives settled according to the procedure of Article 100 of the Treaty.

TITLE I: GENERAL PROVISIONS

CHAPTER I: FORMATION OF THE EUROPEAN ASSOCIATION

Article 1

(Form of the European association)

Associations are groups of individuals or legal persons (such as associations and foundations) whose members pool their knowledge or their activities either for a purpose in the general interest or in order to promote the interests of particular professions or groups in a wide variety of fields, such as science, culture, charity, philanthropy, health or education.

In the Community such bodies have at present to be formed within the jurisdiction of a single Member State.

The European association (AE) will serve as a vehicle for groups wishing to operate throughout the Community, on the conditions and in the manner set out in this Regulation.

The EA is free to determine its objects, provided they are compatible with the objectives of the Community and the public policy of the Member States. It will pursue them in accordance with the principles which derive from its character as a grouping of persons and will be managed in a disinterested fashion.

It may engage in a gainful economic activity on a regular basis, but any profit must be devoted exclusively to the pursuit of its objects and may not be divided between its members.

Article 2

(Legal personality)

The EA is to acquire legal personality on the day of its registration in the register designated by the Member State in which it has its registered office.

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

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

The EA's liability is limited to its assets.

Article 3

(Formation and rules)

The Regulation provides for the direct formation of an EA either by at least two of the legal entities listed in the Annex to the Regulation, which are formed under the law of a Member State in accordance with the laws, regulations and administrative provisions in force, and have their registered offices in at least two Member States, or by a minimum of 21 natural persons who are nationals of and resident in at least two Member States. This figure of 21 takes account of the minimum conditions laid down by Greek law on associations. Formation of an EA by conversion of a domestic association is possible if the converting association has an establishment in a Member State other than that in which it has its registered office and can show that it is carrying on a genuine cross-border activity.

The European character of the EA must not be fictitious; there must be a genuine and substantial presence of members of different nationalities.

This Article also lists the particulars which must be included in the EA's rules, for instance the name of the EA preceded or followed by the abbreviation "EA", the conditions and procedures for the admission, expulsion and resignation of members, the rights and obligations of members, the majority and quorum requirements and the grounds for winding up.

Article 4

(Registered office)

The EA's registered office, which is specified in the rules, must be situated within the Community and must be in the same place as its central administration.

Article 5

(Transfer of registered office)

As regards the transfer of the EA's registered office, a distinction has to be made according to whether or not there is a change of the applicable law.

If the registered office is transferred within the same Member State, the EA will not be wound up nor will a new legal person be created.

On the other hand, where the transfer results in a change of the applicable law, the decision to transfer must be taken under the conditions laid down for the amendment of the rules, i.e. by a two-thirds majority, and may not be taken for two months after publication of the transfer proposal.

The Regulation lays down a special procedure to be followed in this case (notably as regards disclosure) in order to protect the interests of third parties. These requirements provide certain safeguards against transfers that might be carried out by an EA with a view to avoiding its obligations.

The transfer will not result in a change in the status of the EA in so far as it amounts to an amendment of its rules which does not affect its legal form.

Article 6

(Applicable law)

This Article defines the scope of the Regulation in relation to the laws of the Member States.

EAs are to be governed first and foremost by the Regulation and, where the Regulation expressly so authorizes, by the rules of the EA.

Where the Regulation is silent on a particular point, the principles of freedom of choice and freedom of contract will have full play, subject to compliance with the binding provisions of the law applying to associations in the Member State in which the EA has its registered office.

It should be noted that in addition to the rules applicable to EAs on the basis of the Regulation and the law governing associations and foundations in the state in which the EA has its registered office, there will also be the Community and national law, including those provisions derived from international conventions, governing matters which are outside the scope of the Regulation, such as social and labour law, intellectual, industrial and commercial property law, bankruptcy law, etc.

Lastly, where a Member State comprises several territorial units each with its own rules on a point regarding which reference has to be made to national law, each territorial unit will be considered a state for the purposes of identifying the law which applies.

Article 7

(Registration and disclosure requirements)

Member States must designate the register in which EAs are to be registered and lay down the procedures for the notification of the EA's rules. An EA cannot be registered until the measures required by the separate Directive on employee involvement have been taken.

For reasons of legal certainty and good legal practice, the Regulation requires Member States to take the measures necessary to ensure disclosure of the documents and particulars listed in paragraph 4. The disclosure measures required are set out in Article 8.

While an EA is being formed, any commitments entered into are to give rise to the joint and several liability, without limit, of the persons who entered into them.

Article 8

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

The Regulation requires Member States to ensure that the documents and particulars listed in Article 7(3) are published in the appropriate official gazette and to determine by which persons the disclosure formalities are to be carried out.

The disclosure requirements in respect of branches of an EA opened in a Member State other than that in which it has its registered office are governed by Directive 89/666/EEC¹.

Third parties may still rely on documents and particulars which have not yet been published except where non disclosure causes them not to have effect.

Article 9

(Notice in the Official Journal)

Whenever an EA is formed or liquidated a notice to that effect must be published for information purposes in the Official Journal of the European Communities. This type of information is important in view of the fact that the activities of an EA are by definition transnational. Such publication will not, however, have any legal consequences. Only disclosure pursuant to Article 8 is valid against third parties.

Notice of any transfer of the EA's registered office in accordance with Article 5 is also to be given in the Official Journal.

Article 10

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

This Article lists the particulars to be stated in the EA's business correspondence with third parties. The list is more comprehensive than that in Article 4 of the first Company Law Directive (Council Directive

¹ Council Directive 89/666/EEC, 21.12.1989, concerning disclosure requests in respect of branches opened in a Member State by certain types of company governed by the law of another State: OJ No L 395, 30.12.1989, p. 36.

68/151/EEC 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).

Mention must be made, for example, of 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 is to decide on matters for which it has sole responsibility under the Regulation, and on matters for which the executive committee does not have sole responsibility.

Article 12

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

The organization and conduct of the general meeting are governed by the rules of the EA, in accordance with the laws, regulations and administrative provisions governing the entities listed in the Annex in the Member State in which the EA has its registered office.

Article 13

(Convening of general meeting)

A general meeting must be held at least once a year, not later than six months after the end of the EA's financial year. This requirement is dictated by the need to approve the annual accounts.

General meetings may be convened at any time by the executive committee either on its own initiative or at the request of at least 25% of the members; the rules may set a lower proportion.

Members should be given sufficient time to prepare to attend the general meeting or to arrange to be represented there, bearing in mind that an increasing number may be resident outside the country in which the EA has its registered office, and that too short a period of notice would prevent them from attending. Nor would the arrangements for the appointment of proxies or for the amendment of the agenda by a minority of members be able to function unless sufficient time is allowed. The Regulation therefore lays down a period of one month.

The agenda for the general meeting held after the end of the financial year must 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 and the approval of the annual report.

Article 14

(Addition of items to the agenda)

It must be possible for 25% or more of the members to request the addition of one or more items to the agenda of a meeting already convened. Requests for the addition of items may be submitted only within 10 days of reception of the notice convening the general meeting.

Article 15

(Attendance and proxies)

It often happens that a member is unable or unwilling to attend a general meeting, for example where he is not resident in the country in which the registered office is situated. Provision is therefore made in all Member States for the appointment of proxies. The Regulation recognizes this right and prevents any provision to the contrary in the rules. The proxy must be a member, however, and may not represent more than two members.

Article 16

(Right to information)

The notice calling the general meeting does not give members enough precise information on certain decisions to be taken by it. The Regulation therefore provides that certain documents must be made available to any member at least one month before the meeting is held. The main such documents are the annual accounts and the auditors' report.

Article 17

(Voting rights)

The principle applied to members' voting rights is that of "one member, one vote."

Article 18

(Normal majority)

The Regulation does not distinguish between ordinary and extraordinary general meetings. It merely provides for a requirement of a qualified majority rather than a simple one in certain cases.

This Article lays down the majority normally required for resolutions of the general meeting, that is to say a simple majority of the votes of the members present or represented.

Article 19

(Special majority)

Following the example of the laws of most Member States, the Regulation requires a qualified majority for resolutions of the general meeting amending the rules. A majority of two thirds of the votes of the members present or represented is required, and any amending resolution must be made public in accordance with Article 8. The rules may be amended by the executive committee of a court or administrative authority orders an amendment.

Article 20

(Resolutions affecting the rights of a class of member)

Where a measure before the general meeting would affect the rights of a particular class of member, it must be approved by those members by a separate vote. An amendment to the rules which falls into this category must be approved by a two thirds majority vote of the members affected.

Article 21

(Actions challenging resolutions of the general meeting)

The provisions of this article are aimed at protecting members in the exercise of their rights during general meetings, and provide for actions challenging resolutions of the general meeting. Only a court or competent authority will be empowered to declare a resolution of the general meeting void or non-existent. Such a decision must be made public in accordance with Article 8.

CHAPTER III : THE EXECUTIVE COMMITTEE

Article 22

(Functions of the executive committee; appointment of members)

The executive committee is to manage the EA and to represent it in dealings with third parties and in legal proceedings.

The member or members of the executive committee are to be appointed or removed by the general meeting.

Article 23

(Holding of meetings and right to information)

The executive committee must meet at least once every three months to discuss the progress and foreseeable prospects of the EA's activities and the operations referred to in Article 30.

Article 24

(Chairmanship, calling of meetings)

The executive committee must elect from among its members a chairman who will convene meetings of the committee under the conditions laid down in the rules, either on his own initiative or at the request of at least one third of the members.

Article 25

(Term of office)

The better to ensure that members of the executive committee can be held accountable for their acts, it is considered appropriate to establish the principle that they can be appointed only for a specific period at a time; this period is not to exceed six years. They may be reappointed.

Article 26

(Conditions of membership)

In the nature of things the functions of members of the executive committee can be performed only by natural persons. The admission of legal entities as members of the executive committee is conditional on their designating a natural person as their representative.

However, no one may be appointed a member of the executive committee who has been disqualified by a judicial or administrative decision (and who has not been reinstated in his personal rights) or whose activities have been declared incompatible under the law of the state in which the EA has its registered office.

Article 27

(Inability to continue in office)

Where a member of the executive committee is permanently prevented from continuing in office, he may be replaced by an alternate member.

Article 28

(Rules of procedure)

It is for the executive committee to draw up its rules of procedure in accordance with the rules of the EA. Any member of the EA and any competent authority will be entitled to consult the rules of procedure at the EA's registered office.

Article 29

(Power of representation; liability of the EA)

This provision is concerned with the representation of the EA in dealings with third parties by representatives acting alone or jointly.

The EA's rules on representation must be disclosed in accordance with Article 8.

Acts done by the EA's representatives will in principle be binding upon it even if those acts are not within its objects. Member States may provide that the EA will not be bound if it can prove that the third party must have been aware of the limits of the EA's objects and acted in bad faith.

Article 30

(Operations requiring authorization)

The aim of this provision is to prevent members of the executive committee from abusing their powers in their personal interest and to the detriment of the EA.

It does not seek to ban particular operations, but rather to control them effectively by making them subject to authorization.

A list enumerates the operations subject to authorization; these are operations which are likely to have a major impact on the activities or organization of the EA. The list is not exhaustive; the rules may make other types of operation subject to authorization. Member States may also specify other categories of operation for which authorization is required.

Article 31

(Rights and obligations)

All members of the executive committee are to have the same rights and obligations. One of the main obligations of committee members is the obligation not to divulge confidential information. The Article also makes it clear that the executive committee is to act in the interests of the EA, its members and its employees.

Article 32

(Conduct of business in the executive committee)

This provision lays down the basic rules on the quorum and majorities required for committee decisions. Otherwise the procedures for conducting business are to be laid down in the rules of the EA.

Article 33

(Civil liability)

This Article and the two following it lay down the principle that members of the executive committee of the EA are liable for any loss or damage they may cause to the EA.

Liability will be incurred only if the EA has suffered damage. There has to be a causal link, therefore, between the act done and the damage suffered.

Where the executive committee has more than one member, it is difficult for an outsider to know which member caused the damage. For this reason the Regulation provides that all the members of the committee are to be jointly and severally liable, whatever the nature of the breach of duty.

Article 34

(Proceedings on behalf of the EA)

This provision lays down procedural rules concerning proceedings on behalf of the EA against members of the executive committee.

A decision to initiate proceedings on behalf of the EA may be taken either by the general meeting, by majority vote, or by at least one fifth of the members of the EA; a special representative must be appointed to conduct the action.

Article 35

(Limitation of action)

The severity of the rules on liability is tempered by the imposition of a limitation period of five years from the time of the act giving rise to damage.

CHAPTER IV : FINANCING, ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Articles 36 to 40

The EA must draw up a budget for the forthcoming financial year.

As regards the drawing up, auditing and disclosure of its annual accounts, and its consolidated accounts if any, the EA is to be subject to the law of the state in which it has its registered office giving effect to the Fourth Council Directive (78/660/EEC) of 25 July 1978 on annual accounts, the Seventh Council Directive (83/349/EEC) of 13 June 1983 on consolidated accounts², the Eighth Council Directive (84/253/EEC) of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents³ and 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' duration⁴. The rules are to lay down the form of audit of the accounts and supervision of the EA.

2 OJ No L 222, 14.8.1978, p. 11 and OJ No L 193, 18.7.1983, p. 1.

3 OJ No L 126, 12.5.1984, p. 20.

4 OJ No L 19, 24.1.1989, p. 16.

Article 41

(Financing)

The EA is to have access to 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.

CHAPTER V : WINDING UP

Article 42

(Winding up by the general meeting)

This Chapter provides an exhaustive list of the ways of winding up an EA. In the interests of legal certainty the Regulation sets out the possible grounds for winding up: expiry of the period fixed in the rules, non-disclosure of the accounts during the EA's last three financial years, and a fall in the number of members below the minimum required, without prejudice to any other grounds laid down either in the law governing the legal entities which founded the EA in the state in which the EA has its registered office or in the rules.

The general meeting may decide either to continue the activities of the EA or to wind it up.

Article 43

(Winding up by the court)

A court must order the EA 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 principle it will be for the Member States to regulate the procedure before the court. But the Regulation does specify who is entitled to initiate such proceedings, namely any person concerned or any competent authority.

