



European Communities

EUROPEAN PARLIAMENT**SESSION DOCUMENTS**

English Edition

20 November 1990

A3-0312/90

R E P O R T

of the Committee on Legal Affairs and Citizens' Rights

on a statute for a European cooperative society and other undertakings in the mutual sector in general

Rapporteur: Mrs Marie-Claude VAYSSADE

DOC_EN\RR\99536

PE 141.359/fin.

Or. Fr.

A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

*	= Consultation procedure requiring a single reading
---	---

**II	= Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment
------	---

**I	= Cooperation procedure (first reading)
-----	---

***	= Parliamentary assent which requires the votes of a majority of the current Members of Parliament
-----	--

C O N T E N T S

	<u>Page</u>
Procedural page	3
A. MOTION FOR A RESOLUTION	4
B. EXPLANATORY STATEMENT	6
<u>Annex I</u> : Motion for a resolution (B3-0254/90) by Mr ARBELOA MURU and others on a statute for a European cooperative society	

At the sitting of 2 April 1990 the President of the European Parliament announced that he had forwarded the motion for a resolution by Mr Arbeloa Muru and others on a statute for a European Cooperative Society (B3-254/90), pursuant to Rule 63 of the Rules of Procedure, to the Committee on Legal Affairs and Citizens' Rights as the committee responsible.

At its meeting of 18 April 1990 the committee decided to draw up a report and appointed Mrs Vayssade rapporteur.

At its meeting of 26, 27 and 28 September 1990, the committee held an initial exchange of views, following an introduction by the rapporteur.

At its meetings of 15 and 16 October and 30 and 31 October 1990, it considered the draft report.

At the latter meeting, it adopted the motion for a resolution unanimously.

The following were present for the vote: Graf Stauffenberg, chairman; Vayssade, first vice-chairman and rapporteur; Fontaine, Janssen van Raay, Garcia Amigo, Gollnisch, Grund, Marques Mendes, Mebrak-Zaïdi, Medina Ortega, Schlechter and Wijsenbeek.

The report was tabled on 16 November 1990.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

MOTION FOR A RESOLUTION

on a statute for a European cooperative society and other undertakings
in the mutual sector in general

The European Parliament,

- having regard to the motion for a resolution by Mr Arbeloa Muru and others, pursuant to Rule 63 of the Rules of Procedure, on a statute for a European Cooperative Society (B3-254/90),
 - having regard to the Commission's communication to the Council of 18 December 1989 on businesses in the 'économie sociale' sector: Europe's frontier-free market (SEC(89) 2187 final),
 - having regard to the opinion of the Economic and Social Committee of 19 September 1990 (ESC 1046/90),
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights (A3-0312/90),
- A. whereas the importance of the mutual and cooperative sector in economic and social activity in the Community has already been emphasized in earlier reports by Parliament, as in its resolutions on cooperatives in the European Community (I-849/82)¹ and on non-profit-making associations in the European Communities (A2-196/86)²,
- B. viewing with considerable interest the Commission's efforts to tackle all the complex aspects of the mutual, cooperative and non-profit sector in its communication to the Council of 18 December 1989 on businesses in the 'économie sociale' sector and Europe's frontier-free market (SEC(89) 2187 final), an important consultative document that should be used as the basis for any adequate assessment of the legal framework currently provided for mutual sector enterprises by Community legislation,
- C. whereas the Community's development towards a single market, to be created by 1993 at the latest, will present a challenge to these enterprises, which, considered as a whole, have a substantial impact on economic and social activity in all the Member States and consequently should be given the means of facilitating their access to the large market and cooperation across the Community's internal frontiers,
1. Notes that, although Community legislation on company law has made progress in several areas and offers mutual and cooperative enterprises several opportunities in respect of freedom of establishment and provision of services, it is nevertheless a body of legislation of which mutual sector enterprises can make only occasional and partial use, generally on a subsidiary basis;

