Comparison of EU company law statutes
Comparison of EU company law statutes
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Foreword

The Governance and Company Law taskforce was created within AISAM’s European legislation working group in 2004 following the Berlin congress and was entrusted with the mission, amongst other things, of promoting the European mutual society statute. In this context, it decided to study the various statutes under European law that insurance companies are able to use to organize their activities on a European level and to compare them with the proposal for a statute for the European mutual society, which was proposed in 1991 and which was on the desk of the European legislators in 2004. The statutes to be compared with the statutes for the European mutual society were: the European company or Societas Europaea statute, which was proposed in 1989 and adopted in 2001, the European cooperative society statute, which was proposed in 1991 and adopted in 2003 and, to complete the overview of entrepreneurial structures, the statute for a European economic interest grouping, even though insurance companies cannot use this company law form to underwrite insurance.

Under the leadership of Jeanne-Marie Camboly from Groupama, France, the taskforce decided to undertake this mission in collaboration with Viviane de Beaufort (and her students), Professor in European and comparative law at ESSEC Business School.

The tasks to be carried out were defined as follows:

- The establishment of an analytical framework that could be used both for the purposes of the legal analysis and comparison of the various European statutes, including the European mutual society, as well as for mutual societies in specific countries
- An analysis of the various statutes that companies are currently able to adopt at community level - the Societas Europaea, the European cooperative society and the European economic interest grouping - and the proposal on the European mutual society.

A further stage, which consisted of the analysis (using the same framework) of the legislation that is currently applied to (insurance) mutuals in several Member States, has been largely incorporated in the study entitled “Mutual insurance companies: the regulatory, financial and fiscal arrangements”, which AISAM was carrying out concurrently on the basis of a questionnaire sent to the members of AISAM and in which five countries participated: Belgium, France, Italy, the Netherlands and Spain(1).

Today, we are proud to be able to present to you our joint AISAM-ESSEC comparative study on the European statutes. Each statute has been studied separately, however, as has already been mentioned, a common plan has been used so as to be able to compare them. Even though, much to our regret, the European Commission has, in the context of its “Better regulation” policy, withdrawn its proposal for a regulation for a statute for a European mutual society, we have decided to retain the proposal for a regulation for

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(1) "Mutual insurance companies: the regulatory, financial and fiscal arrangements", is also available in French “Sociétés d’assurance mutuelles: les dispositifs réglementaires, financiers et fiscaux” and was published by AISAM in 2007.
a statute for a European mutual society in our comparative study (in its initial version introduced in 1991 and with the additions made following the first reading before the Council in 1996).

It is worth pointing out that, in the meantime, a proposal for a new text for a statute for a European mutual society has been prepared by the three organisations that represent the mutual sector, namely AISAM, ACME and AIM(2).

We hope that this study will be a source of interesting information not only for academics and legal experts, but also for anyone interested in European company structures, the insurance sector in general and in mutuals in particular.

Viviane de Beaufort worked on this project with a team of students from ESSEC and the Sceaux M2 business legal counsels in 2005 and 2006: D. Dias, J. Durande, Q. Fernet, AC. Humeau, A. Martinez, Y. Penez, O. Philouze, C. Poinet, A. Pons, P. Soussan. We would like to thank Viviane de Beaufort and her team for the research and study that they have carried out.
We should also like to thank AISAM’s secretariat and particularly the Secretary General, Lieve Lowet, for their dedication in bringing this study to print.

Jeanne-Marie Camboly
Leader, Governance &
Company Law taskforce

Edoardo Greppi
Chair, European
Legislation working group

(2) See: www.aisam.org,
www.acme-eu.org,
www.insurance-mutuals.org
The authors

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Viviane de Beaufort is professor in Community law at ESSEC Business School and is the holder of the Jean Monnet chair. She is the director of the “Cursus droit” and co-director of the European Law and Economics Centre. She is the author of many publications and papers in the field of comparative company law and stock exchange law, as well as corporate governance. She is also interested in institutional issues and European lobbying and is involved in policy discussions within several think tanks. Furthermore, she continues to act in a consultancy capacity on European public relations.

Jeanne Marie CAMBOLY

Jeanne-Marie CAMBOLY is currently in charge of Groupama’s External Relations, with a particular focus on the Group’s professional and parliamentary relations. In this capacity, she is responsible for the secretariat general of the FFSAM (Fédération Française des Sociétés d’Assurances Mutuelles – French Federation of Mutual Insurance Companies). She is also cochair of the AISAM-ACME EMS Taskforce. Before taking up her current position, she was a legal counsel within Groupama’s Legal and Fiscal Department from 1983 to 2000, where she specialised in non-life and health insurance. From 1980 to 1983 she was in charge of a general legal service within the Fédération Nationale des Coopératives de Consommateurs (National Federation of Consumer Cooperatives). Jeanne-Marie CAMBOLY has a Master’s degree in insurance law as well as a Master’s degree in property law. She has a degree from the Faculty of Law at the University of Paris II Assas Panthéon. Before joining Groupama, she was on the teaching staff at the Paris and Sceaux Faculty of Law. She is the author of several legal publications that have become important points of reference, notably in the areas of insurance and social protection in the agricultural sector.

Edoardo GREPPI

Edoardo Greppi is the chairman of AISAM’s “European legislation” working group and a delegate of Reale Mutua, Turin. He is professor of International Law, International Organizations and European law at the Faculty of Law at the University of Turin, Italy. He is also director of the Master’s course in International Organisations, International Criminal Law and Crime Prevention (Faculty of Law, University of Turin and the United Nations Research Institute on crime and justice). Edoardo Greppi is a member of several international law societies and is the author of books on international trade in services, as well as on war crimes and crimes against humanity in international law.
Comparative table of European company law statutes
### EUROPEAN MUTUAL SOCIETY
(Proposal for a Regulation 93/C 326/05 of 6 July 1993)
AND MODIFICATIONS MADE IN 1996

<table>
<thead>
<tr>
<th>Objects of the company</th>
<th>To meet the needs of its members</th>
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<th>Formation</th>
<th>Legal structure and formation requirements</th>
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<tr>
<td>Art 2</td>
<td><strong>At least 2</strong> legal entities pursuing activities other than providence (and coming within the competence of at least 2 different member states). <strong>At least 2</strong> legal entities pursuing providence activities (and coming within the competence of at least 2 different member states). <strong>500</strong> natural persons residing in at least 2 member states. A mutual society formed in accordance with the law of a member state and has its registered office and central administration in the Community may convert to an ME if it has at least 500 members in another member state and is carrying on genuine and effective activities (Art 2-2).</td>
</tr>
</tbody>
</table>

| Minimum formation fund | Art 4 | 100 000 € “ecus” or higher if stipulated in the law of the member state |

| Legal personality | Art 1 | Full and complete legal personality |

| Fiscal status | Recital 15 | Applicable provisions of the member states (The Regulation does not cover the following areas of law: labour, taxation, competition, intellectual property, insolvency and suspension of payments.) |

<table>
<thead>
<tr>
<th>Formal rules</th>
<th>Art 8-3</th>
<th>Registration: the member state designates the register in which the ME has to be registered</th>
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<tr>
<td>Registration</td>
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<td>Publication</td>
<td>Art 3</td>
<td>Statutes: 14 compulsory elements</td>
</tr>
<tr>
<td>Statutes</td>
<td>1. the name of the company, specifying the nature of the activity engaged in and preceded or followed by the abbreviation &quot;ME&quot;</td>
<td></td>
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<tr>
<td></td>
<td>2. a precise statement of the objects of the ME,</td>
<td></td>
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<tr>
<td></td>
<td>3. the identity of physical persons, the names, the objects and registered offices of the founder members, where these are legal entities,</td>
<td></td>
</tr>
</tbody>
</table>

| Fiscal status | Recital 16 | Applicable provisions of the member states (This Regulation does not cover the following areas of law: taxation, competition, intellectual property and insolvency) |

<table>
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<tr>
<th>Formal rules</th>
<th>Art 11, 12, 13</th>
<th>Registration: see law applicable to public limited-liability companies in the member state (not detailed in the acts); register of the member state; conclusion of an agreement for registration</th>
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<td>Publication</td>
<td>Art 5</td>
<td>Statutes: the following 12 points shall be included</td>
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<tr>
<td>Statutes</td>
<td>1. the name of the company, preceded or followed by the abbreviation ‘SCE’ and, where appropriate, the word ‘limited’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2. a statement of the objects</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3. the names of the natural persons and the names of the entities which are</td>
<td></td>
</tr>
</tbody>
</table>

Drawn up under the supervision of Viviane de Beaufort by students from the ESSEC-Master de juriste d'affaires de Sceaux programme, in cooperation with AISAM, 2005-2006.
| EUROPEAN MUTUAL SOCIETY  
**(PROPOSAL FOR A REGULATION 93/C 326/05 OF 6 JULY 1993) AND MODIFICATIONS MADE IN 1996** | EUROPEAN COOPERATIVE SOCIETY  
**(COUNCIL REGULATION 1435/2003 OF 22 JULY 2003)** |
|---|---|
| 4. the address of the ME’s registered office,  
5. the conditions and procedures for the admission, expulsion and resignation of members,  
6. the rights and obligations of members and of the ME  
7. the subscriptions payable by natural or legal persons, and, where appropriate, provisions as to arrears,  
8. the management structure,  
9. the powers and responsibilities of each of the governing bodies of the ME,  
10. provisions governing the appointment and removal of the members of the governing bodies,  
11. the majority and quorum requirements,  
12. a definition of the governing bodies, or members of these bodies, having authority to represent the ME in dealings with third parties,  
13. the conditions for the initiation of proceedings on behalf of the ME (see Article 42),  
14. the grounds for winding up  
| founder members of the SCE, indicating their objects and registered office in the latter case,  
| 4. the address of the SCE’s registered office,  
5. the conditions and procedures for the admission, expulsion and resignation of members,  
6. the rights and obligations of members, and the different categories of members, if any, and the rights and obligations of members in each category,  
7. the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,  
8. specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,  
9. the powers and responsibilities of the members of each of the governing organs,  
10. provisions governing the appointment and removal of the members of the governing organs,  
11. the majority and quorum requirements,  
12. the duration of the existence of the society, where this is of limited duration.  
|  
| Art 5  
Registered office: the registered office of an ME shall be situated within the Community in the member state in which the ME has its central administration.  
|  
| Art 6  
Registered office: the obligation of locating the head office and the registered office in the same place.  
|  
| Approval capacity and Affectio societatis  
|  
| Recital 7  
The respect for the principle of primacy of the individual is reflected in the specific rules concerning the membership, resignation and expulsion conditions. The principle of primacy of the individual refers to the one-man, one-vote rule.  
| Recital 8  
Principle of primacy of the individual, reflected in the “one-man, one-vote” rule.  
|  
| Art 14  
Membership is free and voluntary, but membership in the SCE shall be subject to the approval of the management or administrative organ. Candidates refused membership may appeal to the general meeting following the application for membership.  
|  
| The statutes may provide that persons who do not expect to use or produce the SCE’s goods and services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes.  
| Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal bodies.  
| The statutes may make admission subject to other conditions, in particular:  
- subscription of a minimum amount of capital,  
- conditions related to the objects of the SCE  
|  
| Art 64  

Drawn up under the supervision of Viviane de Beaufort by students from the ESSEC-Master de juriste d'affaires de Sceaux programme, in cooperation with AISAM, 2005-2006.
**EUROPEAN MUTUAL SOCIETY**
(PROPosals FOR A REGULATION 93/C 326/05 OF 6 JULY 1993)
AND MODIFICATIONS MADE IN 1996

**EUROPEAN COOPERATIVE SOCIETY**
(COUNCIL REGULATION 1435/2003 OF 22 JULY 2003)

### The acquisition of securities issued by the SCE, other than shares and debentures, does not confer the status of member.

**Art 15**
Membership shall be lost:
- upon resignation,
- upon expulsion, where the member commits a serious breach of his/her obligations or acts contrary to the interests of the SCE,
- where authorised by the statutes, upon the transfer of all shares held to a member of a natural person or legal entity which has acquired membership,
- upon winding up in the case of a member that is not a natural person,
- upon bankruptcy,
- upon death,
- in any other situation provided for in the statutes or in the legislation on cooperatives of the member state in which the SCE has its registered office.

Resignation or expulsion shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.

A member may be expelled via administrative decision or a decision by the management organ after the member has been heard. The member may appeal against such a decision to the general meeting.

### Responsibilities / powers

#### Two-tier system (Art 27 to 31)

The management board manages the ME. The member or members of the management board shall have the power to represent the ME in dealings with third parties and in legal proceedings. (Art 27-1)

“...the capacity to provide that a member or members of the management board will be appointed by the general meeting”. (Art 27-2)

The supervisory board shall supervise the duties of the management board. It may not itself exercise the power to manage the ME and cannot represent the ME in dealings with third parties. It shall represent the ME in dealings with members of the management board, or one of them, in case of litigation or a social action based on

### Two-tier system (Art 37 to 41)

The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A member state may provide that a managing director is responsible for the current management under the same conditions as for the cooperatives that have registered offices within that member state’s territory.

The member or members of the management organ shall be appointed and removed by the supervisory organ. However, a member state may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory.

The supervisory organ shall supervise the duties performed by the management organ.
the legal liability of one or more members of the management board, regarding the
ME, for faults done during the accomplishment of their functions, or during
the conclusion of contracts in which the ME is in part and in which one of
the management board’s member has an interest even indirect. (Art 29-1)
With the exception of the employees' representatives election or removal, in
accordance with National provisions taken in enforcement of the Directive
(2003/72/CE) concerning the function of workers, the members of the supervisory
board shall be appointed and removed by the general meeting. However, the
members of the first supervisory board may be appointed in the statutes. (Art 29-2)

The one-tier system (Art 32 to 34)
The administrative body shall manage the ME. The member or members of the
administrative board shall have the power to represent the ME in dealings with third
parties and in legal proceedings.
The number of the members of the administrative body is determined by the
statutes. A member state can however decide the minimum or maximum number of
members of the administrative body for ME registered on its territory. With the
exception of the employees' representatives in accordance with National provisions
taken in enforcement of the Directive (2003/72/CE), the members of the
administrative body shall be appointed and removed by the general meeting.

Rules common to both systems
Art 35
Members of the governing bodies shall be appointed for a period laid down in the
statutes not exceeding six years. Unless otherwise provisions in the statutes, the
members can be reappointed one or more times for the period laid down.

Art 12
1. "The general meeting is competent for all resolutions concerning the
modification of the statutes, the dissolution, the transfer of the registered office, the
transformation, the establishment of annual financial statements and/or
consolidated financial statements and the appointment of results and (the
appointment of members of the management board or the administrative body),
without any prejudice on the enforcement of (2003/72/CE) Directive’s provisions
which complete the statute of the ME concerning the function of workers.”

2. “Moreover, the general meeting shall decide on matters in which it has a
competence given by:
- the statutes of the ME in accordance with the law of the member state in which the
ME has its registered office;
- the legislation of the state member in which the ME has its registered office
concerning competences of the general meeting of a similar national legal entity;
**EUROPEAN MUTUAL SOCIETY**  
**PROPOSAL FOR A REGULATION 93/C 326/05 OF 6 JULY 1993**  
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- the legislation of the state member in which the ME has its registered office, transposing the Directive 2003/72/CE which complete the statute of the ME concerning the function of workers”.

