

**ECONOMIC AND SOCIAL  
CONSULTATIVE ASSEMBLY**

**1992**

**STATUTES FOR THE  
EUROPEAN COOPERATIVE,  
MUTUAL AND NON-PROFIT SECTORS**

*EUROPEAN  
COMMUNITIES*



*ECONOMIC AND  
SOCIAL COMMITTEE*

Brussels

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CONSULTATIVE ASSEMBLY**

***STATUTES FOR THE  
EUROPEAN COOPERATIVE,  
MUTUAL AND NON-PROFIT SECTORS***

FOREWORD by Mr António CARDOSO E CUNHA,  
Member of the Commission  
of the European Communities

***EUROPEAN  
COMMUNITIES***

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## FOREWORD

An Economic and Social Committee Opinion on a Commission proposal is always an event to which the Commission attaches great importance.

The present Opinion deals with the proposals for Council regulations on statutes for a European Association (EA), a European Co-operative Society (SCE) and a European Mutual Society (ME). I am particularly pleased to note that the Opinions are, on the whole, positive and that they have been adopted by a very large majority of the ESC.

The ESC's excellent 1986 report on co-operatives, mutual societies and non-profit-making associations in the European Community provided an initial analysis of the role of these organisations, which had hitherto been given little recognition at Community level as a fully-fledged economic sector.

Then the Economic and Social Committee was able, in its own-initiative report and Opinion of September 1990, to identify the needs of co-operatives, mutual societies, non-profit-making associations and charities in the light of a frontier-free Europe.

From these reports it is evident that co-operatives, mutual societies, non-profit-making associations and charities are guided by specific organisational procedures and legal rules which are different from those governing the operations of companies, and that they play an important economic and social role in all the countries of the European Community.

These organisational procedures thus make an essential contribution to the dynamism of a democratic society based on the concept of pluralism and on the maintenance and nurturing of the spirit of initiative among the citizens of Europe; indeed, the priority which they give to the individual make them the essential tools for building a citizen's Europe.

Another important thing about co-operatives, mutual societies, non-profit-making associations and charities is their basically disinterested nature. For when they carry out economic activities they do so not to achieve a profit in the traditional sense of the term but above all to contribute, for instance, to the economic, social or cultural advancement of their members or of society in general.

As far back as 1989 the Commission undertook in its work programme to examine how co-operatives, mutual societies, non-profit-making associations and charities would be affected by the Single Market and what opportunities they might have. It also expressed its interest in the sector in a Communication of December 1989, the object of which was to:

- identify the prospects open to co-operatives, mutual societies, non-profit-making associations and charities in the Europe of 1992 and the extent to which they were taken into account in EC policies; and
- outline the steps to be taken by the Community to ensure that such bodies would have access to the frontier-free market on an equal footing with other enterprises.

These entities must therefore be able to benefit without restriction from the advantages offered by the Single Market on the same footing as companies, especially as regards their cross-border activities, while at the same time retaining those features peculiar to them and to which they are quite rightly very attached.

The three proposals for Council regulations referred to earlier offer the following solutions:

- Formation of a SCE, ME or EA modelled on the provisions of the proposal for a regulation on a European Company. An SCE, ME or EA may be formed either directly by any of the legal entities listed in the annexes to each regulation which have their registered offices in at least two Member States, or by conversion of a domestic co-operative, mutual or association which has an establishment or subsidiary in another Member State and which can show that it is carrying on a genuine cross-border activity. In addition, EAs may be formed directly by natural persons.

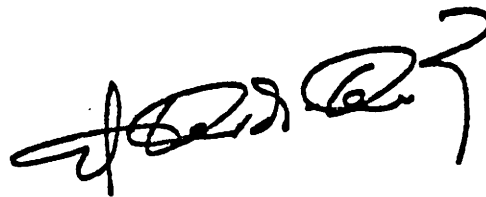
- The statutes of the SCE, ME and EA provide the three entities with a similar set of rules regarding the general meeting, internal structure, financing, accounting requirements, winding-up and liquidation, insolvency and suspension of payments. However, specific rules are laid down in each proposal concerning such matters as capital for SCEs, the formation fund for MEs, the procedures for forming an EA and the rules governing the operations of the managing body.

The involvement of employees in managing bodies is governed by national rules.

When there are no national rules on employee involvement the directives provide procedures for information and consultation between employee representatives and the managing and/or administrative bodies of the SCE, ME or EA.

The Commission is therefore particularly satisfied with the support and favourable welcome given by the Economic and Social Committee not only to its proposals for regulations on statutes for a European Co-operative Society, a European Mutual Society and a European Association, but also to its approach to the question of employee involvement.

Co-operatives, mutual societies, non-profit-making associations and charities will now finally be able to have the specific and optional European operational instrument which they need if they are to be fully integrated into the Single Market of 1992.



Antonio CARDOSO E CUNHA  
Commissioner responsible for the social  
economy sector

## THE STUDY GROUP'S COMPOSITION

These ESC Opinions on the Statute for the European Cooperative, Mutual and Non-Profit Sectors are an important contribution to the operation of the Single Market. They were adopted as follows :

- Statute for a European Cooperative Society : by a majority, with 9 votes against and 9 abstentions
- Statute for a European Mutual Society : by a majority, with 8 votes against and 15 abstentions
- Statute for a European Association : by a majority, with 11 votes against and 16 abstentions.

The results of a compromise established on an extremely broad geographical base, these Opinions open the way to the future Cooperative, Mutual and Non-Profit Community.

To prepare its Opinions the Section for Industry, Commerce, Crafts and Services set up a Study Group consisting of the following :

<b>Chairman:</b>	Mr	WICK (D) Gr. I
<b>Rapporteur:</b>	Mr	RAMAEKERS (B) Gr. III
<b>Co-rapporteur:</b>	Mr	FLUM (D) Gr. II PANERO FLOREZ (ESP) Gr. I
<b>Members:</b>	Mr	BELL (UK) Gr. I BENTO GONÇALES (PO) Gr. I CARROLL (IRL) Gr. II CHEVALIER (F) Gr. III DONCK (B) Gr. I FORGAS I CABRERA (ESP) Gr. III HILKENS (NL) Gr. III de KNEGT (NL) Gr. II LAKA (ESP) Gr. II MERCIER (F) Gr. II MORALES (PO) Gr. III NOORDWAL (NL) Gr. I PASQUALI (I) Gr. III PELLARINI (I) Gr. II
<b>Rapporteur's Expert:</b>	Mr	LEJEUNE (B)
<b>Co-rapporteurs' Experts:</b>	Mr Mrs	NEUMAN-DUESBERG (D) TRINIDAD RODRIGUEZ (ESP)
<b>Group Experts:</b>	Mr  Mrs Mr	HOFKENS (B) Gr. I WIESNER (D) Gr. I MAGNI (I) Gr. II HOFFMANN (D) Gr. II TOLMAN (NL) Gr. III COURSIN (F) Gr. III
<b>Secretariat:</b>	Mr	LEINER, Head of Division





**OPINION**  
**of the**  
**Economic and Social Committee**

on the

- Proposal for a Council Regulation (EEC) on the Statute for a European Cooperative Society
- Proposal for a Council Directive complementing the Statute for a European Cooperative Society with regard to the Involvement of Employees



On 26 March 1992 the Council decided to consult the Economic and Social Committee, under Article 100A and 54 of the Treaty establishing the European Economic Community, on the

*Proposal for a Council Regulation (EEC) on the Statute for a European Cooperative Society - SYN 388*

*Proposal for a Council Directive complementing the Statute for a European Cooperative Society with regard to the Involvement of Employees - SYN 398 (COM(91) 273 final).*

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 6 May 1992. The Rapporteur was Mr RAMAEKERS.

At its 297th Plenary Session (meeting of 26 May 1992) the Economic and Social Committee adopted the following Opinion by a majority, with 9 votes against and 9 abstentions:

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

**1. Introduction**

- 1.1. With this proposal for a Council Regulation on the statute for a European Cooperative Society (Societas Cooperativa Europaea - SCE), the European Institutions are working along two lines: towards giving tangible form to the interest they have shown in this sector of the economy and recognizing the specific needs of cooperative societies.
- 1.2. After a number of resolutions passed by the European Parliament (the 1982 Mihr Report/the 1987 Avgerinos Report) and Opinions issued recently by the Economic and Social Committee (Opinion of 28 September 1989<sup>1</sup> on the contribution of the cooperative sector to regional development; Opinion of 28 March 1990<sup>2</sup> on the Proposed Regulation setting out the Statute for the European Cooperative Society in which the Committee highlighted the need to set up an optional or alternative European legal framework for cooperatives; Opinion of 19 September 1990<sup>3</sup> which called for a number of points regarding the Statute for a future European Cooperative Society), this Commission document has highlighted most positively the importance of the cooperative sector within the European economic market.
- 1.3. Thus, apart from their importance in social terms, cooperatives have a turnover which amounts to ECU 370 bn and 63 million members in the Community.
- 1.4. With their specific and optional statute, these societies will be in a position to make a major contribution to developing a "Citizen's Europe": a precondition for social cohesion and essential to the success of the internal market itself.
- 1.5. The Committee considers it absolutely essential that the three regulations on the statutes for a European association, a European mutual society and a European cooperative be examined and adopted simultaneously.
- 1.6. It urges maintenance of the "gangways" principle, which it also considers essential, i.e. the possibility of setting up one of these three European entities through a national association, mutual society or cooperative.
- 1.7. To take account of the evolutionary nature of the matters dealt with by the regulation, the Committee would like it to include a flexible revision clause enabling, for instance, the exhaustive annexes to be modified.