¹ OJ No. C 128, 16.5.1983, p. 51

² OJ No. C 99, 13.4.1987, p. 205

2. Considers - in view of these undertakings' involvement in widely varying spheres of economic activity - that this arrangement is not sufficient to ensure that these companies will remain competitive on the Community market in the medium and long term;
3. Considers also that there is a risk that reliance on the company legislation already in force will cause them to lose their identity, which is largely defined by basic principles such as the voluntary association of persons resolved to give priority to a common objective, democratic management structures on the basis of maximum participation and the principles of 'one person, one vote' and of solidarity;
4. Notes the importance, but also the limitations, of the European Economic Interest Grouping (EEIG), set up under Council Regulation No. 2137/85 of 25 July 1985³, with regard to its impact on international cooperation between Community undertakings;
5. Believes that the formulation of an optional legal instrument to facilitate mergers or the creation of holdings or joint subsidiaries between mutual sector undertakings is the most appropriate means of allowing these companies to retain their individuality and their competitiveness in a frontier-free market;
6. Therefore calls again on the Commission to draft one or more regulations on statutes with due regard to the specific characteristics of every type of company found in the mutual sector, according to a timescale that will allow their entry into force in the most appropriate conditions, in the light of progress towards the completed internal market, and, in any case, at the latest at the same time as the regulation on the Statute for a European Company⁴ and in accordance with the guidelines put forward by the Economic and Social Committee;
7. Considers with interest the draft statutes already drawn up by cooperative, mutual and non-profit organizations and notes the Commission's intention to take them into consideration;
8. Also calls for a directive on the role of workers in mutual sector undertakings;
9. Also calls on the Commission to ensure that the Economic and Social Committee is closely involved in drawing up such legislation;
10. Instructs its President to forward this resolution to the Commission and Council.

³ OJ No. L 199, 31.7.1985, p. 1

⁴ OJ No. C 263, 16.10.1989, p. 41

B

EXPLANATORY STATEMENT

1. INTRODUCTION

1. The report tackles a question that has already been considered by Parliament from various angles. Because of their economic and social importance, cooperatives will no longer be able to remain outside the Community institutions' scrutiny for much longer, particularly in view of the creation of the internal market in 1993. Parliament can congratulate itself on having given an impetus to highlighting the importance of these undertakings and having worked towards their becoming a 'permanent discussion partner on all economic and social subjects'⁵. The honours can be claimed by Mr Mihr's report, on behalf of the Committee on Economic and Monetary Affairs, on cooperatives in the European Community (1-849/82), which contained the resolution adopted by Parliament on 13 April 1983⁶. According to a major study by the Economic and Social Committee⁷, this report 'constitutes a milestone in the history of relations between the Community bodies and the European cooperative movement'⁸.

2. The resolution of 13 April 1983, however, was not so far-reaching as the rapporteur had wished. One of the suggestions that he put forward, but which was not taken up, was the drawing up of a European statute for cooperatives. Mr Arbeloa Muru and others made an effort to fill this omission in their motion for a resolution (B3-254/90), which is at the origin of this Legal Affairs Committee report. The resolution 'calls on the Commission to draw up, in collaboration with the Coordinating Committee of EC Cooperative Associations, a draft directive on a Statute for a European Cooperative Society based on the provisions laid down by Community law for legal persons'. This objective can at least be considered to be in conformity with the provisions of Article 58(2) of the EEC Treaty.

3. The impetus given by Parliament, particularly via its resolution on cooperatives of 13 April 1983, has created its own momentum, going beyond cooperatives per se to cover a much wider spectrum of organizations such as mutual and non-profit-making bodies. This trend reveals the importance of the whole sector for economic and social activity in the Community. Here, the study by the Economic and Social Committee⁹, mentioned above, is highly significant. Meanwhile, the Commission, in view of the special characteristics of what may conveniently be described as mutual sector undertakings, undertook in its programme of work at the beginning of 1989 to 'initiate reflections on the various elements of the mutual/cooperative sector (associations, mutual bodies, cooperatives) while seeking to pinpoint the impact and opportunities created for them by a frontier-free Europe'¹⁰. It

⁵ See below

⁶ See OJ No. C 128, 16.5.1983, p. 51

⁷ The cooperative, mutual and non-profit sector and its organizations in the European Community, Office for Official Publications of the European Communities, Brussels 1986