The court may grant the EA sufficient time to rectify the situation if this is at all possible.

CHAPTER VI : LIQUIDATION

Article 44

(Liquidation)

The winding up of an EA automatically entails the liquidation of its assets. Once the decision to wind up has been taken, the EA continues to exist solely for the purposes of the liquidation. As regards procedure the Regulation makes reference to national law.

Failing any provision in the rules, once the creditors have been paid in full the net assets are to be distributed in accordance with the laws of the Member State in which the EA has its registered office.

CHAPTER VII : INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 45

(Insolvency and suspension of payments)

EAs which are the subject of insolvency or suspension of payments proceedings are governed in all Member States by special rules, which are not affected by this Regulation. The provisions of national law are therefore applicable.

The opening of insolvency or suspension of payments proceedings must be entered in the register referred to in Article 7 and published in accordance with Article 8.

TITLE II : FINAL PROVISIONS

Article 46

(Penalties)

Each Member State determines the sanctions that will be applied in case of violation of the regulation and as necessary the measures that will lead to its enforcement. The sanctions must be effective, proportionate and dissuasive.

Article 47

This Article provides that the Regulation is to enter into force on 1 January 1993.

Proposal for a
COUNCIL REGULATION (EEC)

on the Statute for a European association

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas the European Parliament adopted a resolution of 13 March 1987 on
non-profit-making associations in the European Communities¹;

Whereas the Commission adopted a communication to the Council of
18 December 1989²; whereas the Economic and Social Committee gave its
opinion on that communication on 19 September 1990³;

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;

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

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

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

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

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

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

Whereas the Statute for a European company, as provided for in Council 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 Council Regulation (EEC) No 2137/85⁵, 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;

4 OJ No

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

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

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

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

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

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

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

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

Whereas the application of this Regulation must be deferred so as to enable each Member State to incorporate into its national law the provisions of Council Directive (EEC) No ... supplementing the Statute for a European association with regard to the involvement of employees⁶ in the European association and to put in place in advance the necessary machinery for securing the formation and operation of European associations having their registered office in its territory, so that the Regulation and the Directive may be applied concomitantly;

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

- Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community⁷, 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 companies⁸, as last amended by Directives 90/604/EEC⁹ and 90/605/EEC¹⁰;

6 OJ No 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.

- Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts¹¹, 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 documents¹²;
- 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' duration¹³;
- 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 State¹⁴;

Whereas recourse to this set of rules should be optional,

HAS ADOPTED THIS REGULATION:

TITLE I: GENERAL PROVISIONS

CHAPTER I: FORMATION OF THE EUROPEAN ASSOCIATION

Article 1

(Form of the European association)

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

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.

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

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

Article 2

(Legal personality)

1. An EA shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 7(3).
2. An EA's legal personality shall entitle it in particular to perform any of the following acts, provided they are necessary for the pursuit of the EA's objects:
 - (a) to conclude contracts and perform other legal acts;
 - (b) to acquire movable and immovable property;
 - (c) to receive donations and legacies;
 - (d) to employ staff;
 - (e) to be a party to legal proceedings.
3. The liability of the EA shall be limited to its assets.

Article 3

(Formation and rules)

1. The following may form an EA:

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

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

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

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

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

3. The statutes of the EA must include:

- its name, preceded or followed by the abbreviation "EA";
- a precise statement of its objects;
- the name, address, occupation and nationality of the founder members, where these are natural persons;

- the name, objects and registered offices of the founder members, where these are legal entities;
 - the address of the EA's registered office;
 - the conditions and procedures for the admission, expulsion and resignation of members;
 - the rights and obligations of members, and the different categories of member if any, and the rights and obligations of members in each category;
 - the powers and responsibilities of the executive committee, and the extent of its authority to represent the EA in dealings with third parties;
 - provisions governing the appointment and removal of the members of the executive committee;
 - the majority and quorum requirements;
 - the conditions for the initiation of proceedings on behalf of the EA under Article 34;
 - the grounds for winding up.
4. For the purposes of this Regulation the "statutes" of the EA comprise both the instrument of incorporation and, where they are set out in a separate document, the EA's statutes properly so-called.

Article 4

(Registered office)

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

Article 5

(Transfer of registered office)

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

2. Where the transfer of the registered office results in a change of the law applicable under Article 6(1)(b), a transfer proposal shall be published in accordance with Article 7.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken under the conditions laid down for the amendment of the statutes. The transfer of the registered office of the EA and the resulting amendment to its statutes shall take effect from the date of registration of the EA, in accordance with Article 7(3), in the register for the new registered office. That registration may not be effected until evidence has been produced that the proposed transfer of the registered office has been published.

3. The removal of the EA from the register for its previous registered office may not be effected until evidence has been produced that the EA has been registered in the register for its new registered office.
4. The fact of the new registration and the fact of the removal of the old registration shall both be published in the Member States concerned, in accordance with Article 8.
5. The new registration of the registered office of the EA may be relied on as against third parties from publication. However, until the removal of the EA from the register for its previous registered office has been published third parties may continue to rely on the old registered office unless the EA proves that such third parties were aware of the new registered office.

Article 6

(Applicable law)

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

failing this:

- (b) - by the law of the Member State in which the EA has its registered office, as determined by that State;
 - by the provisions freely determined by the parties in the statutes of the EA, in accordance with the law of the Member State in which the EA has its registered office.
2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under point (b) of paragraph 1.
 3. In each Member State and subject to the express provisions of this Regulation, an EA shall have the same rights, powers and obligations as an association formed under the law of the Member State in which the EA has its registered office.

Article 7

(Registration and disclosure requirements)

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 EAs must be registered and shall determine the rules governing it. They shall lay down the procedures for filing the EA's statutes. No EA may be registered until the measures provided for in Directive (EEC)... [supplementing the Statute for a European association with regard to the involvement of employees] have been adopted.

4. Member States shall take the measures required to ensure that the following documents and particulars are disclosed as provided for in paragraph 3:
 - (a) the statutes of the EA, any amendments to them, and the complete text of the statutes in its up-to-date form;
 - (b) the opening or closing of any establishment;
 - (c) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:
 - are authorized to represent the EA in dealings with third parties and in legal proceedings;
 - take part in the administration, supervision or control of the EA;
 - (d) the balance sheet and the profit and loss account for each financial year; the document containing the balance sheet shall give particulars of the persons who are required by law to certify it;
 - (e) any proposal to transfer the registered office as referred to in Article 5(2);
 - (f) the winding-up and liquidation of the EA and the decision to continue the EA's activities taken under 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 sixteenth 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 Official Publications Office 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 under Article 8(1).

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

Article 10

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

Letters and documents sent to third parties shall state legibly:

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

CHAPTER II: GENERAL MEETING

Article 11

(Competence)

The general meeting shall decide on:

- (a) matters for which it has sole responsibility under this Regulation;
- (b) matters for which the executive committee does not have sole responsibility as a result of:
 - this Regulation;
 - Directive (EEC)... [supplementing the Statute for a European association with regard to the involvement of employees];
 - the law of the State where the EA has its registered office;
 - the statutes of the EA.

Article 12

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

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

Article 13

(Convening of general meeting)

1. A general meeting shall be held at least once a year, not more than six months after the end of the EA's financial year.
2. General meetings may be convened by the executive committee at any time either on its own initiative or at the request of at least 25% of the members; the statutes may set a lower proportion.
3. The request for a meeting shall state the reasons for convening it and the items to be included on the agenda.
4. If, following a request made under paragraph 2, the necessary steps have not been taken within a month, the competent judicial or administrative authority of the State where the EA's registered office is situated may order the convening of a general meeting or authorize either the members who have requested it or their representative to convene the meeting.
5. A general meeting may, during a meeting, decide that a further meeting be convened and set the date and the agenda.
6. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and of the appropriation of the profit or treatment of the loss, the approval of the budget estimates, and, if applicable, the approval of the annual report referred to in Article 46 of Directive 78/660/EEC, to be submitted by the executive committee.

Article 14

(Addition of items to the agenda)

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

Article 15

(Attendance and proxies)

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

Article 16

(Right to information)

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

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

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

Article 17

(Voting rights)

Each member shall have one vote.

Article 18

(Normal majority)

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

Article 19

(Special majority)

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

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

Article 20

(Resolutions affecting the rights of a class of member)

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

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

Article 21

(Actions challenging resolutions of the general meeting)

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

CHAPTER III: THE EXECUTIVE COMMITTEE

Article 22

(Functions of the executive committee; appointment of members)

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

Article 23

(Holding of meetings and right to information)

1. The executive committee shall meet at least once every three months, at intervals laid down by the statutes, to discuss the progress and foreseeable prospects of the EA's affairs.
2. The executive committee shall meet to deliberate on the operations referred to in Article 30.
3. Each member of the executive committee shall be entitled to examine all reports, documents and information supplied to the committee concerning the activities of the EA.

Article 24

(Chairmanship, calling of meetings)

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

Article 25

(Term of office)

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

Article 26

(Conditions of membership)

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

That legal entity shall designate a natural person as its representative to exercise its functions on the board concerned. The representative shall be subject to the same conditions and obligations as if he were personally a member of the board.

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

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

is disqualified from serving on the executive committee, or management, or supervisory board of a legal entity.

Article 27

(Inability to continue in office)

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

Article 28

(Rules of procedure)

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

Article 29

(Power of representation; liability of the EA)

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

2. However, the statutes of the EA may provide that the EA shall be validly bound either by each of the members acting individually or by two or more of them acting jointly. Such a clause may be relied upon against third parties where it has been disclosed in accordance with Article 7.
3. Acts performed by members of the governing body of the EA shall bind the EA vis-à-vis third parties even where the acts in question are not in accordance with the objects of the EA, providing they do not exceed the powers conferred on them by the law or which the law allows to be conferred on it.

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

4. The appointment, termination of office and particulars of the persons who may represent an EA must be disclosed in accordance with Article 7. The information disclosed must state whether these persons are authorized to bind the EA individually or whether they must act jointly.

Article 30

(Operations requiring authorization)

1. A decision of the executive committee shall be required to authorize any of the following operations:
 - (a) closing or transferring a large establishment or a substantial part of such an establishment;
 - (b) substantially reducing, extending or altering the activities of the EA;
 - (c) making substantial organizational changes within the EA;

- (d) establishing cooperation with other legal entities which is both long-term and of importance to the activities of the EA, or terminating such cooperation;
 - (e) raising loans in respect of operations in excess of a ceiling laid down in the statutes, issuing securities and assuming or guaranteeing liabilities of a third party;
 - (f) acquiring movable or immovable property.
2. The statutes of the EA may provide that paragraph 1 shall also apply to other operations.
 3. A Member State may determine the categories of operation referred to in paragraph 1 for EAs registered in its territory under the same conditions as those applying to associations governed by the law of that State.
 4. A Member State may provide that the executive committee of EAs registered in its territory may itself make certain categories of operation subject to authorization or deliberation under the same conditions as those applying to associations governed by the law of that State.

Article 31

(Rights and obligations)

1. Within the scope of the functions attributed to them by this Regulation each of the members of the executive committee shall have the same rights and obligations as the other members.
2. All members of the executive committee shall carry out their functions in the interests of the EA, having regard in particular to the interests of the members and the employees.
3. All members of the executive committee shall exercise a proper discretion, even after they have ceased to hold office, in respect of information of a confidential nature concerning the EA.

Article 32

(Conduct of business in the executive committee)

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

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

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

Article 33

(Civil liability)

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

Article 34

(Proceedings on behalf of the EA)

1. The general meeting, by a majority of the votes cast, shall take the decision to initiate proceedings, in the name and on behalf of the EA, to establish liability under Article 33(1).

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

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

Article 35

(Limitation of actions)

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

CHAPTER IV: ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS
AND MEANS OF FINANCING

Article 36

(Budget estimates)

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

Article 37

(Preparation of annual accounts and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, the EA shall be subject to the measures adopted in the State in which it has its registered office pursuant to Directives 78/660/EEC and 83/349/EEC.
2. The EA may draw up its annual accounts, and its consolidated accounts if any, in ECUs. In this event the bases of conversion used to express in ECUs those items included in the accounts which are or were originally expressed in another currency must be disclosed in the notes to the accounts.

Article 38

(Auditing)

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

Article 39

(Disclosure of accounts)

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

Article 40

(Audit)

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

Article 41

(Financing)

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

CHAPTER V: WINDING UP

Article 42

(Winding up by the general meeting)

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

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

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

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

The general meeting shall decide:

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

Article 43

(Winding up by the court)

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

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

CHAPTER VI: LIQUIDATION

Article 44

(Liquidation)

1. The winding up of an EA shall entail its liquidation.
2. The liquidation of an EA and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office.
3. After the creditors have been paid in full, the net assets shall be distributed in accordance with the law applying to the EA in the State in which it has its registered office unless otherwise stipulated in the statutes.
4. An EA in liquidation shall continue to have legal personality until the conclusion of the liquidation.
5. Following the liquidation, the books and records relating to the liquidation shall be lodged at the register referred to in Article 7(3). Any interested party may examine such books and records.

CHAPTER VII: INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 45

(Insolvency and suspension of payments)

1. The EA shall be subject to the law of the State in which it has its registered office in respect of insolvency and suspension of payments.
2. The opening of insolvency or suspension of payments proceedings shall be notified by the person appointed to conduct the proceedings, for entry in the register referred to in Article 7(3). The entry in the register shall show the following:
 - (a) the nature of the proceedings, the date of the order, and the court making it;
 - (b) the date on which payments were suspended, if the court order provides for this;
 - (c) the name and address of the person having power to conduct the proceedings, or of each of them where there are more than one;
 - (d) any other information considered necessary.
3. The court shall, either of its own motion or on application by any interested party, order its decision to be noted in the register referred to in Article 7(3).
4. Particulars registered pursuant to paragraphs 2 and 3 shall be published in the manner referred to in Article 8.

