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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Businesses in the "Economie Sociale" sector

Europe's frontier-free market

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This communication:

- defines and describes the Economie Sociale sector by giving a brief overview of the branches in which its enterprises are active in all Member States (section 2);
- identifies the prospects opening up for enterprises in this sector in the Europe of 1992 and shows to what extent they are taken into account in Community policies (section 3);
- adumbrates 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 (section 4).

1. Background

In 1989 the Commission of the European Communities turned its attention to the Economie Sociale sector by setting up a new department in DG XXIII.

Before then, enterprises in this sector were not identified as such. However, their concerns have been taken into account at Community level in terms of the branch in which they are active, such as agriculture,¹ fisheries and financial services (banking and insurance).² Their importance has also been recognized in the wider context of their contribution to the development of certain Community policies, especially regional and social policy, in such areas as training, employment and local development. And all measures launched under the Community's enterprise policy have been applicable to the mutual/cooperative sector.³

1 Under Council Regulation 62/26/EEC, for example.

2 Under Directives 73/239/EEC, 79/267/EEC and 88/357/EEC, for example.

3 COM(86)445 final and Council Decision 89/490/EEC.

For its part, the European Parliament has adopted several resolutions specifically concerning certain types of unit in the mutual/cooperative sector - those on the role of cooperatives in regional development (1983 and 1987) and in development policy (1988).

The Economic and Social Committee in 1986 organized a conference on organizations in the cooperative, mutual and non-profit sector in the Community, in preparation for which it published a major study which to this day is the most exhaustive and authoritative work on the subject. More recently, (September 1989) the Committee adopted an own-initiative opinion on the role of cooperatives in regional development.

As they are highly distinctive, the Commission undertook in its programme for 1989 to initiate "reflection 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".⁴

The coherent approach generated by the exercise of specific responsibility for the mutual/cooperative sector, complementing previous sectoral appraisals, has deepened understanding of the concerns of enterprises in this sector and in particular their expectations regarding the frontier-free market.⁵

The findings of this work are the basis for the guidelines for Community action in this field.

2. The contribution of enterprises in the Economie Sociale sector to the development of the Community

2.1 Definition

The idea of the Economie Sociale sector as a distinctive entity, although it corresponds to reality in most Member States, is not universally accepted throughout the Community. Some Member States prefer a less structured approach, leaving it to the economic actors to organize themselves without theorizing about how they do it.

4 Bulletin of the European Communities, Supplement 2/1989, point 90, p.47.

5 Some of their concerns were confirmed at a recent symposium on the sector, held in Paris 15-17 November 1989.

By whatever name the sector is known, it now exists in all Member States, obeying very similar principles of organization and operation.

The hallmark of belonging to the sector is the specific manner of organization of an enterprise's productive activity. The driving principles are the solidarity and participation (one member, one vote) of its members, whether producers, users or consumers, informed by a proud independence and civic purpose.

The enterprises are generally in the legal form of a cooperative, a mutual society or a non-profit association.

The sector thus includes organizations which form part of the economy because they engage in productive activities, applying resources to satisfy needs. They may produce market goods and services (i.e. sold at a price that at least covers their production cost), or non-market goods and services (supplied free, or at a price unrelated to their cost, the difference being made up by non-market financing, membership fees, grants, donations, etc.). They are enterprises operating in competition with traditional forms of enterprise.

Such enterprises belong to the *Economie Sociale* sector because of their purposes and the way they organize and manage their productive activity. It has nothing to do with the nature of the economic goods and services produced.

Engagement in economic activity is the factor determining the inclusion of this sector in the field of enterprise policy. Accordingly, this communication is essentially about non-profit, cooperative and mutual societies pursuing an economic activity, if only as a secondary purpose, for which the question of access to the frontier-free market is of topical concern.

For other organizations with the same legal form but engaged in economic activity, such as certain non-profit associations, the European dimension does not mean integrating into a frontier-free market but rather taking their place in a people's Europe or taking part in the building of social Europe. The contribution of the sector to these most important fields falls outside the scope of an analysis of the conditions of access to the frontier-free market for enterprises in the mutual/cooperative sector.

2.2 Legal forms and activity in different branches of the economy

The Economie Sociale sector is characterized by the extreme diversity of its enterprises in terms of legal form, size, economic branch and location. It is inherently complex, but certain elements can be identified.

First, enterprises in this sector are types of organization that are legally recognized in all Member States, even though they may take different legal forms (cooperative society or association, mutual society or association, non-profit association, sui generis organization), which themselves may fall within wider branches of private law (company law, associations) and sometimes make for particular management practices.

Secondly, in all Community Member States they are to be found in all branches of the economy in one or other of these legal forms.

In one of the oldest forms of cooperation, consumer cooperatives, they are active in the distribution of goods, food and non-food. Cooperatives have also developed in the retail trade, and now account for nearly 10% of total retail turnover in Europe.

In agriculture, nearly two thirds (60%) of Europe's crops are harvested, processed or sold through a cooperative.

In banking, cooperative or mutual banks account for almost 17% of savings in Europe.

Nearly forty million European families (and two to three times as many individuals) rely on mutual funds for sickness and old-age insurance. In the United Kingdom, mutual funds cover almost 40% of the life assurance market, and in the Federal Republic of Germany they account for over 50% of supplementary sickness insurance.

Enterprises in this sector play an important role in the production of other goods and services, such as building and construction, printing and

glassmaking, and also tourism, housing and training.⁶ They keep some trades alive (workers' and craftworkers' cooperatives) and more recently have opened up employment opportunities for young people or in isolated or declining regions (cooperatives or associations organized to develop local economic initiatives).

They are economically and socially active throughout Europe, and in most of their fields they are by no means negligible.

3. Prospects in a frontier-free market and recognition in Community policies

Like ordinary undertakings, these enterprises are now aware of the need to take account of the European dimension and the opportunities it opens up for the development of their activities.

At the Community level and at the present stage, two complementary strategies are open to them: to increase their presence on European markets by merging, diversifying or specializing; and to open up new fields once the frontiers are down throughout the Community.

The enterprises have great assets for pursuing both these strategies, in their competitiveness and their distinctive ability to identify consumer or user needs and deploy the resources to satisfy them.

Like all enterprises in the Community, those in this sector may be taken into account at two levels of Community action: access to services and participation in specific programmes and measures to promote enterprise for

⁶ More than ten million European households rent their dwelling from a housing cooperative; over three million beds are available to holidaymakers in Europe under schemes set up and administered by cooperative tourist associations.

the full internal market; and an improving business environment as the practical measures for a frontier-free market take effect.

3.1 Access to measures to promote enterprise⁷

Mutual societies, cooperatives and the like have access to all Community measures concerning financing, business services, research, innovation and technology transfer, and vocational training. They are eligible for measures under the Community's structural Funds (ESF, ERDF and EAGGF), allowing for the Funds' and resource allocation priorities and procedures.

For agriculture, specific regulations have been introduced, some as far back as 1972, precisely to facilitate the creation or development of producer groups or associations. These measures will be adjusted in the course of work on the future of the countryside.

Similarly, several units in this sector or their federations take part in activities under the Community's enterprise policy, such as the Euro Info Centres, the Business Corporation Centre and experimental training schemes for SME managers.

3.2 Integration into the environment created by measures to complete the frontier-free market⁸

The possibility for in the Economic social ^{sector} enterprises engaging in economic activity on a Community-wide scale is directly secured by the Treaty provisions (Articles 7, 52, 58, 59 and 60) establishing the principles of non-discrimination in the freedom of establishment and freedom to supply services, and implies compliance with, inter alia, the rules of free competition (Articles 85, 86, 90 and 92). It is facilitated by the instruments introduced to promote cooperation between European businesses.

7 A detailed analysis is given in point 3 of the Annex.

8 A detailed analysis is given in point 2 of the Annex.

(i) In law, these general principles apply to enterprises in this sector just as they do to all businesses. Article 58, in particular, applies to any legal entity engaged in economic activity,⁹ including, therefore, mutual/cooperative enterprises.

The Community has therefore already in the past taken account of the specific nature of enterprises in this sector:

- in occupations not subject to regulation by law, the principles of freedom of establishment and freedom to supply services fully apply to all enterprises, including those in the mutual/cooperative sector, and so far no problems have been reported;
- in the regulated occupations (banking and insurance), the Community Directives ensure access, subject to the rules they lay down, to all enterprises in the sector, both cooperatives and mutual societies.

At Community level, these are acquired rights for enterprises in this sector. Consequently, at this stage of the appraisal and in the light of current information, there is no need for specific legislation in this field.

(ii) However, the Commission is aware that there may be problems in their actual exercise, given the specific features of the legal forms in different countries, the methods of organization and the national competitive position of some enterprises in this sector.

The question may therefore arise at Community level of harmonizing certain national provisions in order to improve the conditions of access to European markets for mutual societies, cooperatives and similar enterprises.