⁸ Ibid, p. 9

⁹ See footnote 7 above

¹⁰ Bulletin of the European Communities, Supplement 2/1989, p. 47

was with this in mind that, on 18 December 1989, the Commission presented a communication to the Council entitled 'Businesses in the 'économie sociale' sector: Europe's frontier-free market'(SEC(89) 2187 final). One of its objectives was to '[adumbrate] the framework for Community action to ensure that enterprises in this sector enjoy access to the frontier-free market on the same footing as other enterprises'¹¹. This was also your rapporteur's starting point, in view of the value of an approach that covers all mutual sector undertakings, and she suggested widening the scope of her investigation, to consider possibilities and solutions for the sector as a whole. The Committee on Legal Affairs and Citizens' Rights approved this line of approach.

4. Before tackling the substance of the question, it would be useful to stress the current interest in mutual sector companies at the highest Community levels. In November 1989 a symposium on the 'European rendez-vous with the social economy' was held in Paris under the auspices of the French Presidency. The second 'rendez-vous' will take place in Rome from 13 to 15 November 1990 under the auspices of the Italian Presidency. Thus this is a generalized movement that reveals the importance of the mutual/cooperative sector in a frontier-free Europe.

II. MUTUAL SECTOR UNDERTAKINGS AND COMMUNITY LAW

5. Community law as derived from the EEC Treaty offers the necessary foundation for the development of legislation specifically for mutual sector undertakings. Article 58(2) of the EEC Treaty states that 'companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making'. Consequently, as already stated by the Legal Affairs Committee in delivering its opinion on Mr Mihr's report (1-849/82), 'Article 54(3)(g) of the EEC Treaty, which deals with the right of establishment of companies or firms, constitutes a fundamental legal basis in that it provides for the coordination of the safeguards required of companies or firms in the Member States for the protection of the interests of members and others'.

6. Despite this, the only moves towards Community legislation to bring national law into line have been aimed at limited liability companies. Considerable effort has been put into the harmonization of public limited liability companies by means of a series of directives or proposals for directives based on Article 54(3)(g) of the EEC Treaty. The Community bodies are currently studying Commission proposals for a statute for a European company and for complementing this statute with regard to the involvement of employees¹². Once these instruments are adopted and put into effect, they will considerably facilitate cross-frontier cooperation between European firms by means of a body henceforth subject to Community law alone.

¹¹ Communication from the Commission SEC (89) 2187 final , p. 2

¹² Proposal for a regulation on the Statute for a European company and proposal for a directive complementing the statute for a European company with regard to the involvement of employees in the European company (C3-143/89 - COM(89) 268 final - SYN 218 and SYN 219; see also OJ No. C 263, 16.10.1989, p. 41 and p. 69)

7. In the advanced stage reached by harmonization of limited liability company law in the Community, the question now arises of the place to be occupied by cooperative, mutual and non-profit bodies in the European frontier-free market. To appreciate these companies' leading economic role in the Communities, it is only necessary to cite a significant passage from the opinion - currently under examination - that the Economic and Social Committee is preparing to deliver to the Commission on its communication on businesses in the 'économie sociale' sector (SEC (89) 2187 final). It is revealing: 'One cannot ignore the cooperatives which, with their 63 million members, notch up an annual turnover of more than 370 000 million ECUs, nor the mutual provident funds with 47 million members and an annual turnover of 22 000 million ECUs, the 25 million families covered by insurance mutuals and cooperatives (turnover 40 000 million ECUs), the 10 million members of jointly managed provident institutions (turnover 2 500 million ECUs), or the 40 million members and 3 million employees who keep the non-profit bodies in business'¹³.