<table>
<thead>
<tr>
<th>Corporate Governance</th>
<th>Two-tier system</th>
<th>The two-tier system</th>
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<tbody>
<tr>
<td>Art 30</td>
<td>The management board shall report to the supervisory board at least once every three months on the state and the business' way of the ME, foreseeable prospects of the ME’s affairs, (taking particular account of any information relating to undertakings controlled by the ME that may significantly affect those affairs). See other information obligations.</td>
<td>Art 40</td>
</tr>
<tr>
<td>The one-tier system</td>
<td>Art 33</td>
<td>The management board shall meet at least once every three months, at intervals laid down by the statutes, to discuss the progress and foreseeable prospects of the ME’s affairs, taking particular account of any information relating to the undertakings controlled by the ME that may significantly affect the progress of the ME.</td>
</tr>
<tr>
<td>Art 43</td>
<td>The administrative organ shall meet at least every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE’s business, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE’s business.</td>
<td></td>
</tr>
<tr>
<td>Rules common to both systems</td>
<td>Art 42</td>
<td>Members of the management, supervisory or administrative boards shall be liable for loss or damage sustained by the ME as a result of the breach of the obligations attached to their functions, according to the rules of the member state of European Union.</td>
</tr>
<tr>
<td>Art 51</td>
<td>Members of the management, supervisory and administrative organs shall be liable for loss or damage sustained by the SCE following any breach on their part of the obligations inherent in their duties.</td>
<td></td>
</tr>
<tr>
<td>Art 13</td>
<td>A general meeting shall be held at least once a year, not later than six months after the end of the ME’s financial year. However, a member state can provide for the first general meeting can be held not later than six months after the institution of the ME. General meetings may be convened at any time by the management board or the administrative board. The management board is bound to convene the general</td>
<td></td>
</tr>
<tr>
<td>Art 54</td>
<td>An SCE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the member state in which the SCE’s registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE, provides for more frequent meetings. A member state may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE’s incorporation. General meetings may be convened at any time by the management organ or the</td>
<td></td>
</tr>
</tbody>
</table>
| **EUROPEAN MUTUAL SOCIETY**  
(PROPOSAL FOR A REGULATION 93/C 326/05 OF 6 JULY 1993)  
AND MODIFICATIONS MADE IN 1996 | **EUROPEAN COOPERATIVE SOCIETY**  
(COUNCIL REGULATION 1435/2003 OF 22 JULY 2003) |
| --- | --- |
| meeting at the request of the supervisory board.  
The general meeting can, at the time of a meeting, decide that a new meeting will be convened at a date and with an agenda appointed by itself.  
**Disclosure of accounts**  
**Art 48:** delete  
1) The annual accounts, the consolidated accounts, if any, and the annual report and audit report shall be disclosed in accordance with the measures adopted by the member state in which the ME has its registered office pursuant to article 3 of the Directive 68/151/EEC.  
2) Where MEs are not subject, under the law of the member state in which the ME has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC, the ME must at least make the accounting documents available to the public at its registered office. Copies of the documents must be obtainable on request. | administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the member state in which the SCE’s registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.  
**Publication of accounts**  
**Art 68**  
1) For the purposes of drawing up its annual accounts and its consolidated accounts, if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC. However, member states may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives.  
2. Where an SCE is not subject, under the law of the member state in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. |

11 Voting rights  
**majority rules**

| **Art 20**  
Each member of the ME, individual or body corporate, shall have one vote. However, statutes can attribute several votes, either to a body corporate relating to the number of its activities and its adherents, or to an individual relating to degree of his interest in the activity of the ME; in these cases, the statutes must provide for these persons can not hold majority of votes.  
**Art 41**  
**Quorum:** Unless the statutes provide a higher quorum, a board shall not conduct business validly unless at least half of its members are present or represented at the discussions.  
**Decision-making:** decisions shall be taken by majority of the votes of the members present or represented, unless the statutes provide a higher quorum.  
**President have a casting vote in case of votes are divided.** However, the statutes of the ME can provide for the contrary, except for the supervisory or administrative board is compound for half of the representing of the workers. | **Art 59**  
Each member of an SCE shall have one vote, regardless of the number of shares he holds.  
**Art 50**  
1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision taking in SCE organs shall be as follows:  
(a) **quorum:** at least half of the members with voting rights must be present or represented;  
(b) **decision-taking:** a majority of the members with voting rights present or represented.  
2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees’ representatives.  
3. Where employee participation is provided for in accordance with Directive 2003/72/EC, a member state may provide that the supervisory organ’s quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to |
### EUROPEAN MUTUAL SOCIETY
**PROPOSAL FOR A REGULATION 93/C 326/05 OF 6 JULY 1993**  
**AND MODIFICATIONS MADE IN 1996**

#### Transfer of registered office

**Art 6:**  
Transfer of registered office  
The registered office of an ME may be transferred to another member state in accordance with paragraphs 2 to 9 below. Such transfer shall not result in the ME being wound up or in the creation of a new legal person.  
A transfer proposal shall be drawn up by the management or administrative board and be published. The members have the right to examine the transfer proposal. No decision to transfer may be taken for two months after the publication of the proposal.  
Any such decision must be governed by the same conditions laid down for the amendment of the statutes.  
The creditors and holders of other rights which predated publication of the transfer proposal may require the ME to constitute an appropriate guarantee in their favour.  
The transfer shall take effect on the date on which the ME is registered in the register for its new registered office, upon delivery of a certificate.  
The new registration of the registered office of the ME may be relied on as against third parties from publication. However, until the removal of the ME from the register for its previous registered office has been published, third parties may continue to rely on the old registered office unless the ME proves that such third parties were aware of the new registered office.  
The laws of a member state may provide that a transfer shall not take affect within the two-month period on grounds of public interest. Review of a judicial authority shall be possible.  
An ME which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures, may not transfer its registered office.  

#### Change in legal person:

**No provisions**

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### EUROPEAN COOPERATIVE SOCIETY
**COUNCIL REGULATION 1435/2003 OF 22 JULY 2003**  
cooperatives governed by the law of the member state concerned.

#### Transfer of registered office

**Art 7:**  
Transfer of registered office  
The registered office of an SCE may be transferred to another member state. Such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person. The procedure is described in Article 7.  
The management or administrative organ shall draw up a transfer proposal and publicise it. An SCE’s members and creditors shall be entitled to examine the transfer proposal. No decision to transfer may be taken for two months after publication of the proposal.  
A decision to transfer must be taken under the same conditions as for an amendment of the statutes.  
The SCE shall satisfy that the interests of creditors and holders of other rights in respect of the SCE have been adequately protected.  
The transfer shall take effect on the date on which the SCE is registered in the register for its new registered office. On publication of an SCE’s new registration, the new registered office may be relied on as against third parties.  
However, as long as the deletion of the SCE’s registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office, unless the SCE proves that such third parties were aware of the new registered office.  
The laws of a member state may provide that a transfer shall not take affect within the two-month period on grounds of public interest. Review of a judicial authority shall be possible.  
An SCE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.  
In respect of any course of action, an SCE shall be considered as having its registered office in the member state where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.  

#### Change in legal person:

**No provisions**
| **EUROPEAN MUTUAL SOCIETY**  
**Proposed Regulation 93/C 326/05 of 6 July 1993**  
**AND MODIFICATIONS MADE IN 1996** |
| **EUROPEAN COOPERATIVE SOCIETY**  
**Council Regulation 1435/2003 of 22 July 2003** |

**Liquidation/Winding up/ Distribution of assets**

**Art 50 to 54**
Concerning winding, the EM is subject to rules applied to similar entities of the member state where it has its registered office.

An ME may be wound up by a decision of the general meeting

Causes:
The period fixed in the statutes has expired.
The subscribed formation fund has been reduced below the minimum laid down in the statutes.
Disclosure of accounts has not taken place in the ME’s last three financial years.
The number of members is below the minimum required by this Regulation or by the ME’s statutes.

An ME may be wound up by a court of law

Causes:
The ME’s activities are being carried on contrary to public policy of the member state of the registered office.
The ME’s activity carried on is no more mutual activity such as those provided for Article 1st and the formation fund become inferior to the minimum laid down for Article 4.

**Liquidation**
The winding up of an ME shall entail its liquidation.
The ME shall be subject to the law of the state in which it has its registered office in respect of insolvency and suspension of payments.

**Art 53**
At the closure of the liquidation, the assets of the ME shall be distributed by decision of the general meeting either to other MEs or mutual societies governed by the law of a member state or to one or more bodies having as their object the support and promotion of mutual societies.

**Art 54**
The ME shall be subject to the law of the state in which it has its registered office in respect of insolvency and suspension of payments and to similar procedures.

**Chapter VII (new)**
Art 54
The ME can be turn into a national legal entity similar to those which are subject to

**before two years have elapsed since its registration or before the first two sets of annual accounts have been approved. The conversion of an SCE into a cooperative shall not result in the winding-up or in the creation of a new legal person. The procedure is spelled out in the same article for publication, certification, etc.**

**Art 72**
An SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the member state in which its registered office is situated, including provisions relating to decision-making by the general meeting.

**Art 73**
An SCE may be wound up by the court or any other competent authority of the member state where the SCE has its registered office.

Causes:
Less than five persons at formation
Failure to comply with formation rules
Failure to provide the minimum capital
Absence of oversight of the legality of a merger, in merger cases

**Art 74**
Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up, including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating, shall be publicised in accordance with Article 12.

**Art 75**
Net assets shall be distributed in accordance with the principle of disinterested distribution or, where permitted by the law of the member state where the SCE has its registered office, in accordance with an alternative arrangement set up in the statutes of the SCE.

**Art 76**
An SCE may be converted into a cooperative governed by the law of the member state in which its registered office is situated, but not before the first two sets of annual accounts have been approved. Such conversion of an SCE into a cooperative shall not result in winding-up or in the creation of a new legal person.
| EUROPEAN MUTUAL SOCIETY  
| (PROPOSAL FOR A REGULATION 93/C 326/05 OF 6 JULY 1993)  
| AND MODIFICATIONS MADE IN 1996  
| ---  
| the law of the state in which it has its registered office, by a decision of its general meeting. This is possible after 2 years from its registration and the disclosing of the annual accounts.  
| The EM transformation into a national legal entity can not give rise to a winding, nor to the creation of a new entity.  
|  
| EUROPEAN COOPERATIVE SOCIETY  
| (COUNCIL REGULATION 1435/2003 OF 22 JULY 2003)  
| ---  
|  

Drawn up under the supervision of Viviane de Beaufort by students from the ESSEC-Master de juriste d'affaires de Sceaux programme, in cooperation with AISAM, 2005-2006.
|   | SOCIETAS EUROPAEA  
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001) | EUROPEAN ECONOMIC INTEREST GROUPING  
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985) |
|---|---|---|
| 1 | **Company objects**  
Not defined in the Regulation  
Art 9. Reference to the objects of a public limited-liability company:  
Lucrative activity, not limited to meeting the needs of its members. | **Art 3**  
The purpose of a grouping shall be to facilitate or develop the economic activity of its members and to improve or increase the results of this activities; its purpose is not to make profits for itself. |
| 2 | **Formation**  
Art 2  
An SE is made up of at least two companies, located in at least two member states.  
An SE may result from:  
- the merger of two or more public limited-liability companies,  
- the formation of a holding company at the initiative of two public or private limited-liability companies,  
- the creation of a joint subsidiary,  
- or the conversion of a public limited-liability company which have a subsidiary that has been operating in another member state for at least two years. | **Art 4**  
A grouping must comprise at least:  
- two companies, firms or other legal bodies which have their central administration in different member states, or  
- two natural persons, who carry on their principal activities in different member states, or  
- a company, firm or other legal body and a natural person, based in different member states  
(An EEIG may not be formed via conversion, only ex-nihilo) |
| 3 | **Minimum formation funds**  
Art 4  
Not less than 120 000 € or higher if the law of the member state requires for companies carrying on certain types of activity.  
Recital 12 and Art 5  
Public offerings are possible if allowed by national law for public limited-liability companies. | **Art 17 e)**  
No compulsory capital; contributions from the members.  
**Art 23**  
No public offerings |
| 4 | **Legal personality**  
Art 1-3  
Full and complete legal personality. | **Art 1**  
The member states shall determine whether or not groupings registered at their registries have legal personality. |
| 5 | **Taxation**  
Recital 20  
This Regulation does not cover the following areas of law such as taxation, competition, intellectual property or insolvency.  
Art 5  
Treated in the same way as public limited-liability companies by national law. | **Art 40**  
The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members (fiscal transparency). |
| 6 | **Formal rules**  
**Registration**  
Registered in the member state in which it has its registered office in a register designated by the law of that member state. An SE may not be registered unless an agreement on arrangements for employee involvement has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.  
**Statutes**  
Art 12  
The name of an SE shall be preceded or followed by the abbreviation ‘SE’.  
**Art 13,14**  
| **Registration**: in the state in which it has its official address, at the registry designated pursuant to Article 39(1): rule on the register  
+ **Art 10**: Registration of EEIG establishments in another member state  
**Art 11**  
**Publication**: national and OJEU  
**Art 1-1, Arts 5**  
**Statutes**: Grouping contract  
5 requirements  
1. The name of the grouping preceded by the words ‘European Economic Interest
| **SOCIETAS EUROPaea**  
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001) | **EUROPEAN ECONOMIC INTEREST GROUPING**  
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985) |
|---|---|
| Publication: national publication and OJEC.  
Art 7  
Registered office: located within the Community, in the same member state as its head office. A member state may in addition impose on SEs the obligation of locating their head office and their registered office in the same place. | Grouping’ or by the initials ‘EEIG’  
2. The official address of the grouping  
3. The objects for which the grouping is being formed  
4. The name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping  
5. The duration of the grouping, except where this is indefinite |
| **Art 12**  
Official address: must be situated in the Community (actual registered office or effective management) | **Art 26**  
A decision to admit new members shall be taken unanimously by the members of the grouping.  
Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping’s debts and other liabilities, including those arising out of the grouping’s activities before his admission.  
He may, however, be exempted by a clause in the contract for the formation of the grouping or the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties only if it is published. |
| **Approval capacity and Affectio societatis**  
Art 1-2  
No shareholder shall be liable for more than the amount he has subscribed. | **Art 27**  
A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.  
Any member of a grouping may, in addition, withdraw on just and proper grounds.  
Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping. |
| **Art 28**  
A member of a grouping shall cease to belong to it on death or when he no longer complies with conditions laid down in Article 4 (1).  
In the event of the death of a natural person who is member of a grouping, nobody may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of remaining members. |
<table>
<thead>
<tr>
<th>8</th>
<th>Governing bodies</th>
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<tbody>
<tr>
<td><strong>Art 38</strong></td>
<td>Under the conditions laid down by this Regulation, an SE shall comprise:</td>
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<td>- a general meeting of shareholders and</td>
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<td>- either a supervisory organ and a management organ (two-tier system) or</td>
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<td></td>
<td>an administrative organ (one-tier system), depending on the form adopted in the statutes.</td>
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<tr>
<th>9</th>
<th>Responsibilities and powers</th>
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<tbody>
<tr>
<td><strong>Two-tier system (Art 39 to 42)</strong></td>
<td>The management organ shall be responsible for managing the SE. A member state may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that member state’s territory. The member or members of the management organ shall be appointed and removed by the supervisory organ. A member state may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within.</td>
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<tr>
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<tbody>
<tr>
<td><strong>Art 19</strong></td>
<td>3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.</td>
</tr>
<tr>
<td><strong>Art 16</strong></td>
<td>2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.</td>
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<tr>
<td><strong>Art 16</strong></td>
<td>The organs of a grouping shall be the members acting collectively and the manager or managers. A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.</td>
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<table>
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</thead>
<tbody>
<tr>
<td><strong>Art 19</strong></td>
<td>1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.</td>
</tr>
<tr>
<td><strong>Art 16</strong></td>
<td>2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.</td>
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<td><strong>Art 29</strong></td>
<td>As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.</td>
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<tr>
<td><strong>Art 30</strong></td>
<td>Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.</td>
</tr>
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</table>
| **SOCIETAS EUROPAEA**  
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001) | **EUROPEAN ECONOMIC INTEREST GROUPING**  
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985) |
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<td>its territory. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE. The members of the supervisory organ shall be appointed by the general meeting. The members of the supervisory organ may, however, be appointed by the statutes. <strong>The one-tier system (Art 43 to 45)</strong> The administrative organ shall manage the SE. A member state may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that member state’s territory. This organ shall consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. <strong>Rules common to both systems</strong> <strong>Art 46:</strong> Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined. <strong>Art 52:</strong> The general meeting shall decide on matters for which it is given sole responsibility by: (a) this Regulation, (b) the legislation of the member state in which the SE’s registered office is situated.</td>
<td><strong>Art 17</strong> 4. On the initiative of a manager or at the request of a member, one or several managers have to organize a consultation of the members so that these last ones can take a decision. <strong>Art 18</strong> Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records. <strong>Art 20</strong> Towards third party, only the manager or if they are some, each of the managers represent the grouping. Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 shall not of itself be proof thereof. <strong>Art 24</strong> The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability. Creditors may not proceed against a member for payment in respect of debts and other liabilities in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.</td>
</tr>
<tr>
<td><strong>Corporate governance</strong></td>
<td></td>
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<tr>
<td><strong>The two-tier system</strong> <strong>Art 41</strong> The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE’s business. This organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE. <strong>The one-tier system</strong> <strong>Art 44</strong> The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE’s business. <strong>Rules common to both systems</strong></td>
<td><strong>Art 17</strong> 4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision. <strong>Art 18</strong> Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping’s books and business records. <strong>Art 20</strong> Only the manager or, where there are two or more, each of the managers shall represent a group in respect of dealings with third parties.</td>
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Drawn up under the supervision of Viviane de Beaufort by students from the ESSEC-Master de juriste d'affaires de Sceaux programme, in cooperation with AISAM, 2005-2006.
| SOCIETAS EUROPAEA  
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001) | EUROPEAN ECONOMIC INTEREST GROUPING  
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985) |
|-------------------------------------------------|-------------------------------------------------|
| **Art 51**  
Members of the SE’s management, supervisory and administrative organs shall be liable for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.  
**Art 54**  
An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the member state in which the SE’s registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE, provides for more frequent meetings. A member state may, however, provide that the first general meeting may be held at any time in the 18 months following an SE’s incorporation. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the member state in which the SE’s registered office is situated. | Each of the managers shall bind the grouping as regards third parties when he acts on behalf of grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 shall not of itself be proof thereof. |
| **Publication of accounts**  
**Art 61**  
Subject to article 62 an SE shall be governed by the rules applicable to public limited-liability companies under the law of the member state in which its registered office is situated as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts. | **Art 24**  
The members of the grouping answer infinitely and in common debts of all kinds of this one. The national law determines the consequences of this responsibility. They can be pursued by a creditor only after formal demand to pay to the grouping and if the payment was not made within an appropriate period. |
| **Art 62**  
1) An SE which is a credit or financial institution shall be governed by the rules laid down in the national law of the member state in which its registered office is situated in implementation of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions as regards the preparation of its annual, and where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.  
2) An SE which is an insurance undertaking shall be governed by the rules laid down in the national law of the member state in which its registered office is situated in implementation of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings as regards the preparation of its annual and, where appropriate, consolidated accounts including the accompanying annual report and the auditing and publication of those accounts. | 1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares. |

Drawn up under the supervision of Viviane de Beaufort by students from the ESSEC-Master de juriste d'affaires de Sceaux programme, in cooperation with AISAM, 2005-2006.
### SOCIETAS EUROPAEA
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001)

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<tr>
<th>11</th>
<th>Voting rights</th>
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<tbody>
<tr>
<td>Majority rule</td>
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</table>

**Art 50**

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:
   - **quorum**: at least half of the members must be present or represented;
   - **decision-taking**: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees’ representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a member state may provide that the supervisory organ’s quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the member state concerned.