<sup>1</sup> OJ N° C 298/59 of 27 November 1989.

<sup>2</sup> OJ N° C 124/34 of 21 May 1990.

<sup>3</sup> OJ N° C 332/81 of 31 December 1990.

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

## 2. Position of the Economic and Social Committee

- 2.1. The Committee's position on the SCE Statute was explained in detail in its Opinion of 19 September 1990.
- 2.2. This Opinion (adopted with no votes against and three abstentions) made six recommendations regarding European cooperatives; it would seem useful to reiterate these recommendations.
  - 2.2.1. Establishment of an optional, alternative **specific legal instrument**. This instrument will also take account of the specific nature of enterprises in the cooperative/mutual/non-profit sector.
  - 2.2.2. Establishment of **financing techniques** for consolidating or boosting the capital of such enterprises.
  - 2.2.3. Compliance with the **"one person, one vote" principle**, adaptable for legal persons.
  - 2.2.4. Provisions, in the event of liquidation, for the **distribution** of assets to bodies pursuing similar objectives.
  - 2.2.5. **Accessibility** of the statute to legal and natural persons.
  - 2.2.6. The possibility of **establishing** a European company of this type by **merger, setting-up a subsidiary, conversion of a national company or from scratch**.

## 3. Comments made by the Committee incorporated into the draft Council Regulation

- 3.1. The first recommendation has quite clearly been incorporated in the text of SCE Statute, more precisely in a number of recitals (i.e. 2, 4, 5, 12 and 17). The Council recommends that cooperatives be provided with adequate legal instruments capable of facilitating the development of their transnational business. This optional instrument of transfrontier cooperation is to help respond to the specific needs of cooperatives, which the arrangements for European Economic Interest Grouping (EEIG) and the European Company (SE) are not fully able to do.
- 3.2. The following three articles define how capital is made up:
  - Article 49\* stipulates that the statute can provide for shares whose holders are to have no voting rights, but who may be given special advantages;
  - Article 50\* authorizes founders to write "non-user investor members" into their statutory provisions. This is for cases where there are voting shares accessible to persons who do not expect to use the SCE's services; the rules may lay down special provisions for their benefit as regards distribution of surpluses;
  - and finally Article 51\*, regarding which the Committee would like to submit two proposals to the Commission:

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\* **Translator's note:** All numbers of articles refer to the French version of the text. English numbers after 20 are one less than their French counterparts because the French Article 20 is rendered as Article 19a in the English version of the Commission text.

- 3.2.1. The Commission should think about putting together a funding system which responds to the following two requirements:
- 1) avoid the danger of delocalization and the risk of creating unfair competition between SCEs and national cooperatives;
  - 2) provide the most European solution possible, and constitute a workable transfrontier legal instrument.
- 3.2.2. The Commission should also look into the extent to which the freedom of movement for capital and services achieved to date allows all cooperatives access to the various types of financing available in the Community.
- 3.3. The Committee welcomes the fact that Article 22 (1) maintains the principle of "one person one vote" - the symbol of cooperative democracy.
- 3.3.1. As regards the rules allowing members to have more than one vote (Article 22(2), the Committee proposes that this "may" (not "must") depend on the extent to which the member concerned takes part in the SCE's activities.
- 3.4. The Committee believes that the distribution of net assets must be carried out on the basis of the "disinterested" principle, i.e. distribution to other SCEs, to national cooperatives and to other organizations whose aim is to support and promote cooperative societies.
- 3.4.1. However, exceptions to this principle could be stipulated in two distinct cases: 1) the constitution provides for a different kind of distribution: 2) the governing body proposes a different type of distribution, as long as this is supported by a two-thirds majority vote in a general meeting.
- 3.5. Ways of setting up an SCE**
- 3.5.1. For a number of reasons, the Committee is surprised that Article 9 makes no mention of natural persons being founding members of SCEs:
- 3.5.1.1. Firstly, the ESC pointed out in its Opinion of 19 September 1990 (point 3.3. et seq.) that the European company as a legal instrument of trans-frontier cooperation was not suitable for the three types of "économie sociale" enterprise. One of the reasons for this was that the European company is not accessible to natural persons, which meant that they could not be organized on a Community-wide basis, in particular in frontier areas.
- Consequently, the ESC requested that future statutes for cooperatives, mutual associations and non-profit bodies be accessible both to natural and legal persons.
- 3.5.1.2. Secondly, Commissioner CARDOSO E CUNHA, responsible for "Economie Sociale", declared in his Communication to the Commission in September 1991 that the aim was to facilitate cooperatives', mutual associations' and the non-profit bodies' access to the benefits of the single market and in addition, to contribute to completion of a citizen's Europe by allowing natural persons to set up cooperatives, mutual associations and non-profit bodies with a European statute.
- 3.5.1.3. Thirdly, natural persons could no longer form an SCE, while the statutes of the European Association did offer this possibility (Article 3) if there were a minimum of 21 natural persons from two Member States.
- It would be desirable if cooperatives, mutuals and non-profit companies were to be treated alike, and their treatment aligned on the most attractive scheme, i.e. that of the European Association.
- 3.5.1.4. Fourthly, previous versions of the SCE statutes did provide natural persons with this opportunity.
- 3.5.2. The categories of legal persons who may set up an SCE are now strictly laid down in Article 9.

To form an SCE, legal entities must meet the following conditions:

- there must be a minimum of two;
- their registered offices and central administration must be located in two or more Member States of the Community;
- they must come under the description set out in the annex to this regulation.

3.5.2.1. On reading this annex, one thing is immediately clear: legal entities mentioned in Article 9 vary from Member State to Member State. Why is it that definitions vary from Member State to Member State?

3.5.2.2. What are the reasons which led one or another type of company being accepted, depending on the Member State?

3.5.2.3. The solution which has been adopted is all the more surprising since the principle of "gangways" was vehemently advocated by DG XXIII and Commissioner CARDOSO E CUNHA saw no legal obstacle to this very same principle. What are these "gangways"? They allow cooperatives, mutual associations and non-profit bodies undifferentiated access to the statute of European Cooperative Society, European Association or European Mutual Society.

3.5.2.4. This move was justified for a number of reasons:

- a) **Practical:** activity within the cooperative sector is not exclusively linked to the legal nature of cooperative societies. Thus although in some Member States cooperatives can only carry out their activity if they are legally set up as cooperatives, while still being authorized a) to acquire interests in other types of companies such as public or private limited companies and b) to include this type of company in their groups, in other Member States (such as Belgium, France, Italy and Luxembourg) cooperatives can choose their legal form which does not necessarily have to be one of the cooperative society. Note that in Denmark there is no legal form specifically for cooperatives - cooperatives can carry out their activity under other legal forms stipulated by company law.<sup>4</sup>

In the insurance sector, national legislation (on the cooperative and mutual association sectors) allows companies to be set up as cooperatives and mutual associations (Belgium, Italy, Luxembourg, Great Britain, Spain) or only as mutual associations (Denmark, Germany, France, Netherlands, Greece and Portugal). Irish firms must adopt as their legal form: incorporated companies limited by shares or guarantee or unlimited.

Companies which are members of the Association of European Cooperative Insurers have adopted various legal forms (cooperative society, mutual association, public limited company) varying according to historical, economic and social circumstances. (There was a time in Belgium for example when an insurance company could not take the legal form of a cooperative).

The common feature is their support for cooperative objectives and principles.

- b) **Legal:** The example of the European Company.

Thus the European company can, at least by setting up a joint subsidiary, be formed by any civil law or commercial company, including cooperative societies, and by other legal entities coming under public or private law.

In view of the ideas set out above as regards the founding members of SCEs, the Committee recommends that both natural persons and legal persons governed by public or private law be able to set up a European cooperative.

3.6. The Committee recommends that SCEs have access to the same arrangements for their formation as do SEs (European Companies) i.e. by conversion, by merger or from scratch.

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<sup>4</sup> ESC General Secretariat, Cooperatives, mutual associations and non-profit bodies in the European Community, EC Publications Office 1986, pages 21 to 24.

- 3.6.1. Why depart from the SE statute when it is already the basis of so many other provisions in the SCE statute?
- 3.6.2. However the SCE is set up, the Committee wishes to avoid a situation where the statute could give asylum to fictitious SCEs; for this reason the Committee recommends that all SCEs be able to demonstrate their intention to carry out genuine and effective cross-border activities.
- 3.6.3. Here, the Committee would reiterate the conditions set out in Article 9(2), in the event of an SCE being established by converting a national cooperative; so that no legal doubt remains as to the exact meaning of this condition, the Committee calls on the Commission to give a precise definition of the expression "genuine and effective cross-border activities", as soon as possible.
- 3.6.4. The Committee wonders whether monitoring of this intention to carry out genuine and effective cross-border activities could not be incorporated into the system laid down in Article 5(2) of the Regulation, which deals with registration and disclosure requirements.
- 3.6.5. As regards the actual nature of the future SCE, the Regulation could stipulate that a given percentage of SCE members must be nationals of Member States other than the one in which the registered offices are located.