8. Company law as laid down in Community directives covers the mutual sector in only a very piecemeal fashion¹⁴. The reason is the distinctive identity of the firms that come into this category, due to the general principles on which they operate. They have a number of common characteristics:

- a voluntary association of natural or legal persons who have decided to give priority to a common objective;
- the sharing of responsibilities and consequently of power is based on the concept of maximum participation: in terms of voting rights this is expressed by the principle 'one man, one vote', whatever the contribution (in capital, in kind or in past activity);
- the satisfaction of members' needs is a priority and it is on this basis that the allocation of surpluses is decided (principle of solidarity); as a result, no priority is given to a maximum capital return or to capital gain;
- the ownership of cooperatives and mutual and non-profit associations is not necessarily linked to the possession of shares or holdings; in the case of cooperatives (where in theory shareholders have no rights over the assets other than the value of the shares) there are specific provisions defining the relationship between shares and ownership; in the case of mutual and non-profit associations the relationship does not exist by definition.

9. Depending on the Community country, mutual third sector undertakings take very different legal forms, usually in response to particular considerations and following national tradition. This is all the more understandable in that these undertakings cover a very wide and varied field of activities: the favourites being food distribution, fisheries, agriculture, commercial and non-commercial services and financial services. Because of this diversity it would be difficult to elaborate a comprehensive approach, on identical terms, to such businesses. It is very significant, for instance, that most

¹³ Economic and Social Committee, Revised Draft Opinion of the Section for Industry, Commerce, Crafts and Services, rapporteur: Mr Ramaekers, ECS 451/90 rev. 2, Brussels, 9 August 1990

¹⁴ See paragraph 9 below

cooperatives are limited companies governed by private law on commercial companies¹⁵. Nevertheless, in view of their distinctive identity, Community legislation has given the Member States the option of not applying certain company law directives to cooperatives that are however incorporated as public limited companies¹⁶. This is just one example of the inadequacy of Community company law legislation in regulating and facilitating cross-frontier cooperation between mutual sector companies.

10. Although this distinctive identity, on which mutual sector undertakings can pride themselves, coupled with the enormous diversity of their legal forms, is a strength, indicating extreme adaptability to the requirements of economic and social activity, there is a risk that it will continue to inspire regular calls for exclusion and fuel arguments that, under pretext of lauding the distinctive identity of these undertakings, will ultimately leave them without a legal framework or even an appropriate legal instrument capable of allowing them to face the demands of the large European market. The question has become topical in recent years and a widespread debate to find possible solutions is under way. However, time is running out and any indecision would be regrettable to say the least. The Commission, in its notable communication from which we have already quoted extensively, has made a creditable effort to present the alternatives clearly. There are two possibilities: either existing instruments can be used as a starting point, by adapting them if possible, or consideration can be given to 'the feasibility of a European model legal form for unincorporated businesses that could govern mergers and the creation of holding companies or joint subsidiaries in this sector, and whether it should be a single model or several'¹⁷.

III. A LEGAL FRAMEWORK FOR THE MUTUAL/COOPERATIVE SECTOR

11. The two possible solutions referred to in the previous paragraph have been thoroughly investigated by the Commission in a working paper attached to its communication on 'économie sociale businesses' (SEC (89) 2187 final). On the basis of this working paper, which aims to define the Community's role with regard to mutual and cooperative undertakings, the Commission draws its own conclusions, which may be summarized as follows:

- (a) in the Commission's view, provided that the Treaty and current directives are applied, 'mutual/cooperative enterprises of whatever legal form are not encountering obstacles to their freedom to provide services. Unless the contrary is shown to be the case, there is no need for specific instruments on this question'¹⁸;

¹⁵ Communication from the Commission to the Council, SEC (89) 2187 final, Annex, p. 17

¹⁶ This is the case in the:

- second directive (77/91/EEC), 13.12.1976, Article 1(2) (OJ No. L 26, 31.1.1977, p. 1
- third directive (78/855/EEC), 9.10.1978, Article 1(2) (OJ No. L 295, 20.10.1978, p. 36)
- sixth directive (82/891/EEC), 17.12.1982, Article 1(4) (OJ No. L 378, 31.12.1982)