(iii) The question may also arise whether the Community's legal instruments for facilitating cooperation among businesses in the single market are adequate for their task.

One of the business cooperation instruments, the European Economic Interest Grouping (EEIG)¹⁰ is open (Article 4) to "companies or firms within the

9 Article 2 of the 1968 Brussels Convention on the mutual recognition of companies and legal persons (not ratified) recognizes the right to participate in the economy of legal persons other than companies "if their principal or secondary purpose is to engage in an economic activity that is normally pursued for compensation";
Directive 68/151/EEC of 14 March 1968.

10 OJ L 199, 31.7.1985.

meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community". Cooperatives, mutual societies and non-profit associations (provided they pursue an economic activity, even as a secondary purpose) are thus entirely free, within the meaning of Article 4, to form an EEIG which will operate as an extension of their activity. Beyond the legal possibilities, the technical possibilities of using the EEIG legal form should certainly be explored by enterprises in this sector, for they may well find it the answer to their European cooperation needs, the more so in that they are already accustomed to practical solidarity and are quite capable of forming alliances with units pursuing complementary purposes.

The draft European company statute in its present form¹¹ allows public limited companies (whether or not they also fall within the cooperative/mutual sector) to engage in all the forms of cooperation specified - mergers, holding companies, common subsidiaries. For companies of legal forms other than the public limited company, which is the case for most in the cooperative/mutual sector, only the third method of forming a European company would be possible, that of setting up a common subsidiary, which would then take the form of a public limited company.

4. Action by the Community

The purpose of Community initiatives in this sector is to foster the pursuit by the enterprises themselves of the complementary strategies identified in point 3, on two fronts.

in the economic sector

4.1 Fostering an appraisal by enterprises of the changes to be brought about by the single market

The Commission will carry out a forward study in conjunction with representatives of the sector, to investigate prospects for the enterprises beyond the mere expansion of their activities to European markets:

in particular, the designing of European products that preserve the independence and individuality of the enterprises producing them. This exercise will more clearly identify the specific contributions of enterprises in this sector to all the economic, social and cultural aspects of the building of Europe.

4.2 Enjoying the same resources as other enterprises for taking advantage of the frontier-free market

The Community's scope for action is defined by the general principles laid down in the Treaty: no discrimination based on nationality, and freedom of establishment and freedom to supply services in compliance with the conditions for free competition between European enterprises.

The Community may in certain cases act on its own initiative, either to ensure that the Treaty principles are complied with or, if and when necessary, to harmonize at Community level the conditions under which mutual societies and cooperatives may trade.

In practice, certain obstacles to cooperation between enterprises in this sector stem from provisions of national law, which do not in themselves infringe the Treaty. For this reason, the Community will act according to the principle of subsidiarity in all fields where cooperation can be advanced without first resorting to harmonization.

Community action will be restricted to essential fields where harmonization would be necessary: this will be the context for a study on the feasibility of a European statute governing merger and holding company operations between mutual/cooperative enterprises not in the form of public limited company.

5. Conclusions

5.1 Ensuring compliance with the general principles of the Treaty and clarifying the situation of mutual/cooperative enterprises in the economic sociale sector as a whole

(1) On present information at this stage of the appraisal, - 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.

If it turns out that genuine, non-discriminatory participation in the internal market by mutual/cooperative enterprises is inhibited by obstacles that infringe Community law, whether they stem from the law of a Member State (country of origin or host country) or from discriminatory or anti-competitive provisions peculiar to the legal form of an enterprise in this sector (concerning, for example, the publication of accounts), it will be for the Commission, exercising its powers under the Treaty, to make sure that such obstacles are removed.

(ii) The Commission will publish 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.

5.2 Use of the instruments for facilitating business cooperation

Particular problems may arise from the difficulties for enterprises in the sector of forming Community scale groupings.

(i) The Commission 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), and will supply information so that the major opportunities it offers for cooperation between enterprises in the sector may be better recognized and used.

(ii) As regards enterprises in this sector which pursue an economic activity but are not in the form of a public limited company (mutual societies, certain non-profit associations, certain cooperatives), the Commission notes that there is some demand 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. The Commission notes that that proposal as it now stands makes no allowance for this need, given the extreme diversity of legal forms from one country to another. The Commission 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.

(iii) In the particular case of non-profit associations not engaged in economic activity that must from the outset be formed on a European basis¹² without being able to invoke Article 58 and its implications as regards access to Community-wide operation, the Commission acknowledges that it would be useful to introduce a legal form governing the direct creation of European associations, for which neither the proposal for a European company nor work on a model European statute for unincorporated businesses would be able to supply a satisfactory structure. The Commission will therefore continue its work on the need for a model legal form for European associations not engaged in economic activity, and how it may be introduced.

5.3 Wider consultation of the parties concerned

At the same time as pursuing its work in the coordination of activities connected with the *Economie Sociale* sector or specific fields of certain policies, the Commission will expand its consultation of the parties concerned, in two ways.

(i) The Commission requests the Economic and Social Committee, in view of its previous work and its consistently voiced concerns in this field, to deliver an opinion on:

- the great diversity of legal forms in the cooperative, mutual and non-profit sector in the Community,
- the role that could be played by the EEIG, given this diversity, to encourage cooperation among enterprises in this sector,
- the feasibility of a European model legal form for unincorporated

¹² For example, to serve the Community aims of strengthening people's Europe and social Europe.

businesses that could govern mergers and the creation of holding companies or joint subsidiaries by enterprises in this sector, and whether it should be a single model or several to match the specific features of the different types of unit,

- the operational conditions for a European model legal form for association to govern the direct creation of associations not engaged in economic activity.

(ii) When proposals are drawn up after the preparatory work and the opinions of the Economic and Social Committee, the Commission, as required and in the light of the proposals studied, will consult experts and representatives of enterprises in the cooperative, mutual and non-profit sector from the Member States.

5.4 The Commission requests the Council:

1. To hold a first debate on the place of ^{Economie Sociale} (cooperative, mutual and non-profit) enterprises in a frontier-free Europe;
2. To take note of the Commission's intention of ensuring that the principles laid down by the Treaty are actually applied in respect of enterprises of this sector in all Member States, in particular as regards non-discrimination, freedom of establishment and freedom to provide services, and free competition;
3. To support the Commission's effort to increase the participation of enterprises of this sector in existing Community programmes and initiatives, in particular as regards information, access to financing and training;
4. To note the request to the Economic and Social Committee for an opinion.

On the basis of the foregoing, the Commission will present a work programme to the Council in 1990 in compliance with the principle of subsidiarity, and will put forward appropriate proposals for its implementation.

ANNEX

**Businesses in the Economie Sociale sector
and the frontier-free market**

Working paper

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Introduction

Organizations in the cooperative, mutual and non-profit sector are active agents in the economy and society of all European countries, and in most of their fields the part they play is by no means negligible.

The challenges they face, like all Community enterprises, stem from the changes brought about by international competition, new technologies and social issues and intensified by the imminence of the full internal market.

Organizations in this sector must realise that the whole European Community is opening up before them. Henceforth they must lift their eyes from their traditional national or even local sphere of activity to the wide horizons of Europe.

New opportunities are opening up for them. They will be able to take advantage of market scale, explore new fields, make new contacts and build national networks up to Community level, and define the right strategies for themselves or with Community partners. It is a new challenge for them to identify the opportunities and make the most of them.

But it will be important to ensure that, to take up the challenge, they will enjoy the environment and resources which the Community intends to make available to every enterprise, whatever its size, sector, location or legal form.

It is the responsibility of the Community institutions to ensure that the framework for a frontier-free Community encompasses all the components of European societies, including the mutual/cooperative sector;¹ and it is up to those in the sector, through their own initiatives, to secure their rightful place.

¹ A brief account of how the mutual/cooperative sector has been taken into account at Community level is given in Annex 3.

1. The size of the cooperative, mutual and non-profit sector in Europe

It is difficult in many Member States to measure the size of this sector, composed as it is of a variety of cooperatives, mutual societies and non-profit associations.

The first studies of the cooperative, mutual and non-profit sector were made in France at the turn of the century (Léon Walras, 1893; Charles Gide, 1905); they analysed the world of both producer and consumer cooperative societies which already had a long history and the new agricultural credit and urban mutual credit societies.

The concept, although it corresponds to reality in most Member States, is not universally accepted throughout the Community. Some Member States prefer a less structured approach, leaving it to the economic sectors to organize themselves without theorizing about how they do it.

1.1 Definition

By whatever name the sector is known, forms of organization and operation obeying very similar principles on the lines of cooperatives, mutual societies and non-profit associations have grown up in all Member States, however diverse they may be in legal form, size, economic activity and location.

The cooperative, mutual and non-profit sector comprises organizations which form part of the economy since they engage in productive activities, applying resources to satisfy needs. They may produce market goods and services (i.e. sold at a price that at least covers their production cost), or non-market goods and services (supplied free, or at a price unrelated to their cost, the difference being made up by non-market financing, membership fees, grants, donations, etc.).