#### **4. Proposals for amendments to certain provisions in the draft Regulation**

##### **Explanatory Memorandum on Article 3 (paras 1 and 2)**

- 4.1. The wording here could imply that an SCE will be wound up or a new legal person will be created if the registered office is transferred from one Member State to another. But Article 3(1) is quite clear in this respect: the transfer of a registered office from one Community Member State to another does not entail that office being wound up or a new legal person being created.
- 4.1.1. Consequently, this part of the Explanatory Memorandum should be reworded so as to avoid any ambiguity.

##### **ARTICLE 5**

- 4.2. Would it not be valuable to add the following to Article 5(4)c:
 

*"Disclosure measures must reveal whether persons who may bind the SCE have the power to do so individually or whether they must act jointly."*
- 4.2.1. This advantage seems to be essential, given that the final part of Article 42(4) (power of representation; liability of the SCE) stipulates mandatory disclosure in matters regarding the option of binding the SCE individually or jointly.

##### **ARTICLE 9**

- 4.3. Given the argument set out in points 3.5.1., 3.5.2. and 3.6.3., the Committee suggests first of all that Article 9(1) be reworded as follows:
 

*"An SCE may be formed by five or more natural persons resident in two or more different Member States and/or by any legal entity under public or private law, formed under the law of a Member State, provided at least two of them have their registered office and central administration located in different Member States."*

The Committee then recommends that the following be added to 9(2):

*"An SCE may be formed by merger between an SCN (National Cooperative Society) and/or an SCE and, may in general, merge with other SCEs or SCNs if the legal statutes of the legal entities involved permit such a merger."*

- 4.3.1. To prevent fictional SCEs being formed, (cf. point 3.6.2.) the Committee feels that the last clause of the first paragraph of Article 9 (2) should be deleted and replaced with the following:

*"To secure the actual nature of the SCE, however it is to be formed, founding members must demonstrate their intention to carry out genuine and effective cross-border activities."*

#### **ARTICLE 9A**

- 4.4. The Committee proposes insertion of the following Article 9a, unless the Commission shows that it overlaps with Article 5(2) of the Regulation:

*"Article 9a (Monitoring Formation)*

*When an SCE is formed and its statutes drawn up, compliance with the provisions set out in this present Regulation and any applicable national law is to be monitored in accordance with the arrangements laid down for cooperatives by the legislation of the Member State in which the SCE's registered office is located. Member States shall take the necessary measures for ensuring that this monitoring is effective."*

#### **ARTICLE 10**

- 4.5. In the list of rules which the SCE must include, the addition of an indication of the duration of the SCE could be considered, unless the duration is indeterminate. This takes account of Article 61(2), first indent, which states that the management or administrative board shall convene a general meeting to take a decision on the winding-up of the SCE, where the period fixed in the rules has expired.

#### **ARTICLE 11(4)**

- 4.6. This Article could present serious risks for some kinds of cooperatives (e.g. those selling by mail order) insofar as this provision could allow competitor firms to gain access to confidential information (e.g. customer files).

#### **ARTICLE 12**

- 4.7.1. Paragraph 1: To take account of the possibility of natural persons establishing an SCE, two other cases in which membership shall be lost should be added: namely death and bankruptcy.
- 4.7.2. Paragraph 2: Should the possibility of expelling a member when he/she has contravened the statute, regulations or decision of the SCE not be limited?
- 4.7.3. The Committee would draw attention to the fact that a member who has resigned or been expelled cannot bring about the society's liquidation.

#### **ARTICLE 14**

- 4.8. To cover SCEs formed by natural persons, the Committee proposes amending Article 14 as follows:

*"The capital of an SCE shall amount to not less than ECU 100,000 or the equivalent in national currency in the event of an SCE being formed by legal persons under public or private law.*

*The capital of an SCE shall amount to not less than ECU 15,000 or the equivalent in national currency in the event of an SCE being formed by natural persons."*

#### **ARTICLE 15**

- 4.9.1. 15(4): In the event of shares being issued otherwise than for cash, it would be appropriate to mention that these non-cash contributions shall be assessable in the light of economic criteria.



- 4.9.2. 15(6): para. 1: The Committee feels that "successive subscriptions" should be replaced by "subscription of shares", in line with practice on capital variability.
- 4.9.3. 15(6): para. 4: To comply with the legal practice of cooperatives, the Committee proposes that the following be added at the end of the last sentence: "... at the proposal of administrative and governing bodies."

#### **ARTICLES 18 AND 20**

- 4.10. These two provisions refer to a minimum percentage of members, in this case 25%, for a) calling a general meeting (Article 18) and b) requesting the addition of new items to the agenda (Article 20). The SE statute (Articles 83(1) and 85) only requires 10% in these two cases. The Explanatory Memorandum on the European Cooperative does not explain the reasons for this percentage being higher for the SCEs.

#### **ARTICLE 22**

- 4.11. In line with points 3.3. and 3.3.1., the Committee proposes the following amendment: Article 22(2) third line: ("... this **must** depend ...") replace "must" with "may".

#### **ARTICLE 64**

- 4.12. The Committee proposes an amended version of this provision (cf. points 3.4. to 3.4.1.):
- "After the creditors have been paid in full, and anything due to designated beneficiaries has been paid in full, the net assets shall be distributed according to the 'disinterest' principle, i.e. to other SCEs or cooperative societies governed by the law of a Member State or to one or more bodies having as their object the support and promotion of cooperative societies.*
- However, there shall be two exceptions to this principle:*
- any other kind of distribution can be stipulated in the constitution;*
  - at the suggestion of the management board, the general meeting may vote by a two-thirds majority for a different type of distribution."*

#### **ARTICLE 66**

- 4.13. It is not normal for the Member States to be made responsible for prescribing penalties by a Regulation, which is directly applicable in all Member States of the Community. If the Commission does not prescribe such penalties itself, we will be faced with a wholly inconsistent scale of punishments.

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

1. The ESC welcomes the Commission's desire to take appropriate account of the role of employees when supplementing the statute for an SCE. The proposed directive coordinates national provisions concerning the participation of employees, the provision to them of information and their consultation and constitutes an indispensable complement to the statute for a European cooperative society.
  - 1.1. This proposed directive is an important component of a policy to promote economic and social cohesion in the Community.
  - 1.2. Through this directive, employees are to be provided with a information and consultation process and be involved in the corporate planning of the SCEs.
  - 1.3. The ESC points out that it is absolutely vital that the proposed regulation and directive both come into force at the same time.

2. In its Opinions on the statute for a European Company (SE), the ESC repeatedly affirmed its agreement in principle that workers' participation was an important precondition for the development of a democratic society and a Citizens' Europe.
  - 2.1. In this connection the ESC notes once again that employees must be assured of joint representation of their interests within the enterprise and be involved in certain decisions of the enterprise, though without impairing the responsibility or efficiency of management. The ESC has already stated this view in its Opinions of 25 October 1972, 29 May 1974 and 28 March 1989 on the European Company.
  - 2.2. However, in view of the political, social, historical and philosophical concepts of the different Member States, workers' involvement has neither taken the same forms nor reached the same stage in all Member States.
3. The Committee also believes that, as in many other fields, it will initially be impossible to achieve harmonization as regards SCEs.
  - 3.1. To this extent the Commission's suggestion of making a flexible offer of a system which takes account of actual legal circumstances in the Member States can be accepted.
  - 3.2. But the ESC considers that the level of workers' involvement or co-determination reached in the Member States should in no way be endangered or reduced.
  - 3.3. Efforts should therefore be made to see that the participation options proposed by the Commission are equivalent as regards content.

Done at Brussels, 26 May 1992.

The Chairman  
of the  
Economic and Social Committee

Michael GEUENICH

The Secretary-General  
of the  
Economic and Social Committee

Jacques MOREAU

**OPINION**  
**of the**  
**Economic and Social Committee**

on the

- Proposal for a Council Regulation (EEC) on the Statute for a European Mutual Society
- Proposal for a Council Directive supplementing the Statute for a European Mutual Society with regard to the Involvement of Employees



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

*Proposal for a Council Regulation (EEC) on the Statute for a European Mutual Society (SYN 390); and the*

*Proposal for a Council Directive supplementing the Statute for a European Mutual Society with regard to the Involvement of Employees (SYN 391) (COM(91) 273 final).*

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

At its 297th Plenary Session (meeting of 26 May 1992) the Economic and Social Committee adopted the following Opinion by a majority, with 8 votes against and 15 abstentions:

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

**1. Introduction**

- 1.1. The Committee is pleased at the interest in the mutual sector shown by the European institutions, as evidenced by the Commission's proposal for a regulation.
- 1.2. After the various resolutions of the European Parliament (1982 Mihr Report, 1987 Avgerinos Report) and the ESC Opinion of 19 September 1990 (which stressed the importance of co-operatives, mutual societies and associations and advocated a greater awareness of the particular problems facing such enterprises during the construction of Europe), the text proposed by the Commission is an additional and decisive step towards obtaining Community-level recognition of the sector's specific nature.
- 1.3. The proposed statute for a European mutual society (ME) covers both provident societies (MPs) and insurance enterprises (MAs); the two types have some features in common and others which set them apart.
- 1.4. Both types follow the principles of mutual democracy (management by the insurees themselves) and solidarity (non-selection of risks); neither distributes surpluses or pays people to canvass for business. As regards differences, the two types are generally handled by different ministries (social affairs for MPs and economic affairs for MAs), cover different risks (personal injury for MPs and all risks, such as damage or death, for MAs) and are subject to different rules. The national laws covering MAs are fairly similar but those governing MPs have developed differently in each country according to local social security schemes: some cover compulsory sickness insurance while others are complementary to or alternatives for compulsory schemes.
- 1.5. The Committee considers it absolutely essential that the three regulations on the statutes for a European association, a European mutual society and a European co-operative be examined and adopted simultaneously.
- 1.6. The Committee urges maintenance of the "linkage" principle, which it also considers essential, i.e. the possibility of setting up one of these three European entities through a national association, mutual society or co-operative.
- 1.7. To take account of the evolutionary nature of the matters dealt with by the regulation, the Committee would like it to include a flexible revision clause enabling, for instance, the exhaustive annexes to be modified.
- 1.8. Moreover, because of the frequent referrals the draft regulation makes to Member States' legislation, the Committee urges the Commission to continue its comparative studies into the different national laws.