### EUROPEAN ECONOMIC INTEREST GROUPING
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985)

**Art 17**

1. Each member shall have one vote. The contract for the formation of a grouping may, however, grant more than one vote to certain members, provided that no one member holds a majority of the votes.

**Decision-making**: A unanimous decision by the members shall be required to:
   - (a) alter the objects of a grouping;
   - (b) alter the number of votes allotted to each member;
   - (c) alter the conditions for taking decisions;
   - (d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;
   - (e) alter the contribution by every member or by some members to the grouping's financing;
   - (f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;
   - (g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. **Quorum**: Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken.

   Unless otherwise provide for by the contract, decisions shall be taken unanimously.
<table>
<thead>
<tr>
<th>SOCIETAS EUROPAEA (COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001)</th>
<th>EUROPEAN ECONOMIC INTEREST GROUPING (COUNCIL REGULATION 2137/85 OF 25 JULY 1985)</th>
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</thead>
<tbody>
<tr>
<td><strong>Art 8</strong> Transfer of registered office: The registered office of an SE may be transferred to another member state in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13. An SE’s shareholders and creditors shall be entitled at least one month before the general meeting called upon to decide on the transfer to examine the transfer proposal. No decision to transfer may be taken for two months after publication of the proposal. Decision shall be taken under the same conditions as for the amendment of the statutes: a majority which may not be less than two thirds of the votes cast. The SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights have been adequately protected. The transfer of an SE’s registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered upon delivery of a certificate attesting to the completion of the acts and formalities required for registration. On publication of the new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE’s registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office. The laws of a member state may provide that the transfer of a registered office shall not take effect within a two-month period on grounds of public interest. Review by a judicial authority shall be possible. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it. In respect of any cause of action, an SE which has transferred its registered office to another member state is considered as having its registered office in the member state where the SE was registered prior to the transfer, even if the SE is sued after the transfer.</td>
<td><strong>Art 13</strong> The official address of a grouping may be transferred within the Community. When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping. <strong>Art 14</strong> When the transfer of the official address results in a change in the law applicable pursuant to Art. 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8. No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered at the registry for the new official address. Upon publication of a grouping's new registration the new official address may be relied on as against third parties; however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address. The laws of a member state may provide that the transfer shall not take effect within the two-month period on grounds of public interest. Review by a judicial authority must be possible. <strong>Conversion</strong> <strong>Conversion</strong> No provisions</td>
</tr>
<tr>
<td><strong>Art 66</strong> Conversion An SE may be converted into a public limited-liability company governed by the law of the member state in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved. The conversion of an SE shall not result in the winding up of the company or in the creation of a new legal person. The same article spells out the procedures for publication, etc.</td>
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| 13 | **Winding up/Liquidation/Asset distribution** | **SOCIETAS EUROPAEA**  
(COUNCIL REGULATION 2157/2001 OF 8 OCTOBRE 2001) | **EUROPEAN ECONOMIC INTEREST GROUPING**  
(COUNCIL REGULATION 2137/85 OF 25 JULY 1985) |
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<td><strong>Art 63</strong></td>
<td>An SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the member state in which its registered office is situated, including provisions relating to decision-making by the general meeting.</td>
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<tr>
<td><strong>Art 31</strong></td>
<td>A grouping may be wound up by a decision of its members. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping.</td>
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<tr>
<td>Causes:</td>
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</table>
| - The contract has reached its term,  
- The grouping’s object has been realised or is impossible to pursue.  
- Failure to fulfil the formation conditions  
- Just and proper grounds |  |
| Unless there is a way to remedy the situation. |  |
| Where, three months after one of the situations referred to in the first subparagraph has occurred, the decision of the members establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up. |  |
| **Art 32** | A grouping may be wound up by the court  
On application by any person concerned or by a competent authority. |  |
| Causes for winding up: |  |  |
| - Failure to keep to the prohibitions listed in Article 3.  
- If the registered office is situated outside the Community  
- Failure to keep to the conditions of formation  
- Breach of public order by its activities. |  |
| **Art 35** | **Liquidation**  
The winding up of a grouping shall entail its liquidation.  
The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.  
A grouping shall retain its capacity until its liquidation is concluded.  
The liquidator or liquidators shall take the publication and registration steps required. |  |
| **Art 36** | Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not of itself cause the commencement of such proceedings against its members. |  |
Appendices:
the regulations and proposed regulation

**European mutual society (ME)**
- European Union, the Council, 10367/96, Working Party on Economic Questions (European Mutual Society) (OR. f)

**European Cooperative Society (SCE)**

**Societas Europaea (SE)**

**European Economic Interest Grouping (EEIG)**
European mutual society (ME)
Amended proposal for a Council Regulation (EEC) on the statute for a European mutual society (\(^{1}\))

(93/C 236/05)

COM(93) 252 final — SYN 390

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 6 July 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas the Commission adopted a communication to the Council of 18 December 1989 (\(^{1}\)); whereas the Economic and Social Committee gave its opinion on that communication on 19 September 1990 (\(^{2}\));

Whereas the completion of the internal market means that there must be full freedom of establishment for all activities which contribute to the objectives of the Community, irrespective of the form taken by the body which carries them on;

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

Whereas by the attainment of their objectives and the form of their operations mutual societies play a full part in the life of the economy;

Whereas the statute for a European company, as provided for in Regulation (EEC) No 2137/85 (\(^{3}\)), is not an instrument which is suited to the specific features of mutual societies;

Whereas the European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85 (\(^{4}\)), does allow groupings to promote certain of their activities in common, while nevertheless preserving their independence, but it does not meet the specific requirements of mutual societies;

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

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

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

(AMENDMENT No 1 included)

Whereas the introduction of a European form of organization which would be available to mutual societies, based on common principles but taking account of the specific features of, on the one hand, mutual societies carrying on providence activities and, on the other hand, mutuals engaged in other activities, in particular insurance, should enable them to operate outside their own national borders in all or part of the territory of the Community;

Whereas the essential aim of the legal rules governing the European mutual society implies that such a society may be set up by legal entities from different Member States, or by transformation of a national mutual society into the new form, without first being wound up, so long as the mutual society has its registered office and central administration in the Community and an establishment or subsidiary in a Member State other than that in which it has its central administration; in this last case, the mutual society must engage in genuine and effective cross-border activity;

Whereas European mutual societies should hold a formation fund;

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

(AMENDMENT No 98)

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

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

— rules on employee involvement in the decision-making process;

— employment law;

— taxation law;

— competition law;

— intellectual and industrial property law;

— rules on insolvency and suspension of payments;

Whereas the application of this Regulation must be deferred so as to enable each Member State to incorporate into its national law the provisions of the Council Directive supplementing the Statute for a European mutual society with regard to the involvement of employees and to put in place in advance the necessary machinery for securing the formation and operation of European mutual societies having their registered office in its territory, so that the Regulation and the Directive may be applied concomitantly;

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

— Council Directive 88/151/EEC of 9 March 1988 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1), as last amended by the Act of Accession of Spain and Portugal,

— Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies (2), as last amended by Directives 90/604/EEC (3) and 90/605/EEC (4);


— Council Directive 84/253/EEC of 10 April 1984 based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (6);

— Council Directive 89/488/EEC of 21 December 1988 on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (7);

— Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (8);

Whereas the activities in the field of financial services and notably as they concern establishments and insurance enterprises have been the subject of legislative measures pursuant to the following Directives:

— Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (9);


(2) OJ No L 222, 14.8.1978, p. 11.
(6) OJ No L 126, 12.5.1984, p. 20.
(11) COM 90/348 final — SYN 291.
Whereas this form of organization should be optional, to the management of basic obligatory social security schemes as well as the operations of provident or assistance organizations the services of which will vary according to available resources and in which the contributions of members is determined by contract, as well as the carrying out of the activities and operations. 

HAS ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

CHAPTER I
FORMATION OF THE EUROPEAN MUTUAL SOCIETY

Article 1
(Form of the European mutual society)

1. Mutual societies may be formed throughout the Community either as a European provident mutual society or a European mutual (ME) carrying out other activities on the conditions and in the manner set out in this Regulation. The name of an ME shall specify the nature of the activity engaged in, indicating whether, for example, it is an insurance activity or purely a providence activity.

2. An ME:

— shall guarantee its members, in return for a subscription, full settlement of contractual undertakings entered into in the course of the activities authorized by its statutes; and

— shall not remunerate its managers or administrators, or assign them a share of the operating surplus. However, managers and administrators may be reimbursed for expenses incurred in performing their duties.

3. An ME shall operate with a formation fund and reserves which shall serve exclusively to cover its debts.

4. An ME shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 8 (3).

5. This Regulation does not prejudice the competence of each Member State to regulate access on its territory

Article 2
(AMENDMENT No 102)

1. An ME may be formed by:

(a) any two or more of the legal entities essentially pursuing activities other than providence hence listed in Annex 1 which are formed under the law of a Member State provided that at least two of them have their registered office and central administration in different Member States;

(b) or any two or more of the legal entities which are listed in Annex 2 and which are formed under the law of a Member State provided that at least two of them have their registered office and central administration in different Member States and that they solely pursue providence activities as defined in the Member States of origin of the founding entities;

(c) or at least 500 natural persons resident in at least two Member States where the ME is essentially carrying on activities other than providence.

(AMENDMENT No 103 — modified)

2. A mutual society which has been formed in accordance with the law of a Member State and has its registered office and central administration in the Community may form an ME by converting into ME form if it has at least 500 members in another Member State and is carrying on genuine and effective activities there or can demonstrate that it will meet the above two-fold condition if it changes form.

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

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

The conversion to ME form and the ME’s statutes shall be approved by the general meeting of members in accordance with the requirements laid down for amendment of its statutes by Article 22.
Article 3
(The statutes of the ME)

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

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

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

Article 4
(Formation fund)

1. The formation fund shall be not less than ECU 100,000 or the equivalent in national currency.

2. Where the law of a Member State requires a higher amount in the case of mutual societies engaged in certain types of activity, the same requirement shall apply to MEs which have their registered office in that State.

Article 5
(Registered office)

The registered office of an ME shall be situated within the Community in the Member State in which the ME has its central administration.

Article 6
(Transfer of registered office)

1. The registered office of an ME may be transferred to another Member State in accordance with paragraphs 2 to 9 below. Such transfer shall not result in the ME being wound up or in the creation of a new legal person.

2. A transfer proposal shall be drawn up by the management or administrative board and be published in accordance with Article 9, without prejudice to any additional form of publicity provided for by the Member State in which the registered office is situated. This proposal shall include details of:

(a) the registered office proposed for the ME;
(b) the statutes proposed for the ME including, where appropriate, its new title;
(c) the timetable proposed for the transfer.

2 (a). The management or administrative board shall draw up a report explaining and justifying the legal and economic aspects of the transfer for the attention of members and workers.

2 (b). The members and creditors of the ME shall, at least one month prior to the general meeting called to decide on the transfer, have the right to examine, at the registered office of the ME, the transfer proposal and the report drawn up by virtue of 2 (a) and to obtain copies of these documents free of charge on request.

2 (c). A Member State may, in respect of MEs registered on its territory, adopt provisions to ensure appropriate protection for members in the minority who voted against the transfer.

3. No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be governed by the conditions laid down for the amendment of the statutes.

4. The creditors and holders of other rights vis-à-vis the ME which predated publication of the transfer proposal may require the ME to constitute an appropriate guarantee in their favour. Exercise of this right shall be governed by national law in the State in which the ME had its registered office prior to transfer.
A Member State may extend the application of the above provision to include debts made by the ME with public entities prior to the date of transfer.

5. In the Member State in which the ME has its registered office, a court, notary or other competent authority shall issue a certificate to the effect that the acts and formalities required prior to transfer have been properly completed.

6. The new registration may not be effected until the certificate provided for in 5 has been produced and evidence has been furnished of completion of the formalities required for registration in the country of the ME’s new registered office.

6 (a). Transfer of the ME’s registered office and the resulting change of statutes shall take effect on the date on which the ME is registered in the register for its new registered office, in accordance with Article 8.

7. The removal of the ME from the register for its previous registered office may not be effected until evidence has been produced that the ME has been registered in the register for its new registered office.

8. The fact of the new registration and the fact of the removal of the old registration shall both be published in the Member States concerned, in accordance with Article 9.

9. The new registration of the registered office of the ME may be relied on as against third parties from publication. However, until the removal of the ME from the register for its previous registered office has been published third parties may continue to rely on the old registered office unless the ME proves that such third parties were aware of the new registered office.

10. A Member State’s legislation may, in respect of MEs registered in that country, provide for any transfer of registered office giving rise to a change in the applicable law not to take effect where, within the period of two months specified in 3, a competent authority from that country lodges an objection. Such objection may only be lodged for reasons of public interest. It must be possible to appeal against any such ruling to a judicial body.

11. An ME which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may not transfer its registered office.

(b) where expressly authorized by this Regulation, by the provisions in the statutes of the ME;

(c) for matters not dealt with by this Regulation or, where a matter is dealt with only partially, for the aspects not covered by this Regulation:
   — the legal provisions adopted by the Member States in application of Community measures dealing specifically with MEs;
   — the legal provisions in Member States applying to the legal entities set out in the Annex and constituted in conformity with the legislation of the Member State in which the ME has its registered office;
   — the provisions of statutes under the same conditions as for the legal entities set out in the Annex and constituted in accordance with the legislation of the Member State in which the ME has its registered office.

(AMENDMENT — aligned with European company)

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a State for the purposes of identifying the law applicable under this paragraph.

3. In each Member State and subject to the express provisions of this Regulation, an ME shall have the same rights, powers and obligations as a mutual society formed under the law of the State in which the ME has its registered office.

Article 8

(Regulation and disclosure requirements)

1. The founder members shall draw up the statutes of the ME in accordance with the provisions for the formation of mutual societies laid down by the law of the State in which the ME has its registered office. The statutes must at least be in writing and signed by the founder members.

2. In those Member States whose legislation does not provide for any precautionary supervision, whether administrative or judicial, at the time of formation, the statutes shall be adopted by notarial act. The supervisory authority shall seek to ensure that this act complies with the requirements for the formation of an ME, and in particular those set out in Articles 1, 2, 3 and 4.

3. Member States shall designate the register in which MEs must be registered and shall determine the rules governing it. They shall lay down the procedures for filing the ME’s statutes. No ME may be registered until it has paid the fees required by the Directive (supplementing the statute for a European mutual society with regard to the involvement of employees) have been adopted.
4. Member States shall take the measures required to ensure that the following documents and particulars are disclosed as provided for in paragraph 3:

(a) the statutes of the MF, any amendments to them, and the complete text of the statutes in its up-to-date form;

(b) the opening or closing of any establishment;

(c) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:
   — are authorized to represent the MF in dealings with third parties and in legal proceedings,
   — take part in the administration, supervision or control of the MF;

(d) at least once a year, the amount of the formation fund, unless any increase in the formation fund requires an amendment to the rules;

(e) the balance sheet and the profit and loss account for each financial year; the document containing the balance sheet shall give particulars of the persons who are required by law to certify it;

(f) any proposal to transfer the registered office as referred to in Article 6 (2);

(g) the winding-up and liquidation of the MF and the decision to continue the MF’s activities taken under Article 49;

(h) any declaration of nullity of the MF by a court;

(i) the appointment of liquidators, particulars of such liquidators, and their respective powers, the termination of their office;

(j) the conclusion of the liquidation of the MF and the removal of the MF from the register.

5. If, prior to its acquisition of legal personality, steps have been taken in the name of an MF, and the MF does not assume the obligations arising from those steps, the persons who took them shall be jointly and severally liable therefor, unless otherwise agreed.

Article 9

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

1. Member States shall ensure that the documents and particulars referred to in Article 8 (4) are disclosed in the appropriate official gazette in the Member State in which the MF has its registered office, and shall determine by which persons the disclosure formalities are to be carried out. Disclosure shall be effected by publication either of an extract or of a reference to the entry in the register.

Member States shall also ensure that anyone may consult the documents referred to in Article 8 (4) in the register referred to in Article 8 (3), and may obtain a copy of the whole or any part, by post if requested.

Member States shall take the necessary measures to avoid any discrepancy between what is disclosed by publication and what appears in the register. However, in cases of discrepancy, the text published may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the MF proves that they had knowledge of the text entered in the register.

Member States may require payment of a fee for the services referred to in the preceding subparagraphs, but the fee may not exceed the administrative cost.

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of MFs opened in a Member State other than that in which it has its registered office.

3. Documents and particulars may be relied on by the MF as against third parties only after they have been disclosed in accordance with paragraph 1, unless the MF proves that the third party had knowledge thereof. However, they may not be relied on in respect of transactions which take place before the 16th day after publication as against third parties who prove that they could not have had knowledge thereof.

4. Third parties may rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

Article 10

(Notice in the Official Journal by the European Communities)

Member States shall ensure that a notice stating that an MF has been registered or that the liquidation of an MF has been concluded is published for information purposes in the Official Journal of the European Communities, stating the number, date and place of registration of the MF, the date and place of publication and the title of the publication, the address of the MF and a summary of its objects, and that these particulars are forwarded to the Office for Official Publications of the European Communities within one month of the date of the publication in the official gazette of the Member State in which the MF has its registered office pursuant to Article 9 (1).

Where the registered office of the MF is transferred in accordance with Article 6 (2) a notice shall be published containing the information provided for in the first paragraph, together with that relating to the new registration.
Article 11

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

Letters and documents sent to third parties shall state legibly:

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

CHAPTER II
GENERAL MEETING

Article 12

(Competence)

The general meeting shall decide on:

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

Article 13

(Holding of general meeting)

1. A general meeting shall be held at least once a year, not later than six months after the end of the ME's financial year.