Such organizations belong to the cooperative, mutual and non-profit sector because of their purposes and the way they organize and manage their productive activity. It has nothing to do with the nature of the economic goods and services produced.

Engagement in an economic activity is the factor determining the inclusion of this sector in the field of enterprise policy. Accordingly, this paper deals only with non-profit, cooperative and mutual societies that pursue an

economic activity, if only as a secondary purpose, for which the question of access to the frontier-free market is of topical concern.

For other organizations with the same legal form but not engaged in economic activity, such as certain non-profit associations, the European dimension does not mean integrating into a frontier-free market but rather taking their place in a people's Europe or taking part in the building of social Europe. The contribution of the sector to these most important fields falls outside the scope of an analysis of the conditions of access to the frontier-free market for enterprises in the mutual/cooperative sector.

1.2 Legal personality

While the term "cooperative, mutual and non-profit sector" does not in itself give an indication of legal form, the organizations are covered by specific bodies of law or by special divisions of ordinary law (see Annex 1), which sometimes makes for particular management practices.

They are types of enterprise that are legally recognized in the Member States, although they may take widely different legal forms.

1.3 Presence in different branches of the economy

Mutual/cooperative enterprises can be found in all areas of activity.

They can be of significant economic importance in some sectors (Annex 2); their importance may change in keeping with the inherent dynamism of the organizations, or in tune with their environment, e.g. the introduction of a social security system, the development of supermarkets, new printing technologies, etc.

For a long time, the favoured areas of activity of these organizations were:

- distribution: consumer cooperatives rank among the oldest forms of cooperation. In some countries they are in decline, but in Denmark they still represent over 30% of the food distribution market, and over 10% in the Federal Republic of Germany.

More recently, the increase in the number of retail cooperatives for pooling services, stemming from the expansion of the distribution

market that encourages individual businesses to join forces, has given them a share of approximately 10% of retail trade;

- agriculture and fisheries: the cooperative structure is firmly rooted in these sectors, for agricultural and maritime social insurance (in cooperative or mutual form), credit, joint producer purchasing of raw materials and equipment and producer cooperatives for selling agricultural or fishery products. Agriculture is also the predominant sector in the cooperative world as a whole, probably accounting for almost half the enterprises and total turnover;
- financial services: from an early date the cooperative or mutual banks supported the development of other organizations in the sector, and their importance is reflected in the position they occupy in the national banking systems (e.g. the cooperative banks serving agriculture): they take up 17% of savings in Europe.

In the insurance field the social welfare mutual funds (or cooperatives) preceded the national social security systems in all the countries, and in some cases they have been given the task of administering them (e.g. Belgium) or they provide additional benefits. In the Netherlands, the mutual funds together cover almost 25% of the market (life and non-life), almost 40% in the United Kingdom and almost 30% in the Federal Republic of Germany (52% health insurance, 23% life). Finally, some of the more recent mutual societies ensuring individual risks (vehicle and house insurance) have seen a substantial expansion in their market shares (in France, 55% of the car insurance market);

- production of market goods and services: the origin of workers' production cooperatives in most countries lies in the resistance of some craftsmen to industrialization. This is still reflected today in the importance of workers' cooperatives in construction, glassmaking and printing. However, since the mid-1970s, other sectors undergoing change have provided a stimulus to the creation of workers' production cooperatives, particularly in market services (tourism) and advanced sectors such as information technology, communications technology and consultancy. At the same time, the creation of cooperatives is a response to the job needs of certain categories of the population whose location (less-developed regions) or position on the labour market (unskilled young people, women) exclude them from traditional activities.

Today, almost three out of four producer cooperatives are located in Italy and France. The most rapid advances are taking place in France and the United Kingdom, mainly in response to pressing employment problems.

The market goods and services sector has recently witnessed the development of producer cooperatives (craftsmen, hauliers, retailers, pharmacists, etc.) seeking in the cooperative a vehicle for the pooling of services vital to the development of their individual activities;

- non-market services: the non-profit (and, more rarely, cooperative) structure has developed in some non-market service sectors such as health, education and research. Although they are non-profit-making and do not distribute the revenue from their activity among their members, these units exercise an economic activity in sectors which are becoming increasingly open to other modes of production and provision of services, blurring the distinction between market and non-market services.

1.4 Characteristics

The hallmark of belonging to the cooperative, mutual and non-profit sector is a characteristic use of specific organization techniques for a given productive activity. The driving principles are the solidarity and participation (one member, one vote) of the members, whether producers, users or consumers, informed by a proud independence and civic purpose.

Their relationships with third parties (customers/suppliers/other users) may exhibit the same type of solidarity, e.g. within cooperative groups; more usually they act in the same way as any other enterprise operating in the market.

As they engage in economic activities, units in this sector are concerned by the new rules for the market without frontiers. Like many economic operators - and most SMEs - they are expressing the need to find their place in the European scheme of things.

2. Providing a legal framework for redeployment at Community level

Like all enterprises in the Community, cooperative, mutual and non-profit organizations face two strategy options in the single market: to concentrate their activities in order to benefit from the new economies of scale; and to specialize in certain goods and services in response to the diversity of demand.

This view of the economic stakes for the sector is particularly pertinent for cooperative enterprises, which, as we have seen, compete on the market. What is more, many cooperatives, particularly producer cooperatives, are small and their concern about the future is therefore similar to that of small and medium-sized businesses operating in the same sector.

For units with the legal status of mutual society the situation is somewhat different. In the social insurance market, although they sometimes compete with private businesses offering a similar range of services, many of their activities are heavily dependent on the social policies of the Member States. In the large-exposure field, mutual societies operate in open markets but, unlike most cooperatives, tend to be large enterprises.

Finally, when non-profit associations become economic operators they too have to compete with other types of businesses on the open market. What is more, be it because of their stated aims or because they are encouraged to do so by national or Community authorities, they are from the outset called upon to collaborate at Community level in carrying out Community-wide tasks.

It is important to ensure that such organizations actually have the means to spread their wings in Europe.²

The means will come from the measures governing the freedom of establishment and the freedom to provide services throughout the Community as well as specific provisions aimed at facilitating cooperation between Community undertakings.

² The question whether enterprises in this sector should adopt strategies concentration or diversification in the Community market is discussed in point 4.

2.1 Principle of non-discrimination

In principle the rules governing the free movement of persons and services prohibit any form of differentiation prejudicial to Community nationals. Any natural or legal person who is a national of a Member State must be free to establish himself, work or provide services in another Member State subject to the same conditions as nationals of that State.

This principle of non-discrimination, enshrined in Article 7 of the Treaty and defined in Articles 48, 52, 59, 60 and 221, requires recognition that foreigners enjoy a range of rights.

What is more, the principle is given a wide interpretation in Court of Justice judgments and applies to all provisions and practices which, even if they do not specifically refer to nationality, have the effect of hindering only, or mainly, migrants who are nationals of other Community countries.

Whether the organization is a cooperative, a mutual society or a non-profit association, discrimination based on its legal form or the employing body is barred.

Yet certain national bodies of law on cooperatives limit the rights of non-nationals to participate in setting up cooperatives. This is true of the French craft cooperatives where the number of foreign craftsmen (whether Community nationals or not) may not exceed one quarter of all members.

Similarly, seven Member States³ still restrict the right to form associations to their own nationals, some with separate legislation on foreign associations. In the remaining Member States⁴ residence is the criterion which determines whether a person or persons may set up an association.

These examples of discrimination in this sector are contrary to the principles laid down in the Treaty, even if the Member States concerned justify them on public interest grounds.

3 Belgium, Federal Republic of Germany, Greece, Italy, Luxembourg, Portugal, Spain.

4 Denmark, France, Ireland, Netherlands, United Kingdom.

2.2 Freedom of establishment and freedom to provide services

For a natural or legal person governed by public or private law, freedom of establishment and freedom to provide services imply that that person may establish himself, or offer services, in a country other than his own and may do so in any form, "under the same conditions as that State's own nationals".

Freedom of establishment allows an undertaking to open a subsidiary, an agency or a branch in another member country as long as it complies with the laws and regulations of the host country. The freedom to provide services, on the other hand, allows an undertaking to supply its services directly to a customer in another Member State without being established in that State and subject to the laws and regulations of its own country of origin.

In some sectors, e.g. insurance and other financial services, there may be a difference between the conditions which govern the exercising of the freedom of establishment and the freedom to provide services. Quite apart from the sectoral differences affecting all undertakings, the situation with regard to the actual application of the conditions laid down under Articles 52 to 58 of the Treaty vary from one cooperative and mutual society to the next.

Article 58 lays down in detail the scope of the provisions concerning freedom of establishment and freedom to provide services. The second paragraph specifies: "'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."

- (1) At Community level this clearly applies to units with the legal form of a cooperative.