## **2. The ESC's Position**

- 2.1. The ESC's position on the ME statute was set out in detail in an Opinion adopted on 19 September 1990; it may be summed up by the following six proposals:
  - 2.1.1. Establishment of an optional, alternative specific legal instrument. This instrument will also take account of the specific nature of mutual societies.
  - 2.1.2. Clarification of financing techniques for consolidating or boosting own funds.
  - 2.1.3. Compliance with the "one person, one vote" principle, adaptable for legal persons.
  - 2.1.4. Provisions, in the event of liquidation, for the distribution of assets to bodies pursuing similar objectives.
  - 2.1.5. Accessibility of the statute to both legal and natural persons.
  - 2.6.1. The possibility of establishing a European company of this type by merger, setting-up a subsidiary, conversion of a national company or from scratch.

## **3. The Responses Contained in the Proposal for a Council Regulation**

- 3.1. The response to this recommendation is provided by the draft regulation as a whole and, more specifically, by certain recitals preceding the actual statute.
- 3.2. The financing of MEs is covered by Article 44, which states that an ME may make use of all forms of financing in the state in which it has its registered office under the same conditions as those applying to the legal entities which founded it.
  - 3.2.1. The Committee feels that as a result of this provision, discrimination could occur in connection with an ME's future location.
  - 3.2.2. In such a Community context, the - possibly utopian - ideal would be to guarantee any ME, regardless of the location of its registered office, access to the forms of financing provided for by one of the national legislations.
  - 3.2.3. Whilst this would obviously entail both practical difficulties and the risk of distortions of competition between MEs and national mutual societies, it should not be forgotten that one of the objectives of this statute is to enable MEs to engage in transnational activities on an equal footing with joint stock companies. If, however, this proposal is not viable, could not MEs at least be given access both to the forms of financing available in the country in which they have their registered office and to the financial instruments of the countries in which they have establishments?
  - 3.2.4. The Committee urges the Commission to continue its work so that a European solution might be found to the problem of financing, bearing in mind the major difficulty that mutuals have in developing their own funds.
- 3.3. Article 20 entitles each member of an ME to one vote. The Committee proposes that the article be amplified by introducing multiple votes for members who are legal persons, in proportion, for example, to their actual membership. However, there should be a single limit on this laid down by statute to prevent any one member from holding an absolute majority.
- 3.4. Article 52 states that the assets of an ME are to be distributed either to other MEs or mutual societies, except where otherwise stated in the rules.
  - 3.4.1. The explanatory memorandum justifies this derogation by the need to take account of certain national legal systems which do not recognize the principle of disinterested devolution. If this is the reason, why should it not be possible to provide that assets should be distributed in accordance with the principle of disinterested devolution in the Member States where that principle is recognized, and, as an exception, in accordance with national legislation in the case of MEs established in Member States where a different principle is

recognized? Such an arrangement would have the advantage of removing this statutory exception in Member States which apply the principle of disinterested devolution or where the law is silent.

- 3.5. It seems astonishing that the draft regulation (Article 2) does not provide for the formation of MEs by natural persons. The ME is, in fact, defined as a group of persons. (Explanatory memorandum: Article I and recital 7).

Other arguments have been put forward in support of this recommendation:

- 3.5.1. Firstly the ESC pointed out in its Opinion of 19 September 1990 (point 3.3 et seq.) that the European company as a legal instrument of trans-frontier cooperation was not suitable for the three types of companies in the cooperative/mutual/non-profit sector. One of the reasons for this was that the European company is not accessible to natural persons, which meant that they could not be organized on a Community-wide basis, particularly in frontier areas. Consequently, the ESC requested that future statutes for cooperatives, mutual associations and non-profit bodies be accessible both to natural and legal persons.
- 3.5.2. Secondly, Commissioner CARDOSO E CUNHA, responsible for the cooperative/mutual/non-profit sector, declared in his Communication to the Commission in September 1991 that the aim of this move was to facilitate cooperatives', mutual associations', and the non-profit bodies', access to the Single Market and, in addition, to contribute to completion of the Citizens' Europe by allowing natural persons to set up cooperatives, mutual associations and non-profit bodies with a European statute.
- 3.5.3. Thirdly, natural persons could no longer form an SCE, while the statutes of the European Association did offer this possibility (Article 3) if there were a minimum of 21 natural persons from two Member States and if the SCE (according to the Commission's interpretation) were made accessible to natural persons after its formation. It would be desirable if the three kinds of companies in the cooperative/mutual/non-profit sector were to benefit from the same approach and be aligned on the most attractive scheme, i.e. that of the European Association.

However, as there are two types of mutual (the MP and the MA), the Committee proposes a two-speed approach as regards access for natural persons:

- on the one hand, natural persons should be admitted as founder-members of an MA (Annex 1) as soon as the statute comes into force; and
- on the other hand, there should be a transitional period of, for example, 5 years as regards the setting-up of an MP (Annex 2) by natural persons, with the possibility of re-examining the conditions of access at the end of this period.

- 3.6. First of all the Committee would like Article 2 to include the creation from scratch of an ME by natural persons (bearing in mind the comment in the previous point).

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

### **4.1. Article 1(2), second indent**

This provides for derogation from the principle of non-remuneration of non-professional managers and administrators, which is completely contrary to the basic principles of the cooperatives/mutual/non-profit sector. The Committee proposes that all forms of direct remuneration be prohibited, whilst at the same time providing for reimbursement of administrators' expenses (transport, subsistence, etc.).

### **4.2. Article 2(2), first indent**

The Committee would like the Commission to say exactly what it means by "carrying on genuine and effective cross-border activities" when an ME is created by conversion.

#### **4.3. Article 7(4), second indent**

The Committee proposes that re-insurance should be added to the activities of credit or insurance.

#### **4.4. Annexes**

4.4.1. The Committee considers that the two following types of German mutual society, which should be eligible for the statute, should be included in the Annexes:

- die gesetzlichen Krankenkassen gemäß dem Sozialgesetzbuch (SGBV);
- die gewerblichen Berufsgenossenschaften gemäß Art. 545 und 762 der Reichsversicherungsordnung (RVO).

4.4.2. As regards Spain, the following should be added to Annex I:

- Mutuas de Accidentes de Trabajo, reguladas por la Ley de Seguros Privados, de 2 de agosto de 1989.

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

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

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

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

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

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

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

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

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

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

3.1. To this extent the Commission's suggestion of making a flexible offer which takes account of actual legal circumstances in the Member States can be accepted.

3.2. But the ESC considers that the level of employee involvement or co-determination reached in the Member States should in no way be endangered or undermined.



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

Done at Brussels, 26 May 1992.

The Chairman  
of the  
Economic and Social Committee

Michael GEUENICH

The Secretary-General  
of the  
Economic and Social Committee

Jacques MOREAU

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## APPENDIX

### to the Opinion of the Economic and Social Committee

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

#### Part II, point 1

Add the following to the first sentence:

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

#### Voting

For: 20

Against: 65

Abstentions: 9



**OPINION**  
**of the**  
**Economic and Social Committee**

on the

- Proposal for a Council Regulation (EEC) on the Statute for a European Association
- Proposal for a Council Directive supplementing the Statute for a European Association with regard to the Involvement of Employees



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

*Proposal for a Council Regulation (EEC) on the Statute for a European Association (SYN 386); and the*

*Proposal for a Council Directive supplementing the Statute for a European Association with regard to the Involvement of Employees (SYN 387) (COM(91) 273 final).*

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

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

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

**1. Introduction**

- 1.1. The Commission has previously acknowledged two fundamental roles played by associations at Community level, namely their capacity to develop economic activity and their task of promoting the general interest and activity in individual sectors in the Citizens' Europe.
- 1.2. The ESC underlined this recognition in its Opinion of 19 September 1990 on the Commission Communication to the Council concerning social economy enterprises and the achievement of a frontier-free European market.
  - 1.2.1. This Opinion, the main lines of which are set out below, is a valuable guide because of the very broad consensus reached on it: there were no votes against and only three abstentions.
  - 1.2.2. Among the wishes expressed by the Committee, one is specific to associations and should be particularly emphasised: that is the idea of a single Community legal statute for all European associations, so as not to introduce any divergencies into the associations sector.
  - 1.2.3. The Committee is pleased that the Commission proposal for a regulation has taken so much account of the remarks made in the Opinion of September 1990.
- 1.3. The proposals for changes which follow are a logical continuation of the Opinion and are intended solely to encourage the harmonious development and operation of associations in Europe.
- 1.4. The Committee thus hopes to contribute towards the drafting of a instrument which is vital to the affirmation of the right of association as a basic freedom and manifestation of European citizenship.
- 1.5. The Committee considers it absolutely essential that the three regulations on the statutes for a European association, a European mutual society and a European co-operative be examined and adopted simultaneously.
- 1.6. The Committee urges maintenance of the "gangways" principle, which it also considers essential, i.e. the possibility of setting up one of these three European entities through a national association, mutual society or co-operative.
- 1.7. To take account of the evolutionary nature of the matters dealt with by the regulation, the Committee would like it to include a flexible revision clause enabling, for instance, the exhaustive annexes to be modified.