2. General meetings may be convened at any time by the management board or the administrative board. The management board is bound to convene the general meeting at the request of the supervisory board.

3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and of the appropriation of the profit or treatment of the loss and the approval of the annual report referred to in Article 46 of Directive 78/660/EEC, to be submitted by the management or administrative board.

4. The statutes of an ME with a management board and a supervisory board may provide that a decision on approval of the annual accounts is to be taken jointly by the two boards, in separate votes, and that the general meeting is to pass a resolution only if the boards are unable to reach agreement.

Article 14

(Meeting called by a minority of members)

1. Not less than 25% of the members of the ME, which proportion may be reduced by the statutes, may request that the general meeting be convened and its agenda set.

2. The request for a meeting shall give the reasons for convening it and the items to be included on the agenda.

3. If, following a request made under paragraph 1, the necessary steps have not been taken within one month, the court or competent authority within the State where the ME's registered office is situated may order the convening of a general meeting or authorize either the members who have requested it or their representative to convene the meeting.

4. A general meeting may during a meeting decide that a further meeting be convened and set the date and the agenda.

Article 15

(Notice of meeting)

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

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

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

Article 16

(Addition of items to the agenda)

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

Article 17

(Attendance and proxies)

1. Only members shall be entitled to speak and vote at the general meeting.

2. Persons entitled to vote shall be entitled to appoint a proxy to represent them at the general meeting in accordance with procedures to be laid down in the statutes.

3. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

Article 18

(Sectional meetings)

(AMENDMENT No 108 — modified)

1. The general meeting shall consist either of all the members or of delegates appointed under the conditions laid down in the statutes.

2. Where the ME has several establishments, or where its activities span more than one region, or where it has more than 500 members, the statutes may provide for the holding of sectional meetings to consider the same agenda separately before the general meeting is held. These meetings shall elect delegates, who shall in their turn be convened as the general meeting. The statutes shall lay down the division into sections, the number of delegates for each section, and the procedures to be followed.

3. Persons entitled to attend the general meeting may appoint a proxy to deputize for them under the conditions laid down in the statutes.

4. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

Article 19

(Right to information)

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

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

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

Article 20

(Voting rights)

(AMENDMENT No 106 — modified)

Each member of the ME shall have one vote. If an ME has been formed by legal persons, its statutes may regulate voting rights according to the number of members and the activities of each legal person who is a member. The statutes must restrict the representation rights of legal persons in order to prevent any one legal person from enjoying an absolute majority of votes.

Article 21

(AMENDMENT No 107)

The statutes may allow members to have more than one vote. The statutes shall, in that event, lay down the circumstances in which a member may have more than one vote; this must depend on the extent to which the member takes part in the ME's activities. The statutes must lay down limits on the number of votes which may be cast by a single member and the number of other members for whom a member may act as proxy.

Article 22

(Normal majority)

Except where this Regulation or the statutes lay down majority requirements, decisions of the general meeting shall be taken by a majority of the votes of the members present or represented.
Article 23

(Special majority)

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

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

Amendments to the statutes shall be published in accordance with the provisions of Article 9.

Article 24

(Actions to have resolutions of general meeting declared void)

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

— an action for such a declaration may be brought by any member provided he can show that he has an interest in having the infringing provision observed,

— the action for such a declaration shall be brought within three months, before the court within whose jurisdiction the ME has its registered office; the procedure in the action shall be governed by the law of the State in which the ME has its registered office,

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

Article 25

(DISlosure of decisions of a court)

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

CHAPTER III

MANAGEMENT, SUPERVISING AND ADMINISTRATIVE BODIES

Article 26

(Structure)

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

Section 1

Two-tier system

Subsection 1

Management board

Article 27

(F riprotion of the management board; appointment of members)

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

2. The member or members of the management board shall be appointed and removed by the supervisory board.

3. No person may at the same time be a member of the management board and of the supervisory board.

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

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

Article 28

(Chairmanship, convening of meetings)

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

Subsection 2
Supervisory board

Article 29
(Functions of the supervisory board; appointment of members)

1. The supervisory board shall supervise the duties performed by the management board. It may not itself exercise the power to manage the ME. The supervisory board may not represent the ME in dealings with third parties. It shall represent the ME in dealings with members of the management board, or one of them, in respect of litigation or the conclusion of contracts.

(Amendment No 108 — modified)

2. With the exception of the employees' representatives pursuant to Directive 68/151/EEC, the members of the supervisory board shall be appointed and removed by the general meeting. However, the members of the first supervisory board may be appointed in the statutes. This provision shall apply without prejudice to national law permitting a minority of shareholders to appoint some of the members of a board.

3. The number of members of the supervisory board shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory board for MEs registered in its territory.

Article 30
(Right to information)

1. The management board shall report to the supervisory board at least once every three months on the state and foreseeable prospects of the ME's affairs, taking particular account of any information relating to undertakings controlled by the ME that may significantly affect those affairs.

2. The management board shall communicate to the supervisory board without delay any information which may have an appreciable effect on the ME.

3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the ME.

4. The supervisory board may undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to carry out this task and may call in the help of experts.

5. Each member of the supervisory board shall be entitled to examine all information communicated by the management board to the supervisory board.

Article 31
(Chairmanship, calling of meetings)

1. The supervisory board shall elect a chairman from among its members.

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

Section 11
The one-tier system

Article 32
(Functions of the administrative board; appointment of members)

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

2. The administrative board shall have at least three members within limits fixed by the statutes.

3. The administrative board may delegate to one or more of its members the power of management. It may also delegate certain management responsibilities to one or more persons not members of the board; such management responsibilities may be revoked at any time. The statutes, or if the statutes are silent the general meeting, shall lay down the conditions within which such delegation shall operate.

(Amendment No 109 — modified)

4. With the exception of the employees' representatives pursuant to Directive 68/151/EEC, the member or members of the administrative board shall be appointed and removed by the general meeting.
Article 33

(Holding of meetings and right to information)

1. The management board shall meet at least once every three months, at intervals laid down by the statutes to discuss the progress and foreseeable prospects of the ME's affairs, taking particular account of any information relating to undertakings controlled by the ME that may significantly affect the progress of the ME.

2. The administrative board shall meet to deliberate on the operations referred to in Article 38.

3. Each member of the administrative board shall be entitled to examine all reports, documents and information supplied to the board concerning the matters referred to in paragraph 1.

Article 34

(Chairmanship, calling of meetings)

1. The administrative board shall elect a chairman from among its members.

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

Section III

Rules common to the one-tier and two-tier board systems

Article 35

(Term of office)

1. Members of the governing bodies shall be appointed for a period laid down in the statutes not exceeding six years.

2. Board members may be reappointed one or more times for the period laid down in accordance with paragraph 1.

Article 36

(Conditions of membership)

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

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

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

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

Article 37

(Rules of procedure)

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

Article 38

(Power of representation; liability of the ME)

1. Where the authority to represent the ME in dealings with third parties, in accordance with Articles 26 (1) and 31 (1), is conferred on two or more members of governing bodies, those persons shall exercise that authority collectively.

2. However, the statutes of the ME may provide that the ME shall be validly bound either by each of the members acting individually or by two or more of them acting jointly. Such a clause may be relied upon against third parties where it has been disclosed in accordance with Article 9.

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

However, Member States may provide that the ME shall not be bound where such acts are outside the objects of the ME if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.
4. The appointment, termination of office and particulars of the persons who may represent an ME must be disclosed in accordance with Article 9. The information disclosed must state whether these persons are authorized to bind the ME individually or whether they must act jointly.

Article 39
(Operations requiring authorization)

1. The statutes of the SCE shall set out the categories of operation requiring authorization for the administrative board by the supervisory board, under the two-tier system, or requiring an express decision from the administrative board under the one-tier system.

However, a Member State may provide that, under the two-tier system, the supervisory board may itself make certain categories of operation subject to authorization.

2. A Member State may lay down the minimum categories of operation which must feature in the statutes of SCEs registered on its territory.

Article 40
(Rights and obligations)

1. Within the scope of the functions attributed to them by this Regulation, each of the members of a board shall have the same rights and obligations as the other members of the board of which he is a member.

2. All board members shall carry out their functions in the interests of the MF, having regard in particular to the interests of the members and the employees.

3. All board members shall exercise a proper discretion, even after they have ceased to hold office, in respect of information of a confidential nature concerning the ME.

Article 41
(Conduct of business on boards)

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

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

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

Article 42
(Civil liability)

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

2. Where the board concerned is composed of more than one member, all the members shall be jointly and severally liable for loss or damage sustained by the ME; however, a member may be relieved of liability if he can prove that he is not in breach of the obligations attached to his functions.

Article 43
(Procedings on behalf of the ME)

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

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

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

Article 44
(Limitation of actions)

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

CHAPTER IV
FINANCING, ANNUAL ACCOUNTS, CONSOLIDATED ACCOUNTS, AUDITING AND DISCLOSURE

Article 45
(Financing)

An ME may avail itself of all forms of financing under the most favourable conditions applying to mutual societies in the State in which it has its registered office and in the Member States in which it has its establishments.
Article 46

(Preparation of annual accounts and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and disclosure, the ME shall be subject to the measures adopted in the State in which it has its registered office under Directives 78/660/EEC and 83/349/EEC.

2. The ME may draw up its annual accounts, and its consolidated accounts if any, in ecus. In this event, the bases of conversion used to express in ecus those items included in the accounts which are or were originally expressed in another currency must be disclosed in the notes to the accounts.

Article 47

(Auditing)

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

Article 48

(Disclosure of accounts)

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

2. Where MEs are subject, under the law of the Member State in which the ME has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC, the ME must at least make the accounting documents available to the public at its registered office. Copies of these documents must be obtainable on request. The price charged for these copies must not exceed the administrative cost.

Article 49

(Credit or financial institutions and insurance undertakings)

MEs which are credit or financial institutions or insurance undertakings shall comply, as regards the drawing-up, auditing and disclosure of annual accounts and consolidated accounts, with the rules laid down by the measures adopted in the Member State in which the ME has its registered office pursuant to Directive 86/36/EEC or, as the case may be, pursuant to Council Directive 91/674/EEC.

CHAPTER V

WINDING UP AND LIQUIDATION

Section 1

Winding up

Article 50

(Winding up by the general meeting)

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

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

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

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

(AMENDMENT No 111)

The general meeting shall decide either to wind up the ME or that the ME shall continue its activities in accordance with Article 22.

Article 51

(Winding up by the court)

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

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

CHAPTER VI
INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 54
(Insolvency and suspension of payments)

1. The MF shall be subject to the law of the State in which it has its registered office in respect of insolvency and suspension of payments.

2. The opening of insolvency or suspension of payment proceedings shall be notified by the person appointed to conduct the proceedings for entry in the register referred to in Article 8 (3). The entry in the register shall show the following:

(a) the nature of the proceedings, the date of the order, and the court making it;
(b) the date on which payments were suspended, if the court order provides for this;
(c) the name and address of the administrator, trustee, receiver, liquidator or any other person having power to conduct the proceedings, or of each of them where there are more than one;
(d) any other information considered necessary.

3. Where a court finally dismisses an application for the opening of the proceedings referred to in paragraph 2 owing to want of sufficient assets, it shall, either of its own motion or on application by any interested party, order its decision to be noted in the register referred to in Article 8 (1).

4. Particulars registered pursuant to paragraphs 2 and 3 shall be disclosed in the manner referred to in Article 9.

TITLE II
FINAL PROVISIONS

Article 55
(Measures to be applied in the event of a breach of rules)

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

Article 56
This Regulation shall enter into force on 1 January 1994.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
ANNEX 1

Legal entities mentioned in Article 2 (1) (a)

For Belgium:

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

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

For Denmark:

— Fortsættelsessygekasse,
— Genindseelskaber.

For Germany:

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

(AMENDMENT — by the rapporteur and the FMC)

— Statutory health insurance funds within the scope of the Social Code (SBGV).
— Accident insurance associations within the meaning of Articles 545 and 762 of the Insurance Regulations (RVO).

For France:

— Mutuals coming under the Code de la mutualite (the Law of 25 July 1985),
— Mutual insurance societies coming under the Code des assurances,
— Caisse de mutualite agricole, regulated by the Rural Code.

For Ireland:

— Voluntary Health Insurance Board coming under the Voluntary Health Insurance Act of 5 February 1957,
— Companies limited by guarantee,
— Societies registered under the Industrial and Provident Societies Acts,
— Societies registered under the Friendly Societies Acts.

For Italy:

— Mutuals coming under the Law of 15 April 1886,
— Cooperative societies, coming under Section VI of the Civil Code relating to cooperative and mutual societies as well as the cooperatives and mutuals covered by legislation or regulations for certain categories.

For Luxembourg:

— Societies of mutual assistance and mutuals coming under the Law of 7 July 1961 and Grand Duchy Regulation of 31 July 1961,
— Associations of mutual insurance coming under Article 2 of the Law of 16 May 1891.

For the Netherlands:

— Entities coming under Section 3 "association" (vereniging) of the second Book of the Burgerlijk Wetboek on cooperative union.

For the United Kingdom:

— Companies limited by guarantee having as their principal object the maintenance of a provident fund,
— Mutual companies,
— Societies registered under the Industrial and Provident Societies Acts,
— Societies registered under the Building Societies Acts,
— Societies registered under the Friendly Societies Act.

For Greece:
— Entities coming under the law for mutuals,
— Allelasphalistikos Sunetairismos.

For Spain:
— Entidades de Prevision Social, coming under the Law of 2 August 1984 establishing the regulation of private insurance,
— Mutuas des Acc. de Trabajo, coming under the Law of 2 August 1984 establishing the regulation of private insurance,
— Sociedad mutua, coming under the Law of 2 August 1984 establishing the regulation of private insurance,
— Sociedad cooperativa, coming under the Law of 2 April 1987 and regional laws.

For Portugal:
— Mutualidades, Associações Mutualistas, coming under the decree law No 72/90 of 3 March 1990,
— Misericordias, coming under Articles 167 to 194 of the Civil Code relating to associations and foundations,
— Mutua de seguros.

ANNEX II

Legal entities referred to in Article 2 (1) (b) which manage obligatory social security schemes as well as provident and mutual assistance organizations, the services of which vary according to the resources available and in which the contribution of members is determined by contract.

For Belgium:
Mutuals coming under the Law of 6 August 1990 relating to mutuals and to national unions of mutuals.

For Denmark:
Fortætelsessygekasse.

For Germany:

(AMENDMENT — by the rapporteur and the EAC)
Statutory health insurance funds within the scope of the Social Code (SGBV); Accident insurance associations within the meaning of Articles 545, 632, 719a and 762 of the Insurance Regulations (RVO).

For France:

(AMENDMENT No 114)
Mutuals coming under the Code de la Mutualité (Law of 25 July 1985),
Mutual insurance societies within the scope of the Insurance Code,
Agricultural mutual funds governed by the Rural Code.

For Ireland:
Voluntary Health Insurance Board coming under the Voluntary Health Insurance Act of 5 February 1957.
Amended proposal for a Council Directive supplementing the statute for a European mutual society with regard to the involvement of employees (1)

(93/C 236/06)

COM(93) 252 final — SYN 391

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 6 July 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 54 thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

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

Whereas in order to attain the objectives set out in Article 8a of the Treaty, Regulation (EEC) No ... establishes a statute for a European mutual society (MF);

(Amendment No 116)

Whereas there are in the Member States laws, regulations and administrative provisions concerning the provision of information to and the consultation of the employees of undertakings, whatever their legal form; whereas in some Member States, there are provisions concerning the participation of employees in mutuals, whatever their type of activity;

Whereas it is desirable to coordinate information and consultation arrangements at Community level in order to develop dialogue between the management boards and administrative boards of MEs and employees;

Whereas the realization of the internal market is giving rise to a process of concentration and conversion of mutuals; whereas in order to ensure a harmonious development of economic activities, MEs carrying on cross-border activities must adopt, if appropriate, a participation model, or, failing this, inform and consult employees on decisions which concern them;

Whereas this Directive determines the minimum areas where there must be information and consultation, without prejudice to the application of the following Directives:

Amended proposal for a Regulation of the European Parliament and of the Council on the statute for a European Mutual Society

TITLE I: GENERAL PROVISIONS

Chapter I: Formation of the European Mutual Society

Article 1
Form of the ME

1. Mutual societies may be formed throughout the Community under the conditions and in the manner laid down in this Regulation under the name "ME" or "European Provident Mutual Society" or an ME carrying on an activity other than provident activities. The name of an ME shall specify the nature of the activity engaged in, indicating whether, for example, it is an insurance activity or a provident, health assistance or credit assistance activity, etc.

2. An ME:
   – shall, in return for a subscription, guarantee its members the full settlement of contractual undertakings entered into in the course of the activities authorized by its statutes;
   – deleted.

3. An ME shall be a limited-liability legal entity and shall operate with a formation fund and reserves which shall serve to cover its debts.

4. An ME shall have legal personality. It shall acquire it on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 8(3).

4a. If before its acquisition of legal personality steps have been taken in an MEs name, and the ME does not assume the obligations arising from those steps, the persons who took them shall be jointly and severally liable therefore, unless otherwise agreed.

5. Deleted

Article 2
Formation

1. An ME may be formed as follows:

(a) by at least two legal entities essentially pursuing activities other than provident activities and (which are listed in Annex 1), which are formed under the law of a Member State and which fall within the law of at least two different Member States;

(b) by at least two legal entities which are listed in Annex 2, which are formed under the law of a Member State, which fall within the law of at least two
different Member States and which solely pursue provident activities as defined in the home Member States of the founding entities or

(c) at least five hundred natural persons resident in at least two Member States where the ME essentially carries on activities other than provident activities.