TITLE II: FINAL PROVISIONS

Article 46

(Penalties)

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

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

Article 47

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels,

For the Council
The President

ANNEX: LEGAL ENTITIES MENTIONED IN ARTICLE 3

- in Belgium, not-for-profit associations and organizations recognized as being of public benefit coming under the law of 25 October 1919 and the law of 27 June 1921;
- in Denmark, associations and foundations coming under the law of 6 June 1984;
- in Spain, associations and foundations coming under, respectively, the law of 24 December 1964 and under Articles 35 and following of the Civil Code;
- in France, not-for-profit associations coming under the law of 1 July 1901 and paragraph 4 of Articles 21 to 79 of the Local Civil Code of Alsace and Moselle, and foundations coming under the law of 23 July 1987, modified by the law of 4 July 1990;
- in Greece, associations and foundations coming under Article 78 of the Greek Civil Code;
- in Ireland, companies limited by guarantee, organizations incorporated by Royal Charter or Act of Parliament, Industrial and Provident Societies or Friendly Societies;
- in Italy, associations and foundations coming under Articles 14 to 35 of the Italian Civil Code.
- In Luxembourg, not-for-profit associations and organizations recognized as of public benefit coming under the law of 21 April 1928;
- in the Netherlands, associations and foundations coming under, respectively, Section II and Articles 286 to 304 of the Civil Code;

- in Portugal, associations and foundations coming under Articles 167 to 194 of the Civil Code;
- in Germany, associations and foundations coming under Articles 21 to 88 of the Civil Code (BGB);
- in the United Kingdom, companies limited by guarantee, organizations incorporated by Royal Charter or Act of Parliament, Industrial and Provident Societies or Friendly Societies, and all institutions established for exclusively charitable purposes.

EXPLANATORY MEMORANDUM ON THE COUNCIL
DIRECTIVE SUPPLEMENTING THE STATUTE FOR A
EUROPEAN ASSOCIATION WITH REGARD TO THE INVOLVEMENT
OF EMPLOYEES

The present Directive fits into the wider framework of the policy of promoting the economic and social objectives of the Community. Its rationale is that employees should be able to take part in shaping the strategies of European associations (EAs).

The Directive has been drafted along the lines of the Directive supplementing the statute for a European company (SE) with regard to the involvement of employees in order to avoid any distortion as between the EA and the SE. However, in view of the nature of the EA a simplified procedure is provided for which consists in:

- referring to national provisions concerning employee participation in those Member States where they exist and if the Member State concerned wishes to apply them;
- harmonizing the arrangements concerning the informing and consulting of employees, notably as regards the minimum areas covered.

Article 1

The 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. According to Article 7 of the Regulation on the Statute for an EA, no EA may be registered until the provisions of this Directive have been adopted. The choice of a participation model and/or of information and consultation arrangements is an essential precondition for registration of an EA.

Member States must incorporate the Directive's provisions in their law.

TITLE I: PARTICIPATION

Article 2

The Directive refers to national provisions concerning the participation of employees in the supervisory or administrative boards of national companies in general.

If the Member State in which the EA has its registered office has no rules on the participation of employees or does not wish to apply such rules to the EA, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

TITLE II: INFORMATION AND CONSULTATION ARRANGEMENTS

Article 3

This Article describes the procedure to be followed for the adoption by the executive committees of founder entities and the representatives of the employees of those entities of information and consultation arrangements.

If the employee's representatives do not agree with the proposed arrangements, they have to submit their reasons in writing to the general meeting called to approve the formation of the EA.

In the event of direct formation by natural persons, the arrangements are chosen by those persons and submitted to the above-mentioned general meeting for approval.

Paragraph 6 states that the arrangements chosen before the EA is formed can be amended. Any amendment has to be decided on by mutual consent.

Paragraph 7 stipulates that the same procedure as that described in paragraph 1 has to be followed in the case of the formation of an EA by conversion.

Paragraph 8 prevents the transfer of the registered office of an EA to another Member State from depriving employees of the information and

consultation arrangements from which they benefit. Such a change may be effected only in accordance with the procedure laid down in this Article.

Article 4

This Article states that the executive committee of the EA must inform and consult the employees of that entity in good time and determines in which areas at least information and consultation are required.

It also governs the informing and consulting of employees by the executive committee of the EA prior to registration and provides that the employees are to be represented within a separate committee or within any other structure agreed between the executive committees of the founder entities and the representatives of the employees of those entities.

The executive committee has to inform and consult the employees on conditions of employment, on documents submitted to the general meeting and on the operations referred to in Article 30 of the Regulation on the Statute for an EA, as soon as a proposal is likely to affect the employees' interests.

Attention is drawn to the applicability of Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies and of Directive 77/187/EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

The Directive authorizes the parties to the negotiations to introduce a simplified procedure, but one in conformity with the requirements of paragraph 1, when the total number of employees - at the registered office and in the various establishments - is less than 50. This threshold has been laid down in the light of existing practices in the Member States and is the same as that in Article 2(5) of Council Directive 75/129/EEC, as amended by Directive .../EEC. Its aim is to avoid cumbersome procedures in small associations.

Article 5

While referring to the practices and laws in force in the Member States, this Article lays down certain basic principles concerning election procedures and the performance by elected representatives of their functions.

The point to note is that the representatives of the employees of the EA are elected (and not appointed) and represent the employees of all the establishments, plants and facilities of the EA in the various Member States in which they are located, even if they are employed only part-time.

<p><u>TITLE III: FINAL PROVISIONS</u></p>

Articles 6 and 7

These final provisions will enter into force on 1 January 1993, the date on which the Member States are to communicate to the Commission the provisions of national law which they will have adopted in the field covered by the Directive. Article 7 points out that the Directive is addressed to the Member States.

Proposal for a
COUNCIL DIRECTIVE
supplementing the Statute for a European association
with regard to the involvement of employees

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, Council 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 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 redundancies², as amended by Directive...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 businesses⁴, 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 employees⁵;

Whereas appropriate provisions must be adopted to ensure that the employees of EAs 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;

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;

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

3 COM(91) 292, 15.7.1991.

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

5 COM(90) 581 final.

Whereas the information and consultation committee or any other alternative body must be informed and consulted about activities and strategies 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].

8. In the event of the registered office of a EA being transferred to another Member State, the information and consultation arrangements in existence before the transfer may be altered only in accordance with the procedure laid down in this Article. The parties to the negotiations shall be the executive committee of the EA and the representatives of the employees of the EA.

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:

- (a) any proposals which might significantly affect the interests of the employees of the EA, 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].

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 choice in the case of EAs having their registered 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.

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 1993. 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
The President

EXPLANATORY MEMORANDUM

STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY

The Regulation on the Statute for a European mutual society has been drawn up to enable mutual societies to take advantage of the single market in the same way as companies can, without having to forego their specific character as groupings of people.

The Regulation aims to meet the concerns expressed by mutual societies through their representatives at European level and by the European Parliament and the Economic and Social Committee.

The Regulation will be relevant to organizations which may take different forms in different Member States, but which carry on the same type of activities under the same principles; the categories of legal entity concerned are listed in the Annex.

Like cooperatives and other associations, mutual societies became important in all European countries at the end of the last century, in response to the needs of particular groups of people, especially the poorest. They took different shapes depending on the traditions of the country and the particular circumstances of the time. The legal mechanisms adopted were not the same from one country to another. Cooperatives, mutual societies and associations are different forms, but in practice they may amount to much the same thing.

As a result, national legislation has not always drawn hard and fast demarcation lines between the forms taken by these bodies or between the types of activity in which they may engage.

This Regulation contains no fiscal provisions. Fiscal problems which may arise in the time when the SCE is formed or when it is active, including those relating to the transfer of its registered office from one Member State to another will have to be dealt with by Directives settled according to the procedure of Article 100 of the Treaty.

TITLE I : GENERAL PROVISIONS

CHAPTER I: FORMATION OF THE EUROPEAN COOPERATIVE SOCIETY

Article 1

(Form of the European cooperative society)

The European cooperative society (SCE) is to be a private law legal person. The members' contributions are to form a capital divided into shares, carrying entitlement to a return in the form of interest payments; the fact that the society has a share capital differentiates it from a mutual society or association.

The SCE also embodies the essential feature of a cooperative society, the principle of "self-help" or "double qualité".

The SCE is to have legal personality from the day of its registration in accordance with Article 5 of the Regulation. It is on this day that the SCE will come into existence. In view of the differences between national rules concerning the time when cooperatives acquire legal personality it is important for the protection of creditors and members that a uniform approach should be adopted here.

A cooperative may serve as a vehicle for the economic activities of its members - consumers, employees, tradesmen, shopkeepers, farmers, businessmen, etc. - but it may also seek to promote their social interests, which is the case for example with cooperatives which build and manage housing.

The members' liability is limited to their shares in the capital. To take account of practice in certain sectors, it is provided that the rules of the SCE may extend this liability to a multiple of the capital subscribed or to a flat-rate figure.

An SCE will deal primarily with its own members. However, in order to take account of commercial constraints, or of the requirements applying in certain businesses such as the pharmacy trade for example, the rules may authorize it to extend its activities to non-members.

Article 2

(Registered office)

The SCE's registered office, which is specified in the rules, must be situated within the Community and must be in the same place as its central administration.

The registered office can be transferred in accordance with Article 3.

Article 3

(Transfer of registered office)

As regards the transfer of an SCE's registered office, a distinction has to be made according to whether or not there is a change of the applicable law.

If the registered office is transferred within the same Member State, the SCE will not be wound up nor will a new legal person be created.

On the other hand, where the transfer results in a change of the applicable law, the decision to transfer must be taken under the conditions laid down for the amendment of the rules, i.e. by the two-thirds majority laid down in Article 25(5), and may not be taken for two months after publication of the transfer proposal.

The Regulation lays down a special procedure to be followed in this case (notably as regards disclosure) in order to protect the interests of third parties, both creditors and others. These requirements provide certain safeguards against transfers which might be carried out by an SCE with a view to avoiding its obligations.

Article 4

(Applicable law)

This Article defines the scope of the Regulation in relation to the laws of the Member States.

SCEs are to be governed first and foremost by the Regulation, and, where the Regulation expressly so authorizes, by the rules of the SCE.

Where the Regulation is silent on a particular point, the principles of independent decision-making and freedom of contract will have full play, subject to compliance with the binding provisions of the law applying to cooperative societies in the Member State in which the SCE has its registered office. The SCE will therefore enjoy the same freedom of contract as domestic cooperatives, whether that freedom is expressly spelt out in legislation or is regarded as a corollary of the principle of freedom of choice.

It should be noted that in addition to the body of rules applicable to SCEs on the basis of the Regulation and the law governing cooperative societies in the state in which the SCE has its registered office there will also be the Community and national law, including those provisions derived from international conventions, governing matters which are outside the scope of the Regulation, such as social and labour law, intellectual property law, bankruptcy law, etc.

Lastly, where a Member State comprises several territorial units each with its own rules on a point regarding which reference has to be made to national law, each territorial unit will be considered a state for the purposes of identifying the law which applies.

Articles 5 and 6

(Publication in the Member States of documents relating to the SCE; Registration and disclosure requirements)

Member States must designate the register in which SCEs are to be registered and lay down the procedures for the notification of the SCE's rules.

An SCE cannot be registered until the measures required by the separate Directive on employee involvement have been taken.

For reasons of legal certainty and good legal practice the Regulation requires Member States to take the measures necessary to ensure disclosure of the documents and particulars listed in Article 5(2). In Member States where there is no official examination at the time of formation the rules must be laid down by notarial act.

While an SCE is being formed, any commitments entered into are to give rise to the joint and several liability, without limit, of the persons who entered into them.

The disclosure measures required are set out in Article 6, which also obliges Member States to take the necessary measures to avoid any discrepancy between what is disclosed by publication in the press and what appears in the register referred to in Article 5.

Article 7

(Notice in the Official Journal)

Whenever an SCE is formed or liquidated and whenever an SCE's registered office is transferred, a notice to that effect must be published for information purposes in the Official Journal of the European Communities. This type of information is important in view of the fact that the activities of an SCE are transnational. Such publication will not, however, have any legal consequences. Only disclosure pursuant to Article 6(1) is valid against third parties.

Article 8

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

This Article lists the particulars to be stated in the SCE's correspondence. The list is more comprehensive than that in Article 4 of Directive 68/151/EEC.

Mention must be made of the fact that the SCE is in liquidation or under the administration of the courts if that is so.

Article 9

(Formation)

The Regulation provides that an SCE may be formed by any two or more of the legal entities formed under the law of a Member State which are listed in the Annex, provided at least two of them have their central administration in different Member States.

A cooperative society with an establishment or subsidiary in a Member State other than that of its central administration may form an SCE by converting into SCE form, provided it can show that it is carrying on a genuine cross-border activity.

Such conversion will not result in the society being wound up or in the creation of a new legal person. It must be approved by the general meeting of members.

Article 10

(The statutes of the SCE)

This Article lists particulars which must be included in the SCE's rules.

Article 11

(Acquisition of membership)

1. A cooperative society is a group of persons, and membership cannot be acquired merely by subscribing a share in the capital.

This Article lays down the minimum requirements for the approval of applicants for membership, who may or may not expect to use the services of the cooperative.

The admission of investor or non-user members, who do not use the SCE's services, represents an exception to the pure self-help principle, and will require the approval of the general meeting, to be decided by a two-thirds majority.

2. The rules may make admission subject to other conditions, taking account of the nature of the cooperative and its business and the wishes of the founders, on condition that these conditions do not in law or in fact prevent the acquisition of membership.
3. Changes in the distribution of capital between members and increases in the shares held are also subject to the approval of the management or administrative board, unless the rules provide otherwise.
- 4, 5, 6 & 7. An index is to be kept at the registered office to record all of these transactions for the benefit of members and other interested parties.

Article 12

(Loss of membership)

- 1, 2 & 3. This Article defines the ways in which membership may be lost, which include:
 - resignation, with a request for repayment of the capital subscribed, or assignment of all shares held;
 - expulsion;
 - winding up of a member which is a legal entity.
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 rules. That shares may be bought or sold is a fundamental characteristic of limited companies, and it is this principle which is to apply here, so that shares can be transferred rapidly and without the need for any more elaborate form of assignment.
5. Paragraph 5 prevents the SCE from subscribing for its own shares, purchasing them or accepting them as security.