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

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

- 2.1. **Specific situation of associations:** creation of a single Community legal statute for all European associations.
- 2.2. Establishment of an optional, alternative **specific legal instrument** (given the loopholes and limits of the EEIG and the European Company). This instrument will also take account of the specific nature of enterprises in the social economy sector.
- 2.3. Clarification of **financing techniques** for consolidating or boosting own funds.
- 2.4. Compliance with the "**one member, one vote**" principle, adaptable for legal persons.
- 2.5. Provision, in the event of liquidation, for the **distribution** of assets to bodies pursuing similar objectives.
- 2.6. **Accessibility** of the statute to both natural and legal persons.
- 2.7. The possibility of **establishing** a European company of this type by **merger, setting-up a subsidiary, conversion of a national company or from scratch**.

## 3. Responses contained in the proposed Council Regulation

- 3.1. The Committee notes that the desire of associations for recognition and the possibility of operating throughout the EC, on the basis of a single statute, has been heeded in Article 1 (text of the actual statute and explanatory memorandum), but more particularly in the fifth and seventh recitals preceding the actual provisions of the proposed regulation.
- 3.2. The Committee is pleased that certain recitals (eleventh and twelfth) recognize that neither the European Company nor the EEIG (European Economic Interest Grouping) are suitable cross-border cooperation instruments for associations or foundations.
  - 3.2.1. Consequently the Commission - which is to be congratulated - has drafted this proposal for a regulation, which is a vital basic component in confirming the right of association as a fundamental freedom and expression of European citizenship.
- 3.3. Article 41 provides that the EA may make use of all forms of financing in the state in which it has its registered office under the same conditions as those applying to the legal entities which founded it.
  - 3.3.1. This wording calls for two comments:
    - firstly, the Committee thinks Article 41 should mention natural persons as well as the EA's founding entities, since both may set up an EA; and
    - secondly, this linkage with the state in which the EA has its registered office does not seem an appropriate criterion since it would lead to inequalities between EAs with their registered offices in different EC Member States.
  - 3.3.2. Theoretically the ideal solution from an EC angle would be to allow EAs access to all forms of financing available to the national legal entities listed in the Annex. But the Committee is well aware that this approach could give rise to many practical difficulties in applying a particular system, besides distorting competition between EAs and national associations.
  - 3.3.3. However, the whole aim of a European statute is to transcend the national dimension and establish a genuinely European association on which the state chosen for establishment of the EA's registered office should have as little influence as the location of a national office's registered office in one town rather than another within the country concerned.

- 3.3.4. Nevertheless, the Committee feels that a system of referral could be found which avoids any distortion of competition between different EAs, or between national and European associations: the laws of the country in which a particular activity is carried out could serve as reference.
- 3.3.5. Obviously the Committee is aware that this method has its drawbacks, such as the difficulty of locating the activity and differences in the forms of financing available to the EA according to the countries to which it extends its activities.
- 3.3.6. Having briefly mentioned these different systems, each with its strong and weak points, the Committee can only recommend the most "European" solution to provide associations with the most operational cross-border legal instrument possible.
- 3.3.7. The Committee also wonders if the forms of financing referred to in Article 41 include both subsidies and the possibility of an EA appealing to public generosity.
- 3.3.8. If it does not, the Committee would like the Commission to see that such sources of finance are included in this provision.
- 3.3.9. Finally, the Committee would like the proposed regulation to indicate that an EA can call upon the various European instruments and forms of financing, and under the best terms possible.
- 3.4. Article 17 currently provides for the "one member, one vote" system. The Committee thinks it would be preferable to provide for the possibility of weighting this voting right (up to a stated maximum limit) to take account of the fact that (a) the EA may consist of natural or legal persons and (b) the latter may differ in nature.
- 3.4.1. The Committee therefore proposes that Article 17 be amplified to read: "Each member of the EA shall have one vote subject to multiple voting rights limited by the rules."
- 3.5. Article 44(3) specifies that net assets shall be distributed as stipulated in the rules and, failing such provision, in accordance with the laws applying to the EA in the Member State in which it has its registered office.
- 3.5.1. The Committee considers that this would completely contradict one of the fundamental principles of social economy, namely the way in which remaining assets should be distributed; it would like the proposed regulation to take account of this principle, even if certain national legal systems lay down solutions which are different from or opposed to it.
- 3.5.2. The Committee therefore proposes the following wording for Article 44(3):
- "The net assets, after the creditors have been paid in full, shall be distributed either to other EAs or to one or more bodies having the same or similar purposes."*
- 3.6. The Committee considers it a positive step that the statute has been made accessible to natural persons (especially as this is not yet the case for SCEs and MEs) in line with the wishes expressed in the ESC Opinion of September 1990.
- 3.6.1. However, the Committee feels that the minimum requirement of 21 natural persons is too high, particularly as this threshold was set to take account of only one country's laws; it therefore proposes that an EA may be formed from a minimum of 7 natural persons.
- 3.6.2. As regards the formation of an EA by two legal persons, the Committee thinks that theoretically the best solution would be for the EA to be formed by any legal entity, thereby taking account of the fact that the nature of the European association is not necessarily that of its members.
- 3.6.3. If that is not feasible, the Committee trusts that, at the very least, cooperative and mutual societies must, along with any form of association, have access to the EA as soon as it is created in order to foster closer ties and cooperation between these three types of enterprise.

- 3.7. **Article 3 allows direct formation of an EA by natural or legal persons or the conversion of a national association. The Committee regrets that, in the latter case, the regulation seems to require some kind of "prior authorization". A national association wishing to become an EA will have to "show that it is carrying on a genuine cross-border activity".**
- 3.7.1. The Committee wonders why this requirement is laid down for the conversion of a national association when no comparable requirement is stipulated for the other ways of forming an EA.
- 3.7.2. The Committee considers that the imposition of such a procedure is tantamount to "putting the cart before the horse", for surely the very reason that national associations will want to chose the European statuté is because they intend to carry out future cross-border activities.

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

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

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

### **Article 2**

- 4.2. As the Committee has already pointed out previously in connection with Article 3, it would be dangerous to establish a system of prior constraint: in the case of Article 2(2) the rights conferred by legal personality will not be granted unless they are necessary for the pursuit of the EA's objects.
- 4.2.1. This condition too must be struck out so as to ensure equality between European associations, irrespective of the country they choose as their headquarters.
- 4.2.2. This is because, in view of the number of referrals by the regulation to the laws of the Member States, it is important that Article 2 actually enables all EAs to carry out their business throughout the Community.
- 4.2.3. The condition should therefore be removed from Article 2(2) as it contradicts Article 6(3).

### **Article 3**

- 4.3. The Committee would like the second indent of Article 3(1) to read "...being nationals of **or resident in** at least two Member States" so that people living in different Member States but having the same nationality may be allowed to form an EA.

### **Article 6**

- 4.4. The Committee wishes to ensure equality between European and national associations and therefore wishes to reduce the risk of an EA which develops its activities in different countries enjoying better legal rights and capabilities than those available to national associations in the countries concerned.
- 4.4.1. To reduce this risk it might be a good idea to include in the regulation Article 2(2) of the Council of Europe Convention on the recognition of the legal personality of international non-governmental organisations, viz.:
 

*"However, when they are required by essential public interest, restrictions, limitations or special procedures governing the exercise of the rights arising out of the legal capacity and laid down by the legislation of the State in which the EA carries out its activities, contracts or enters in relations with third parties shall be applicable."*
- 4.4.2. This could be added to Article 6(3) of the proposal, stipulating that its terms apply as an exception to those in Article 2(2).



## **Article 15**

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

## **Article 23**

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

## **Article 31(2)**

- 4.7. The Committee asks the Commission to redraft this article so that UK charities may also make use of the statute.

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

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

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

1. The ESC welcomes the Commission's desire to take appropriate account of the role of employees when supplementing the statute for a European association.  
  