2. A mutual society which has been formed in accordance with the law of a Member State and has its registered office and central administration within the Community may change to ME form if it has at least five hundred members in another Member State and is carrying on genuine and effective activities there or can demonstrate that it will meet the above twofold condition if it changes form.

No such change of form shall result in a society's being wound up or in the creation of a new legal person.

The administrative or management board of such a mutual society shall draw up a proposal for a change of form covering the legal and economic aspects of the change of form and indicating the implications of the change of form for members and employees.

(\ldots)

The Member States shall adopt the additional provisions necessary for such changes of form.

Article 3
Statutes

1. The statutes of an ME shall include at least:

- the name of the ME, preceded or followed (\ldots) by the abbreviation "ME" supplemented by the nature of the activity engaged in;
- a precise statement of the objects of the ME;
- the identity of the natural persons and the names, objects and registered offices of the ME's founder members, where these are legal entities;
- the address of the ME's registered office;
- the conditions and procedures for the admission, expulsion and resignation of members;
- the rights and obligations of members and of the ME;
- the subscriptions payable and, where appropriate, provisions as to arrears;
- the management structure;
- the powers and responsibilities of each of the ME's organs;
- the provisions governing the appointment and removal of the members of the governing bodies;
– the majority and quorum requirements;
– identification of the governing bodies, or members of those bodies, that have authority to represent the ME in dealings with third parties;
– the conditions governing the initiation of proceedings on behalf of the ME under Article 42;
– the grounds for winding the ME up.

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

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

**Article 4**

**Formation Fund**

1. The formation fund shall be not less than ECU 100 000 or the equivalent in national currency.

2. Where the law of a Member State requires a larger amount in the case of mutual societies engaged in certain types of activity, the same requirement shall apply to MEs that have registered offices in that State.

**Article 5**

**Registered office**

The registered office of an ME shall be situated within the Community in the Member State in which the ME has its central administration.

**Article 6**

**Transfer of registered office**

1. The registered office of an ME may be transferred to another Member State in accordance with paragraphs 2 to 9. No such transfer shall result in an ME's being wound up or in the creation of a new legal person.

2. The management or administrative board shall draw up a transfer proposal and publish it in accordance with Article 9, without prejudice to any additional form of publicity provided for by the Member State in which the registered office is situated. That proposal shall include details of:

   (a) the registered office proposed for the ME;
   
   (b) the statutes proposed for the ME including, where appropriate, its new name;
   
   (c) the timetable proposed for the transfer.
2a. The management or administrative board shall draw up a report explaining and justifying the legal and economic aspects of the transfer and indicating the implications of the transfer for members and employees.

2b. At least one month before the general meeting called to decide on the transfer, the ME's members and auditors shall have the right to examine the transfer proposal and the report drawn up by virtue of paragraph 2a and to obtain copies of those documents free of charge on request at the ME's registered office.

2c. A Member State may, in respect of MEs registered within its territory, adopt provisions to ensure appropriate protection for members in the minority that voted against a transfer.

3. No decision to transfer may be taken within two months of the publication of the proposal. Any such decision shall be governed by the conditions laid down for the amendment of the statutes.

4. The creditors and holders of other rights vis-à-vis an ME which predate publication of a transfer proposal may require the ME to constitute an appropriate guarantee in their favour. Exercise of that right shall be governed by national law in the State in which the ME had its registered office before the transfer.

A Member State may extend the application of the first subparagraph to include those of an ME's debts to public entities that were incurred before the date of transfer.

5. In the Member State in which an ME has its registered office, a court, notary or other competent authority shall issue a certificate to the effect that the acts and formalities required before transfer have been properly completed.

6. The new registration may not be effected until the certificate provided for in paragraph 5 has been produced and evidence has been furnished of completion of the formalities required for registration in the country of the ME's new registered office.

6a. That transfer of an ME's registered office and the resulting change of statutes shall take effect on the date on which the ME is registered in the register for its new registered office in accordance with Article 8.

7. The removal of an ME from the register for its previous registered office may not be effected until evidence has been produced that the ME has been registered in the register for its new registered office.

8. The fact of the new registration and the fact of the removal of the old registration shall both be published in the Member States concerned in accordance with Article 9.

9. The new registration of the registered office of the ME may be relied on as against third parties once it is published. However, until the removal of the ME from the register for its previous registered office has been published third parties may continue to rely on the old registered office unless the ME proves that such third parties were aware of the new registered office.

10. A Member State's legislation may, in respect of MEs registered in that State, provide that no transfer of registered office (…) shall take effect where, within the period of two months specified in paragraph 3, one of that State's competent authorities lodges an objection. Such objections may be lodged only on grounds of public interest. It shall be possible to appeal against any such ruling to a judicial body.
11. No ME which is the subject of winding-up, liquidation, insolvency, suspension of payments or other such procedures may transfer its registered office.

Article 7
The law applicable

1. An ME shall be governed:

(a) by the provisions of this Regulation;

(b) where expressly authorized by this Regulation, by the provisions of its statutes;

(c) in matters not covered by this Regulation or, where a matter is covered only partially, for the aspects not covered by this Regulation:
   – by the legal provisions adopted by the Member States in application of Community measures dealing specifically with MEs;
   – by the legal provisions in Member States applicable to similar national legal entities listed in the Annex and constituted in accordance with the law of the Member State in which the ME has its registered office;
   – the provisions of its statutes under the same conditions as for the legal entities listed in the Annex and constituted in accordance with the law of the Member State in which the ME has its registered office.

2. Where a Member State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered a Member State for the purposes of identifying the law applicable under this paragraph.

3. In each Member State and subject to the express provisions of this Regulation, an ME shall have the same rights, powers and obligations as a mutual society formed under the law of the State in which the ME has its registered office.

Article 8
Registration and disclosure requirements

1. The founder members shall draw up the ME’s statutes in accordance with the provisions laid down for the formation of similar legal entities by the law of the State in which the ME has its registered office and with Article 3 of this Regulation on the content of the statutes. The statutes must at least be in writing and be signed by the founder members.

2. The Member States shall provide for the preventive control of legality when an ME is formed. That control may be carried out either by an administrative or judicial authority or by an official or notary who shall execute an act where such an act is required for the formation of similar national legal entities. The supervisory authority shall ensure that such acts comply with the requirements for the formation of an ME, and in particular those laid down in Articles 1, 2, 3 and 5.
3. Member States shall designate the register in which MEs must be registered and shall determine the rules governing it. (…) No ME may be registered until the measures required by the Directive (supplementing the statute for a European Mutual Society with regard to the involvement of employees) have been adopted.

4. Member States shall take the measures necessary to ensure that the following documents and particulars are entered or filed in the register provided for in paragraph 3:

(a) the statutes of the ME, any amendments to them, and the complete text of the statutes in its up-to-date form;

(b) the opening or closing of any establishment;

(c) the appointment, termination of office and particulars of the persons who either as an organ constituted pursuant to law or as members of any such organ:
   – are authorized to bind the ME either individually or jointly in dealings with third parties and to represent it in legal proceedings,
   – take part in the administration, supervision or control of the ME;

(d) at least once a year, the amount of the formation fund (…);

(e) (the balance sheet and the profit and loss account for each financial year; the document containing the balance sheet shall give particulars of the persons who are required by law to certify it);

(f) any proposal to transfer the registered office as referred to in Article 6(2);

(g) the winding up and liquidation of the ME (…);

(h) any declaration of nullity of the ME by a court;

(i) the appointment of liquidators, particulars of such liquidators, their respective powers and the termination of their office;

(j) the conclusion of the liquidation of the ME and the removal of the ME from the register.

5. Deleted.

5a. Member States shall also ensure that anyone may consult the documents referred to in Article 8(4) in the register referred to in Article 8(3), and may obtain a copy of the whole or any part, by post if requested.

**Article 9**
Publication of documents and particulars relating to the ME in the Member States

1. Member States shall ensure that the documents and particulars referred to in Article 8(4) are proposed in the appropriate official gazette in the Member State in which an ME has its registered office, and shall determine persons by whom the publication
formalities are to be carried out. Publication shall be effected by filing it in the form either of an extract or of a reference to the entry in the register.

Member States shall take the measures necessary to prevent any discrepancy between what is disclosed by publication and what appears in the register. In the event of a discrepancy, however, the text published may not be relied on as against third parties; the latter may nevertheless rely thereon, unless the ME proves that they had knowledge of the text entered or filed in the register.

Member States may require payment of a fee for the services referred to in the preceding subparagraphs, but the fee may not exceed the administrative cost.

2. The national rules adopted in implementation of Directive 89/666/EEC shall apply to branches of an ME opened in a Member State other than that in which it has its registered office. Member States may, however, provide for derogations from the national provisions implementing that Directive to take account of the specific features of mutual societies.

3. Documents and particulars may be relied on by the ME as against third parties only after they have been published in accordance with paragraph 1, unless the ME proves that the third party had knowledge thereof. However, they may not be relied on in respect of transactions which take place before the sixteenth day after publication as against third parties who prove that they could not have had knowledge thereof.

4. Third parties may rely on any documents and particulars in respect of which the publication formalities have not yet been completed, unless the fact that they have not been published causes them to have no effect.

Article 10
Notice in the Official Journal of the European Communities

1. Notice of an ME's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 9. That notice shall state the name, number, date and place of registration of the ME, the date and place of publication and the title of publication in the official gazette of the Member State and the registered office and a summary description of the object of the ME.

2. Where the registered office of an ME is transferred in accordance with Article 6, notice shall be published giving the same information as that provided for in paragraph 1, together with that relating to the new registration.

3. The Member States shall ensure that the particulars referred to in paragraph 1 are communicated to the Official Publication Office of the European Communities within one month of the publication referred to in Article 9(1).

Article 11
Particulars to be given in the ME's documents

Letters and documents sent to third parties shall state legibly:
(a) the name of the ME, preceded or followed by the abbreviation "ME" together with the nature of the activity carried on (and a reference to the national legislation to which it is subject) and the fact that it is a limited-liability legal entity;

(b) the register in which the ME is registered in accordance with Article 8(3), and the number of the ME's entry in that register;

(c) the address of the ME's registered office;

(d) if appropriate, the fact that the ME is in liquidation or subject to insolvency proceedings.

Chapter II: GENERAL MEETING

Article 12
Competence

1. The general meeting shall be competent to take all decisions relating to the amendment of the statutes, winding up, transfer of the registered office, change of form, preparation of the annual and/or consolidated accounts, the application of profits and (the appointment of members of the management or administrative board) without prejudice to the application of the provisions of Directive .../.../EC supplementing the Statute for an ME with regard to the involvement of employees.

2. Moreover, the general meeting shall decide on matters for which it is competent under:

   – the statutes of the ME in accordance with the law of the Member State in which the ME's registered office is situated;

   – the legislation of the Member State in which the ME has its registered office concerning the powers of the general meeting of a similar national legal entity;

   – the legislation of the Member State in which the ME has its registered office which transposes Directive .../.../EC supplementing the Statute for an ME with regard to the involvement of employees.

(b) Deleted.

Article 13
Holding of general meetings

1. A general meeting shall be held at least once a year, within six months of the end of the ME's financial year. A Member State may, however, provide that the first general meeting may be held at any time in the eighteen months following an ME formation.

2. A general meeting may be convened at any time by the management body or the administrative body. The management body shall be bound to convene a general meeting at the request of the supervisory body.

3. Deleted.
4. Deleted.

5. The general meeting may, in the course of a meeting, decide that a further meeting be convened and set the date and the agenda.

**Article 14**

Meeting called by a minority of members

1. 10% or more of the members of an ME, which proportion may be reduced by the statutes, may request that a general meeting be convened and its agenda set.

2. A request for a meeting shall state the reasons for convening it and the items to be put on the agenda.

3. If, following a request made under paragraph 1, the necessary steps have not been taken within one month, the court or competent authority within the State in which the MEs registered office is situated may order that a general meeting be convened (...).

4. Deleted.

**Article 15**

Notice of meeting

1. A general meeting shall be convened:
   - by means of a notice published in one or more mass-circulation newspapers in the Member States if the statutes of the ME provide for such a possibility;
   - or by a notice in writing sent by any means to every member of the ME.

2. A notice calling a general meeting shall give the following particulars at least:
   - the name and the registered office of the ME;
   - the place, date and time of the meeting;
   - where appropriate, the type of general meeting (ordinary, extraordinary or special);
   - a statement of the formalities, if any, prescribed in the statutes for attendance at a general meeting and for the exercise of the right to vote;
   - the agenda, showing the subjects to be discussed and the proposals for decisions. The agenda for a general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the application of profits.

3. The period between the date of publication of the notice or the date of dispatch of the communication referred to in paragraph 1 and the date of the opening of the general meeting shall not be less than thirty days. That period may, however, be reduced to fifteen days in the event of an emergency.
Article 16
Addition of items to the agenda

10% or more of the members of an ME, which proportion may be reduced by the statutes, may, within ten days of receiving the notice convening a general meeting, request the addition of one or more items to the agenda.

The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the ME's registered office is situated or, failing that, by the ME's statutes.

Article 17
Attendance and proxies

1. Only members shall be entitled to speak and vote at general meetings.

2. A person entitled to vote shall be entitled to appoint a proxy to represent him at a general meeting in accordance with procedures which must be laid down in the statutes which shall also lay down the maximum number of persons for whom a proxy may act.

3. The statutes may permit postal voting, in which case they shall lay down the necessary procedures.

Article 18
Sectional meetings

1. Deleted.

2. Where an ME carries on two or more distinct activities, where it has two or more establishments, where its activities span more than one territorial unit or where it has more than five hundred members, the statutes may provide for the holding of sectional meetings to consider the same agenda separately before the general meeting is held. Such meetings shall elect delegates, who shall in their turn be convened as the general meeting. The statutes shall lay down the division into sections, the number of delegates for each section, and the procedures to be followed.

3. Deleted.

4. Deleted.

Article 19
Right to information

1. Every member who so requests before or at a general meeting shall be entitled to obtain information from the management or administrative body on the ME's activities arising from items on the agenda. Insofar as possible, information shall be provided (at the latest) at the general meeting in question.
2. The management or administrative body may refuse to supply such information only where its disclosure:
   – would be likely to be seriously prejudicial to the ME;
   – would be incompatible with a legal obligation of confidentiality.

3. A member refused information may require that his question and the grounds for refusal be entered in the minutes of the general meeting.

4. At least ten days before the general meeting that follows the end of the financial year, members may examine any accounting documents that must be drawn up in accordance with Article 46.

   Article 20
   Voting rights

1. Each natural or legal person who is a member of an ME shall have one vote.

2. The statutes may, however, give more than one vote, either to a member who is a legal person on the basis of the number of his activities and of the number of its members or to a member who is a natural person on the basis of the extent of his participation in the activities of the mutual society; in these cases the statutes shall provide that none of such members shall hold a majority of the votes.

   Article 21
   Deleted.

   Article 22
   Simple (and qualified) majority

1. (...) Decisions of the general meeting shall be taken by an absolute majority of the votes cast by the members present or represented.

2. However, in the case of the amendment of the statutes, winding up, the transfer of the registered office and change of form, the general meeting shall act by a majority of two-thirds of the votes cast by the members present or represented.

3. The calculation of votes cast shall not include abstentions or spoilt or blank votes.

4. The statutes shall lay down the quorum requirements which are to apply to general meetings.

   Article 23
   Qualified majority
   Deleted.

   Article 23a (new)
Minutes

1. Minutes shall be drawn up for every general meeting. The minutes shall include the following particulars:

   – the place and date of the meeting;
   – the decisions taken;
   – the results of votes.

2. The attendance list, the documents relating to the convening of the general meeting and the reports submitted to the members on the items on the agenda shall be annexed to the minutes.

3. The minutes and the documents annexed thereto shall be preserved for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request against payment of the administrative cost.

4. The minutes shall be signed by the chairman of the meeting.

Article 24
Actions to have resolutions of general meeting declared void

Deleted.

Article 25
Disclosure of court decisions

Deleted.

Chapter III: MANAGEMENT, SUPERVISORY AND ADMINISTRATIVE BODIES

Article 26
Structure

Under the conditions laid down by this Regulation the statutes of an ME shall determine that an ME's structure shall be either two-tier (management body and supervisory body) or one-tier (administrative body); a Member State may, however, require that MEs that have registered offices within its territory adopt either the two-tier or the one-tier system as it shall determine.

SECTION 1: Two-tier system

Subsection 1: Management body

Article 27
Functions of the management body; appointment of members
1. The management body shall manage the ME. The member or members of the management body shall have the power to bind the ME in dealings with third parties and to represent it in legal proceedings in accordance with the provisions adopted pursuant to Directive 68/151/EEC by the Member State in which the ME's registered office is situated.

2. The member or members of the management body shall be appointed and removed by the supervisory body. However, a Member State may require or permit the statutes to provide that the member or members of the management body shall be appointed by the general meeting.

3. No person may at the same time be a member of the management board and of the supervisory body. The supervisory body may, however, nominate one of its members to perform the duties of a member of the management body in the event of a vacancy. During such a period the duties of the person concerned as a member of the supervisory body shall be suspended.

4. The number of members of the management body shall be laid down in the statutes of the ME. A Member State may, however, fix a minimum and/or maximum number.

Article 28
Chairmanship; convening of meeting

1. The management body shall elect a chairman from among its members, in accordance with the statutes.

2. Meetings of the management body shall be convened in accordance with the statutes. In any event any member of the management body may convene a meeting where urgency requires, stating his reasons.

SUBSECTION 2: SUPERVISORY BOARD

Article 29
Functions of the supervisory board; appointment of members

1. The supervisory board shall supervise the duties performed by the management board. It may not itself exercise the power to manage the ME. The supervisory board may not represent the ME in dealings with third parties. It shall represent the ME in respect of litigation or a social action based on the civil liability of one or more members of the management board vis-à-vis the ME for errors committed in the performance of their duties or the conclusion of contracts to which the ME is party and in which one of the members of the management board has an interest, if only indirect.