In practice this principle may be evaded by national laws and practices, an example being the principle of the geographical area of operation in the case of the French agricultural cooperatives.

- (ii) Mutual insurance funds are covered by Article 58. Their exclusion on the grounds that they are non-profit-making has never been sought.

They are undertakings governed by civil or commercial law engaged in economic activity conducted for compensation.

Mutual societies are included in the list of forms of insurance undertakings covered by the 1973 and 1979 Directives* (Article 8).

Certain very small mutual societies with a very low turnover and in practice a purely local activity are excluded from the scope of the Directives. The exclusion applies to mutual societies whose annual contribution income does not exceed ECU 1 million ('non-life') or ECU 500 000 for three consecutive years ('life'). For the purpose of comparison, the total contributions collected by the French mutual societies which are members of the association of mutual benefit societies was almost ECU 4 000 million in 1986 (excluding life assurance).

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- * 73/239/EEC, First Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.
88/357/EEC, Second Council Directive of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC.
79/267/EEC, First Council Directive of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance.

The Directives of 1973 and 1979 seek to facilitate the actual exercise of the freedom of establishment in the insurance industry. The 1973 Directive introduces, in particular, the requirement to set up separate companies for 'life' and 'non-life' activities (mass risks and large exposures).
The 1988 Second Directive seeks to facilitate the actual exercise of the freedom to provide services in the 'non-life' insurance industry; in particular, it introduces a distinction between mass risks and large exposures.
A draft text on the conditions governing freedom to provide services in life assurance is now before the Council.

From the legal point of view, or given their legal form, by far the majority of European mutual societies comes within the scope of the Directives on insurance. Some of their provisions have even been specifically drafted to suit mutual societies, e.g. Articles 16 and 17 on solvency margins.⁴

On the other hand, the areas of activity covered by the Directives may raise certain problems of interpretation.

Article 2 of the 1973 Directive ('non-life') excludes "insurance forming part of a statutory system of social security" (Article 2(1)(d)). This wording clashes with the changes that have been taking place in social security systems in the last ten years or so: certain benefits ensured independently of the national social security systems nonetheless complement the minimum benefits established by the statutory systems. The boundary between a compulsory statutory system (managed by public departments or mutual societies) and a voluntary statutory system (run by mutual societies and companies) has moved. Mutual societies are not the only units involved but, in view of their long-standing activities in providing insurance additional to the statutory social security systems, some clarification of the scope of the Directives would be useful.

Overall, as concerns activities relating to life assurance, large exposures and mass risks that complement the national social security systems, and subject to the reservations made above, the Directives set the conditions for freedom of establishment and freedom to provide services by both mutual societies and private companies. Saving any restrictions imposed by national law, where these activities are concerned mutual associations are not excluded from the Community market liberalized by these Directives.

By contrast, where mutual societies replace or administer national social security systems, that part of their activities is governed by national social protection laws, not by provisions for a common market in insurance, and is not at present open to competition by other providers of services.

⁴ Article 17(2)(c): "Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations."

This demarcation of the scope of the Directives might prompt European mutual societies to clarify what part of their activities takes place on the insurance market and what part constitutes delegation of public social protection provision.⁵

(iii) Non-profit bodies are the type of unit in this sector whose inclusion within the scope of the Community provisions on freedom of establishment and freedom to provide services is the most debatable.

Article 58 excludes from the above provisions "companies or firms ... which are non-profit-making". The non-profit status is one of the fundamental principles underpinning the activities of associations and may even be included in the very title of an association, e.g. the ASBL under Belgian law.

In fact the interpretation of this paragraph of Article 58 results in a distinction between those associations which pursue a profitable (economic) activity as a secondary purpose but which serves their objectives and those which pursue their aims without engaging in any economic activity.

The term 'profit-making' should be taken in the broad sense of engaging in the kind of economic activity that legal persons other than companies may pursue "if their principal or secondary purpose is to engage in an economic activity that is normally conducted for compensation".⁶ This would mean that the only bodies excluded from the scope of the provisions on the free movement of services would be those not involved in economic activities. By contrast, an association engaged in economic activities, even as a secondary purpose, would fall within the scope of the Treaty even if it was non-profit-making and its members did not obtain any financial benefit from their membership.

5 For some, such clarification might affect their system of supervision for some or all of their activities (but would not require them to change their mutual status). For instance, the social security department could be the supervising body for activities that are strictly part of a statutory social insurance system, and the insurance (financial services) supervisory body could oversee their other activities. In Spain, the United Kingdom and the Netherlands, mutual societies are subject to insurance law.

6 Convention on the mutual recognition of companies and legal persons (9 March 1968), Article 2 (not ratified); Directive 68/151/EEC; Bulletin of the European Communities Supplement 2/1969.

This interpretation amounts to giving economic considerations precedence over legal considerations, as is the case in Italian law. There the body of law which applies varies according to whether the unit in question is a recognized or non-recognized association, a foundation, a committee, etc., whereas the accounting and tax rules to which the units are subject depend solely on their activity.

Applying such an interpretation of Article 58 to associations engaged in economic activity would seem to be universally acceptable to the experts. And, where associations are concerned, the situation would improve significantly if this interpretation were firmly established as it would put them in a better position to evaluate the benefits and risks of becoming established or providing services in another Member State.

2.3 Instruments for cooperation between organizations in this sector

In a number of cases, the opportunities for exercising the freedom of establishment and freedom to provide services are already being exploited by producers of goods and services seeking to expand and diversify their markets. Organizations in the cooperative, mutual and non-profit sector are less frequently involved in such initiatives because of the uncertainties we have pointed out with regard to their position under the Treaties. Nevertheless, several examples of offensive strategies can be identified on the Community market. For instance, a haulage cooperative (with 51 members) in the south of France, while remaining based in France, has opened agencies in frontier areas, thus facilitating foreign trade: Perpignan serves Spain; Lille serves Belgium, the Netherlands and the United Kingdom; Nancy handles trade with Germany and Reims trade with Luxembourg. Similarly, several savings funds belonging to a French mutual bank are planning to set up subsidiaries through wholly-owned holding companies which will thus give them bases throughout the Community.

However, for organizations in this sector as for other businesses, penetration of the Community market does not simply mean freedom of establishment in another Member State or the freedom to provide goods and services in that state. For many organizations, whatever their rules of association, the next step in building Europe is cooperation between partners from different Member States, so that operations which had hitherto been conducted on a national scale take on a European dimension.

European cooperation may involve activities related to those of the enterprises concerned and arise directly from the desire of each of them to operate at a transnational level. It may involve pooling resources in order to break into the European market while allowing each unit to retain

its autonomy within its national market. This is the case, for example, with the EUROCO consortium, made up of 24 European building workers' cooperatives, whose purpose is to enable the cooperatives to retain their share of the European market and to develop transnational contacts.

In other cases, the desire for joint production and the common provision of an additional service to that normally provided by each of the organizations concerned leads to the formation of an autonomous, independent entity operating on a Community-wide scale but bringing together products and workers from a number of Member States. In the field of insurance, for example, an Italian cooperative known as LEGA - including the Federazione Italiana della Mutualita - is developing an insurance company (UNIPOL), in association with a German group with trade-union links (VOLDSFÜRSORGE). A number of mutual societies based in Spain are taking similar action, while several French, German, Belgian and Italian associations have set up the "European Association for Social and Cultural Progress", with the aim of implementing, throughout the Community, projects in the fields of vocational training, education and culture.

Cooperation between organizations in this sector can take various forms: exchange of technology or knowhow; setting up joint subsidiaries or management groups to sell or even design products or services, or jointly to buy up other units; joint studies, commercial ventures, etc.

Although most organizations in this sector would welcome European cooperation, they are often faced with major obstacles.

To help those firms wishing to cooperate more closely to overcome the problems facing them and to penetrate the Community markets in an integrated manner, Community law has introduced two new legal instruments. The first of these, the European Economic Interest Grouping, came into force (where enacted in national legislation) on 1 July 1989, while the second - the European Company Statute - was sent to the Council in August 1989.

2.3.1 The European Economic Interest Grouping (EEIG)⁷

The EEIG occupies an intermediate position between a simple contract and a company. It directly encourages transnational cooperation between natural and legal persons wishing to carry out some of their activities in common.

⁷ OJ L 199, 31.7.1985.

The introduction of this legal instrument is the result of an analysis of the general obstacles in the way of cooperation, and in particular the difficulty of catering for transnational cooperation ventures in national law with limited territorial jurisdiction. The choice of national law also depends on the location of one of the cooperating partners, at the risk that partners based in other Member States might be distrustful or reluctant to cooperate. Joint operations can also be initiated through cross-holdings, but this involves the risk of reducing the independence of the partners.

The advantage of the EEIG in this respect is that it enables group members to pool their activities, resources or services so as to improve or embrace their own results; the activity of the Grouping can only be ancillary to the economic activity of its members.