¹⁷ Communication from the Commission, SEC (89) 2187 final, p. 12

¹⁸ Communication from the Commission, SEC (89) 2187 final, p. 11

- (b) to this end, it states its intention of publishing 'in the Official Journal of the European Communities a communication on the interpretation of the second paragraph of Article 58 in order to define the scope of that Article in respect of all cooperative, mutual and non-profit-organizations engaging in economic activity'¹⁹; behind this reasoning is the latent idea that a distinction should be made, depending on whether the associations concerned are engaged in an economic activity (see communication from the Commission, p. 12);
- (c) it 'would draw the attention of enterprises in the cooperative, mutual and non-profit sector and their representatives to the advantages of the European Economic Interest Grouping (EEIG)'²⁰;
- (d) it admits - implicitly but not unequivocally - that the draft statute for a European company currently before Parliament cannot be used as an instrument of cooperation for most such undertakings, which, though they pursue an economic activity, are not in the form of a public limited company (mutual societies, certain non-profit associations and certain cooperatives);
- (e) it notes that there is some demand, by the companies referred to in (d), for 'an instrument which would facilitate grouping operations, in conditions similar to those which would be available to public limited companies under the European company proposal'²¹;
- (f) it 'notes that the proposal as it now stands makes no allowance for this need, given the extreme diversity of legal forms from one country to another'²²;
- (g) nevertheless, it 'undertakes to examine the conditions that would permit merger operations and the formation of holding companies or joint subsidiaries by the types of business into which most enterprises in the sector fall that are not public limited companies, without at this stage pronouncing on the type of instrument necessary (single legal model or several), or whether it should be restricted to the mutual/cooperative sector'²³.

12. From the Commission's conclusions, it may be assumed, that, at a first stage at least, mutual sector undertakings could make use of already existing instruments to promote their activities in the European market. This is the thrust of the conclusions reached in 11(a) and (b) above. The same applies to the possibility of cooperatives in the form of limited public companies using the current draft statute for a European company to set up European companies in each of the forms envisaged: mergers, holdings and joint subsidiaries. Naturally, mutual and non-profit associations and certain cooperatives - particularly cooperatives sui generis, e.g. certain production cooperatives, would also have the option of making use of this text but only for the creation of joint subsidiaries, the only method of creating a European company open to all legal entities, not only public limited companies.

¹⁹ Ibid, p. 11

²⁰ Idem

²¹ Ibid, p. 12

²² Idem

²³ Idem

13. While this may sound well in theory, in your rapporteur's view, more is required in practice. It overlooks a major consideration - the distinctive identity of mutual and cooperative undertakings, as was described above²⁴. The problem does not lie in gaining access to the European market through different forms of cooperation but in ensuring access under identical conditions to those available to other undertakings, making allowances for size of course. The current instruments are unsuitable in this respect for the simple reason that, as matters stand, mutual sector undertakings can only very occasionally make use of them, and then only in a very piecemeal and usually subsidiary way. As a result it is highly unlikely that they will be able to compete on equal terms with limited liability companies engaged in similar activities, insurance for instance. Consequently your rapporteur is far from being convinced that it is the right solution to offer mutual sector undertakings, as the only valid option, legal instruments that are not designed to cope with their individual characteristics and their diversity.

14. The European Economic Interest Grouping (EEIG)²⁵ is the only legal instrument available under Community law that is currently capable of regulating international relations between undertakings. Nevertheless even this form of cooperation has its limits, as the Economic and Social Committee reveals in its opinion (which it is currently preparing)²⁶. The fact that its objectives are ancillary to the economic activity of its members, the unlimited joint liability of its members and its inability to raise public funding are not the least of the disadvantages as regards the matter in hand.

15. Among the Commission's considerations are the question of the feasibility of a model legal form for the mutual sector undertakings that could govern mergers or the creation of holding companies or joint subsidiaries. Judging by the conclusions set out in paragraphs 11(f) and (g) above, the Commission does not seem in a hurry to consider such a solution in the near future. The main argument invoked in defence of this rather cautious approach is the great diversity of the national legal forms of the bodies concerned.

16. The Commission's position is certainly realistic, since no effort towards harmonization has been specifically aimed at mutual sector undertakings. The problem however lies in the fact that the alternatives considered above do not provide an adequate response to the concerns of the mutual sector undertakings. It seems to your rapporteur that the difficulty of finding a solution is not a valid reason for not seeking one. In any case the difficulties will go on increasing as the date for the completion of the European market approaches. There are several considerations militating in favour of an instrument appropriate to each category of mutual cooperative undertaking.