2. With the exception of the election and removal of the employees' representatives in accordance with the national provisions adopted pursuant to Directive (../EC) in connection with the role of the employees, the members of the supervisory board shall be appointed and removed by the general meeting. However, the members of the first supervisory board may be appointed in the statutes. This provision shall not jeopardize national law permitting a minority of shareholders of the ME or other non-members of the ME to appoint some of the members of a board.
3. The number of members of the supervisory board shall be laid down in the statutes. A Member State may, however, stipulate the minimum or maximum number of members of the supervisory board for MEs having their registered office in its territory.

Article 30
Right to information

1. The management board shall report to the supervisory board at least once every three months on the operation and foreseeable prospects of the ME's affairs (taking particular account of any information relating to undertakings controlled by the ME that may significantly affect those affairs).

2. The management board shall communicate to the supervisory board without delay any information which may have an appreciable effect on the ME.

3. The supervisory board may at any time require the management board to provide information or a special report on any matter concerning the ME.

4. The supervisory board may undertake all investigations necessary for the performance of its duties. It may appoint one or more of its members to carry out this task and may call in the help of experts.

5. Each member of the supervisory board shall be entitled to examine all information communicated by the management board to the supervisory board.

Article 31
Chairmanship, calling of meetings

1. The supervisory board shall elect a chairman from among its members.

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

SECTION II: THE ONE-TIER SYSTEM

Article 32
Functions of the administrative board; appointment of members

1. The administrative board shall manage the ME. The management board shall have the power to represent the ME in dealings with third parties and in legal proceedings.
2. The number of members of the administrative board shall be laid down in the statutes. A Member State may, however, stipulate a minimum or maximum number of members of the administrative board for MEs with a registered office in its territory.

3. The administrative board may delegate to one or more of its members (…) the power to manage and to represent the ME. The statutes, or if the statutes are silent, the general meeting may lay down the conditions within which such delegation shall operate. On its own responsibility, it may also delegate certain management responsibilities to one or more persons not members of the board; such management responsibilities may be revoked at any time. (…).

4. With the exception of the employees’ representatives pursuant to the national provisions adopted in accordance with Directive …/…/EC in respect of the role of the workers, the member or members of the administrative board shall be appointed and removed by the general meeting.

5. This provision shall not jeopardize national law permitting a minority of shareholders of the ME or other non-members of the ME to appoint some of the members of a board.

Article 33
Holding of meetings and right to information

1. The management board shall meet at least once every three months, at intervals laid down by the statutes, to discuss the progress and foreseeable prospects of the ME’s affairs (…).

2. (The administrative board shall meet to deliberate on the operations referred to in Article 39).

3. Each member of the administrative board shall be entitled to examine all reports, documents and information supplied to the board (…).

Article 34
Chairmanship, calling of meetings

1. The administrative board shall elect a chairman from among its members. However, the legislation of a Member State may stipulate that the statutes of the ME authorize the general meeting to appoint a chairman.

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

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

Article 35
Term of office
1. Members of the governing bodies shall be appointed for a period laid down in the statutes not exceeding six years.

2. Board members may be reappointed one or more times unless the statutes provide otherwise. (...)

Article 36
Conditions of membership

1. The statutes of an ME may permit a legal person or any other legal entity to be a member of a board, provided that the legislation of the Member State in which the ME has its registered office does not provide otherwise in respect of similar domestic legal entities.

That legal person or legal entity (...) which is a member of a board shall designate a natural person as its representative to exercise its functions on the board in question. The representative shall be subject to the same conditions and obligations as if he were personally a member of the board.

2. No person may be a member of a management, supervisory or administrative board of an ME, nor have conferred on him powers of management or representation, who:

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

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

Article 37
Rules of procedure

Deleted.

Article 38
Power of representation; liability of an ME

1. Where the authority to represent the ME in dealings with third parties, in accordance with Articles 27(1) and 32(1), is conferred on two or more members, those persons shall exercise that authority collectively.

2. However, the legislation of a Member State may provide that authority to represent the ME may be conferred by the statutes of an ME either on one single person or on two or more persons acting jointly or individually.

3. Acts done by (...) the boards of the ME shall be binding upon it vis-à-vis third parties, even if those acts are not within the objects of the ME, unless such acts exceed the powers that the law of the Member State in which the ME has its registered office confers or allows to be conferred on those boards.
However, Member States may provide that the ME shall not be bound where such acts are outside the objects of the ME, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it; disclosure of the statutes shall not of itself be sufficient proof thereof.

4. The limits on the powers of the boards of the ME, arising under the statutes or from a decision of the competent bodies, may never be relied on as against third parties, even if they have been disclosed.

Article 39
Operations requiring authorization

1. The statutes of the ME shall set out the categories of operation for which:
   - under the two-tier system, authorization from the supervisory board must be requested by the management board before any decision is taken; or
   - under the one-tier system, the administrative board may not delegate authorization to take a decision to some of its members, so that an express decision from the administrative board itself is required.

(...)  

2. However, a Member State may lay down the minimum categories of operation referred to in paragraph 1 which must feature in the statutes of MEs whose registered office is in its territory. Furthermore, a Member State may provide that, under a two-tier system, the supervisory board may itself determine which categories of operation are to be subject to authorization.

Article 40
Rights and obligations

1. Within the scope of the functions attributed to them by this Regulation, each of the members of a board shall have the same rights and obligations as the other members of the board of which he is a member.

2. All board members shall carry out their functions in the interests of the ME, having regard in particular to the interests of the members and the employees.

3. Deleted.

Article 41
Conduct of business on boards

1. Deleted.

2. Unless the statutes of an ME require a higher quorum, a board shall not conduct business validly unless at least half of its members are present or represented at the discussions. Decisions shall be taken by a majority of the votes of the members present or represented, unless the statutes provide for a larger majority.
A member may be represented by another member or an alternate member who was appointed at the same time as the member.

3. The chairman of each board shall have a casting vote in the event of a tie. However, the statutes of an ME may make provision to the contrary, except where half of the supervisory (or administrative) board consists of employees' representatives.

3a In the case of a board which includes employees' representatives, a Member State may provide that the rules governing the supervisory board's quorum and decision-making majority shall be those applicable to similar domestic legal entities.

Article 42
Civil liability

Members of the management, supervisory or administrative board shall be liable, in accordance with the provisions applicable in the Member State in which the ME's registered office is situated to similar domestic legal entities, for loss or damage sustained by the ME following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Article 43
Proceedings on behalf of the ME

Deleted

Article 44
Limitation of actions

Deleted

CHAPTER IV: FINANCING, ANNUAL ACCOUNTS, CONSOLIDATED ACCOUNTS, AUDITING AND DISCLOSURE

Article 45
(Financing)

Deleted.

Article 46
(Preparation of annual accounts and consolidated accounts)

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and disclosure, the ME shall be subject to the measures adopted in the State in which it has its registered office under Directives 78/660/EEC and 83/349/EEC, as they apply to the companies covered by those Directives.

However, a Member State may provide for derogations from the national provisions implementing those Directives for MEs, or a category of MEs, having their registered
offices on its territory insofar as such derogations are necessitated by the particular nature of their activity.

Such derogations may relate only to the layout, nomenclature, terminology and content of items in the balance sheet and the profit and loss account and may not have the effect of allowing the ME in question to provide less information in their annual accounts than other companies carrying out similar activities to which the aforementioned Directives apply.

1a. By way of derogation from the application of the Directives referred to in paragraph 1, a Member State may provide that MEs are not subject, under the law of the Member State in which the ME has its registered office, to a disclosure requirement as provided for in Article 3 of Directive 68/151/EEC; in such cases the ME must at least make the accounting documents available to the public at its registered office. Copies of these documents must be obtainable on request. The price charged for these copies must not exceed the administrative cost.

2. The ME may draw up its annual accounts, and its consolidated accounts if any, in ecus. In this event, the bases of conversion used to express in ecus those items included in the accounts which are or were originally expressed in another currency must be disclosed in the notes to the accounts.

3. The statutes of an ME with a management board and a supervisory board may provide that a decision on approval of the annual accounts is to be taken jointly by the two boards, in separate votes, and that the general meeting is to pass a resolution only if the boards are unable to reach agreement.

Article 47
(Auditing)

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

Article 48
(Disclosure of accounts)

1. Deleted.

2. Deleted.

Article 49
(Credit or financial institutions and insurance undertakings)

1. Inasmuch as a Member State's legislation allows cooperatives to pursue activities as credit or financial institutions or insurance undertakings, an ME pursuing such activities and whose registered office is situated in that State shall comply with the rules laid down by the relevant national law of that Member State.
2. **MEs** which are credit or financial institutions or insurance undertakings shall comply, as regards the drawing-up, auditing and disclosure of annual accounts and consolidated accounts, with the rules laid down by the measures adopted in the Member State in which the ME has its registered office pursuant to Council Directive 86/635/EEC or, as the case may be, pursuant to Council Directive 91/674/EEC.

**CHAPTER V: WINDING UP AND LIQUIDATION**

**Section I: Winding up**

**Article 50**
(Winding up of an ME)

In the event of winding up, an ME shall be subject to the law of the Member State in which its registered office is located that is applicable to similar national entities.

(...)

**Article 51**
(Winding up by the court of the place where the ME has its registered office)

1. On an application by any person concerned who has a legitimate right or any competent authority, the court or an administrative authority of the place where an ME has its registered office must order it to be wound up where it finds that:
   - deleted
   - the ME's activity being carried on contrary to the public interest in the Member State in which the ME has its registered office, or no longer constitutes a mutual activity such as those set out in Article 1, and that the formation fund has fallen below the amount laid down in Article 4 of this Regulation.

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

2. When an ME no longer complies with the requirement laid down in Article 5 concerning the place of its central administration, the Member State in which the ME's registered office is situated shall take appropriate measures to oblige the ME to regularize its situation within a specified period either:
   - by re-establishing its central administration in the Member State in which its registered office is situated, or
   - by transferring the registered office by means of the procedure laid down in Article 6. If the ME does not comply with those measures, the court or the administrative authority of the State in which the ME's registered office is situated shall order that the ME be wound up.
Where the authorities of a Member State establish that the central administration of an ME has been transferred to their territory in breach of Article 5, they shall immediately inform the Member State in which the ME's registered office is situated.

3. The Member State in which the ME's registered office is situated shall seek judicial remedy with suspensory effect with regard to any decisions further to established infringements taken under paragraphs 1 and 2.

Section II: Liquidation

Article 52
(Liquidation)

1. The winding up of an ME shall entail its liquidation.

2. The liquidation of an ME and the conclusion of its liquidation shall be governed by the law of the State in which it has its registered office applicable to similar national legal entities.

3. Deleted.

4. Deleted.

Article 53
(Distribution)

On conclusion of the liquidation, once the creditors have been paid in full, and anything due to beneficiaries designated in the rules has been distributed, the assets of the ME shall [...] be distributed by decision of the general meeting either to other MEs or mutual societies governed by the law of a Member State or to one or more bodies having as their object the support and promotion of mutual societies.

CHAPTER VI: INSOLVENCY AND SUSPENSION OF PAYMENTS

Article 54
(Insolvency and suspension of payments)

1. The ME shall be subject to the law of the State in which it has its registered office in respect of insolvency and similar procedures applicable to similar national legal entities.

2. Deleted.

3. Deleted.

4. Deleted.

CHAPTER VII (NEW): CONVERSION OF AN ME
Article 54
(Conversion)

1. By decision of its general meeting, an ME may be converted into a national legal entity similar to those governed by the law of the Member State in which its registered office is situated. Such conversion may not take place until two years have elapsed since its registration and approval of the first two sets of annual accounts.

2. The conversion of an ME into a similar national legal entity shall not result in winding–up or in the creation of a new legal person.

3. The administrative or management board of the ME shall draw up:

   (a) draft terms of conversion and at least information concerning the new form, registered office, business name and date on which the conversion takes effect;

   (b) a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of its adoption for members (and, where appropriate, for employees).

4. The draft terms of conversion shall be filed or entered in the register provided for in Article 8(3) at least one month before the general meeting called to decide on conversion.

5. The general meeting of the ME which decides on conversion shall also approve the statutes of the new form under the same conditions.

TITLE II: FINAL PROVISIONS

Article 55
(Measures to be applied in the event of a breach of rules)

1. Each Member State shall take all appropriate measures to implement the Regulation; for that purpose, they shall designate inter alia the authorities responsible for:

   (a) the supervision of legality within the meaning of Article 8(2);

   (b) the publication of the ME’s acts and particulars in a register within the meaning of Article 8(3);

   (c) the publication of documents in the official gazette within the meaning of Article 9;

   (d) the auditing of accounting documents within the meaning of Article 47;

   (e) requesting or ordering winding–up within the meaning of Article 51;

   (f) the supervision of the formalities preceding any transfer of the registered office in accordance with Article 6(5);
(g) opposition to the transfer of the registered office as provided for in Article 6(10).

2. Member States shall determine the similar legal entities subject to national regulations which would apply (directly or by analogy) to MEs depending on their objects, pursuant to the second indent of Article 7(1)(c).

3. Member States shall take these measures before 1 January ....; they shall forthwith inform the Commission thereof and also inform the other Member States.

Article 56

This Regulation shall enter into force on .......... .

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

Source: European Union, the Council, 10367/96, outcome of proceedings of the Working Party on Economic Questions (European Mutual Society) (OR.f)
European Cooperative Society (SCE)
COUNCIL REGULATION (EC) No 1435/2003
of 22 July 2003
on the Statute for a European Cooperative Society (SCE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the European Economic and Social Committee (3),

Whereas:


(2) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community means not only that barriers to trade should be removed, but also that the structures of production should be adapted to the Community dimension. For that purpose it is essential that companies of all types the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(3) The legal framework within which business should be carried on in the Community is still based largely on national laws and therefore does not correspond to the economic framework within which it should develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(4) The Council has adopted Regulation (EC) No 2157/2001 (9) establishing the legal form of the European Company (SE) according to the general principles of the public limited-liability company. This is not an instrument which is suited to the specific features of cooperatives.

(5) The European Economic Interest Grouping (EEIG), as provided for in Regulation (EEC) No 2137/85 (10), allows undertakings to promote certain of their activities in common, while nevertheless preserving their independence, but does not meet the specific requirements of cooperative enterprise.

(6) The Community, anxious to ensure equal terms of competition and to contribute to its economic development, should provide cooperatives, which are a form of organisation generally recognised in all Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities. The United Nations has encouraged all governments to ensure a supportive environment in which cooperatives can participate on an equal footing with other forms of enterprise (11).

(2) OJ C 42, 15.2.1993, p. 75 and opinion delivered on 14 May 2003 (not yet published in the Official Journal).
Cooperatives are primarily groups of persons or legal entities with particular operating principles that are different from those of other economic agents. These include the principles of democratic structure and control and the distribution of the net profit for the financial year on an equitable basis.

These particular principles include notably the principle of the primacy of the individual which is reflected in the specific rules on membership, resignation and expulsion, where the 'one man, one vote' rule is laid down and the right to vote is vested in the individual, with the implication that members cannot exercise any rights over the assets of the cooperative.

Cooperatives have a share capital and their members may be either individuals or enterprises. These members may consist wholly or partly of customers, employees or suppliers. Where a cooperative is constituted of members who are themselves cooperative enterprises, it is known as a 'secondary' or 'second-degree' cooperative. In some circumstances cooperatives may also have among their members a specified proportion of investor members who do not use their services, or of third parties who benefit by their activities or carry out work on their behalf.

A European cooperative society (hereinafter referred to as 'SCE') should have as its principal object the satisfaction of its members' needs and/or the development of their economic and/or social activities, in compliance with the following principles:

- its activities should be conducted for the mutual benefit of the members so that each member benefits from the activities of the SCE in accordance with his/her participation,
- members of the SCE should also be customers, employees or suppliers or should be otherwise involved in the activities of the SCE,
- control should be vested equally in members, although weighted voting may be allowed, in order to reflect each member's contribution to the SCE,
- there should be limited interest on loan and share capital,
- profits should be distributed according to business done with the SCE or retained to meet the needs of members,
- there should be no artificial restrictions on membership,
- net assets and reserves should be distributed on winding-up according to the principle of disinterested distribution, that is to say to another cooperative body pursuing similar aims or general interest purposes.

Cross-border cooperation between cooperatives in the Community is currently hampered by legal and administrative difficulties which should be eliminated in a market without frontiers.

The introduction of a European legal form for cooperatives, based on common principles but taking account of their specific features, should enable them to operate outside their own national borders in all or part of the territory of the Community.

The essential aim of this Regulation is to enable the establishment of an SCE by physical persons resident in different Member States or legal entities established under the laws of different Member States. It will also make possible the establishment of an SCE by merger of two existing cooperatives, or by conversion of a national cooperative into the new form without first being wound up, where that cooperative has its registered office and head office within one Member State and an establishment or subsidiary in another Member State.

In view of the specific Community character of an SCE, the 'real seat' arrangement adopted by this Regulation in respect of SCES is without prejudice to Member States' laws and does not pre-empt the choices to be made for other Community texts on company law.

References to capital in this Regulation should comprise solely the subscribed capital. This should not affect any undistributed joint assets/equity capital in the SCE.

This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.
(17) The rules on the involvement of employees in the European cooperative society are laid down in Directive 2003/72/EC (1), and those provisions thus form an indissociable complement to this Regulation and are to be applied concomitantly.