Under Article 4, membership of a grouping is open to "companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community".⁸

Cooperative, mutual and non-profit bodies (if engaged in economic activity, even as a secondary purpose) are thus entirely free under Article 4 to set up an EEIG, which will operate as an extension of their activity.

For instance, eleven financial institutions in this sector, based in six different Member States, decided in May 1989 to set up an EEIG in order to "develop joint activities and instruments in the field of financing within the cooperative, mutual and non-profit sector in the new Community framework. Another of its concerns will be financial engineering for cultural, ethical and ecological projects". Other types of cooperative might consider taking this step in order to take up invitations to tender for public contracts.

Some mutual insurance funds might, as a first step towards closer integration, consider setting up accident claim processing centres, in particular where the accidents concern parties in different Member States, or a joint risk assessment centre, a coordination grouping to ensure equal treatment for policy-holders from different Member States or, more generally, joint research projects or schemes for accident prevention. Some initiatives of this kind have already been taken but are limited to bilateral agreements.

⁸ Natural persons engaged in economic activity may also form an EEIG.

Similar considerations apply to non-profit associations engaged in economic activity, common aspects of which could be developed in an EEIG. For instance, associations concerned with research, training, education, culture, local development or development in the Third World might find that the EEIG is the best legal framework for that part of their activities which they wish to develop in common at Community level, possibly at the request of the Community institutions themselves.

However, the EEIG does not provide a suitable framework for concerted action at Community level by associations which do not engage in any economic activity in pursuit of their purpose.

Moreover, the EEIG must have a well-defined purpose in terms of the activity of each of the partners involved, whatever their legal form; there must be a clear connection between the object of the EEIG and the activities of each partner, for otherwise their responsibility would be difficult to define and any party with an interest could apply for the dissolution of the EEIG.

The European Economic Interest Grouping represents an advance in the capacity of organizations from different Member States to undertake joint activities at European level. It was not, however, designed for the purpose of pooling the activities of the partners, or to enable restructuring within a particular sector to take place through mergers or acquisitions or by European firms setting up joint subsidiaries. Such measures become necessary when cooperation agreements or a commitment to joint action demand closer integration between partners, involving the creation of a new legal entity.

2.3.2 The European Company Statute

The latest proposal for a European company statute,⁹ which was put before the Council in August 1989, is intended to facilitate this type of operation.

A European company will be a public limited company. It can be formed in three ways: by merger between public limited companies, by forming a holding company for public limited companies, or by forming a joint subsidiary of any type of company or other legal body governed by public or private law.

⁹ COM(89)268 final, 25 August 1989.

- (i) Public limited cooperatives may use any of these three methods to form European companies.

A number of provisions have been amended in this new proposal to take account of the cooperation requirements of small and medium-sized businesses: in particular, the minimum capital has been reduced to ECU 100 000 (of which only 25% need be paid up).

Most cooperatives are limited companies governed by private law on commercial companies. Provided they have been formed as cooperatives with the status of public limited companies and not in any other form adopted by many businesses, whether cooperatives or not, they may apply to form a European company.

There is, however, one factor, particularly in the case of workers' production cooperatives, which may make it impossible to use the European company statute, namely the need to reflect their organizational principles, particularly those of democratic management, in their articles of association.

This proposal is part-and-parcel with the proposal for a Directive concerning worker participation in the European company, which may take three forms.

The first two can be described as co-management and joint consultative committees respectively. The third method may be agreed between the management boards or governing bodies of the founder companies and the employees or their representatives in these companies. Employees' rights (to information and consultation) are deemed to be minimum rights. Cooperative principles could be applied through this third approach, which could open up the way for innovations directly inspired by worker cooperative practices. The Industrial Common Ownership Movement (ICOM) in Ireland and the United Kingdom is an example.

- (ii) For mutual societies, non-profit bodies and some forms of cooperative¹⁰ the only way is the third method, i.e. the formation of a joint subsidiary, which is open to all legal entities, not only public limited companies.

¹⁰ Cooperatives sui generis which are not governed by company law or by the law governing associations, such as certain types of producer cooperatives (including agricultural cooperatives).

Company mergers and the formation of holding companies involve the exchange of shares and hence are options open only to limited companies.

Consequently, mutual societies may be less well equipped to cope with the trend towards mergers and acquisitions which has characterized the insurance sector. They may find it difficult to achieve the economies of scale sought through such operations. This argument can also apply to associations supplying common products or services for which market size is a determining factor.

If a joint subsidiary is set up, it will have to be in the form of a public limited company, which is different - and in the case of associations a far cry - from that of its founder companies. This would not, however, be incompatible with the legal capacity of mutual or friendly societies. There are already mutual and friendly societies (like cooperatives) in the Community with subsidiaries which are governed by the law on public limited companies.

This prompted certain representatives of mutual/cooperative sector organizations to call for the introduction of model legal forms governed by Community law for mutual societies, cooperatives and associations.¹¹

In response, various proposals are now at various stages of the drafting process. Generally speaking they tend to envisage regulating the formation from scratch of an independent body with no legal or operational links to existing units operating on national markets.

But if we argue by analogy with the draft European Company statute, we would have to work towards a statute designed to regulate the formation of unincorporated businesses (mutual societies or economically active associations) set up to operate on the European market by means of a merger of unincorporated businesses governed by national law or the formation of a holding company or a joint subsidiary having a legal form other than that of a public limited company.¹²

11 For associations, see Parliament's resolution of 13 March 1987 and proposal of April 1989 put forward by the joint working party chaired by Mr Eyraud; for cooperatives, see the report of a group set up by the office for the mutual/cooperative sector (France, December 1988); for mutual societies, see the proposal by the International Association of Mutual Societies (July 1989).

12 A statute of this type could also facilitate cooperation by enterprises which are neither part of the mutual/cooperative sector nor incorporated as public limited companies.

The great diversity of national bodies of law governing unincorporated businesses, cooperatives sui generis, mutual societies and especially associations will make it difficult to introduce at European level a legal form so different from that of a public limited company.

The recent progress on the European company statute has been made possible by a gradual harmonization of company law through Community Directives and national legislation, particularly in the area of taxation.

A thorough study must be made of the laws and conditions governing cooperatives (other than public limited companies), mutual societies and associations. This further implies that all the legal aspects and tax positions of such bodies must also be fully investigated and their respect for basic rights in European societies such as the freedom of association.

3. Strengthening the sector's economic position in the European area

The possibilities afforded by these legal instruments for cooperation - the EEIG and the European company statute - which are open to cooperatives in full and mutual societies and associations in part, do not necessarily mean that enterprises in this sector will implement European strategies, or guarantee their success should they do so. For all enterprises, and for the many SMEs in particular, access to the European market involves consolidating their activities: getting to know the markets and improving productivity. Only by strengthening and adapting their economic resources will enterprises be able to maintain their position on a European market, whose penetration cannot be guaranteed by the implementation of tailor-made legislation alone.

For organizations in this sector exercising an economic activity, as for any other enterprise, the completion of a single European market means more competition on existing markets, whether from private companies or from other organizations in the same sector. However, the corollary of this is easier access to new markets, due to the freedom of establishment and the freedom to provide services under the conditions described above.

Units in the sector will have to adapt their strategies to this new environment, accurately assessing their strengths and weaknesses in a market which is more open and in which they face increased and, above all, much more varied competition.

Some Member States have implemented measures in support of enterprises in the mutual/cooperative sector.¹³ What is more, some Community measures have been designed to assist mainly small and medium-sized enterprises, regardless of their legal form or structure.

These measures are partly intended to provide enterprises with the means to expand: financing, training and the opportunity to share in European innovation and research.

They are also intended to facilitate access to European markets opened up by the general measures mentioned in point 2.

3.1 Development measures

The financing measures available to aid expansion of SMEs in particular vary according to the nature of their activity.

SMEs can obtain loans directly from the European Coal and Steel Community (ECSC) and through global loans from the European Investment Bank (EIB), either from its own resources or under the New Community Instrument (NCI). Allocation is not conditional on an enterprise's legal form. Indeed, some of the EIB's intermediaries (administering the loans locally) are cooperative banks or mutual funds: e.g. the Caisse Centrale de Crédit Coopératif (F) and the Banca Centrale di Credito Popolare (I).

However, experimental mechanisms in the field of transnational¹⁴ or regional venture capital,¹⁵ and seed capital¹⁶ are not easily applicable to organizations in this sector.

13 Here it should be remembered that aids granted to bodies in the mutual/cooperative sector are caught by Articles 92 and 93 of the EEC Treaty and the Commission therefore has to be given prior notification so that it can determine whether they are compatible with the common market.

14 "Venture Consort" pilot project.

15 Under Integrated Development Operations (IDO) or Integrated Mediterranean Programmes (IMP).

16 SEC(88) 1496.

Organizations in this sector have their own distinctive approach to capital formation, which is collected from a cooperative or mutual society's members, be they workers, producers or consumers. Opening up to outside investment runs up against the problem of raising capital without conceding a commensurate voice in the unit's affairs,¹⁷ which naturally discourages investment; providing a return on investment is also problematic, in view of the principles on which cooperatives are founded.