This is in order to comply with the principle that the capital must be maintained intact.

6. Credit institutions, however, may accept their own shares as security in their ordinary transactions.

This rule applies in many of the Member States.

Article 13

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

This Article lays down the financial obligations of the SCE and of the member if his membership comes to an end.

The principle is that shares are to be repaid at their nominal value.

If a special reserve has been set up for the purpose, a member who is leaving may be entitled to a proportion of that reserve in accordance with the rules.

It will be for the membership to strike a balance between the financial interests of the individual member and the protection of the SCE's capital and reserves, taking account of the nature of the SCE and its business.

Article 14

(Minimum capital)

The capital of an SCE may not be less than ECU 100 000 or the equivalent in national currency.

Article 15

(Capital of the SCE)

This Article defines the legal arrangements governing the capital of the SCE.

It should be pointed out that the SCE, being a grouping of particular persons, cannot issue bearer shares.

The capital is to be variable; in other words it may be increased or reduced without amending the rules and without any public announcement, except that Article 14 imposes a minimum level and Article 5(2)(d) requires an annual disclosure of the amount of the capital. The general meeting is to pass a resolution each year recording the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year (second last subparagraph of paragraph 6).

In line with practice in certain Member States the SCE is to be entitled to increase its capital by capitalizing all or part of the reserves available for distribution.

As the SCE's capital is variable, this decision will be of special importance for the development or maintenance of the society's own funds.

Such a decision will have to be taken by the general meeting in accordance with the quorum and majority requirements for an amendment of the rules, which under Article 25(5) means a two-thirds majority.

CHAPTER II : GENERAL MEETING

Article 16

(Competence)

The general meeting is to decide on matters for which it has sole responsibility under the Regulation, and on matters for which the management board, supervisory board or administrative board do not have sole responsibility.

Articles 17 to 21

These Articles deal with the calling of general meetings , attendance at them and the use of proxies.

In accordance with a principle common to all Member States, a general meeting must be held at least once a year, not later than six months after the end of the financial year. This requirement is dictated by the need to

approve the annual accounts. Meetings are to be convened by the management board or administrative board on its own initiative or at the request of at least 25% of the members.

A general meeting must be convened in such a way that all members receive notice of it.

The minimum contents of the notice calling the meeting are laid down in the Regulation. The particulars listed do not call for any elucidation, except to say that it is important that the member should know whether he is being invited to an ordinary meeting, an extraordinary meeting or a special meeting as different rules as to quorum or majority may be applicable depending on the nature of the meeting.

The laws of all Member States specify the length of notice between the day on which a meeting is convened and the day of the meeting, but this period varies between five days and one month depending on the Member State.

Members must be given sufficient time to prepare to attend the general meeting or to arrange to be represented there, bearing in mind that an increasing number may be resident outside the country of the registered office and that too short a period of notice would prevent them from attending. Nor would the arrangements for the appointment of proxies or for the amendment of the agenda by a minority of members be able to function unless sufficient time is allowed. The Regulation therefore lays down a period of one month.

It often happens that a member is unable or unwilling to attend a general meeting, for example where he is not resident in the country in which the registered office is situated. Provision is therefore made in all Member States for the appointment of proxies. The Regulation recognizes this right; the procedures are to be laid down in the rules.

Article 22

(Voting rights)

Voting rights are determined by the principle "one member, one vote", with two exceptions: the rules may allow members to have more than one vote,

within certain limits, and non-user members may together have voting rights amounting to up to one third of the total.

Article 23

(Rules of conduct)

The conduct of the general meeting is to be governed by the rules.

Article 24

(Right to information)

Every member is entitled to obtain information in advance of and during the general meeting. Information may be refused only if it would be likely to be seriously prejudicial to the SCE or if its disclosure would be incompatible with a legal obligation of confidentiality.

Article 25

(Decisions)

The rules are to lay down the quorum and majority requirements which are to apply at ordinary general meetings. No resolution may be passed on any item which is not on the agenda, unless all the members are present or represented. A decision to amend the rules or to wind up the SCE requires a two-thirds majority.

Article 26

(Minutes)

This Article requires minutes to be drawn up after every general meeting.

Article 27

(Actions to have resolutions of general meeting declared void)

Actions to have resolutions of a general meeting declared void may be brought by any member provided he can show he has a legitimate interest.

As far as procedure is concerned, reference is made to the law of the state in which the SCE has its registered office.

Article 28

(Sectional meetings)

It can happen that a member of an SCE is unable to attend the general meeting for example because he is not resident in the same country as that of the registered office. The Regulation therefore allows provision to be made in the rules for postal voting. Under certain conditions the rules may also provide for the holding of sectional meetings to consider the same agenda separately.

Article 29

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

This Article requires a special vote for certain resolutions which would affect the rights of a particular class of member.

Special provisions of this kind are needed where an SCE has issued different classes of share. If measures are envisaged which would change the relationship between these classes of share, the resolution of the general meeting must be supplemented by a separate vote at least of the members who might be adversely affected by the resolution.

CHAPTER III : MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

Article 30

(Structure)

On the question of governing bodies, the Regulation is based on national company law and on the amended proposal for a Fifth Directive on the structure of public limited companies¹; it provides for a separation of powers between the general meeting of members, which is to decide certain major items of business, and the bodies which are to manage and represent the SCE.

The management and representation of the SCE is to be the function either of a management board, with a supervisory board monitoring its activities

1 OJ No C 240, 9.9.1983, p. 2.

(the two-tier system), or of an administrative board (the one-tier system). The choice is limited to these two alternatives.

The legal entities which found an SCE are to choose between the two systems, which are governed by the more detailed rules set out in Articles 31 to 38 of the Regulation. Articles 39 and 49 lay down rules common to the two systems.

However, a Member State may require SCEs in its territory to 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)

In this system a management board is to manage the SCE and to represent it in dealings with third parties.

The key feature of the two-tier system is that members of the management board are always to be appointed by the supervisory board. The two bodies are kept separate by a rule preventing the same person from serving on both at the same time, with the exception envisaged in the second subparagraph of paragraph 3. Where advantage is taken of that exception the member concerned temporarily ceases to exercise his functions on the supervisory board.

Article 32

(Chairmanship, convening of meetings)

The rules may provide that the management board is to elect its own chairman.

Meetings are to be convened in accordance with the rules.

SUBSECTION II : SUPERVISORY BOARD

Article 33

(Functions of the supervisory board; appointment of members)

The members of the supervisory board are to be appointed by the general meeting. The board's functions are confined to supervising the duties performed by the management board.

This provision is without prejudice to national law and to the separate Directive on the involvement of employees.

Article 34

(Right to information)

To enable it to perform its duties, the supervisory board is to receive from the management board a quarterly report on the SCE's affairs. The supervisory board may require the management board to provide information or a special report on any matter concerning the SCE, and it is vested with such powers of investigation as are necessary for the performance of its duties. Every member of the board is to have access to all information communicated by the management board.

Article 35

(Chairmanship, calling of meetings)

The supervisory board is to elect its own chairman from among its members.

To ensure that the supervisory board functions properly it can be convened on its chairman's initiative, or at the request of at least one third of its members, or at the request of the management board; if no action has been taken in respect of the request within 15 days the meeting may be called by those requesting it. This is necessary in order to avoid any possibility of collusion between the management board and a majority on the supervisory board.

SECTION II : THE ONE-TIER SYSTEM

Article 36

(Functions of the administrative board; appointment of members)

This Article outlines the fundamental characteristics of the one-tier system.

In this system a single administrative board is to manage the SCE and represent it in dealings with third parties and in legal proceedings.

There must be at least three members of the administrative board; they are to be appointed by the general meeting.

Article 37

(Holding of meetings and right to information)

The administrative board must meet at least once every three months to discuss the SCE's affairs and the operations referred to in Article 42. This enables the members of the board to supervise the affairs of the SCE.

Article 38

(Chairmanship, calling of meetings)

The administrative board must elect from among its members a chairman who will convene meetings of the board under the conditions laid down in the rules, either on his own initiative or at the request of at least one third of the members; if he takes no action on such a request within 15 days, a meeting may be called by those requesting it. The request must indicate the reasons for calling the meeting.

SECTION III : RULES COMMON TO THE ONE-TIER AND TWO-TIER BOARD SYSTEMS

Article 39

(Term of office)

The better to ensure that members of the governing bodies can be held accountable for their acts it is considered appropriate to establish the principle that they can be appointed only for a specific period at a time; this period is not to exceed six years. They may be reappointed one or more times for the same period.

Article 40

(Conditions of membership)

The rules may permit a cooperative society or any other legal entity to be a member of the board. In the nature of things the functions of members of the governing bodies can be performed only by natural persons. For this reason, the admission of legal persons as members of those bodies is conditional on their designating a natural person as their representative to exercise their functions on the board.

However, no one may become a member of a governing body who has been disqualified by a judicial or administrative decision (and who has not been reinstated in his personal rights) or whose activities have been declared incompatible under the domestic law of the state in which the SCE has its registered office.

Article 41

(Rules of procedure)

It will be for each governing body to draw up its rules of procedure in accordance with the rules of the SCE. Any member of the SCE and any competent authority will be entitled to consult the rules of procedure at the SCE's registered office.

Article 42

(Power of representation; liability of the SCE)

This provision is concerned with the representation of the SCE in dealings with third parties by representatives acting alone or jointly.

The SCE's rules on representation must be disclosed in accordance with Article 6.

Acts done by the SCE's representatives will be binding upon it even if those acts are not within its objects. Member States may provide that it will not be bound if it can prove that the third party can be presumed to have been aware of the limits imposed by its objects, and thus acted in bad faith.

Article 43

(Operations requiring authorization)

The aim of this provision is to prevent members of the governing bodies from abusing their powers in their personal interest and to the detriment of the SCE.

Operations likely to have a major impact on the business or organization of the SCE require the authorization of the supervisory board or the deliberation of the administrative board. The categories of operation listed are defined in terms of financial criteria: percentages of subscribed capital and turnover are to be laid down. The rules of the SCE may expand the list of operations requiring authorization.

Paragraph 3 allows a Member State to impose the same categories of operation here as those which its law applies to domestic cooperative societies.

Paragraph 4 allows a Member State which authorizes the governing bodies of cooperative societies to determine this list to adopt the same system for SCEs registered in that country.

Article 44

(Rights and obligations)

All members of a board are to have the same rights and obligations. One of the main obligations of board members is the obligation not to divulge confidential information. The Article also makes it clear that the boards are to act in the interests of the SCE, its members and its employees.

Article 45

(Conduct of business on boards)

This provision lays down the basic rules on the quorums and majorities required for board decisions and on the representation of board members. Otherwise the procedures for conducting business are to be laid down in the rules of the SCE.

Article 46

(Civil liability)

This and the succeeding Articles lay down the principle that the members of the governing bodies of the SCE are liable for any loss or damage they may cause to the SCE.

Liability will be incurred only if the SCE has suffered damage. There has to be a causal link, therefore, between the act done and the damage suffered.

Where the governing body has more than one member, it is difficult for an outsider to know which member caused the damage. For this reason the Regulation provides that all the members of the relevant body are to be jointly and severally liable, whatever the nature of the breach of duty.

Article 47

(Proceedings on behalf of the SCE)

This provision sets out to clarify the procedural rules governing action brought on the SCE's behalf against members of the governing bodies.

Proceedings may be initiated either by the general meeting, acting by majority, or by at least one fifth of the members of the SCE; a special representative must be appointed to conduct the action.

Article 48

(Limitation of actions)

The severity of the rules on liability is offset by the imposition of a limitation period of five years from the time of the act giving rise to damage.

CHAPTER IV : CAPITAL, OWN FUNDS AND BORROWING

Article 49

(Holders of non-voting shares)

The SCE may offer "investor" shares for subscription by interested parties. Even though their holders have been approved as members by the general meeting, these shares do not carry any right to vote at general meetings.

To offset these disadvantages such shares may be given preferential financial entitlements either in the rules of the SCE or by agreement at the time they are issued.

The rules must include provisions ensuring that the interests of holders of non-voting shares can be represented and defended. In particular, they must provide for special meetings of such shareholders.

Article 50

("Non-user" investor members)

Article 50 allows members to be admitted who do not expect to use the SCE's services but who are interested in the progress of the SCE.

Together such members may not hold more than one third of the votes of all members (Article 22).

On the other hand the rules may lay down special provisions for the benefit of such members with regard to the distribution of surpluses.

Article 51

(Financing)

This Article allows the SCE to make use of all forms of financing available to its founders in the Member State in which it has its registered office.

Article 52

(Dividend)

The repayment of any "overpayments" charged, in the form of dividends, is a traditional practice in cooperative societies.

Article 53

(Legal reserve)

As the SCE's capital is variable, the obligation to build up a legal reserve has been included in order better to protect creditors.

This part of the reserves cannot be distributed to the members if they withdraw from the society, and cannot be incorporated into the capital.

Article 54

(Allocation of the available surplus)

Apart from the obligation to allocate a part of any surplus to a reserve which cannot be distributed, the arrangements governing the allocation of surpluses are to be freely determined by the rules.

CHAPTER V : ANNUAL ACCOUNTS, CONSOLIDATED ACCOUNTS AND AUDITING

Articles 55 to 60

As regards the drawing-up, auditing and disclosure of its annual accounts, and its consolidated accounts if any, the SCE is to be subject to the law of the state in which it has its registered office giving effect to the Fourth Council Directive (78/660/EEC) of 25 July 1978 on annual accounts, the Seventh Council Directive (83/349/EEC) of 13 June 1983 on consolidated accounts², the Eighth Council Directive (84/253/EEC) of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents³, and 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' duration⁴.

SCEs which are credit or financial institutions or insurance undertakings must comply with the national legislation in the Member State in which they have their registered office giving effect to Council Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions⁵ or as the case may be Council Directive ... on the annual accounts and consolidated accounts of insurance undertakings.