- The fact that - perhaps anticipating the Community institutions - the organizations concerned, grouped within associations or federations within the Community, have already done some work in this area and are ready to propose draft legal forms, which have the approval of the relevant national bodies. The Commission itself mentions that it has been approached by these organizations in this connection.

²⁴ See paragraph 8 above

²⁵ Council Regulation (EEC) No. 2137/85 of 25 July 1985, OJ No. L 199, 31.7.1985, p. 1

²⁶ See footnote 13 above

- The diversity of the national legal forms cannot be overcome by making use of existing Community legislation: this would lead to extreme confusion and would undermine the competitiveness of the businesses concerned. Use of existing Community instruments would only extend national disparities indefinitely, at the expense of the development of cross-frontier cooperation.
 - In view of their individual identities and the special bonds between their members - a characteristic of all mutual sector undertakings - it is by no means certain that the drafting of specific Community instruments would give rise to the same problems as those we all face in devising and implementing a statute for a European public limited company.
17. Several times, on various occasions, the European Parliament has supported the view that a viable solution for the future of the mutual/cooperative sector in Europe would be the elaboration of instruments capable of facilitating access to the European market and cross-frontier cooperation between third sector undertakings. In its opinion concerning Mr Mihr's report on cooperatives (1-849/82)²⁷, the Legal Affairs Committee stated that the drawing up of a statute for a European company was not a prerequisite for the establishment of a statute for a European cooperative society. Mrs Fontaine's report on non-profit making associations in the European Communities (A2-196/86)²⁸ requested the Commission to draw up a proposal for a Community-wide statute for these associations and inspired the drafting of a European statute of associations by a Parliament intergroup. It is worth pointing out here - in view of the Commission's interpretation of Article 58(2) of the EEC Treaty - that to split the cooperative movement by prescribing a different legal form depending on whether the association concerned is engaged in an economic activity is not the best solution. In its opinion, which it is currently considering²⁹, the Economic and Social Committee favours an optional subsidiary legal statute, which is all the more necessary in that the undertakings concerned 'will increasingly be competing in the Internal Market with conventionally capitalized firms, while sticking to their principles'³⁰.

IV EMPLOYEE INVOLVEMENT IN MUTUAL AND COOPERATIVE UNDERTAKINGS

18. The proposal for a directive on this subject, presented jointly with the proposal for a regulation on the Statute for a European company³¹, should apply mutatis mutandis to cooperatives, mutual societies and non-profit organizations, in so far as their own statutes do not make specific provision for their employees.

²⁷ See footnote 6 above

²⁸ OJ No. C 99, 13.4.1987, p. 205

²⁹ See footnote 13 above

³⁰ Ibid, p. 5, paragraph 4(1)

³¹ See footnote 12 above

V. CONCLUSIONS

19. In the light of the foregoing, your rapporteur can only repeat what the European Parliament has said on numerous occasions already, that a statute conceived on a European basis and adapted to the specific requirements of each category of undertaking is the sole legal form capable of ensuring that these bodies have access to cross-frontier cooperation within the Community, in conditions that allow them to compete on suitable terms. It is thus essential that the Community authorities work towards this objective.

MOTION FOR A RESOLUTION (DOCUMENT B3-0254/90)
by Mr ARBELOA MURU, Mr ALVAREZ DE PAZ, Mr CARBEZON ALONSO and Mr BRU PURÓN
pursuant to Rule 63 of the Rules of Procedure
on a statute for a European Cooperative Society

The European Parliament,

- A. having regard to its previous resolutions on the cooperative movement in the Community,
- B. wishing to protect the specific economic and social features of the cooperatives,
- C. concerned that their legal, financial and fiscal balance should be maintained within the Single European Market,
 - 1. Calls on the Commission to draw up, in collaboration with the Coordinating Committee of EC Cooperative Associations (CCACC), a draft directive on a Statute for a European Cooperative Society based on the provisions laid down by Community law for legal persons;
 - 2. Instructs its President to forward this resolution to the Council, the Commission and the CCACC.