Direct investment grants are another source of funding, available in the form of cofinancing for regional aid schemes or regional development programmes eligible for ERDF support. In response to the objectives set in the reform of the structural Funds, a number of programmes including elements aimed at SMEs, involving in some cases local development projects implemented by cooperatives or associations, were presented to the Commission.

In regions of absolute priority the European Social Fund helps fund job creation on local community projects aimed at providing people, regardless of their age, with new jobs lasting at least six months.

The provision of business services, such as the Business Innovation Centres and the network of local development agents, financed by the structural Funds is one manifestation of Community help. These services are available to all.

Community research, innovation and technology transfer operations are experiencing difficulties in increasing SMEs' share of Community research programmes. Workers' or producer cooperatives do not escape this effect of scale. A recent measure under the ERITE programme is aimed at encouraging SMEs to take part by granting feasibility premiums.¹⁸ It is too early to assess the impact of such action on enterprises in the mutual and cooperative sector.

¹⁷ In cooperatives, voting power depends on a capital contribution but is not directly proportional to it. Whatever the size of the contribution, the principle of "one member, one vote" applies.

¹⁸ COM(89)84 final.

The technological level of Europe's small firms, in particular, can also be raised by transferring the results of Community research and adapting new techniques to meet needs outside the field in which they were originally developed. The SPRINT programme has increased awareness of the technology transfer machinery; a federation of cooperative societies, the Confédération Générale des Sociétés Coopératives Ouvrières de Production (CG SCOP, F) is involved in the programme as a member of the network of business advisers specializing in technology transfer.

Vocational training presents a challenge for all enterprises, and SMEs in particular, as the internal market nears completion. Cooperatives, mutual societies and associations are noted for the great importance they have always attached to staff and management training, and this application of one of their basic principles is certainly one of their greatest strengths. Their considerable training effort usually receives national, and sometimes Community, back-up. One of the European Social Fund's priorities is supporting vocational training on job creation schemes set up by local community groups, with help from local or regional government, to improve the local employment situation.¹⁹ In regions of absolute priority the ESF also supports, in the interests of local job creation, vocational training projects directed at providing jobs for trainers and local development agents. COMETT and PETRA, the exchange programmes for young workers, are also open to proposals from cooperatives and the like. Because of the inherently transnational character of these programmes, many national training agencies or youth exchange bodies have formed links enabling them to expand the scope of their activities. Sometimes these programmes have engendered new bodies, such as the University-Business Training Partnership (UBTP) which grew out of the COMETT programme.

¹⁹ For under 25s in all regions and for all ages in priority regions.

More recently organizations representing managers of producer (ICOM, UK) or craft trades cooperatives (FROGA, F) have been enlisted to try out training and education measures within the framework of experimental training schemes to prepare managers of SMEs for Europe in 1992.²¹ Back-up for assessing similar projects organized by CECOP, an organization representing Europe's cooperatives, will give a clearer picture of the strategies and the means of implementing them being considered by cooperatives as the internal market nears completion.

Finally, in the agricultural sector the Community has for some years now been applying measures to support organizations in the mutual/cooperative sector. An example is the formation of producer organizations - of which there are over 1 000 in the fruit and vegetables sector²² - and of over 300 producer groups and associations of groups in Community regions with serious structural deficiencies.²³ In addition, under a common measure to improve the conditions under which agricultural products are processed and marketed²⁴ priority goes to projects which give economic advantages to the producers and, therefore, to their groups and associations. Regulation (EEC) No 797/85 on improving the efficiency of agricultural structures sets up an investment aid scheme for farm associations and agricultural cooperatives whose sole object is the management of agricultural holdings; provides for start-up aid to agricultural associations whose aims are mutual aid, a more efficient shared use of farm machinery, or joint farm management; and introduces farmer replacement services and the creation of farm management services.²⁵

21 SEC(88)1860.

22 Council Regulation (EEC) No 1035/72, OJ L 118, 20.5.1972.

23 Council Regulation (EEC) No 1360/78, OJ L 166, 23.6.1978.

24 Council Regulation (EEC) No 355/77, OJ L 51, 23.2.1977.

25 The scope of these aids could soon be extended to promote the setting up of mutual aid group fostering practices that protect the environment and groups whose aim is to introduce alternative farming practices such as organic farming, integrated pest control and extensive farming (COM(89)91 final).

3.2. Access to Europe's frontier-free market

Measures to establish the free movement of persons, goods, services and capital are a precondition if this sector's organizations are to gain access to the European market; however, their limited knowledge of foreign markets may still prevent them from benefiting from such measures.

Community information schemes can solve this problem. The network of Euro Info Centres²⁶ spanning the whole of Europe is open to any unit in this sector engaged in economic activity. The Community's contract with the Euro Info Centres expressly forbids them, when providing information, to discriminate between enterprises on the basis of their sector, size or legal form. Moreover, the Bundesverband der Deutschen Volksbanken/Raiffeisenbanken (FRG) and the Lega Nazionale delle Cooperative et Mutue (I) are members of the Euro Info Centres network. The recent decision to introduce an information service specializing in the agricultural markets and rural development²⁷ will channel information on Community markets to agricultural producer groups and cooperatives.

The sector's organizations also have access, if seeking Community partners, to the Business Cooperation Centre's facilities. EC-Net, the computerized business cooperation network numbers amongst its members such organizations as CEOOP (the European Committee of Workers Productive Cooperatives), the Consorzio Nazionale Servizi delle Società Cooperative (I) and the Fondation Rurale de la Wallonie (B). They are able to bring together cooperatives and other types of enterprise by means of exchanges or pooling know-how. However, very few of the sector's organizations have yet taken part in the annual Europartnership event, which brings Europe's small and medium-sized enterprises together; the next event, to be held in Wales in June 1990, will be an opportunity to see just how receptive the sector is to such encounters.

²⁶ COM(87)152 final of 7 April 1987; SEC(89)931 final of 5 June 1989.

²⁷ SEC(89)1717 final of 20 October 1989.

Examination of these measures to help SMEs benefit from the internal market makes clear the purpose of the Community's activities: bringing them out of isolation by offering them the opportunity to join information networks, exchange know-how and find partners.

Enterprises in the cooperative and mutual sector have certain advantages over their competitors in the private sector. Owing to the very nature of the sector and its basic principles of solidarity, there exist long-standing links between its enterprises.

Support might be given to the sector's own existing information schemes. In many instances, its training schemes could serve as a model for enterprises in the same branch or the same region. A reluctance to cooperate will be a greater obstacle in the private sector, where businessmen may be less accustomed to working with cooperatives or other similar organizations.

4. Redeployment on a European scale

This rapid overview has revealed that there is a great deal more to assessing what the European dimension means to the cooperative and mutual sector than merely analysing the situation of its organizations in the light of the Treaties and of Community measures.

The European dimension poses the challenge of a sea change in the economic and social context in which these organizations operate.

They have now taken on board the European challenge. The remarks in the previous sections have shown that, if they adapt, they have the means to adopt similar strategies to those of traditional undertakings.

However, the expansion of their environment to encompass the European dimension does not solely constitute a problem of market size, to which they could respond either by concentrating their means of production or by specializing in certain products as most undertakings do.

For them, the European perspective also poses the fundamental question of their *raison d'être*: from this arises the question of the nature of the goods and services supplied and the way in which their production and distribution is organized.

Should this sector fundamentally reappraise its activities - which grew out of a specific economic and social context - to fit them into this new European framework with its geographical, economic, social and cultural dimension?

Given the strengthening of the social dimension of the internal market - itself a major pillar in the building of Europe - such a reappraisal would be desirable, for in the way they go about their business the organizations in the mutual/cooperative sector are driven by an ethos of solidarity and the involvement of the economically active and social groups themselves.

4.1 The ability to manage the transition to European integration

In the past, the enterprises of the cooperative and mutual sector have demonstrated their ability to adapt in societies in transition.

It was the cooperatives and mutual societies which first set about satisfying, with limited resources, the aspirations of employees in respect of social insurance, pensions, etc., that were eventually embodied in social legislation and allocated substantial resources. Today, they are again involved in a process of economic and social change: regarding production for some of them; or the particular situation of certain sections of the population; or they are contributing to the revitalization of some regions with the aid of local development schemes, social integration measures, etc. Development associations have started initiatives to slow down the decline of activities and depopulation and to reconstitute an economic fabric that will then attract other businesses, whether or not they belong to the cooperative and mutual sector.

The active role of the organizations in such difficult situations illustrates their innovative capacity, as reflected in the way in which they supply a product or a service, set up a business or design a work station. It also explains their ability to develop strong links with their environment, through business networks, partnerships with local authorities, tapping private savings, etc.