(18) Work on the approximation of national company law has made substantial progress so that certain provisions adopted by the Member State where the SCE has its registered office for the purpose of implementing directives on companies may be referred to by analogy for the SCE in areas where the functioning of the cooperative does not require uniform Community rules, such provisions being appropriate to the arrangements governing the SCE, especially:

— first Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community (2),


(19) Activities in the field of financial services in particular in so far as they concern credit establishments and insurance undertakings have been the subject of legislative measures pursuant to the following Directives:


(20) This form of organisation should be optional,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Form of the SCE

1. A cooperative society may be set up within the territory of the Community in the form of a European Cooperative Society (SCE) on the conditions and in the manner laid down in this Regulation.

2. The subscribed capital of an SCE shall be divided into shares.

The number of members and the capital of an SCE shall be variable.

Unless otherwise provided by the statutes of the SCE when that SCE is formed, no member shall be liable for more than the amount he/she has subscribed. Where the members of the SCE have limited liability, the name of the SCE shall end in 'limited'.

3. An SCE shall have as its principal object the satisfaction of its members' needs and/or the development of their economic and social activities, in particular through the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out or commissions. An SCE may also have as its object the satisfaction of its members' needs by promoting, in the manner set forth above, their participation in economic activities, in one or more SCEs and/or national cooperatives. An SCE may conduct its activities through a subsidiary.

4. An SCE may not extend the benefits of its activities to non-members or allow them to participate in its business, except where its statutes provide otherwise.

(1) See page 25 of this Official Journal.
5. An SCE shall have legal personality.

6. Employee involvement in an SCE shall be governed by the provisions of Directive 2003/72/EC.

Article 2

Formation

1. An SCE may be formed as follows:
   — by five or more natural persons resident in at least two Member States,
   — by five or more natural persons and companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, resident in, or governed by the law of, at least two different Member States,
   — by companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law formed under the law of a Member State which are governed by the law of at least two different Member States,
   — by a merger between cooperatives formed under the law of a Member State with registered offices and head offices within the Community if for at least two of them are governed by the law of different Member States,
   — by conversion of a cooperative formed under the law of a Member State, which has its registered office and head office within the Community if for at least two years it has had an establishment or subsidiary governed by the law of another Member State.

2. A Member State may provide that a legal body the head office of which is not in the Community may participate in the formation of an SCE provided that legal body is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State's economy.

Article 3

Minimum capital

1. The capital of an SCE shall be expressed in the national currency. An SCE whose registered office is outside the Euro-area may also express its capital in euro.

2. The subscribed capital shall not be less than EUR 30 000.

3. The laws of the Member State requiring a greater subscribed capital for legal bodies carrying on certain types of activity shall apply to SCEs with registered offices in that Member State.

4. The statutes shall lay down a sum below which subscribed capital may not be allowed to fall as a result of repayment of the shares of members who cease to belong to the SCE. This sum may not be less than the amount laid down in paragraph 2. The date laid down in Article 16 by which members who cease to belong to the SCE are entitled to repayment shall be suspended as long as repayment would result in subscribed capital falling below the set limit.

5. The capital may be increased by successive subscriptions by members or on the admission of new members, and it may be reduced by the total or partial repayment of subscriptions, subject to paragraph 4.

Variations in the amount of the capital shall not require amendment of the statutes or disclosure.

Article 4

Capital of the SCE

1. The subscribed capital of an SCE shall be represented by the members' shares, expressed in the national currency. An SCE whose registered office is outside of the Euro-area may also express its shares in euro. More than one class of shares may be issued.

The statutes may provide that different classes of shares shall confer different entitlements with regard to the distribution of surpluses. Shares conferring the same entitlements shall constitute one class.

2. The capital may be formed only of assets capable of economic assessment. Members' shares may not be issued for an undertaking to perform work or supply services.

2. The capital may be formed only of assets capable of economic assessment. Members' shares may not be issued for an undertaking to perform work or supply services.

3. Shares shall be held by named persons. The nominal value of shares in a single class shall be identical. It shall be laid down in the statutes. Shares may not be issued at a price lower than their nominal value.

4. Shares issued for cash shall be paid for on the day of the subscription to not less than 25% of their nominal value. The balance shall be paid within five years unless the statutes provide for a shorter period.
5. Shares issued otherwise than for cash shall be fully paid for at the time of subscription.

6. The law applicable to public limited-liability companies in the Member State where the SCE has its registered office, concerning the appointment of experts and the valuation of any consideration other than cash, shall apply by analogy to the SCE.

7. The statutes shall lay down the minimum number of shares which must be subscribed for in order to qualify for membership. If they stipulate that the majority at general meetings shall be constituted by members who are natural persons and if they lay down a subscription requirement for members wishing to take part in the activities of the SCE, they may not make membership subject to subscription for more than one share.

8. When it considers the accounts for the financial year, the annual general meeting shall by resolution record the amount of the capital at the end of the financial year and the variation by reference to the preceding financial year.

9. The statutes shall include at least:

   — the name of the SCE, preceded or followed by the abbreviation ‘SCE’ and, where appropriate, the word ‘limited’,

   — a statement of the objects,

   — the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,

   — the address of the SCE’s registered office,

   — the conditions and procedures for the admission, expulsion and resignation of members,

   — the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,

   — the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,

   — specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,

   — the powers and responsibilities of the members of each of the governing organs,

   — provisions governing the appointment and removal of the members of the governing organs,

   — the majority and quorum requirements,

   — the duration of the existence of the society, where this is of limited duration.

10. The nominal value of shares may be reduced by subdividing the shares issued.

11. In accordance with the statutes and with the agreement either of the general meeting or of the management or administrative organ, shares may be assigned or sold to a member or to anyone acquiring membership.

12. An SCE may not subscribe for its own shares, purchase them or accept them as security, either directly or through a person acting in his/her own name but on behalf of the SCE.

An SCE’s shares may, however, be accepted as security in the ordinary transactions of SCE credit institutions.

Article 5

Statutes

1. For the purposes of this Regulation, ‘the statutes of an SCE’ shall mean both the instrument of incorporation and, when they are the subject of a separate document, the statutes of the SCE.

2. The founder members shall draw up the statutes of the SCE in accordance with the provisions for the formation of cooperative societies laid down by the law of the Member State in which the SCE has its registered office. The statutes shall be in writing and signed by the founder members.

3. The law for the precautionary supervision applicable in the Member State in which the SCE has its registered office to public limited-liability companies during the phase of the constitution shall apply by analogy to the control of the constitution of the SCE.

4. The statutes of the SCE shall include at least:

   — the name of the SCE, preceded or followed by the abbreviation ‘SCE’ and, where appropriate, the word ‘limited’,

   — a statement of the objects,

   — the names of the natural persons and the names of the entities which are founder members of the SCE, indicating their objects and registered offices in the latter case,

   — the address of the SCE’s registered office,

   — the conditions and procedures for the admission, expulsion and resignation of members,

   — the rights and obligations of members, and the different categories of member, if any, and the rights and obligations of members in each category,

   — the nominal value of the subscribed shares, the amount of the subscribed capital, and an indication that the capital is variable,

   — specific rules concerning the amount to be allocated from the surplus, where appropriate, to the legal reserve,

   — the powers and responsibilities of the members of each of the governing organs,

   — provisions governing the appointment and removal of the members of the governing organs,

   — the majority and quorum requirements,

   — the duration of the existence of the society, where this is of limited duration.
Article 6

Registered office

The registered office of an SCE shall be located within the Community, in the same Member State as its head office. A Member State may, in addition, impose on SCEs registered in its territory the obligation of locating the head office and the registered office in the same place.

Article 7

Transfer of registered office

1. The registered office of an SCE may be transferred to another Member State in accordance with paragraphs 2 to 16. Such transfer shall not result in the winding-up of the SCE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 12, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, the registered office and number of the SCE and shall cover:

   (a) the proposed registered office of the SCE;

   (b) the proposed statutes of the SCE including, where appropriate, its new name;

   (c) the proposed timetable for the transfer;

   (d) any implication the transfer may have on employees’ involvement;

   (e) any rights provided for the protection of members, creditors and holders of other rights.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects as well as the employment effects of the transfer and explaining the implications of the transfer for members, creditors, employees and holders of other rights.

4. An SCE’s members, creditors and the holders of other rights, and any other body which according to national law can exercise this right, shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine, at the SCE’s registered office, the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of these documents free of charge.

5. Any member who opposed the transfer decision at the general meeting or at a sectorial or section meeting may tender his/her resignation within two months of the general meeting’s decision. Membership shall terminate at the end of the financial year in which the resignation was tendered; the transfer shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 4(4) and 16.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 62(4).

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SCE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SCE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SCE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise, or may arise, prior to the transfer.

The first and second subparagraphs shall apply without prejudice to the application to SCEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which the SCE has its registered office, the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted and evidence has been produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SCE’s registered office and the consequent amendment of its statutes shall take effect on the date on which the SCE is registered in accordance with Article 11(1) in the register for its new registered office.

11. When the SCE’s new registration has been effected, the registry for its new registration shall notify the register for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned, in accordance with Article 12.
13. On publication of an SCE’s new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SCE’s registration from the register of its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SCE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SCEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State’s competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SCE is supervised by a national financial supervisory authority according to Community directives, the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.

15. An SCE may not transfer its registered office if proceedings for winding-up, including voluntary winding-up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SCE which has transferred its registered office to another Member State shall be considered, in respect of any course of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member State where the SCE was registered prior to the transfer, even if the SCE is sued after the transfer.

Article 8

Law applicable

1. An SCE shall be governed:

(a) by this Regulation;

(b) where expressly authorised by this Regulation, by the provisions of its statutes;

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the laws adopted by Member States in the implementation of Community measures relating specifically to SCEs;

(ii) the laws of Member States which would apply to a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office;

(iii) the provisions of its statutes, in the same way as for a cooperative formed in accordance with the law of the Member State in which the SCE has its registered office.

2. If national law provides for specific rules and/or restrictions related to the nature of business carried out by an SCE, or for forms of control by a supervisory authority, that law shall apply in full to the SCE.

Article 9

Principle of non-discrimination

Subject to this Regulation, an SCE shall be treated in every Member State as if it were a cooperative, formed in accordance with the law of the Member State in which it has its registered office.

Article 10

Particulars to be stated in the documents

1. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies regulating the content of the letters and documents sent to third parties shall apply by analogy to that SCE. The name of the SCE shall be preceded or followed by the abbreviation ‘SCE’ and, where appropriate, by the word limited.

2. Only SCEs may include the acronym ‘SCE’ before or after their name in order to determine their legal form.

3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the acronym ‘SCE’ appears shall not be required to alter their names.

Article 11

Registration and disclosure requirements

1. Every SCE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with the law applicable to public limited-liability companies.

2. An SCE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2003/72/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.
3. In order for an SCE established by way of merger to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2003/72/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating cooperatives must have been governed by participation rules before registration of the SCE.

4. The statutes of the SCE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where such new arrangements determined pursuant to Directive 2003/72/EC conflict with the existing statutes, the statutes shall be amended to the extent necessary.

In this case, a Member State may provide that the management organ or the administrative organ of the SCE shall be entitled to amend the statutes without any further decision from the general meeting.

5. The law applicable, in the Member State where the SCE has its registered office, to public limited-liability companies concerning disclosure requirements of documents and particulars shall apply by analogy to that SCE.

Article 12

Publication of documents in the Member States

1. Publication of documents and particulars concerning an SCE which must be made public under this Regulation shall be effected in the manner laid down in the laws of the Member State applicable to public limited-liability companies in which the SCE has its registered office.

2. The national rules adopted pursuant to Directive 89/666/EEC shall apply to branches of an SCE opened in a Member State other than that in which it has its registered office. However, Member States may provide for derogations from the national provisions implementing that Directive to take account of the specific features of cooperatives.

Article 13

Notice in the Official Journal of the European Union

1. Notice of an SCE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Union after publication in accordance with Article 12. That notice shall state the name, number, date and place of registration of the SCE, the date and place of publication and the title of publication, the registered office of the SCE and its sector of activity.

2. Where the registered office of an SCE is transferred in accordance with Article 7, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 12(1).

Article 14

Acquisition of membership

1. Without prejudice to Article 33(1)(b) the acquisition of membership of an SCE shall be subject to the approval of the management or administrative organ. Candidates refused membership may appeal to the general meeting held following the application for membership.

Where the laws of the Member State of the SCE's registered office so permit, the statutes may provide that persons who do not expect to use or produce the SCE's goods and services may be admitted as investor (non-user) members. The acquisition of such membership shall be subject to approval by the general meeting or any other organ delegated to give approval by the general meeting or the statutes.

Members who are legal bodies shall be deemed to be users by virtue of the fact that they represent their own members provided that their members who are natural persons are users.

Unless the statutes provide otherwise, membership of an SCE may be acquired by natural persons or legal bodies.

2. The statutes may make admission subject to other conditions, in particular:

— subscription of a minimum amount of capital,

— conditions related to the objects of the SCE.

3. Where provided for in the statutes, applications for a supplementary stake in the capital may be addressed to members.

4. An alphabetical index of all members shall be kept at the registered office of the SCE, showing their addresses and the number and class, if appropriate, of the shares they hold. Any party having a direct legitimate interest may inspect the index on request, and may obtain a copy of the whole or any part at a price not exceeding the administrative cost thereof.

5. Any transaction which affects the manner in which the capital is ascribed or allotted, or increased or reduced, shall be entered on the index of members provided for in paragraph 4 no later than the month following that in which the change occurs.
6. The transactions referred to in paragraph 5 shall not take effect with respect to the SCE or third parties having a direct legitimate interest until they are entered on the index referred to in paragraph 4.

7. Members shall, on request be given a written statement certifying that the change has been entered.

Article 15

Loss of membership

1. Membership shall be lost:
   — upon resignation,
   — upon expulsion, where the member commits a serious breach of his/her obligations or acts contrary to the interests of the SCE,
   — where authorised by the statutes, upon the transfer of all shares held to a member or a natural person or legal entity which has acquired membership,
   — upon winding-up in the case of a member that is not a natural person,
   — upon bankruptcy,
   — upon death,
   — in any other situation provided for in the statutes or in the legislation on cooperatives of the Member State in which the SCE has its registered office.

2. Any minority member who opposed an amendment to the statutes at the general meeting whereby:
   (i) new obligations in respect of payments or other services were introduced; or
   (ii) existing obligations for members were substantially extended; or
   (iii) the period of notice for resignation from the SCE was extended to more than five years;
may tender his/her resignation within two months of the general meeting’s decision.

Membership shall terminate at the end of the current financial year in the cases referred to in points (i) and (ii) of the first subparagraph and at the end of the period of notice which applied before the statutes were amended in the case referred to in point (iii) thereof. The amendment to the statutes shall not take effect in respect of that member. Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.

3. The decision to expel a member shall be taken by the administrative or management organ, after the member has been heard. The member may appeal against such a decision to the general meeting.

Article 16

Financial entitlements of members in the event of resignation or expulsion

1. Except where shares are transferred and subject to Article 3, loss of membership shall entitle the member to repayment of his/her part of the subscribed capital, reduced in proportion to any losses charged against the SCE’s capital.

2. The amounts deducted under paragraph 1 shall be calculated by reference to the balance sheet for the financial year in which the entitlement to repayment arose.

3. The statutes shall lay down the procedures and conditions for exercising the right to resign and lay down the time within which repayment shall be made, which may not exceed three years. In any event, the SCE shall not be obliged to make the repayment less than six months after approval of the balance sheet issued following the loss of membership.

4. Paragraphs 1, 2 and 3 shall apply also where only a part of a member’s shareholding is to be repaid.

CHAPTER II

FORMATION

Section 1

General

Article 17

Law applicable during formation

1. Subject to this Regulation, the formation of an SCE shall be governed by the law applicable to cooperatives in the Member State in which the SCE establishes its registered office.

2. The registration of an SCE shall be made public in accordance with Article 12.

Article 18

Acquisition of legal personality

1. An SCE shall acquire legal personality on the day of its registration in the Member State in which it has its registered office, in the register designated by that State in accordance with Article 11(1).
2. If acts are performed in an SCE’s name before its registration in accordance with Article 11 and the SCE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit in the absence of agreement to the contrary.

Section 2

Formation by merger

Article 19

Procedures for formation by merger

An SCE may be formed by means of a merger carried out in accordance with:

— the procedure for merger by acquisition,
— the procedure for merger by the formation of a new legal person.

In the case of a merger by acquisition, the acquiring cooperative shall take the form of an SCE when the merger takes place. In the case of a merger by the formation of a new legal person, the latter shall take the form of an SCE.

Article 20

Law applicable in the case of merger

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each cooperative involved in the formation of an SCE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited-liability companies under the law of that State.

Article 21

Grounds for opposition to a merger

The laws of a Member State may provide that a cooperative governed by the law of that Member State may not take part in the formation of an SCE by merger if any of that Member State’s competent authorities opposes it before the issue of the certificate referred to in Article 29(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

Article 22

Conditions of merger

1. The management or administrative organ of merging cooperatives shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

(a) the name and registered office of each of the merging cooperatives together with those proposed for the SCE;
(b) the share-exchange ratio of the subscribed capital and the amount of any cash payment. If there are no shares, a precise division of the assets and its equivalent value in shares;
(c) the terms for the allotment of shares in the SCE;
(d) the date from which the holding of shares in the SCE will entitle the holders to share in surplus and any special conditions affecting that entitlement;
(e) the date from which the transactions of the merging cooperatives will be treated for accounting purposes as being those of the SCE;
(f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 66, do not confer the status of member;
(g) the rights conferred by the SCE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;
(h) the forms of protection of the rights of creditors of the merging cooperatives;
(i) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging cooperatives;
(j) the statutes of the SCE;
(k) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2003/72/EC.