2 OJ No L 222, 14.8.1978, p. 11 and OJ No L 193, 18.7.1983, p. 1.

3 OJ No L 126, 12.5.1984, p. 20.

4 OJ No L 19, 24.1.1989, p. 16.

5 OJ No L 372, 31.12.1986, p. 1.

CHAPTER VI : WINDING UP AND LIQUIDATION

SECTION I : WINDING UP

Article 61

(Winding up by the general meetnig)

This Chapter provides an exhaustive list of the ways of winding up an SCE. In the interests of legal certainty the Regulation sets out the possible grounds for winding up: expiry of the period fixed in the rules, a drop in the subscribed capital below the minimum laid down in the rules, non-disclosure of the accounts during the SCE's last three financial years, and a fall in the number of members below the minimum required, without prejudice to any other grounds laid down either in the law governing the legal entities which founded the SCE in the state in which it has its registered office, or in the rules.

The general meeting may decide either to continue the activities of the SCE or to wind it up.

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 it 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 sufficient time in which to rectify the situation if this is at all possible.

SECTION II : LIQUIDATION

Article 63

(Liquidation)

The winding up of an SCE automatically entails the liquidation of its assets. Once the decision to wind up has been taken, the SCE continues to exist solely for the purposes of the liquidation. As regards procedure the Regulation makes reference to national law.

Articles 64

(Distribution)

The principle is laid down that the net assets should be distributed either to other SCEs or to similar bodies. However, as this solution is not provided for in the law of some Member States, SCEs are given the option of departing from this principle in their rules.

CHAPTER VII : INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 65

(Insolvency and suspension of payments)

SCEs which are the subject of insolvency or suspension of payments proceedings are to be subject to the national law of each Member State.

However, the Regulation requires an entry to be made in the register of the state in which the SCE has its registered office in the event of insolvency or suspension of payments and lists the particulars which the entry must contain.

TITLE II : FINAL PROVISIONS

Article 66

(Penalties)

Each Member State determines the sanctions that will be applied in case of violation of the regulation and as necessary the measures that will lead to its enforcement. The sanctions must be effective, proportionate and dissuasive.

Article 67

This Article provides that the Regulation is to enter into force on 1 January 1993.

Proposal for a
COUNCIL REGULATION (EEC)

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 Community¹ and on 9 July 1987 on the
contribution of cooperatives to regional development²,

Whereas the Commission adopted a communication to the Council of
18 December 1989³; whereas the Economic and Social Committee gave its
opinion on that communication on 19 September 1990⁴;

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;

1 OJ No C 128, 16.5.1983, p. 51 (report doc. 1-849/82).

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.

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 Council 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 2137/85⁶, 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;

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 cooperative;

Whereas cooperative 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 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;

5 OJ No L

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

Whereas the essential aim of the legal rules governing the European cooperative society implies that such a cooperative may be set up by legal entities 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 Council Directive ... supplementing the Statute for a European cooperative society with regard to the involvement of employees⁷ and to put in place in advance the necessary machinery for securing the formation and operation of European cooperative 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 cooperative society has its registered office for the purpose of implementing directives on companies, by analogy for the European cooperative society in areas where the functioning of the cooperative does not require uniform Community rules, such dispositions being appropriate to the arrangements governing the European cooperative 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 Community⁸, 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 companies⁹, as last amended by Directives 90/604/EEC¹⁰ and 90/605/EEC¹¹;
- Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts¹², 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 documents¹³;

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

9 OJ No L 222, 14.8.1978, p. 11.

10 OJ No L 317, 16.11.1990, p. 57.

11 OJ No L 317, 16.11.1990, p. 60.

12 OJ No L 193, 18.7.1983, p. 1.

13 OJ No L 126, 12.5.1984, p. 20.

- 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' duration¹⁴;
- 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 State¹⁵;

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 institutions¹⁶,
- 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/EEC¹⁷;
- 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/EEC¹⁸;

Whereas this form of organization should be optional,

HAS ADOPTED THIS REGULATION:

14 OJ No L 19, 24.1.1989, p. 16.
15 OJ No L 395, 30.12.1989, p. 36.
16 OJ No L 372, 31.12.1986, p. 1.
17 OJ No L 386, 30.12.1989, p. 1.
18 COM(90) 348 final - SYN 291.

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 at the place specified in its statutes, which must be within the Community. It shall be the same as the place where the SCE has its central administration.

Article 3

(Transfer of registered office)

1. The registered office of an SCE may be transferred within the Community. Such transfer shall not result in the SCE being wound up or in the creation of a new legal person.
2. Where the transfer of the registered office results in a change of the law applicable under Article 4(1)(b), a transfer proposal shall be published in accordance with Article 6.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken under the conditions laid down for the amendment of the statutes. The transfer of the registered office of the SCE and the resulting amendment to its statutes shall take effect from the date of registration for the SCE, in accordance with Article 5(3), in the register for the new registered office. That registration may not be effected until evidence has been produced that the proposed transfer of the registered office has been published.

3. The removal of the 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.
4. The fact of the new registration and the fact of the termination of the old registration shall both be published in the Member States concerned, in accordance with Article 6.

5. 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.

Article 4

(Applicable law)

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

failing this:

- (b) - by the provisions of the law governing cooperative societies in the Member State in which the SCE has its registered office;
 - by the provisions freely determined by the parties in the statutes of the SCE, in accordance with the same conditions as for cooperative societies governed by the law of the Member State in which the SCE has its registered office.
2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under point (b) of paragraph 1.
3. In each Member State and subject to the express provisions of this regulation, an 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.

4. The following shall apply to an SCE:

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

Article 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 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
 - are authorized to represent the SCE 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 sixteenth 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 Official Publications Office 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)

1. An SCE may be formed by any two or more of the legal entities formed under the law of a Member State which are listed in the Annex provided at least two of them have their registered office and central administration in 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 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 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)

1. Membership shall be lost:
 - upon resignation;
 - upon expulsion;
 - upon assignment of all shares held, where this is authorized by the statutes;
 - upon winding up in the case of a legal entity;
 - 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. The capital of an SCE shall amount to not less than ECU 100 000 or the equivalent in national currency.

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. The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership, and may lay down the 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.

The capital may be increased by the capitalization of all or part of the reserves available for distribution, by 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 Article 13(1) and Article 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;
 - 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;
 - 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 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. 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 measure to which the member takes part in the SCE'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.
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. 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, free of charge, upon request.

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. 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 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 fifteen 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. 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 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 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.

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 following operations shall require the authorization of the supervisory board or the deliberation of the administrative board:
 - (a) any investment project requiring an amount more than the percentage of subscribed capital fixed in accordance with (e);
 - (b) the setting up, acquisition, disposal or closing down of undertakings, establishments or parts of establishments where the purchase price or disposal proceeds account for more than the percentage of subscribed capital fixed in accordance with (e);
 - (c) the raising or granting of loans, the issue of debt securities and the assumption of liabilities of a third party or suretyship for a third party where the total money value in each case is more than the percentage of subscribed capital fixed in accordance with (e);
 - (d) the conclusion of supply and performance contracts where the total turnover provided for therein is more than the percentage of turnover for the previous financial year fixed in accordance with (e);
 - (e) the percentage referred to in (a) to (d) shall be determined by the statutes of the SCE. It shall not be less than 5% nor more than 25%.
2. The statutes of the SCE may provide that paragraph 1 shall also apply to other types of decisions.
3. A Member State may determine the categories of operation referred to in paragraph 1 for SCEs registered in its territory under the same conditions as those applying to cooperative societies governed by the law of that State.

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

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)

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

Article 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 AND AUDITING

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 under 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 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 audited by persons outside the society, an internal audit body cannot replace the persons provided for by law.

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.
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)

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.

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 [on the annual accounts and consolidated accounts of insurance undertakings]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;
 - 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.

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)

After the creditors have been paid in full, and anything due to designated beneficiaries has been distributed, the assets of the SCE shall, except where otherwise stated in the statutes, be distributed by decision of the general meeting either 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.

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 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 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

(Penalties)

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

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

Article 67

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels,

For the Council
The President

Annex

LEGAL ENTITIES REFERRED

- 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 (RGL. S. 55) published on 20 May 1898 (RGL.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.

EXPLANATORY MEMORANDUM ON THE COUNCIL
DIRECTIVE SUPPLEMENTING THE STATUTE FOR A
EUROPEAN COOPERATIVE SOCIETY WITH REGARD TO THE INVOLVEMENT
OF EMPLOYEES

The present Directive fits into the wider framework of the policy of promoting the economic and social objectives of the Community. Its rationale is that employees should be able to take part in shaping the strategies of European cooperative societies (SCEs).

The Directive has been drafted along the lines of the Directive supplementing the statute for a European company (SE) with regard to the involvement of employees in order to avoid any distortion as between the SCE and the SE. However, in view of the nature of the SCE a simplified procedure is provided for which consists in:

- referring to national provisions concerning employee participation in those Member States where they exist and if the Member State concerned wishes to apply them;
- harmonizing the arrangements concerning the informing and consulting of employees, notably as regards the minimum areas covered.

Article 1

The 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 cooperative society. According to Article 5 of the Regulation on the Statute for an SCE, no SCE may be registered until the provisions of this Directive have been adopted. The choice of a participation model and/or of information and consultation arrangements is an essential precondition for registration of an SCE.

Member States must incorporate the Directive's provisions in their law.

TITLE I: PARTICIPATION

Article 2

The Directive refers to national provisions concerning the participation of employees in the supervisory or administrative boards of national cooperatives.

If the Member State in which the SCE has its registered office has no rules on the participation of employees or does not wish to apply such rules to the SCE, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

SCEs whose employees are also for the most part members are exempted from this procedure and from that regarding information and consultation as they participate de facto as members in shaping the strategies of the SCE.

TITLE II: INFORMATION AND CONSULTATION ARRANGEMENTS

Article 3

This Article describes the procedure to be followed for the adoption by the management boards or administrative boards of founder entities and the representatives of the employees of those entities of information and consultation arrangements.

If the employee's representatives do not agree with the proposed arrangements, they have to submit their reasons in writing to the general meeting called to approve the formation of the SCE.

Paragraph 5 states that the arrangements chosen before the SCE is formed can be amended. Any amendment has to be decided on by mutual consent.

Paragraph 6 stipulates that the same procedure as that described in paragraph 1 has to be followed in the case of the formation of an SCE by conversion.

Paragraph 7 prevents the transfer of the registered office of an SCE to another Member State from depriving employees of the information and consultation arrangements from which they benefit. Such a change may be effected only in accordance with the procedure laid down in this Article.

Article 4

This Article states that the management board and/or the administrative board of the SCE must inform and consult the employees of that entity in good time and determines in which areas at least information and consultation are required.

It also governs the informing and consulting of employees by the management board or administrative board of the SCE prior to registration and provides that the employees are to be represented within a separate committee 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.

The management board or administrative board has to inform and consult the employees on conditions of employment, on documents submitted to the general meeting and on the operations referred to in Article 43 of the Regulation on the Statute for an SCE, as soon as a proposal is likely to affect the employees' interests.

Attention is drawn to the applicability of Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies and of Directive 77/187/EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

The Directive authorizes the parties to the negotiations to introduce a simplified procedure, but one in conformity with the requirements of paragraph 1, when the total number of employees - at the registered office and in the various establishments - is less than 50. This threshold has been laid down in the light of existing practices in the Member States and is the same as that in Article 2(5) of Council Directive 75/129/EEC, as

amended by Directive .../EEC. Its aim is to avoid cumbersome procedures in small cooperatives.

Article 5

While referring to the practices and laws in force in the Member States, this Article lays down certain basic principles concerning election procedures and the performance by elected representatives of their functions.

The point to note is that the representatives of the employees of the SCE are elected (and not appointed) and represent the employees of all the establishments, plants and facilities of the SCE in the various Member States in which they are located, even if they are employed only part-time.

<p><u>TITLE III: FINAL PROVISIONS</u></p>

Article 6

Article 6 exempts from the application of the Directive those SCEs whose employees are also for the most part members.

Articles 7 and 8

These final provisions will enter into force on 1 January 1993, the date on which the Member States are to communicate to the Commission the provisions of national law which they will have adopted in the field covered by the Directive. Article 8 points out that the Directive is addressed to the Member States.

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,

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, Council 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 redundancies², as amended by Directive ...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 businesses⁴, 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 employees⁵;

Whereas appropriate provisions must be adopted to ensure that the employees of SCEs 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;

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, 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 activities and strategies of the SCE capable of affecting the employees' interests;

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

3 COM(91) 292, 15.7.1991.

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

5 COM(90) 581 final.

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.
2. 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 SCE is contrary to the employees' interests and what measures should be taken with respect to the employees.
3. 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.
4. 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.

5. 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.
6. 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].
7. In the event of the registered office of a SCE being transferred to another Member State, the information and consultation arrangements in existence before the transfer may be altered only in accordance with the procedure laid down in this Article. The parties to the negotiations shall be 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:
 - (a) any proposals which might significantly affect the interests of the employees of the SCE, 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].

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.

A Member State may restrict this choice in the case of SCEs having their registered 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.

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 1993. 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
The President

EXPLANATORY MEMORANDUM

STATUTE FOR A EUROPEAN MUTUAL SOCIETY

The Regulation on the Statute for a European mutual society has been drawn up to enable mutual societies to take advantage of the single market in the same way as companies can, without having to forego their specific character as groupings of people.

The Regulation aims to meet the concerns expressed by mutual societies through their representatives at European level and by the European Parliament and the Economic and Social Committee.

The Regulation will be relevant to organizations which may take different forms in different Member States, but which carry on the same type of activities under the same principles; the categories of legal entity concerned are listed in the Annex.

Like cooperatives and other associations, mutual societies became important in all European countries at the end of the last century, in response to the needs of particular groups of people, especially the poorest. They took different shapes depending on the traditions of the country and the particular circumstances of the time. The legal mechanisms adopted were not the same from one country to another. Cooperatives, mutual societies and associations are different forms, but in practice they may amount to much the same thing.

As a result, national legislation has not always drawn hard and fast demarcation lines between the forms taken by these bodies or between the types of activity in which they may engage.

This Regulation contains no fiscal provisions. Fiscal problems which may arise in the time when the ME is formed or when it is active, including those relating to the transfer of its registered office from one Member State to another will have to be dealt with by Directives settled according to the procedure of Article 100 of the Treaty.