The creation of an area without frontiers, the building of Europe, demands change on the part of each national economy and every business. The manner in which the organizations of the cooperative and mutual sector have developed their innovative capacities and the way in which they organize their own transition to a European dimension can determine the future of the whole of society, just as the first mutual societies influenced the development of social protection in all the States.

The creation of a European area without frontiers throws down the challenge of maintaining this social and economic pioneering role, in an unabated spirit of active solidarity, which the organizations of the sector have played and still play, and which they must adapt to the European stage.

Some mutual societies have already embarked on this course, for example when they explain the reorganization of part of their activities as reflecting their desire to help shape the single market so that it will serve as a model for social policy, or to make a practical contribution to harmonization of social benefits throughout Europe.

By the same token, the attempts to boost the capital resources of cooperatives, in particular workers' cooperatives, encounter the same problems as SMEs wishing to expand while preserving their independence; the search for solutions within the cooperative movement could provide a blueprint for attracting outside capital without loss of control that the non-cooperative sector, whose own initiatives have been somewhat piecemeal, could follow.

By moving into an ever widening range of economic activities in all Member States, the associations are showing that there are many different ways of meeting the wants and needs of Europe's citizens.

4.2 Strengthening social bonds both within and outside the world of enterprise

The social motivation that is the hallmark of the sector opens up a broad debate on enterprise and its function.

The characteristics of the cooperative, mutual and non-profit sector that we have repeatedly stressed imply that its organizations do not merely constitute a method of responding to, or penetrating, an undifferentiated market. The sector is also characterized by its ability to set up high-profile businesses on the strength of the solidarity of the members or users. It demonstrates how a group of people can take charge of their own destiny by economic and social action.

The success of many organizations of the sector is founded on the strong social and occupational bands of the producer or user group. This cohesion is born of the belief, held since the very beginning of the movement, that economic efficiency and production are possible only if the human resources of a business are given their rightful place and the aspirations of the employees, producers or users are listened to. This is why many activities are close to the source of demand and the final consumer, and why partners able to articulate this demand have been integrated into the networks. It also explains the desire to have a highly motivated staff.

The solidarity instinct of the group is reflected in the insistence on formal contracts to govern its relationships with any external partner, such as government, another company or a contributor of capital. Originally, the supplier of capital and the group controlling the business were one and the same (employees or users).

There are therefore three levels to the development on a European scale of the organizations of the sector.

Firstly, there is the launch of common actions at the level of a Community of twelve Member States, a much larger number of regions and a wide spectrum of interests rooted in history and tradition.

The second level involves maintaining and developing social cohesion in the event of a sudden expansion of activities that could result from access to the European market. The national activities of the organizations of the sector grew from origins of local demand and the needs of close-knit neighbourhoods, and were progressively extended across the land and to other types of activity. The European area without frontiers requires them to respond suddenly to demand dispersed over a vastly wider territory and emanating from a great diversity of tastes and interests.

The third level concerns the increased financial needs of the organizations in order to be able to expand their activities. It carries with it the risk of a progressive shift of power within the unit from the group of producers or users to the group which bears the investment risk (the suppliers of capital), and thus threatens the cohesion between users, producers and workers, an essential element in the success of the organization.

At the local level or within an individual organization, an effort is usually made to limit this dichotomy between group cohesion and the

pressures of expanding activities by developing training schemes and channels for the expression of employees' or users' views.

The responses of units in the cooperative and mutual sector have frequently blazed the trail for traditional businesses as they develop worker participation in recognition of the fact that, today, the problems of competitiveness in the market without frontiers demand an enhanced respect for the human resources deployed.

In the same way, their ability to devise different answers to the needs of citizens, consumers, producers and users has opened up new markets, into which all forms of business have then moved.

Thus the organizations of the cooperative and mutual sector demonstrate by their actions and their practical grasp that a link is often possible between true economic vigour and satisfaction of essential needs not yet considered worthwhile targets for business in general.

Conclusion

The Community should help organizations in this sector in two ways.

1. The Community should provide them with the resources available to all undertakings so that they can take advantage of the European market.

In some cases it is easy to identify what needs to be done; it is less easy to decide how to do it.

However, it is important to restate certain guiding principles on which a work programme should be based.

- (a) There must be no discrimination on the grounds of nationality.

Any difference in treatment between nationals and non-nationals in the formation or operation of an enterprise in this sector is an infringement of the Treaty.

- (b) There must be freedom of establishment and freedom to provide services for those organizations covered by Article 58.

The inclusion within the scope of Article 58 of non-profit-making units of this sector which engage in economic activity must be clarified.

The purpose of stating this principle is to establish equal treatment on the large single market for all economically active organizations, irrespective of their legal form. Organizations are defined according to whether or not they engage in an economic activity and according to the branch in which they are active, and not according to the legal form under which the activity is pursued.

Careful consideration should be given to the implications of proclaiming these freedoms, since they determine the access to the markets of organizations governed by bodies of national law which differ considerably in their rules on formation, taxation and position with respect to social legislation and competition law.

- (c) There must be access to the business cooperation facilities.

Early action should be taken to investigate the conditions for cooperation in the form of mergers or the formation of holding companies or joint subsidiaries for the types of business, other than the public limited company, in the mutual cooperative sector.

The study should cover both the rules for forming such enterprises through mergers or new holding companies or joint subsidiaries, and the legal form of the new enterprise: will it be a public limited company or another type of enterprise?

At the same time, methods could be found of encouraging cooperation between cooperatives and mutual societies operating in different branches by conducting pilot schemes which build on the complementary aspects of each of these types of organization in the different Member States.

2. The Community should nurture the sector's own debate and new ideas on the implications of the large single market.

One clear objective in the building of Europe is to respect the economic and social cohesion of the Community in the drive towards the frontier-free area.

The units themselves should be made more aware of their traditional pioneering role in the face of change, and also of their potential contribution to European society in general.

The Commission should discuss the future with representatives of the sector. It could do this by setting up and providing secretarial support for a think tank led by a distinguished figure.

Annex I

The legal framework of cooperative, mutual and non-profit organizations

Source: Economic and Social Committee, 1987.

Table A: Legal Framework for Cooperative, Mutual and Non-Profit Organizations

	B	DK	D	GR	F	IRL
Cooperatives	<p>Legal form:</p> <ul style="list-style-type: none"> - Cooperative (1973 Laws) - Other admissible legal forms: limited company, plc, limited company, professional association, non-profit making associations etc. <p>Supervision: Authorization by the Ministry for Economic Affairs</p> <p>Tax regime: Minimal tax advantages</p>	<p>Legal form:</p> <ul style="list-style-type: none"> - Trading company - The law makes no provision for the legal form 'cooperative' <p>Supervision: As for all other companies</p>	<p>Legal form: Registered cooperative (law of 1889)</p> <p>Supervision:</p> <ul style="list-style-type: none"> a) internal: supervisory board b) external: auditing association <p>Tax regime: Some types of cooperative enjoy tax relief or tax exemption</p>	<p>Legal form:</p> <ul style="list-style-type: none"> - Cooperative (law 602/1914 as amended by laws 921/1978 and 1267/1982 with regard to agricultural cooperatives) <p>Supervision: by the state</p>	<p>Legal form: Cooperative (law of 1947) + special legal provision for different sectors of the cooperative movement</p> <ul style="list-style-type: none"> - agricultural cooperative (1972 law) - other forms: any company under civil or commercial law <p>Supervision: As for all other companies. Special regulations apply to certain sectors.</p> <p>Tax regime: Minimal tax advantages</p>	<p>Legal form:</p> <ul style="list-style-type: none"> - Cooperative <p>Supervision: Registration with the Registrar of Friendly Societies</p> <p>Tax regime: Minimal tax relief</p>
Mutual societies	<p>Legal form:</p> <ul style="list-style-type: none"> - mutual insurance society - joint insurance fund <p>Supervision:</p> <ul style="list-style-type: none"> a) mutual insurance societies: insurance supervision authorities b) joint insurance funds: Social Welfare Ministry 	<p>Legal form:</p> <ul style="list-style-type: none"> - mutual insurance society <p>Supervision: As for all other insurance companies</p>	<p>Legal form:</p> <ul style="list-style-type: none"> - mutual insurance society <p>Supervision:</p> <ul style="list-style-type: none"> a) internal: supervisory board (optional for smaller mutual insurance societies) b) external: Federal Supervisory Office for Insurance <p>Tax regime: Smaller mutual insurance societies may, in certain circumstances, be exempted from corporation tax</p>	<p>Legal form: Not dealt with in this text</p>	<p>Legal form:</p> <ul style="list-style-type: none"> a) - mutual assistance fund (mutual insurance code) - agricultural social insurance fund b) - mutual insurance society (insurance code) - agricultural mutual insurance fund 	<p>Legal form:</p> <ul style="list-style-type: none"> (1) Friendly Society (2) Company limited by shares, with special rules embodying mutual principles <p>Supervision: (1) Registration with authorities as Friendly Society (2) As for other companies</p>
Non-Profit organizations (Non-profit associations, building societies, etc.)	<p>Legal form:</p> <ul style="list-style-type: none"> - Non-profit making associations (1921 Law) 	<p>Legal form:</p> <ul style="list-style-type: none"> - institutions lending against 'real' security (1970 Law) 	<p>Legal form:</p> <ul style="list-style-type: none"> - registered association (not dealt with in this study) - Building Society (1927 Law) 	<p>Legal form: Not dealt with in this text</p>	<p>Legal form: Non-profit association (1901 Law)</p>	<p>Legal form: Building Society (1976 and 1980 laws)</p> <p>Supervision: Registration with the Registrar of Building Societies</p>