The proposed directive co-ordinates national provisions concerning the participation of employees, the provision to them of information and their consultation and constitutes an indispensable complement to the statute for a European association.
- 1.1. This directive is an important component of a policy to promote economic and social cohesion in the Community.
- 1.2. Through this directive employees should be provided with an information and consultation process and be involved in the corporate planning of the European association.
- 1.3. The ESC considers it absolutely vital that the proposed regulation and directive both come into force at the same time.
2. Even in its Opinion on the statute for a European Company the ESC repeatedly affirmed its agreement in principle and stressed that the involvement of employees is an important precondition for the development of a democratic society and a Citizens' Europe.
- 2.1. In this connection the ESC affirms once again that employees must be assured of joint representation of their interests within the enterprise and be involved in certain business decisions, though without influencing the responsibility or efficiency of management. The ESC has already stated this view in its Opinions of 25 October 1972, 29 May 1974 and 28 March 1989 on the European Company.
- 2.2. However, in view of the political, social, historical and philosophical concepts of the different Member States, employee involvement has neither taken the same forms nor reached the same stage in all Member States.
3. The Committee also believes that, as in many other fields, it will initially be impossible to achieve uniformity as regards European associations.
- 3.1. To this extent the Commission's suggestion of making a flexible offer which takes account of actual legal circumstances in the Member States can be accepted.

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

Done at Brussels, 26 May 1992.

The Chairman  
of the  
Economic and Social Committee

Michael GEUENICH

The Secretary-General  
of the  
Economic and Social Committee

Jacques MOREAU

**N.B.:** Appendix overleaf.

## **APPENDIX**

### **to the Opinion of the Economic and Social Committee**

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

#### **Point 1.2.4. (new)**

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

#### **Voting**

For: 28  
Against: 58  
Abstentions: 9

#### **Part II, point 1**

Add the following to the first sentence:

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

#### **Voting**

For: 27  
Against: 53  
Abstentions: 11



# APPENDICES



# APPENDIX I

## Record of the Proceedings of the Economic and Social Committee

- Proposal for a Council Regulation (EEC) on the Statute for a European Cooperative Society
- Proposal for a Council Directive complementing the Statute for a European Cooperative Society with regard to the Involvement of Employees
- Proposal for a Council Regulation (EEC) on the Statute for a European Mutual Society
- Proposal for a Council Directive supplementing the Statute for a European Mutual Society with regard to the Involvement of Employees
- Proposal for a Council Regulation (EEC) on the Statute for a European Association
- Proposal for a Council Directive supplementing the Statute for a European Association with regard to the Involvement of Employees





The **CHAIRMAN** moved to agenda items 8, 9 and 10, stating that they would be looked at together. These concerned adoption of Opinions on the Statute for a European Association, Statute for a European Cooperative Society and Statute for a European Mutual Society.

The preparatory work had been carried out by the Section for Industry, Commerce, Crafts and Services which had set up a Study Group under the chairmanship of Mr WICK. The Rapporteur was Mr RAMAEKERS and Co-Rapporteurs Mr FLUM and Mr PANERO FLOREZ.

## **I. PRESENTATION BY THE CHAIRMAN OF THE SECTION FOR INDUSTRY, COMMERCE, CRAFTS AND SERVICES, MRS ROBINSON**

**Mrs ROBINSON** briefly spoke of the work carried out by the Section on the subject of the Social Economy. She noted that all the Opinions had been adopted by the Section on 6 May 1992 with the following votes:

- statute for European association: 32 for, 2 against
- statute for European cooperative society: 38 for, 4 against, 1 abstention
- statute for European mutual society: 28 for, 3 against.

## **II. PRESENTATION OF THE SECTION'S OPINIONS BY MR RAMAEKERS, RAPPORTEUR**

In his statement, **Mr RAMAEKERS** talked about the unusual event of addressing 3 items on the agenda together. Whilst three Opinions were to be examined with the aim of setting up three European statutes, in practical terms the statutes could be set up differently in the Member States albeit with a common core.

Nevertheless the Section supported the idea of "gateways" between the three different statutes. The Section also stressed the need for the existence of a review clause, which would allow both the Committee and the Commission to take stock of events in future years.

Concern was expressed that the fate of these statutes should not be linked to that of the European Company, since they were quite distinct.

Mr RAMAEKERS expressed his satisfaction that a single statute had been drawn up for associations. He underlined that non-profit-making associations can well be included in the context of the Economie Sociale.

## **III. GENERAL DISCUSSION**

**Mr JASCHICK** congratulated the Commission for these proposals which worked towards enriching the European framework and thus should be encouraged. He also stressed that worker participation was important for the development of social Europe.

**Mr BELL** indicated that non-profit-making entities are a large sector in the Community: in the UK charities were responsible for a turnover ... times that of agriculture. This sector therefore deserved support at EC level. However, following in the footsteps of the European Company Statute, these statutes were likely to suffer the same fate. In particular worker participation was likely to be a major blocking point in the Council. The EC Commission should have detached the legal aspect from the worker participation aspect. Furthermore the Commission had omitted to tackle the problem of the need for a well harmonised fiscal tax structure between Member States. While Mr BELL supported the Opinions, he felt that the Commission had made errors which it would later regret.

**Mr BENTO GONÇALVES** expressed satisfaction at the work carried out by the Committee. However he would have preferred to have seen all three Statutes adopted with the European Company Statute.

For **Mr MORELAND** the European Statutes should be a dynamic factor encouraging progress and not a block. Different statutes were needed for differently sized cooperatives. Mr MORELAND welcomed the "Association" document in that it went some way towards addressing the needs of charities and foundations. However recourse to a regulation rather than a directive could be unwise. Where Member States already have detailed legislation, a regulation would lead to duplication. He also felt that this Commission proposal was too detailed.

**Mr WICK** felt that it was a good idea to have separate proposals. Even if they were bound together, they should not be treated as a package. European-wide cooperatives should be given adequate legal instruments on which to base themselves and with national legislation unaffected. He stressed the need for different treatment between this statute and the European Company Statute which applies to public limited liability companies.

**Mr PASQUALI** shared the comments and criticisms of Mr BELL. This was a complex matter for although the statutes catered for bodies falling under a single name, there could in fact be differences between types of companies. A Community-wide legal instrument involving the need to understand the differences between national legislations and to remove them called for the approach of a directive and not a regulation.

For **Mr FLUM** the main aspect of the three statutes was that they were facultative and optional. The Commission proposal had taken up an issue which had always been considered important by the Committee, namely the involvement of employees. Worker participation was a major aim of the ESC. He stressed that these three separate proposals should not be linked together.

At the end of the general discussion, **Mr RAMAEKERS** replied. On worker participation, he stressed that legislation in this area, in his opinion, did not pose a drawback, but that worker participation prompted workers to feel motivated. Lastly he thanked the members for all their help and effort.

#### **IV. PAGE-BY-PAGE EXAMINATION OF THE OPINION ON THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY**

##### **Section II, para 1**

Amendment proposed by Mr MORELAND

Add addition to the first sentence:

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

##### **Reasons**

These three European statutes are intended to extend to different varieties of co-operatives, associations, etc. of various sizes. This should be with the intention of creating an outline framework for the use of workers and employers on the ground.

**Mr FLUM** advised Mr MORELAND to withdraw the amendment. Such a sentence would dilute the contents and usefulness of the statutes.

**The RAPPORTEUR** too, advised that the amendment be withdrawn.

The amendment was rejected by 53 votes against, 21 in favour and 12 abstentions.

##### **Section II, after point 3**

Amendment proposed by Mr BENTO GONÇALVES

Add the following to chapter II (new point 4):

*"The ESC recommends that as far as the position of employees is concerned, a parallel should be established between the present draft directive and that complementing the statute for a European Company, both as regards content and the date of entry into force; this would avoid distortions of competition as between SE and SCEs."*

#### **Reasons**

**Mr BENTO GONÇALVES** did not agree that worker participation was not a potential handicap to European cooperative societies. Since these institutions must operate in the market place on the same basis as private institutions, there should be no legislation which handicaps their efforts.

**Mr FLUM** replied that the suggested amendment be rejected.

**Mr RAMAEKERS** also, not wishing to upset the balance achieved by the document, suggested the amendment be rejected.

The amendment was rejected with 56 votes against, 15 in favour and 25 abstentions.

### **V. VOTE ON THE STATUTE FOR A EUROPEAN COOPERATIVE SOCIETY OPINION AS A WHOLE**

The Opinion was adopted by a large majority with 9 votes against.

### **VI. PAGE-BY-PAGE EXAMINATION OF THE OPINION ON THE STATUTE FOR A EUROPEAN MUTUAL SOCIETY**

#### **Section II, para 1**

Amendment proposed by Mr MORELAND

Add addition to first sentence:

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

The amendment was again rejected with 65 votes against, 20 for and 2 abstentions.

#### **Para 4.1.**

Amendment proposed by Mr LITTLE

Delete entire paragraph.

#### **Reasons**

Under the proposed Article 1(2), this assumes the non-remuneration of managers. However the effect of this is likely to prevent the efficient direction of European mutual societies. The wording of paragraph 4.1. is unduly restrictive and should be deleted from the opinion.

**The Rapporteur**, in his response, disagreed, the amendment being incompatible with the ethic of the social economy.

The amendment was rejected with 61 votes against, 21 for and 12 abstentions.

## **VII. VOTE ON THE STATUTE FOR A EUROPEAN MUTUAL SOCIETY OPINION AS A WHOLE**

The Opinion was adopted by a majority with 8 votes against and 15 abstentions.