TITLE I: GENERAL PROVISIONS

CHAPTER I : FORMATION OF THE EUROPEAN MUTUAL SOCIETY

Article 1

(Form of the European mutual society)

The European mutual society (ME) is to be a grouping of natural and/or legal persons which guarantees its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorized by its rules (whether concerned with providence, insurance, health assistance, credit, or otherwise).

A way will have to be found at an appropriate time of enabling certain large mutual insurance companies, whose performance is determined by their size, to carry on their activities at European level.

The ME is to have legal personality from the day it is registered in accordance with Article 8 of the Regulation. It is on this day that the ME will come into existence. In view of the differences between national rules concerning the time when mutual societies acquire legal personality, the need for legal certainty, notably for the ME's creditors and members, militates in favour of a uniform approach.

Registration may be relied on against third parties once it has been disclosed in the official gazette referred to in Article 9 of the Regulation.

The Regulation recognizes the competence of each Member State to regulate the management of basic obligatory social security.

Article 2

(Formation)

The Regulation provides that a ME may be formed by national legal entities listed in annexes 1 and 2. The founder members must satisfy themselves that the ME has a cross-border dimension at the time of its formation; they must

check that the founding societies or other entities are formed under the law of a Member State, and that they have their registered office and central administration in at least two Member States.

Provision is also made for formation by conversion of an existing mutual society, without the society being wound up or a new legal person being created, provided it has an establishment or subsidiary in a Member State other than that of its central administration, and can show that it is carrying on a genuine cross-border activity.

The Regulation takes account of the position of those mutual societies which in some Member States are entrusted with compulsory social security functions. The Regulation makes it clear that it does not apply to compulsory basic social security schemes run by provident societies in certain Member States.

Article 3

(The statutes of the ME)

This Article lists particulars which must be included in the ME's rules, for instance the name of the ME preceded or followed by the abbreviation "ME", the conditions and procedures for the admission, expulsion and resignation of members, the rights and obligations of members, the rules on majorities and quorums, and the grounds for winding up. The expression "member" is defined in the last paragraph.

Article 4

(Formation fund)

This Article specifies the minimum amount of the ME's formation fund, without prejudice, however, to national provisions providing for a higher amount in the case of mutual societies engaged in certain types of activity. The ordinary minimum is to be ECU 100 000.

Article 5

(Registered office)

The ME's registered office, which is specified in the rules, must be situated within the Community and must be in the same place as its central administration.

Article 6

(Transfer of registered office)

As regards the transfer of a ME's registered office, a distinction has to be made according to whether or not there is a change of the applicable law.

If the registered office is transferred within the same Member State, the ME will not be wound up nor will a new legal person be created.

On the other hand, where the transfer results in a change of the applicable law, the decision to transfer must be taken under the conditions laid down for the amendment of the rules, i.e. by a two-thirds majority, and may not be taken for two months after publication of the transfer proposal.

The Regulation lays down a special procedure to be followed in this case (notably as regards disclosure) in order to protect the interests of third parties. These requirements provide certain safeguards against transfers which might be carried out by a ME with a view to avoiding its obligations.

The transfer will not result in a change in the status of the ME in so far as it amounts to an amendment of its rules which does not affect its legal form.

Article 7

(Applicable law)

This Article defines the scope of the Regulation in relation to the laws of the Member States.

MEs are to be governed first and foremost by the Regulation, and, where the Regulation expressly so authorizes, by the rules of the ME.

Where the Regulation is silent on a particular point, the principles of freedom of choice and freedom of contract will have full play, subject to compliance with the binding provisions of the law applying to mutual societies in the Member State in which the ME has its registered office.

It should be noted that in addition to the body of rules applicable to MEs on the basis of the Regulation and the law governing mutual societies in the state in which the ME has its registered office there will also be the Community and national law, including those provisions derived from international conventions, governing matters which are outside the scope of the Regulation, such as social and labour law, competition law, intellectual, industrial and commercial property law, bankruptcy law, etc.

Lastly, where a Member State comprises several territorial units each with its own rules on a point regarding which reference has to be made to national law, each territorial unit will be considered a state for the purposes of identifying the law which applies.

Articles 8 and 9

(Registration and disclosure requirements; Publication
of documents and particulars in the Member States)

Member States must designate the register in which MEs are to be registered and lay down the procedures for the notification of the ME's rules.

A ME can be registered only once the measures required by the separate Directive on employee involvement have been taken.

For reasons of legal certainty and good legal practice, the Regulation requires Member States to take the measures necessary to ensure disclosure of the documents and particulars listed in Article 8(4). The disclosure measures required are set out in Article 9.

While a ME is being formed, any commitments entered into are to give rise to the joint and several liability, without limit, of the persons who entered into them.

Article 10

(Notice in the Official Journal)

Whenever a ME is formed or liquidated and whenever a ME's registered office is transferred, a notice to that effect must be published for information purposes in the Official Journal of the European Communities. This type of information is important in view of the fact that the activities of an ME are by definition transnational. Such publication will not, however, have any legal consequences. Only disclosure pursuant to Article 9 is valid against third parties.

Article 11

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

This Article lists the particulars to be stated in the ME's correspondence. The list is more comprehensive than that in Article 4 of Directive 68/151/EEC.

Mention must be made, for example, of 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 is to decide on matters for which it has sole responsibility under the Regulation, and on matters for which the management board, supervisory board or administrative board do not have sole responsibility.

Articles 13 and 14

(Holding of general meetings by the governing bodies or
by the members)

A general meeting must be held at least once a year, not later than six months after the end of the ME's financial year. This requirement is dictated by the need to approve the annual accounts.

General meetings may be convened by the management board or the administrative board whenever they think fit or by at least 25% of the members of the ME, which proportion may be reduced by the rules.

The agenda for the general meeting held after the end of the financial year must 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.

Article 15

(Notice of meeting)

The general meeting must be convened in such a way that all members receive notice of it.

The minimum contents of the notice calling the meeting are laid down in the Regulation. The particulars listed do not call for any elucidation, except to say that it is important that the member should be informed whether he is being invited to an ordinary meeting, an extraordinary meeting or a special meeting, as different rules as to quorum or majority may be applicable depending on the nature of the meeting.

The laws of all Member States specify the length of notice between the day on which a meeting is convened and the day of the meeting, but this period varies between five days and one month depending on the Member State.

Members must be given sufficient time to prepare to attend the general meeting or to arrange to be represented there, bearing in mind that an increasing number may be resident outside the country in which the ME has its registered office, and that too short a period of notice would prevent them from attending. Nor would the arrangements for the appointment of proxies or for the amendment of the agenda by a minority of members be able to function unless sufficient time is allowed. The Regulation therefore lays down a period of one month.

Article 16

(Addition of items to the agenda)

It must be possible for 25% or more of the members of the ME to request the addition of one or more items to the agenda of a general meeting already convened; this proportion may be reduced by the rules. The request may not be refused, but must be put in within the 10 days following the calling of the meeting.

Article 17

(Attendance and proxies)

It often happens that a member is unable or unwilling to attend a general meeting, for example where he is not resident in the country in which the registered office is situated. Provision is therefore made in all Member States for the appointment of proxies. The Regulation recognizes this right of representation by a mandatory and prevents any provision to the contrary in the rules.

Article 18

(Sectional meetings)

The rules can allow postal voting as well as sectional meetings before the annual general meeting.

Article 19

(Right to information)

The notice calling the general meeting does not give members enough precise information on certain decisions to be taken by it. The Regulation therefore provides that certain documents must be made available to any member at least one month before the meeting is held. The main such documents are the annual accounts and the auditors' report.

Article 20

(Voting rights)

The principle "one member, one vote" is to apply.

Article 21

(Normal Majority)

The Regulation does not distinguish between ordinary and extraordinary general meetings. It merely provides for a requirement of a qualified majority rather than a simple one in certain cases.

This Article lays down the majority normally required for resolutions of the general meeting, that is to say a simple majority of the votes of the members present or represented.

Article 22

(Special majority)

Following the example of the laws of most Member States, the Regulation requires a qualified majority for resolutions of the general meeting amending the rules.

A majority of two thirds of the votes of the members present or represented is required, and any amending resolution must be made public in accordance with Article 9.

Article 23

(Actions to have resolutions of general meeting
declared void)

Actions to have resolutions of a general meeting declared void may be brought by any member provided he can show he has a legitimate interest. As far as procedure is concerned, reference is made to the law of the state in which the ME has its registered office.

Article 24

(Disclosure of decisions of a court)

Decisions of a court declaring a resolution of a general meeting void must be made public.

CHAPTER III : MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

Article 25

(Structure)

On the question of governing bodies, the Regulation is based on national company law and on the amended proposal for a Fifth Directive on the structure of public limited companies.¹ It provides for a separation of powers between the general meeting of members, which is to decide certain major items of business, and the bodies which are to manage and represent the ME.

The management and representation of the ME is to be the function either of a management board, with a supervisory board monitoring its activities (the two-tier system), or of an administrative board (the one-tier system).

1 OJ No C 240, 9.9.1983, p. 2.

The choice is limited to these two alternatives.

A Member State may require MEs in its territory to adopt either the two-tier or the one-tier system as it shall determine.

SECTION I : TWO-TIER SYSTEM

SUBSECTION 1 : MANAGEMENT BOARD

Article 26

(Functions of the management board; appointment of members)

In this system a management board is to manage the ME, with power to represent it in dealings with third parties and in legal proceedings.

Members of the management board are always to be appointed by the supervisory board. The two bodies are kept separate by a rule preventing the same person from serving on both at the same time, subject to the exception in paragraph 3.

The possibility of replacing a member of the management board by a member of the supervisory board in the event of a vacancy has been provided for in paragraph 3. In that event, the member in question will cease to perform his functions on the supervisory board.

Article 27

(Chairmanship, convening of meetings)

The management board is to elect its own chairman.

The conditions governing the convening of meetings are to be laid down in the rules.

SUBSECTION 2 : SUPERVISORY BOARD

Article 28

(Functions of the supervisory board; appointment of members)

The members of the supervisory board are to be appointed and removed by the general meeting. The number of members is to be laid down in the rules. The first members may be appointed in the rules.

Their task is to supervise the duties performed by the management board.

The supervisory board may not itself exercise the power to manage the ME.

Article 29

(Right to information)

To enable it to perform its duties, the supervisory board is to receive from the management board a quarterly report on the ME's affairs. The supervisory board may require the management board to provide information or a special report on any matter concerning the ME, and it is vested with such powers of investigation as are necessary for the performance of its duties. All information must be communicated directly between the two boards and not through the chairman of the supervisory board.

Article 30

(Chairmanship, calling of meetings)

The supervisory board is to elect its own chairman.

The supervisory board can be convened on its chairman's initiative, or at the request of the management board, or at the request of at least one third of its members. This is intended to avoid any possibility of collusion between the management board and a majority on the supervisory board.

SECTION II : THE ONE-TIER SYSTEM

Article 31

(Functions of the administrative board; appointment of members)

This Article outlines the fundamental characteristics of the one-tier system.

In this system a single administrative board is to manage the ME and represent it in dealings with third parties and in legal proceedings.

The member or members of the administrative board are to be appointed and removed by the general meeting.

Article 32

(Holding of meetings and right to information)

The administrative board must meet at least once every three months to discuss the state and foreseeable prospects of the ME's affairs and the operations referred to in Article 38.

Article 33

(Chairmanship, calling of meetings)

The administrative board must elect from among its members a chairman who will convene a meeting of the board under the conditions laid down in the rules, either on his own initiative or at the request of at least one third of the members.

If no action is taken in response to such a request within 15 days the meeting may be called by those who made the request.

SECTION III : RULES COMMON TO THE ONE-TIER AND TWO-TIER BOARD SYSTEMS

Article 34

(Term of office)

Members of the governing bodies can be appointed only for a specific period at a time; this period is not to exceed six years. They may be reappointed one or more times for the same period.

Article 35

(Conditions of membership)

In the nature of things the functions of members of the governing bodies can be performed only by natural persons. For this reason, the admission of legal persons as members of those bodies is conditional on their designating a natural person as their representative.

However, no one may become a member of a governing body who has been disqualified by a judicial or administrative decision (and who has not been reinstated in his personal rights) or whose activities have been declared incompatible under the domestic law of the state in which the ME has its registered office.

Article 36

(Rules of procedure)

It will be for each governing body to draw up its rules of procedure in accordance with the rules of the ME. Any member of the ME and any competent authority will be entitled to consult the rules of procedure at the ME's registered office.

Article 37

(Power of representation; liability of the ME)

This provision is concerned with the representation of the ME in dealings with third parties by representatives acting alone or jointly.

The ME's rules on representation must be disclosed in accordance with Article 9.

Acts done by the ME's representatives will in principle be binding upon it even if those acts are not within its objects, unless the ME can prove that the third party acted in bad faith.

Article 38

(Operations requiring authorization)

The aim of this provision is to prevent members of the management or administrative board from abusing their powers in their personal interest and to the detriment of the ME.

A list enumerates the operations which require the authorization of the supervisory board or the deliberation of the administrative board; these are operations which are likely to have a major impact on the business or organization of the ME.

The list is not exhaustive; the rules may make other types of operation subject to authorization or deliberation. Member States may also specify other categories of operation for which authorization or deliberation is required.

Article 39

(Rights and obligations)

All members of a board are to have the same rights and obligations even where certain members are given special responsibility for particular functions of the board. One of the main obligations of board members is the obligation not to divulge confidential information. The article also makes it clear that the fundamental duty of board members is to act in the interests of the ME, its members and its employees.

Article 40

(Conduct of business on boards)

This provision lays down the basic rules on the quorums and majorities required for board decisions and on the representation of board members. Otherwise the procedures for conducting business are to be laid down in the rules of the ME.

Article 41

(Civil liability)

This Article and the two following it lay down the principle that the members of the governing bodies of the ME are liable for any loss or damage they may cause to the ME.

Liability will be incurred only if the ME has suffered damage. There has to be a causal link, therefore, between the act done and the damage suffered.

Where the governing body has more than one member, it is difficult for an outsider to know which member caused the damage. For this reason the Regulation provides that all the members of the relevant body are to be jointly and severally liable, whatever the nature of the breach of duty.