I	L	NL	UK	S	P
<p>Legal form: - Cooperative (1947 Law) + special legal provisions for each type of cooperative Supervision: Ministry of Labour and Social Welfare - various other ad hoc bodies Tax regime: Tax exemption or relief under certain circumstances</p>	<p>Legal form: - Cooperative (1915 Law) - Agricultural association - other admissible forms: the six legal forms of trading company Supervision: Internal: supervisory committee</p>	<p>Legal form: - Cooperative (1976 Law) Supervision: As for other companies Tax regime: Some minor special arrangements</p>	<p>Legal form: - Cooperative Supervision: Registration with Chief Registrar of Friendly Societies; certain cooperatives are registered under the laws on companies limited by guarantee Tax regime: Minor tax relief</p>	<p>Legal form: - Cooperative (Spanish Law 52/1974; Catalan Law 4/83; Basque Law 1/82) Supervision: a) Internal: auditors b) External: Authorization by Ministry of Labour (Directorate-General for Cooperatives) Tax regime: Some tax exemptions or concessions</p>	<p>Legal form: Cooperative (law 454/80 as amended by law 238/81) Supervision: Cooperative Registry as required by Art. 86 of the laws on cooperatives. Registry authorities cover economic and financial supervision</p>
<p>Legal form: - Mutual assistance fund - Supplementary fund</p>	<p>Legal form: Mutual assistance fund (1961 Law) Supervision: Ministry of Social Security</p>	<p>Legal form: (1) Mutual Insurance Society (2) Health insurance fund Supervision: (1) As for other insurance companies (2) Health insurance council</p>	<p>Legal form: - Friendly Society (1947 Law) - Company limited by shares, with Rules based on mutual principles - Company limited by guarantee Supervision: Registration as Friendly Society. In the case of companies limited by shares <i>inter alia</i> corresponds to supervision over all other insurance companies</p>	<p>Legal form: - Mutual assoc. (under Social Welfare Act 6.12.1941; Occupat. Accid. Act 30.5.1974, or Gen. Insur. Act 18.12.1954) Supervision: Mutual associat. set up under the soc welfare of occupat. accidents legal. are supervised by the Ministry of Labour (Directorate-Gen. for Social Welfare); those set up under the gen. insur. legal. are supervised by the Ministry of Finance Tax regime: Some tax advant. Not dealt within this text</p>	<p>Legal form: Mutual prov. soc. (law 347/81 and regul. 58/81) Supervision: Mutual provident societies are subject to the supervision of the Ministry for Social Matters, Directorate General for Social Security Tax regime: Some tax advantages</p>
<p>Legal form: Not dealt with in this text</p>	<p>Legal form: Not dealt with in this text</p>	<p>Legal form: Housing Corporation (1901 law)</p>	<p>Legal form: Building Society (1962 law) Supervision: Registration with the Chief Registrar of Building Societies</p>	<p>Legal form: Not dealt with in this text</p>	<p>Legal form: Private social welfare institutions (law 119/1983) Supervision: Ministry for Social Matters, Directorate General for Social Security, Directorate for the maintenance of private social welfare institutions</p>

Annex 2

Statistics on cooperative, mutual and non-profit organizations

There are no official statistics on organizations in this sector. The statistics which do exist cover economic activity and employment data in terms of size, location and economic sector or branch, but not legal form.

Many units in the sector are governed by the ordinary law for which they constitute a particular category, sometimes covered by a separate specific and identifiable body of law, but in other cases governed only by voluntary codes of conduct (e.g. British production cooperatives abide by the rules of the Industrial Common Ownership Movement).

The figures given below summarize statistics provided by cooperative movements and their European associations.

Consumer cooperatives in the EEC and EFTA are estimated to have a membership of 20 million families and to employ 400 000 workers in 22 000 shops and 200 factories or warehouses. Total turnover is put at ECU 50 000 million.

These enterprises have not escaped the trend towards concentration in the European distribution sector. In Italy, for example, the number of consumer cooperatives has declined over 20 years by a factor of 7 (to today's figure of 450) and the number of points of sale has dropped from 7 000 to 1 300, with a larger average floor area.

The activities of mutual societies in Europe cover three classes of insurance:

- (i) life assurance, a market where private insurance companies have long been active;
- (ii) sickness or old age insurance, supplementing or managing national social security systems; only over the last ten years or so has there been real competition on this expanding market between private companies and mutual societies to provide supplementary sickness and old age insurance cover; health expenditure

in Europe ranges from 3.9% of GDP in Greece to 8.5% in France;

- (iii) large exposures insurance (vehicles, fire, property damage), a market where mutual societies in some countries have increased their market share over the last 20 years.

In the whole of the Community there are some 10 000 mutual societies concerned with social security supplementing public social security schemes. They employ more than 200 000 workers and provide cover for 40 million families (and two or three times that number of individuals).

In 1984-85 their market shares varied from 1.6% in the Netherlands to 38% in the United Kingdom for life assurance and from 8.1% in Italy to 52.1% in Germany for non-life insurance. In Germany, three mutual societies were among the ten largest companies on the life and non-life market. Similar figures were recorded in Denmark, Spain and France but for non-life insurance only, whereas the figure for life assurance was only one or two companies in ten.

In the agricultural sector it is estimated that an average 60% of total European production is harvested, processed and sold through cooperatives.

The proportion varies with the Member State and the product. In 1987 the figure in Denmark for pigmeat, milk, fruit and vegetables was over 90%; in Greece, nearly 50% for cereals and fruit, over 25% for milk, and some 15% for vegetables; in Spain, under 20%, except for fruit (26%); in France, between 35% (vegetables) and 78% (pigmeat); and in Italy between 5% (eggs) and 35% (cereals).

Annex 3

Background

In 1989 the Commission of the European Communities turned its attention to the cooperative, mutual and non-profit sector by setting up a new department in DG XXIII.

Before then, enterprises in this sector were not identified as such. However, their concerns have been taken into account at Community level in terms of the branch in which they are active, such as agriculture, fisheries and financial services (banking and insurance). Their importance has also been recognized in the wider context of their contribution to the development of certain Community policies, especially regional and social policy, in such areas as training, employment and local development. And all measures launched under the Community's enterprise policy have been applicable to the mutual/cooperative sector.

For its part, the European Parliament has adopted several resolutions specifically concerning certain types of unit in the mutual/cooperative sector - those on the role of cooperatives in regional development (1983 and 1987) and in development policy (1988).

The Economic and Social Committee in 1986 organized a conference on organizations in the cooperative, mutual and non-profit sector in the Community, in preparation for which it published a major study which to this day is the most exhaustive and authoritative work on the subject. More recently, (September 1989) the Committee adopted an own-initiative opinion on the role of cooperatives in regional development.

As they are highly distinctive, the Commission undertook in its programme for 1989 to initiate "reflection 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".²⁸

²⁸ Bulletin of the European Communities, Supplement 2/1989, point 90, p. 47.

Annex 3 (contd)

Community reports and papers on the cooperative, mutual and non-profit sector

European Parliament

- Resolution of the European Parliament (Mihl report) 1983
- Resolution of the European Parliament presented by Mr Eyraud on 5 November 1984 on "the development of associations" (not adopted, referred back)
- Resolution of the European Parliament on "non-profit-making associations in the European Communities" (Fontaine report), 13 March 1987
- Resolution of the European Parliament on "the contribution of cooperatives to regional development" (Avgerinos report of 28 May 1986), July 1987
- Resolution of the European Parliament urging Member States to ratify the Council of Europe Convention on the mutual recognition of non-governmental associations and organizations, 3 March 1988
- Report of the European Parliament (Mr Trivelli) on "cooperatives and the cooperative movement in development policy", 4 October 1988
- Working paper by an inter-group working party chaired by Mr Eyraud on a draft European model legal form for associations, April 1989

Economic and Social Committee

- Conference on the activities of cooperatives, mutual societies and associations in the Community, October 1986
(Working paper and conference proceedings published by the ESC)
- Own-initiative opinion of the Economic and Social Committee on the contribution of the cooperative sector to regional development (rapporteur: Mr Bento Goncalves), 29 September 1989