## **VIII. PAGE-BY-PAGE EXAMINATION OF THE OPINION ON THE STATUTE FOR A EUROPEAN ASSOCIATION**

### **After point 1.2.3**

Amendment proposed by Mr GIESECKE

Add new point 1.2.4.:

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

### **Reasons**

The proposed document is too bureaucratic and includes far too much detail. This would result in the proposed statute hardly being used, if the present wording is retained.

**Mr RAMAEKERS** advised that the amendment be rejected.

The amendment was rejected with 58 votes against, 18 in favour and 9 abstentions.

### **Point 4.7.**

Amendment proposed by Mr MORELAND

Add new text:

*"In any event the second paragraph of Article 31 should read*

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

### **Reasons**

Under Article 31(2) of the Commission's proposal, this stressed the interests of employers and employees. However, in the case of voluntary organisations, the prime interests must be those of the beneficiaries. Therefore the wording of this article should be changed to take account of this factor.

**The RAPPORTEUR**, in response, accepted this amendment and felt that it should be adopted, since it improved the value of the Opinion, in being adaptable to situations where it should be implemented.

This amendment was accepted.

### **After point 4.7.**

Amendment proposed by Mr GIESECKE

Addition of a new paragraph 4.8.:

"Art. 39

*The Committee thinks that Article 39 should be deleted. As Article 2(2) stipulates that the European Association is not a commercially-oriented operation, it is not necessary to publish an Annual Report in the interests of creditors and the public. Hardly any Member States make non profit making associations subject to full disclosure requirements. National associations would make no use of the legal form being offered if they were subject to heavier burdens than they would be under national law."*

### **Reasons**

Article 39, which requires European Associations to publish their accounts, should be deleted and be replaced by a paragraph which is less constraining than that of the Commission.

In his response, **the RAPPORTEUR** fully endorsed the requirement for European Associations to be obliged to make their accounts public in an Annual Report. He advised the rejection of this amendment.

The amendment was rejected with 59 votes against, 17 in favour and 10 abstentions.

### **Section II, para 1**

Amendment proposed by Mr MORELAND

Add addition to first sentence:

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

The amendment was rejected with 53 votes against, 27 votes in favour and 11 abstentions.

## **IX. VOTE ON THE STATUTE FOR A EUROPEAN ASSOCIATION OPINION AS A WHOLE**

The Opinion was adopted by majority with 11 votes against and 16 abstentions.

## **X. Mr BENTO GONÇALVES** made the following statement to explain his vote:

"My proposal for amendment to the text of the Opinion was as follows:

'Add the following to Chapter II:

### **Point 4 (new):**

*"The ESC recommends that, as far as the position of employees is concerned, a parallel should be established between the present draft Directive and that complementing the statute for a European Company, both as regards content and the date of entry into force; this would avoid distortions of competition arising between SEs and SCEs."*

Since this was thrown out by the ESC Plenary Session, I wish to explain my reasons for voting against the Opinion - which was in part a value judgement on the Commission Proposal as regards the position of workers in the Statute for a European Cooperative Society.

During the debate on the issue I argued the points set out below, which unfortunately did not at all meet with a satisfactory response.

The points of principle on which I base my 'no' vote are as follows:

1. Contrary to the Commission's Explanatory Memorandum, no parallel has been established as regards employees' involvement in either the Statute for a European Company (SE) or the Statute for a European Cooperative Society (SCE).
2. The Commission proposal distorts the principle of equal treatment in competition, as set out in the Treaty of Rome and in directives on competition.
3. No account has been taken of the specific nature of cooperatives (users', workers' and mixed cooperatives), neither have the major differences in size been realistically considered.

### **Conclusion**

I am left with the impression that cooperatives could be viewed as a type of guinea pig for trying out an albeit rudimentary form of statute for co-management, whose era has already passed. On the other hand, it is up to Member States whether or not they adopt the regulation, and this could place the SCE statute in a secondary position. It also encourages the largest and most powerful cooperatives to opt for setting up a European Company so that they can compete in the market on equal terms.

It would be serious if these Commission proposals were adopted by the Council as they stand, and were perhaps to become museum pieces without being used as envisaged."

## **APPENDIX II**

**Opinion on the Communication from the Commission;  
to the Council - Businesses in the  
"Economie Sociale" sector Europe's frontier-free market**





On 26 January 1990 the Commission, in accordance with Article 198 of the Treaty establishing the European Economic Community, asked the Economic and Social Committee to discuss:

- the diversity of **legal forms** of "économie sociale" enterprises in the Community;
- the role which the **European Economic Interest Grouping (EEIG)** could play, given the above diversity, in encouraging cooperation between "économie sociale" enterprises;
- the **feasibility** of a **European Company Statute** for persons, making provision for mergers, the establishment of a holding company or common subsidiary by "économie sociale" enterprises; and the possible nature of such a statute (a **framework statute** or a specific statute reflecting the particular characteristics of each area or sector of the "économie sociale");
- the operating conditions for a **European non-profit body statute** which would permit the direct establishment of non-profit associations not engaging in economic activity.

The Section for Industry, Commerce, Crafts and Services, which was instructed to prepare the Committee's work on the subject, adopted its Opinion on 5 September 1990. (Rapporteur: Mr RAMAEKERS).

At its 279th Plenary Session (meeting of 19 September 1990) the Economic and Social Committee adopted the following Opinion with no votes against and 3 abstentions:

## 1. Introduction

- 1.1. First of all, the Committee welcomes the Commission's Communication to the Council of 18 December 1989, recognizing the role which "économie sociale" enterprises can play in the establishment of a frontier-free market.
- 1.2. The Commission White Paper, presented at the Milan Summit in 1985 set the goal of establishing, by the end of 1992, a frontier-free market for goods, services, capital and persons, in parallel with a Social Europe.
  - 1.2.1. A framework is needed providing every company, irrespective of size, its sector of activity, its location or its legal form, with the resources needed to meet the challenge of the Internal Market.
  - 1.2.2. The Commission's recognition of the special nature of the cooperative, mutual and non-profit sectors (known in some European countries as the "économie sociale") is welcome; the enterprises concerned are entitled to insist that their identity be preserved within the new legal framework designed to improve transnational cooperation and to promote economic integration.
- 1.3. The cooperatives, mutual associations and non-profit bodies, which have been an integral part of the economic and social history of Europe, particularly since the nineteenth century, bring together throughout the Twelve some tens of millions of persons who have chosen the path of shared responsibility and solidarity for the conduct of their business.
  - 1.3.1. Apart from their social and civic significance, the major economic role played by these enterprises in the Community cannot be underestimated. One cannot ignore the cooperatives which, with their 63 million members, notch up an annual turnover of more than 370,000 million ECUs, nor the mutual provident funds with 47 million members and an annual turnover of 22,000 million ECUs, the 25 million families covered by insurance mutuels and cooperatives (turnover 40,000 million ECUs), the 10 million members of jointly managed provident institutions (turnover 2,500 million ECUs), or the 40 million members and 3 million employees who keep the non-profit bodies in business.
- 1.4. It is essential that enterprises belonging to this sector enjoy the same access as the Community's other economic operators, to the appropriate cooperation and restructuring facilities and the same freedom to operate throughout the Community and in all economic sectors. Such enterprises make an important contribution to the building of a People's Europe, a prerequisite of social cohesion and a vital ingredient in ensuring the success of the Single Market.

- 1.5. Nevertheless, this clearly must be done without putting these enterprises at an advantage vis-à-vis other kinds of enterprise.
- 1.6. It would also be desirable for cooperative, mutual and non-profit sector enterprises to undertake joint initiatives with similar enterprises located outside the EEC.

## **2. Diversity of legal forms**

- 2.1. Just like all other enterprises, cooperative, mutual and non-profit sector enterprises have the right to be recognized and to enjoy the same access as other economic operators to the entire Single Market and to gear their size to the demands of that market. These enterprises also play a beneficial role in the construction of the European market by:
  - helping to stimulate and promote social and regional balance in the economy;
  - developing the qualitative aspect of consumption;
  - involving their members personally in the People's Europe.
- 2.2. Given the scale and specific nature of these enterprises, the manifest diversity of their legal forms in the Twelve is not surprising. The Committee draws attention to its 1987 comparative study which highlighted the national (or even regional or sectoral) legal disparities affecting these three forms of enterprise.
  - 2.2.1. The diverse legal forms are evidence of their vigour and their adaptability.
  - 2.3. But despite their different forms, all these enterprises have a common history or at least common ideals and are today based on those common principles which make them a third option alongside joint stock and public-sector enterprises.
  - 2.4. Although it is impossible to arrive at a single legal definition of the "économie sociale" enterprise, the undertakings concerned are nonetheless part of a movement which gives high priority to the individual and which freely embraces the following principles:
    - free association;
    - a democratic management structure;
    - solidarity;
    - fulfilment of members' potential and/or promotion of the general interest.