Article 42

(Proceedings on behalf of the ME)

This provision sets out to clarify the procedural rules governing actions brought on the ME's behalf against members of the governing bodies.

Proceedings may be initiated either by the general meeting or by at least one fifth of the members of the ME; a special representative must be appointed to conduct the action.

Article 43

(Limitation of actions)

The severity of the rules on liability is tempered by the imposition of a limitation period of five years from the time of the act giving rise to damage.

CHAPTER IV : FINANCING, ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 44

(Financing)

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

Articles 45 to 48

(Accounts)

As regards the the drawing-up, auditing and disclosure of its annual accounts, and its consolidated accounts if any, the ME is to be subject to the law of the state in which it has its registered office giving effect to the Fourth Council Directive (78/660/EEC) of 25 July 1978 on annual accounts, the Seventh Council Directive (83/349/EEC) of 13 June 1983 on consolidated accounts,² the Eighth Council Directive (84/253/EEC) of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents,³ and 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.⁴

MEs which are credit or financial institutions or insurance undertakings must comply with the national provisions implementing Council Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions⁵ or as the case may be Council Directive ... on the annual accounts and consolidated accounts of insurance undertakings.

CHAPTER V : WINDING UP AND LIQUIDATION

SECTION I : WINDING UP

Article 49

(Winding up by the general meeting)

This Chapter provides an exhaustive list of the ways of winding up a ME. In the interests of legal certainty the Regulation sets out the possible grounds for winding up: expiry of the period fixed in the rules, a drop in

2 OJ No L 222, 14.8.1978, p. 11 and OJ No L 193, 18.7.1983, p. 1.

3 OJ No L 126, 12.5.1984, p. 20.

4 OJ No L 19, 24.1.1989, p. 16.

5 OJ No L 372, 31.12.1986, p. 1.

the subscribed formation fund below the minimum laid down in the rules, non-disclosure of the accounts during the ME's last three financial years, and a fall in the number of members below the minimum required, without prejudice to any other grounds laid down either in the law governing the legal entities which founded the ME in the state in which it has its registered office, or in the rules.

The general meeting may decide either to continue the activities of the ME or to wind it up.

Article 50

(Winding up by the court)

The court must order the ME 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 principle it will be for the Member States to regulate the procedure to be followed before the court. But the Regulation does specify who is entitled to initiate such proceedings, namely any person concerned or any competent authority. The court may grant the ME sufficient time in which to rectify the situation if this is at all possible.

SECTION II : LIQUIDATION

Article 51

(Liquidation)

The winding up of a ME automatically entails the liquidation of its assets. Once the decision to wind up has been taken, the ME continues to exist solely for the purposes of the liquidation. As regards procedure the Regulation makes reference to the law of the country where the office is registred.

Article 52

(Distribution)

The principle is laid down that the net assets should be distributed either to other MEs or to similar bodies. However, as this solution is not provided for in the law of some Member States, MEs are given the option of departing from this principle in their rules.

CHAPTER VI : INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 53

(Insolvency and suspension of payments)

MEs which are the subject of insolvency or suspension of payments proceedings are to be subject to the national law of each Member State. However, the Regulation requires an entry to be made in the register of the state in which the ME has its registered office in the event of insolvency or suspension of payments and lists the particulars which the entry must contain.

TITLE II : FINAL PROVISIONS

Article 54

(Penalties)

This Article requires Member States to provide for appropriate penalties in the event of failure to comply with the Regulation.

The sanctions must be effective, proportionate and dissuasive.

Article 55

This Article provides that the Regulation is to enter into force on 1 January 1993.

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 1989¹; whereas the Economic and Social Committee gave its
opinion on that communication on 19 September 1990²;

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;

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.

Whereas the Statute for a European company, as provided for in Council 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 Council Regulation (EEC) No 2137/85⁴, does allow groupings to promote certain of their activities in common, while nevertheless preserving their independence, but it does not meet the specific requirements of mutual societies;

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

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

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

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

Whereas the essential aim of the legal rules governing the European mutual society implies that such a society may be set up by legal entities from different Member States, or by transformation of a national mutual society into the new form, without first being wound up, so long as the mutual society has its registered office and central administration in the Community and an establishment or subsidiary in a Member State other than

3 OJ No L

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

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;

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

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

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

Whereas the application of this Regulation must be deferred so as to enable each Member State to incorporate into its national law the provisions of Council Directive ... supplementing the Statute for a European mutual society with regard to the involvement of employees⁵ 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 Community⁶, 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 companies⁷, as last amended by Directives 90/604/EEC⁸ and 90/605/EEC⁹;
- Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts¹⁰, 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 documents¹¹;
- 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' duration¹²;
- 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 State¹³;

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.

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 institutions¹⁴;
- 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/EEC¹⁵;
- 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/EEC¹⁶.

Whereas this form of organization should be optional,

HAS ADOPTED THIS REGULATION:

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.

TITLE I : GENERAL PROVISIONS

CHAPTER I : FORMATION OF THE EUROPEAN MUTUAL SOCIETY

Article 1

(Form of the European mutual society)

1. Mutual societies may be formed throughout the Community in the form of a European mutual society (ME) on the conditions and in the manner set out in this Regulation. The name of an ME shall specify the nature of the activity engaged in, whether concerned with providence, insurance, health assistance, credit, or otherwise.
2. An ME:
 - shall guarantee its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorized by its statutes; and
 - shall not remunerate its managers or administrators, unless otherwise provided in its statutes.
3. An ME shall operate with a formation fund and reserves which shall serve exclusively to cover its debts.
4. An ME shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 8(3).
5. This Regulation does not prejudice the competence of each Member State to regulate access on its territory to the management of basic obligatory social security schemes as well as the operations of provident or assistance organizations the services of which will vary according to available resources and in which the contributions of members is determined by contract, as well as the carrying out of the activities and operations.

Article 2
(Formation)

1. An ME may be formed by:

(a) either any two or more of the legal entities which are listed in Annex I which are formed under the law of a Member State provided that at least two of them have their registered office and central administration in different Member States; in this case, the ME will be able to exercise all activities appropriate to a mutual society of the type of those mentioned in Article 1(1),

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

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

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

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

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

Article 3

(The statutes of the ME)

1. The statutes of the ME must include:
 - the name of the ME, specifying the nature of the activity engaged in, and preceded or followed by the abbreviation "ME";
 - a precise statement of the objects of the ME;
 - the name, objects and registered offices of the founder members, where these are legal entities;
 - the address of the ME's registered office;
 - the conditions and procedures for the admission, expulsion and resignation of members;
 - the rights and obligations of members and of the ME;
 - the subscriptions payable by natural or legal persons, and, where appropriate, provisions as to arrears;
 - the management structure;
 - the powers and responsibilities of each of the governing bodies of the ME;
 - provisions governing the appointment and removal of the members of the governing bodies;
 - the majority and quorum requirements;
 - a definition of the governing bodies, or members of those bodies, having authority to represent the ME in dealings with third parties;
 - the conditions for the initiation of proceedings on behalf of the ME under Article 42;
 - the grounds for winding up.

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

3. For the purposes of this Regulation a "member" of any ME means any legal person who took part in the foundation of the ME or who acquired membership later.

Article 4

(Formation fund)

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

Article 5

(Registered office)

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

Article 6

(Transfer of registered office)

1. The registered office of a ME may be transferred within the Community. Such transfer shall not result in the ME being wound up or in the creation of a new legal person.
2. Where the transfer of the registered office results in a change of the law applicable under Article 7(1)(b), a transfer proposal shall be published in accordance with Article 9.

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

3. The removal of the ME from the register for its previous registered office may not be effected until evidence has been produced that the ME has been registered in the register for its new registered office.
4. The fact of the new registration and the fact of the removal of the old registration shall both be published in the Member States concerned in accordance with Article 9.
5. The new registration of the registered office of the ME may be relied on as against third parties from publication. However, until the removal of the ME from the register for its previous registered office has been published third parties may continue to rely on the old registered office unless the ME proves that such third parties were aware of the new registered office.

Article 7

(Applicable law)

1. An ME shall be governed:
 - (a) - by the provisions of this Regulation;
 - where expressly authorized by this Regulation, by the provisions freely determined by the parties in the statutes of the ME;
 - failing this:
 - (b) - by the provisions of the law of the Member State in which the ME has its registered office governing domestic mutual societies engaging in comparable activities;
 - by the provisions freely determined by the parties in the statutes of the ME, in accordance with the same conditions as for mutual societies engaging in comparable activities and governed by the law of the Member State in which the ME has its registered office.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under point (b) of paragraph 1.
3. In each Member State and subject to the express provisions of this Regulation, an ME shall have the same rights, powers and obligations as a mutual society formed under the law of the State in which the ME has its registered office.
4. The following shall apply to an ME:
 - the provisions of Community law and national law adopted in conformity with them,
and
 - in the absence of community legislation, national provisions regulating access or the exercise of certain activities such as credit or insurance.

Article 8

(Registration and disclosure requirements)

1. The founder members shall draw up the statutes of the ME in accordance with the provisions for the formation of mutual societies laid down by the law of the State in which the ME has its registered office. The statutes must at least be in writing and signed by the founder members.
2. In those Member States whose legislation does not provide for any precautionary supervision, whether administrative or judicial, at the time of formation, the statutes shall be adopted by notarial act. The supervisory authority shall seek to ensure that this act complies with the requirements for the formation of an ME, and in particular those set out in Articles 1, 2, 3 and 5.

3. Member States shall designate the register in which MEs must be registered and shall determine the rules governing it. They shall lay down the procedures for filing the ME's statutes. No ME may be registered until the measures required by 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 sixteenth 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 Official Publications Office 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 under Article 9(1).

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

Article 11

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

Letters and documents sent to third parties shall state legibly:

- (a) the name of the ME, preceded or followed by the abbreviation "ME";

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

CHAPTER II : GENERAL MEETING

Article 12

(Competence)

The general meeting shall decide on:

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

Article 13

(Holding of general meeting)

1. A general meeting shall be held at least once a year, not later than six months after the end of the ME's financial year.
2. General meetings may be convened at any time by the management board or the administrative board. The management board is bound to convene the general meeting at the request of the supervisory board.

3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and of the appropriation of the profit or treatment of the loss and the approval of the annual report referred to in Article 46 of Directive 78/660/EEC, to be submitted by the management or administrative board.
4. The statutes of an ME with a management board and a supervisory board may provide that a decision on approval of the annual accounts is to be taken jointly by the two boards, in separate votes, and that the general meeting is to pass a resolution only if the boards are unable to reach agreement.

Article 14

(Meeting called by a minority of members)

1. Not less than 25% of the members of the ME, which proportion may be reduced by the statutes, may request that the general meeting be convened and its agenda set.
2. The request for a meeting shall give the reasons for convening it and the items to be included on the agenda.
3. If, following a request made under paragraph 1, the necessary steps have not been taken within one month, the court or competent authority within the State where the ME's registered office is situated may order the convening of a general meeting or authorize either the members who have requested it or their representative to convene the meeting.
4. A general meeting may during a meeting decide that a further meeting be convened and set the date and the agenda.

Article 15

(Notice of meeting)

1. The general meeting shall be convened:
 - by a notice published in the national gazette appointed by the Member State in which the ME has its registered office in accordance with Article 3(4) of Directive 68/151/EEC;
 - by a notice published in one or more newspapers with a large circulation in the Member States;
 - or by a notice in writing sent to every member of the ME by any available means.

2. The notice calling the general meeting shall contain the following particulars, at least:
 - the name and the registered office of the ME;
 - the place and date of the meeting;
 - the type of general meeting (ordinary, extraordinary or special);
 - a statement of the formalities, if any, prescribed by the rules for attendance at the general meeting and for the exercise of the right to vote;
 - the agenda, showing the subjects to be discussed and the proposals for resolutions.

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

Article 16

(Addition of items to the agenda)

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

Article 17

(Attendance and proxies)

1. Only members shall be entitled to speak and vote at the general meeting.
2. Persons entitled to vote shall be entitled to appoint a proxy to represent them at the general meeting in accordance with procedures to be laid down in the statutes.
3. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

Article 18

(Sectional meetings)

Where the ME has several establishments, or where its activities span more than one territorial unit, the statutes may provide for the holding of sectional meetings to consider the same agenda separately before the general meeting is held. These meetings shall elect delegates, who shall in their turn be convened as the 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 19

(Right to information)

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

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

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

Article 20

(Voting rights)

Each member of the ME shall have one vote.

Article 21

(Normal majority)

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

Article 22

(Special majority)

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

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

Article 23

(Actions to have resolutions of general meeting declared void)

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

- an action for such a declaration may be brought by any member provided he can show that he has an interest in having the infringed provision observed;
- the action for such a declaration shall be brought within three months, before the court within whose jurisdiction the ME has its registered office; the procedure in the action shall be governed by the law of the State in which the ME has its registered office;

- having heard the ME, the court may suspend application of the contested resolution; it may also require the applicant to lodge security for the damage which may result from the suspension of application of the resolution, if the application is ultimately dismissed as inadmissible or unfounded; judgments declaring a resolution void or ordering that its application be suspended shall be effective erga omnes, without prejudice to claims on the ME acquired in good faith by third parties.

Article 24

(Disclosure of decisions of a court)

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

CHAPTER III : MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

Article 25

(Structure)

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

SECTION I: TWO-TIER SYSTEM

SUBSECTION 1: MANAGEMENT BOARD

Article 26

(Functions of the management board; appointment of members)

1. The management board shall manage the ME. The member or members of the management board shall have the power to represent the ME in dealings with third parties and in legal proceedings in accordance with the measures adopted pursuant to Directive 68/151/EEC by the Member State in which the ME has its registered office.
2. The member or members of the management board shall be appointed and removed by the supervisory board.
3. No person may at the same time be a member of the management board and of the supervisory board.

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

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

Article 27

(Chairmanship, convening of meetings)

1. The statutes may provide that the management board is to elect a chairman from among its members.
2. Meetings of the management board shall be convened in accordance with the statutes of the ME or the rules of procedure of the board. In any event any member of the board may convene a meeting where urgency requires, stating his reasons.