## **3. The role of the EEIG and the European Company**

- 3.1. The European Economic Interest Grouping (EEIG) is at present the only Community legal instrument governing transfrontier links. This extremely flexible legal structure enables enterprises (joint stock companies, cooperatives, mutual associations or non-profit bodies pursuing an economic activity) to develop jointly certain types of activity whilst retaining their legal and economic autonomy.
- 3.2. Nonetheless, the EEIG has considerable limitations:
  - its objective is ancillary to the economic activity of its members, i.e. the Grouping's activity cannot be substituted for that of its members;
  - the unlimited joint liability of its members, i.e. members have unlimited joint responsibility for the Grouping's debts (without being able to limit such responsibility to any money which may or may not have been paid in by members);
  - its inability to raise public funding, i.e. the impossibility of issuing securities or bonds for sale to the public;
  - legal persons based outside the EC cannot join an EEIG;
  - the tax status of EEIGs remains unclear in several Member States;

- 3.2.1. In order to overcome these limitations, the Commission has drafted another Community legal instrument which entails (i) a higher degree of integration and (ii) reduced autonomy of members. This is the European Company Statute which will be available to all firms operating on a Community scale.
- 3.3. The Committee feels it would be wrong to offer the mutual/cooperative-sector enterprises only this vehicle for European integration.
- 3.3.1. Mutual/cooperative sector enterprises can only set up a European Company by way of a joint subsidiary, i.e. they cannot do so via a holding company, merger or the conversion of a national company.
- 3.3.2. The use of this instrument would strip these enterprises of their specific characteristics insofar as they would no longer be able to apply principles such as:
- the precedence of people over capital;
  - free association;
  - one person, one vote;
  - solidarity;
  - the non-availability of reserves for distribution;
  - the devolution of assets on liquidation.
- 3.3.3. The European Company is closed off to natural persons, which is tantamount to denying them the right to organize on a Community scale; this is a particular problem for frontier-area residents.
- 3.4. Given that the European Company is a very flexible, but also limited, cooperation instrument and that some mutual/cooperative-sector enterprises will have great difficulty (in terms of both access and compatibility with their principles) in using this vehicle, the Committee feels that there is still no legal instrument enabling these enterprises to improve their international cooperation and satisfactorily promote their integration into the Community.
- 3.4.1. It is essential to set up an alternative, optional European legal framework for mutual/cooperative-sector enterprises, as they have features which need to be preserved, and which are not adequately catered for by the EEIG or the European Company.
- 3.4.2. It is essential that, as soon as the Single Market is completed, the "économie sociale" enterprises should enjoy the same access as capital-based firms to the entire Community market, as well as the right to choose a legal vehicle for doing business in the Community which is compatible with their principles.
- 3.4.3. The Committee draws attention to its Opinions of 24 November 1988 and 28 March 1990<sup>(1)</sup> on the European Company Statute recommending a special statute for "économie sociale" enterprises, given the need to preserve their salient features and the European Company Statute's failure to provide an appropriate legal framework.

#### **4. Feasibility of a specific European statute**

- 4.1. The fact that mutual/cooperative sector enterprises will increasingly be competing in the Internal Market with conventionally capitalized firms, while sticking to their principles, clearly reinforces the need for an optional subsidiary legal statute. The Committee notes that, despite the similarities referred to above, these enterprises also have structural and operational differences, whose existence cannot be denied without forcing them into a single, uniform mould.

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(1) Opinion of 24 November 1988, OJ No. C 23 of 30 January 1989 and Opinion of 28 March 1990, OJ No. C 124 of 21 May 1990.

- 4.1.1. The Committee therefore calls on the Commission to take account of the differences between the various components by drafting separate statutes for cooperatives, mutual associations (including insurance mutuals) and non-profit bodies; these could perhaps be incorporated into a single instrument with a common preamble or a common core.**

An analysis of the legal forms of these enterprises reveals certain clear similarities:

- all the enterprises which could benefit from a draft statute are operating in the internal market. They are directly involved in their respective economic sectors, in competition with joint stock companies;
- generally they are deeply attached to their guiding principles:
  - precedence of people over capital;
  - satisfaction of members' needs and/or operation in the general interest;
  - solidarity between members.
- each of the three sectors has national legal forms which are converging via a process of adapting existing legal instruments to market mechanisms.

In the light of these considerations, the Commission should draft statutes bearing in mind the following key points:

- the objective of a European company with the features of an "économie sociale" enterprise;
- financing (establishment of own funds - participating securities or other techniques);
- management bodies (one person, one vote principle with possible derogations in the case of legal persons);
- the possibility of devolving assets (not between members, but rather to another body with the same objective) in the event of liquidation.

The cooperative, mutual and non-profit sectors have each contributed to the debate by drafting European statutes.

- 4.2. The Community legal statute or statutes drawn up for the sector should be open to legal as well as natural persons. It should allow for the setting up of a European company ex nihilo or by merger, the establishment of a subsidiary or the conversion of a national company.
- 4.3. The Committee also urges that it be consulted again when the Commission has drawn up one or more legal statutes for the mutual/cooperative sector.
- 4.4. At all events, the adoption of this European statute must remain subsidiary and optional and neither require nor prevent any future harmonization of national laws governing the mutual/cooperative sector.

## **5. The problem of non-profit bodies<sup>(2)</sup>**

- 5.1. It should be noted that the Commission intends to interpret the expression "profit-making", as used in the second paragraph of Article 58 of the Rome Treaty, in the broad sense, i.e. participation in economic life by legal persons other than companies whose main or subsidiary purpose is an economic activity normally pursued for profit.
- 5.1.1. In this regard, it is noted that all non-profit bodies pursue (or are likely to pursue) an economic activity as defined by the Commission, because in order to achieve their social objectives these bodies need to engage in economic activities which are to a greater or lesser degree subsidiary.

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(2) See page 12 of Commission document SEC(89) 2187 final.

- 5.2. More generally, all non-profit bodies (e.g. non-governmental international organizations) wish to be recognized and to enjoy freedom to operate throughout the Community.
- 5.3. At all events, the Committee urges the Commission not to create artificial divisions in the non-profit movement which has the right to lobby for its integration into the Single Market and its involvement in the Social Europe and People's Europe.
- 5.3.1. It would therefore be appropriate to draft a single Community legal statute for all Community non-profit bodies (whose activity is, or is likely to be, economic in the broader sense).

The Commission or the Court of Justice can always exclude certain non-profit activities which do not meet the criterion of the second paragraph of Article 58 from application of this statute.

## **6. Beyond the legal problems**

- 6.1. In the light of the general nature of the Commission's Communication to the Council of 18 December 1989 on the mutual/cooperative sector, the Committee would point out that the legal framework is only part of the problem facing this sector.
- 6.1.1. The European institutions' attention is drawn to other problems encountered by these enterprises arising from the fact that, whilst they are economic operators to be treated without discrimination (either positive or negative) they also have a specific role in the economy.
- 6.2. First and foremost, mutual/cooperative sector enterprises by their very nature have a specific and important role to play in the promotion of social dialogue, and more generally in the establishment of the Social Europe.<sup>(3)</sup>
- 6.3. Irrespective of the legal form adopted or the nationality of the enterprise, these enterprises must enjoy the right of access to all economic sectors in all Member States if the concept of the internal market and the principles on which it is based (legal freedom of movement, establishment and freedom to provide services) are not to be jeopardized. Similarly, legal persons' freedom of association cannot be achieved until all economic activities are open to all forms of enterprise in every Member State. These cooperative, mutual and non-profit enterprises should therefore at the earliest opportunity be enabled to pursue any economic activity throughout the Community.
- 6.4. The financing of many mutual/cooperative sector enterprises is a real problem given the specific nature of their business plans and the quantitative and qualitative increase in their financial needs caused by international competition. The financial support available from their members alone is often insufficient, and these enterprises are obliged to seek external funding.

However, recourse to the financial world can be contemplated only if it allows these enterprises to preserve their specific characteristics, i.e. to maintain the fundamental principle that people take precedence over capital. They must therefore call on forms of financing which both meet this requirement and attract suppliers of capital (e.g. use of participating securities, guarantee and participation funds).

- 6.4.1. Apart from securing the reciprocal recognition of the financing instruments available in the various Member States, consideration should be given to the possibility of establishing European participating securities negotiable throughout the Community for the use of these enterprises established under Community law.

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(3) OJ C. 126 of 23 May 1989.

**6.5. In parallel with this, the Seventh Directive on consolidated accounts should be extended to the mutual/cooperative sector.**

**6.6. The specific nature of these enterprises and their different objectives require that their members be able to act and react appropriately.**

**Particular attention should be paid to the training of members and staff of cooperatives, mutual associations and non-profit bodies.**

**6.6.1. Steps should be taken to ensure that these enterprises have sufficient information on, and access to, (specific or non-specific) subsidies for the appropriate training of their members and staff.**

**6.7. A permanent representative coordinating body attached to the Commission should also be set up. This liaison body could open a constructive dialogue on the sector with the European Institutions, with a view to initiating specific action programmes, e.g. on training.**

**6.8. Similarly, the Commission could promote the establishment of a European training and research institute for the "économie sociale"; several already exist at national level.**

**6.9. The continuing discussions initiated by the ESC conference on the cooperative, mutual and non-profit sector should enhance the importance of these enterprises for non-EC countries. They could be more effectively involved in the existing cooperation instruments and policies by means of:**

- a contribution to the training of managers (in-service training, swap arrangements, etc.);**
- the exchange of experience (seminars, information, etc.);**
- the setting up of joint enterprises and the undertaking by Community enterprises of projects transcending the Community's borders.**

**Done at Brussels, 19 September 1990.**

**The Chairman  
of the Economic and  
Social Committee**

**Alberto MASPRONE**

**The Secretary-General  
of the Economic and  
Social Committee**

**Jacques MOREAU**

European Communities - Economic and Social Committee

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