SUBSECTION 2: SUPERVISORY BOARD

Article 28

(Functions of the supervisory board; appointment of members)

1. The supervisory board shall supervise the duties performed by the management board. It may not itself exercise the power to manage the ME. The supervisory board may not represent the ME in dealings with third parties. It shall represent the ME in dealings with members of the management board, or one of them, in respect of litigation or the conclusion of contracts.
2. The members of the supervisory board shall be appointed and removed by the general meeting. However, the members of the first supervisory board may be appointed in the statutes. This provision shall apply without prejudice to national law permitting a minority of shareholders to appoint some of the members of a board.
3. The number of members of the supervisory board shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory board for MEs registered in its territory.

Article 29

(Right to information)

1. The management board shall report to the supervisory board at least once every three months on the state and foreseeable prospects of the ME's affairs, taking particular account of any information relating to undertakings controlled by the ME that may significantly affect those affairs.
2. The management board shall communicate to the supervisory board without delay any information which may have an appreciable effect on the ME.

3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the ME.
4. The supervisory board may undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to carry out this task and may call in the help of experts.
5. Each member of the supervisory board shall be entitled to examine all information communicated by the management board to the supervisory board.

Article 30

(Chairmanship, calling of meetings)

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

SECTION II: THE ONE-TIER SYSTEM

Article 31

(Functions of the administrative board; appointment of members)

1. The administrative board shall manage the ME. The member or members of the administrative board shall have the power to represent the ME in dealings with third parties and in legal proceedings in accordance with the measures adopted pursuant to Directive 68/151/EEC by the Member State in which the ME has its registered office.

2. The administrative board shall have at least three members within limits fixed by the statutes.
3. The administrative board may delegate to one or more of its members the power of management. It may also delegate certain management responsibilities to one or more persons not members of the board; such management responsibilities may be revoked at any time. The statutes or if the statutes are silent the general meeting shall lay down the conditions within which such delegation shall operate.
4. The member or members of the administrative board shall be appointed and removed by the general meeting.

Article 32

(Holding of meetings and right to information)

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

Article 33

(Chairmanship, calling of meetings)

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

SECTION III: RULES COMMON TO THE ONE-TIER AND TWO-TIER BOARD SYSTEMS

Article 34

(Term of office)

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

Article 35

(Conditions of membership)

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

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

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

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

Article 36

(Rules of procedure)

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

Article 37

(Power of representation; liability of the ME)

1. Where the authority to represent the ME in dealings with third parties, in accordance with Articles 26(1) and 31(1), is conferred on two or more members of governing bodies, those persons shall exercise that authority collectively.
2. However, the statutes of the ME may provide that the ME shall be validly bound either by each of the members acting individually or by two or more of them acting jointly. Such a clause may be relied upon against third parties where it has been disclosed in accordance with Article 9.

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

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

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

Article 38

(Operations requiring authorization)

1. The following operations shall require the authorization of the supervisory board or the deliberation of the administrative board:
 - (a) closing or transferring a large establishment or a substantial part of such an establishment;
 - (b) substantially reducing, extending or altering the activities of the ME;
 - (c) making substantial organizational changes within the ME;
 - (d) establishing cooperation with other legal entities which is both long-term and of importance to the activities of the ME, or terminating such cooperation,
 - (e) raising loans in respect of operations in excess of the ceiling laid down in the statutes, issuing securities and assuming or guaranteeing liabilities of a third party.

2. The statutes of the ME may provide that paragraph 1 shall also apply to other operations.
3. A Member State may determine the categories of operation referred to in paragraph 1 for MEs registered in its territory under the same conditions as those applying to mutual societies governed by the law of that State.
4. A Member State may provide that the supervisory or administrative board of MEs registered in its territory may itself make certain categories of operation subject to authorization or deliberation under the same conditions as those applying to mutual societies governed by the law of that state.

Article 39

(Rights and obligations)

1. Within the scope of the functions attributed to them by this Regulation each of the members of a board shall have the same rights and obligations as the other members of the board of which he is a member.
2. All board members shall carry out their functions in the interests of the ME, having regard in particular to the interests of the members and the employees.
3. All board members shall exercise a proper discretion, even after they have ceased to hold office, in respect of information of a confidential nature concerning the ME.

Article 40

(Conduct of business on boards)

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

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

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

Article 41

(Civil liability)

1. Members of the management, supervisory or administrative board shall be liable for loss or damage sustained by the ME as a result of breach of the obligations 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 ME; 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 42

(Proceedings on behalf of the ME)

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

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

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

Article 43

(Limitation of actions)

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

CHAPTER IV : FINANCING, ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

Article 44

(Financing)

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

Article 45

(Preparation of annual accounts and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and disclosure, the ME shall be subject to the measures adopted in the State in which it has its registered office under Directives 78/660/EEC and 83/349/EEC.
2. The ME may draw up its annual accounts, and its consolidated accounts if any, in ECUs. In this event the bases of conversion used to express in ECUs those items included in the accounts which are or were originally expressed in another currency must be disclosed in the notes to the accounts.

Article 46

(Auditing)

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

Article 47

(Disclosure of accounts)

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

Article 48

(Credit or financial institutions and insurance undertakings)

MEs which are credit or financial institutions or insurance undertakings shall comply, as regards the drawing-up, auditing and disclosure of annual accounts and consolidated accounts, with the rules laid down by the measures adopted in the Member State in which the ME has its registered office pursuant to Directive 86/635/EEC or, as the case may be, pursuant to Council Directive [on the annual accounts and consolidated accounts of insurance undertakings]¹⁷.

CHAPTER V : WINDING UP AND LIQUIDATION

SECTION I: WINDING UP

Article 49

(Winding up by the general meeting)

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

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

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

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

The general meeting shall decide:

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

Article 50

(Winding up by the court)

On an application by any person concerned or any competent authority, the court of the place where the ME has its registered office must order it to be wound up where it finds that the registered office has been transferred outside the Community, or that the ME's activities are being carried on contrary to public policy in the Member State in which the ME has its registered office, or in breach of Articles 1, 2(1) or 4.

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

SECTION II: LIQUIDATION

Article 51

(Liquidation)

1. The winding up of an ME shall entail its liquidation.
2. The liquidation of an ME and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office.
3. An ME in liquidation shall continue to have legal personality until the conclusion of the liquidation.
4. Following the liquidation, the books and records relating to the liquidation shall be lodged at the register referred to in Article 8(3). Any interested party may examine such books and records.

Article 52

(Distribution)

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

CHAPTER VI : INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 53

(Insolvency and suspension of payments)

1. The ME shall be subject to the law of the State in which it has its registered office in respect of insolvency and suspension of payments.
2. The opening of insolvency or suspension of payments proceedings shall be notified by the person appointed to conduct the proceedings for entry in the register referred to in Article 8(3). The entry in the register shall show the following:
 - (a) the nature of the proceedings, the date of the order, and the court making it;
 - (b) the date on which payments were suspended, if the court order provides for this;
 - (c) the name and address of the administrator, trustee, receiver, liquidator or any other person having power to conduct the proceedings, or of each of them where there are more than one;
 - (d) any other information considered necessary.

3. Where a court finally dismisses an application for the opening of the proceedings referred to in paragraph 2 owing to want of sufficient assets, it shall, either of its own motion or on application by any interested party, order its decision to be noted in the register referred to in Article 8(3).
4. Particulars registered pursuant to paragraphs 2 and 3 shall be disclosed in the manner referred to in Article 9.

TITLE II : FINAL PROVISIONS

Article 54

(Penalties)

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

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

Article 55

This Regulation shall enter into force on 1 January 1993.

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

Done at Brussels,

For the Council
The President

ANNEX 1: LEGAL ENTITIES MENTIONED IN ARTICLE 2(1)(a)

- for Belgium

Association of mutual insurance, coming under Article 2 of the law of 11 June 1874 on insurance and Article 11 of the law of 9 July 1975 on the control of insurance enterprises

Cooperative societies coming under Articles 141 to 164 of the consolidated law on commercial companies as it affects cooperative societies

- for Denmark

Fortsættelsessygekasse

Gensidige selskaber

- for Germany

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

- for France

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

Mutual insurance societies coming under the Code des Assurances

Caisse de Mutualité Agricole, regulated by the Code Rural

- for Ireland

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

Companies limited by guarantee

Societies registered under the Industrial and Provident Societies Acts

Societies registered under the Friendly Societies Acts

- for Italy

Mutuals coming under the law of 15 April 1886

Cooperative societies, coming under Section VI of the Civil Code relating to cooperative and mutual societies as well as the cooperatives and mutuals covered by legislation or regulations for certain categories

- for Luxembourg

Societies of mutual assistance and mutuals coming under the law of 7 July 1961 and Grand Duchy Regulation of 31 July 1961

Associations of mutual insurance coming under Article 2 of the law of 16 May 1891

- for the Netherlands

Entities coming under Section 3 "association" (vereniging) of the second Book of BW 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

Allelaspalistikos 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 2: 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

Fortsættelsessygekasse

- for France

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

- for Ireland

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

- for Italy

Mutuals coming under the law of 15 April 1886

- For Luxembourg

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

- for the Netherlands

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

- for Greece

Entities coming under the law for mutuals

- for Spain

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

- for Portugal

Mutualidades, Associações Mutualistas coming under the decree-law No
72/90 of 3 Marchg 1990/90 du 3/03/1990

EXPLANATORY MEMORANDUM ON THE COUNCIL
DIRECTIVE SUPPLEMENTING THE STATUTE FOR A
EUROPEAN MUTUAL SOCIETY WITH REGARD TO THE INVOLVEMENT
OF EMPLOYEES

The present Directive fits into the wider framework of the policy of promoting the economic and social objectives of the Community. Its rationale is that employees should be able to take part in shaping the strategies of European mutual societies (CMEs).

The Directive has been drafted along the lines of the Directive supplementing the statute for a European company (SE) with regard to the involvement of employees in order to avoid any distortion as between the CME and the SE. However, in view of the nature of the CME a simplified procedure is provided for which consists in:

- referring to national provisions concerning employee participation in those Member States where they exist and if the Member State concerned wishes to apply them;
- harmonizing the arrangements concerning the informing and consulting of employees, notably as regards the minimum areas covered.

Article 1

The 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 mutual society. According to Article 8 of the Regulation on the statute for a CME, no CME may be registered until the provisions of this Directive have been adopted. The choice of a participation model and/or of information and consultation arrangements is an essential precondition for registration of a CME.

Member States must incorporate the Directive's provisions in their law.

TITLE I: PARTICIPATION

Article 2

The Directive refers to national provisions concerning the participation of employees in the supervisory or administrative boards of national mutuals.

If the Member State in which the CME has its registered office has no rules on the participation of employees or does not wish to apply such rules to the CME, it must nevertheless comply with the minimum requirements of the succeeding articles as regards the informing and consulting of employees.

TITLE II: INFORMATION AND CONSULTATION ARRANGEMENTS

Article 3

This Article describes the procedure to be followed for the adoption by the management boards or administrative boards of founder entities and the representatives of the employees of those entities of information and consultation arrangements.

If the employee's representatives do not agree with the proposed arrangements, they have to submit their reasons in writing to the general meeting called to approve the formation of the CME.

Paragraph 5 states that the arrangements chosen before the CME is formed can be amended. Any amendment has to be decided on by mutual consent.

Paragraph 6 stipulates that the same procedure as that described in paragraph 1 has to be followed in the case of the formation of a CME by conversion.

Paragraph 7 prevents the transfer of the registered office of a CME to another Member State from depriving employees of the information and consultation arrangements from which they benefit. Such a change may be effected only in accordance with the procedure laid down in this Article.

Article 4

This Article states that the management board and/or the administrative board of the CME must inform and consult the employees of that entity in good time and determines in which areas at least information and consultation are required.

It also governs the informing and consulting of employees by the management board or administrative board of the CME prior to registration and provides that the employees are to be represented within a separate committee 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.

The management board or administrative board has to inform and consult the employees on conditions of employment, on documents submitted to the general meeting and on the operations referred to in Article 37 of the Regulation on the Statute for a CME, as soon as a proposal is likely to affect the employees' interests.

Attention is drawn to the applicability of Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies and of Directive 77/187/EEC of 14 February 1977 on the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

The Directive authorizes the parties to the negotiations to introduce a simplified procedure, but one in conformity with the requirements of paragraph 1, when the total number of employees - at the registered office and in the various establishments - is less than 50. This threshold has been laid down in the light of existing practices in the Member States and is the same as that in Article 2(5) of Council Directive 75/129/EEC, as amended by Directive .../EEC. Its aim is to avoid cumbersome procedures in small mutuals.

Article 5

While referring to the practices and laws in force in the Member States, this Article lays down certain basic principles concerning election procedures and the performance by elected representatives of their functions.

The point to note is that the representatives of the employees of the CME are elected (and not appointed) and represent the employees of all the establishments, plants and facilities of the CME in the various Member States in which they are located, even if they are employed only part-time.

<p><u>TITLE III: FINAL PROVISIONS</u></p>

Articles 6 and 7

These final provisions will enter into force on 1 January 1993, the date on which the Member States are to communicate to the Commission the provisions of national law which they will have adopted in the field covered by the Directive. Article 7 points out that the Directive is addressed to the Member States.

Proposal for a
COUNCIL DIRECTIVE

supplementing the Statute for a European mutual society
with regard to the involvement of employees

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, Council Regulation (EEC) No ...¹ establishes a Statute for a
European mutual society (ME);

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;

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 redundancies², as amended by Directive ...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 businesses⁴, 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 employees⁵;

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;

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, 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;

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

3 COM(91) 292, 15.7.1991.

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

5 COM(90) 581 final.

Whereas the information and consultation committee or any other alternative body must be informed and consulted about activities and strategies 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 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 ... [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 a 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 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.
3. 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.

4. 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.
5. 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.
6. 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].
7. 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 in accordance with the procedure laid down in this Article. The parties to the negotiations shall be the management board or the administrative board of the ME and the 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:
 - (a) any proposals which might significantly affect the interests of the employees of the ME, 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].

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.

A Member State may restrict this choice in the case of MEs having their registered office in its territory.

3. In a 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.

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 1993. 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
The President

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