2. The merging cooperatives may include further items in the draft terms of merger.

3. The law applicable to public limited-liability companies concerning the draft terms of a merger shall apply by analogy to the cross-border merger of cooperatives for the creation of an SCE.
Article 23

Explanation and justification of the terms of merger

The administrative or management organs of each merging cooperative shall draw up a detailed written report explaining and justifying the draft terms of merger from a legal and economic viewpoint and in particular the share-exchange ratio. The report shall also indicate any special valuation difficulties.

Article 24

Publication

1. The law applicable to public limited-liability companies concerning the disclosure requirements of the draft terms of mergers shall apply by analogy to each of the merging cooperatives, subject to the additional requirements imposed by the Member State to which the cooperative concerned is subject.

2. Publication of the draft terms of merger in the national gazette shall, however, include the following particulars for each of the merging cooperatives:
   
   (a) the type, name and registered office of each merging cooperative;
   
   (b) the address of the place or of the register in which the statutes and all other documents and particulars are filed in respect of each merging cooperative, and the number of the entry in that register;
   
   (c) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of the creditors of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
   
   (d) an indication of the arrangements made in accordance with Article 28 for the exercise of the rights of members of the cooperative in question and the address at which complete information on those arrangements may be obtained free of charge;
   
   (e) the name and registered office proposed for the SCE;
   
   (f) the conditions determining the date on which the merger will take effect pursuant to Article 31.

Article 25

Disclosure requirements

1. Any member shall be entitled, at least one month before the date of the general meeting required to decide on the merger, to inspect at the registered office the following documents:

   (a) the draft terms of merger mentioned in Article 22;
   
   (b) the annual accounts and management reports of the merging cooperatives for the three preceding financial years;
   
   (c) an accounting statement drafted in accordance with the provisions applicable to the internal mergers of public limited-liability companies, to the extent that such a statement is required by these provisions;
   
   (d) the experts’ report on the value of shares to be distributed in exchange for the assets for the merging cooperatives or the share exchange ratio as provided for in Article 26;
   
   (e) the report from the cooperative’s administrative or management organs as provided for in Article 23.

2. A full copy of the documents referred to in paragraph 1 or, if he/she so wishes, an extract, may be obtained by any member on request and free of charge.

Article 26

Report of independent experts

1. For each merging cooperative, one or more independent experts, appointed by that cooperative in accordance with the provisions of Article 4(6), shall examine the draft terms of merger and draw up a written report for the members.

2. A single report for all merging cooperatives may be drawn up where this is permitted by the laws of the Member States to which the cooperatives are subject.

3. The law applicable to the mergers of public limited-liability companies concerning the rights and obligations of experts shall apply by analogy to the merger of cooperatives.
Article 27

Approval of the terms of merger

1. The general meeting of each of the merging cooperatives shall approve the draft terms of the merger.

2. Employee involvement in the SCE shall be decided upon pursuant to Directive 2003/72/EC. The general meetings of each of the merging cooperatives may reserve the right to make registration of the SCE conditional upon its express ratification of the arrangements so decided.

Article 28

Laws applicable to formation by merger

1. The law of the Member State governing each merging cooperative shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

   — creditors of the merging cooperatives,
   — holders of bonds in the merging cooperatives.

2. A Member State may, in the case of the merging cooperatives governed by its law, adopt provisions designed to ensure appropriate protection for members who have opposed the merger.

Article 29

Scrutiny of merger procedure

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging cooperative in accordance with the law of the Member State to which the merging cooperative is subject that apply to mergers of cooperatives and, failing that, the provisions applicable to internal mergers of public limited companies under the law of that State.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate attesting to the completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging cooperative is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority members, without preventing the registration of the merger, such procedures shall apply only if the other merging cooperatives situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 27(1), the possibility for the members of that merging cooperative to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been started. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring cooperative and all its members.

Article 30

Scrutiny of legality of merger

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SCE, by the court, notary or other competent authority in the Member State of the proposed registered office of the SCE able to scrutinise that aspect of the legality of mergers of cooperatives and, failing that, mergers of public limited-liability companies.

2. To that end, each merging cooperative shall submit to the competent authority the certificate referred to in Article 29(2) within six months of its issue together with a copy of the draft terms of merger approved by that cooperative.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging cooperatives have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2003/72/EC.

4. The said authority shall also satisfy itself that the SCE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office.

Article 31

Registration of merger

1. A merger and the simultaneous formation of an SCE shall take effect on the date on which the SCE is registered in accordance with Article 11(1).
2. The SCE may not be registered until all the formalities provided for in Articles 29 and 30 have been completed.

Artikel 32

Classification

For each of the merging cooperatives the completion of the merger shall be made public as laid down by the law of the Member State concerned in accordance with the laws governing mergers of public companies limited by shares.

Artikel 33

Consequences of merger

1. A merger carried out as laid down in the first indent of the first subparagraph of Article 19 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of each cooperative being acquired are transferred to the acquiring legal person;

(b) the members of each cooperative being acquired become members of the acquiring legal person;

(c) the cooperatives being acquired cease to exist;

(d) the acquiring legal person assumes the form of an SCE.

2. A merger carried out as laid down in the second indent of the first subparagraph of Article 19 shall have the following consequences ipso jure and simultaneously:

(a) all the assets and liabilities of the merging cooperatives are transferred to the SCE;

(b) the members of the merging cooperatives become members of the SCE;

(c) the merging cooperatives cease to exist.

3. Where, in the case of a merger of cooperatives, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging cooperatives becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging cooperatives or by the SCE following its registration.

4. The rights and obligations of the participating cooperatives in relation to both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SCE.

The first subparagraph shall not apply to the right of workers’ representatives to participate in general or section or sectorial meetings provided for in Article 59(4).

5. When the merger has been registered, the SCE shall immediately inform the members of the cooperative being acquired of the fact that they have been entered in the register of members and of the number of their shares.

Artikel 34

Legality of the merger

1. A merger as provided for in the fourth indent of Article 2(1) may not be declared null and void once the SCE has been registered.

2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 74.

Section 3

Conversion of an existing cooperative into an SCE

Artikel 35

Procedures for formation by conversion

1. Without prejudice to Article 11, the conversion of a cooperative into an SCE shall not result in the winding-up of the cooperative or in the creation of a new legal person.

2. The registered office may not be transferred from one Member State to another pursuant to Article 7 at the same time as the conversion is effected.

3. The administrative or management organ of the cooperative in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications for members and employees of the adoption of the form of an SCE.

4. The draft terms of conversion shall be made public in the manner laid down in each Member State’s law at least one month before the general meeting called upon to decide thereon.
5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the cooperative being converted into an SCE is subject shall certify mutatis mutandis that the rules of Article 22(1)(b) are respected.

6. The general meeting of the cooperative in question shall approve the draft terms of conversion together with the statutes of the SCE.

7. Member States may make a conversion conditional on a favourable vote of a qualified majority or unanimity in the controlling organ of the cooperative to be converted within which employee participation is organised.

8. The rights and obligations of the cooperative to be converted on both individual and collective terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration, be transferred to the SCE.

CHAPTER III

STRUCTURE OF THE SCE

Article 36

Structure of organs

Under the conditions laid down by this Regulation an SCE shall comprise:

(a) a general meeting; and

(b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Section 1

Two-tier system

Article 37

Functions of the management organ; appointment of members

1. The management organ shall be responsible for managing the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director is responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State’s territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

However, a Member State may require or permit the statutes to provide that the member or members of the management organ are appointed and removed by the general meeting under the same conditions as for cooperatives that have registered offices within its territory.

3. No person may at the same time be a member of the management organ and of the supervisory organ of an SCE. The supervisory organ may, however, nominate one of its members to exercise the function of member of the management organ in the event of a vacancy. During such period, the functions of the person concerned as member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SCE’s statutes. However, a Member State may fix a minimum and/or maximum number.

5. Where no provision is made for a two-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

Article 38

Chairmanship and the calling of meetings of the management organ

1. The management organ shall elect a chairman from among its members, in accordance with the statutes.

2. The chairman shall call a meeting of the management organ under the conditions laid down in the statutes, either on his own initiative or at the request of any member. Any such request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the management organ may be called by the member(s) who made the request.

Article 39

Functions of the supervisory organ; appointment of members

1. The supervisory organ shall supervise the duties performed by the management organ. It may not itself exercise the power to manage the SCE. The supervisory organ may not represent the SCE in dealings with third parties. It shall represent the SCE in dealings with the management organ, or its members, in respect of litigation or the conclusion of contracts.
2. The members of the supervisory organ shall be appointed and removed by the general meeting. The members of the first supervisory organ may, however, be appointed in the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

3. Of the members of the supervisory organ, not more than one quarter of the posts available may be filled by non-user members.

4. The statutes shall lay down the number of members of the supervisory organ or the rules for determining it. A Member State may, however, stipulate the number of members or the composition of the supervisory organ for SCEs having their registered office in its territory or a minimum and/or a maximum number.

**Article 40**

**Right to information**

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable developments of the SCE's business, taking account of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly communicate to the supervisory organ any information on events likely to have an appreciable effect on the SCE.

3. The supervisory organ may require the management organ to provide information of any kind, which it needs to exercise supervision in accordance with Article 39(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

**Article 41**

**Chairmanship and the calling of meetings of the supervisory organ**

1. The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the supervisory organ under the conditions laid down in the statutes, either on his/her own initiative, or at the request of at least one third of its members, or at the request of the management organ. The request shall indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the supervisory organ may be called by those who made the request.

**Section 2**

**The one-tier system**

**Article 42**

**Functions of the administrative organ; appointment of members**

1. The administrative organ shall manage the SCE and shall represent it in dealings with third parties and in legal proceedings. A Member State may provide that a managing director shall be responsible for the current management under the same conditions as for cooperatives that have registered offices within that Member State’s territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the statutes of the SCE. However, a Member State may set a minimum and, where necessary, a maximum number of members. Of the members of the administrative organ, not more than one quarter of the posts available may be filled by non-user members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2003/72/EC.

3. The members of the administrative organ, and, where the statutes so provide, their alternate members, shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to any employee participation arrangements determined pursuant to Directive 2003/72/EC.

4. Where no provision is made for a one-tier system in relation to cooperatives with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SCEs.

**Article 43**

**Intervals between meetings and the right to information**

1. The administrative organ shall meet at least once every three months, at intervals laid down in the statutes, to discuss the progress of and foreseeable development of the SCE’s business, taking account, where appropriate, of any information relating to undertakings controlled by the SCE that may significantly affect the progress of the SCE’s business.
2. Each member of the administrative organ shall be entitled to examine all reports, documents and information submitted to it.

Article 44

Chairmanship and the calling of meetings of the administrative organ

1. The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting may be elected chairman.

2. The chairman shall call a meeting of the administrative organ under the conditions laid down in the statutes, either on his/her own initiative or at the request of at least one third of its members. The request must indicate the reasons for calling the meeting. If no action has been taken in respect of such a request within 15 days, the meeting of the administrative organ may be called by those who made the request.

Section 3

Rules common to the one-tier and two-tier systems

Article 45

Term of office

1. Members of SCE organs shall be appointed for a period laid down in the statutes not exceeding six years.

2. Subject to any restrictions laid down in the statutes, members may be re-appointed once or more than once for the period determined in accordance with paragraph 1.

Article 46

Conditions of membership

1. An SCE’s statutes may permit a company within the meaning of Article 48 of the Treaty to be a member of one of its organs, provided that the law applicable to cooperatives in the Member State in which the SCE’s registered office is situated does not provide otherwise.

That company shall designate a natural person as its representative to exercise its functions on the organ in question. The representative shall be subject to the same conditions and obligations as if he/she were personally a member of the organ.

2. No person may be a member of any SCE organ or a representative of a member within the meaning of paragraph 1 who:

— is disqualified, under the law of the Member State in which the SCE’s registered office is situated, from serving on the corresponding organ of a cooperative governed by the law of that State, or

— is disqualified from serving on the corresponding organ of a cooperative governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SCE’s statutes may, in accordance with the law applicable to cooperatives in the Member State, lay down special conditions of eligibility for members representing the administrative organ.

Article 47

Power of representation and liability of the SCE

1. Where the authority to represent the SCE in dealings with third parties, in accordance with Articles 37(1) and 42(1), is conferred on two or more members, those members shall exercise that authority collectively, unless the law of the Member State in which the SCE’s registered office is situated allows the statutes to provide otherwise, in which case such a clause may be relied upon against third parties where it has been disclosed in accordance with Articles 11(5) and 12.

2. Acts performed by an SCE’s organs shall bind the SCE vis-à-vis third parties, even where the acts in question are not in accordance with the objects of the SCE, providing they do not exceed the powers conferred on them by the law of the Member State in which the SCE has its registered office or which that law allows to be conferred on them.

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

3. The limits on the powers of the organs of the SCE, arising under the statutes or from a decision of the competent organs, may never be relied on as against third parties, even if they have been disclosed.

4. A Member State may stipulate that the power to represent the SCE may be conferred by the statutes on a single person or on several persons acting jointly. Such legislation may stipulate that this provision of the statutes may be relied on as against third parties provided that it concerns the general power of representation. Whether or not such a provision may be relied on as against third parties shall be governed by the provisions of Article 12.
Article 48

Operations requiring authorisation

1. An SCE’s statutes shall list the categories of transactions requiring:
   — under the two-tier system, authorisation from the supervisory organ or the general meeting to the management organ,
   — under the one-tier system, an express decision adopted by the administrative organ or authorisation from the general meeting.

2. Paragraph 1 shall apply without prejudice to Article 47.

3. However, a Member State may determine the minimum categories of transactions and the organ which shall give the authorisation which must feature in the statutes of SCEs registered in its territory and/or provide that, under the two-tier system, the supervisory organ may itself determine which categories of transactions are to be subject to authorisation.

Article 49

Confidentiality

The members of an SCE’s organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SCE the disclosure of which might be prejudicial to the cooperative’s interests or those of its members, except where such disclosure is required or permitted under national law provisions applicable to cooperatives or companies or is in the public interest.

Article 50

Conduct of the business of organs

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SCE organs shall be as follows:
   (a) quorum: at least half of the members with voting rights must be present or represented;
   (b) decision-taking: a majority of the members with voting rights present or represented.

Members who are absent may take part in decisions by authorising another member of the organ or the alternate members who were appointed at the same time to represent them.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees’ representatives.

3. Where employee participation is provided for in accordance with Directive 2003/72/EC, a Member State may provide that the supervisory organ’s quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to cooperatives governed by the law of the Member State concerned.

Article 51

Civil liability

Members of management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to cooperatives in the Member State in which the SCE’s registered office is situated, for loss or damage sustained by the SCE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 4

General meeting

Article 52

Competence

The general meeting shall decide on matters for which it is given sole responsibility by:
(a) this Regulation; or
(b) the legislation of the Member State in which the SCE’s registered office is situated, adopted under Directive 2003/72/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a cooperative governed by the law of the Member State in which the SCE’s registered office is situated, either by the law of that Member State or by the SCE’s statutes in accordance with that law.

Article 53

Conduct of general meetings

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to cooperatives in the Member State in which the SCE’s registered office is situated.
Article 54

Holding of general meetings

1. An SCE shall hold a general meeting at least once each calendar year, unless the law of the Member State in which the SCE's registered office is situated applicable to cooperatives carrying on the same type of activity as the SCE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SCE's incorporation.

2. General meetings may be convened at any time by the management organ or the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to cooperatives in the Member State in which the SCE's registered office is situated. The management organ shall be bound to convene a general meeting at the request of the supervisory organ.

3. The agenda for the general meeting held after the end of the financial year shall include at least the approval of the annual accounts and the allocation of profits.

4. The general meeting may in the course of a meeting decide that a further meeting be convened and set the date and the agenda.

Article 55

Meeting called by a minority of members

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require the SCE to convene a general meeting and may draw up its agenda. The above proportions may be reduced by the statutes.

Article 56

Notice of meeting

1. A general meeting shall be convened by a notice in writing sent by any available means to every person entitled to attend the SCE's general meeting in accordance with Article 58(1) and (2) and the provisions of the statutes. That notice may be given by publication in the official internal publication of the SCE.

2. The notice calling a general meeting shall give at least the following particulars:

   — the name and registered office of the SCE,
   — the venue, date and time of the meeting,
   — where appropriate, the type of general meeting.

3. The period between the date of dispatch of the notice referred to in paragraph 1 and the date of the opening of the general meeting shall be at least 30 days. It may, however, be reduced to 15 days in urgent cases. Where Article 61(4) is applied, relating to quorum requirements, the time between a first and second meeting convened to consider the same agenda may be reduced according to the law of the Member State in which the SCE has its registered office.

Article 57

Additions to the agenda

Members of the SCE who together number more than 5 000, or who have at least 10 % of the total number of the votes, may require that one or more additional items be put on the agenda of any general meeting. The above proportions may be reduced by the statutes.

Article 58

Attendance and proxies

1. Every member shall be entitled to speak and vote at general meetings on the points that are included in the agenda.

2. Members of the SCE's organs and holders of securities other than shares and debentures within the meaning of Article 64 and, if the statutes allow, any other person entitled to do so under the law of the State in which the SCE's registered office is situated may attend a general meeting without voting rights.

3. A person entitled to vote shall be entitled to appoint a proxy to represent him/her at a general meeting in accordance with procedures laid down in the statutes.

   The statutes shall lay down the maximum number of persons for whom a proxy may act.

4. The statutes may permit postal voting or electronic voting, in which case they shall lay down the necessary procedures.

Article 59

Voting rights

1. Each member of an SCE shall have one vote, regardless of the number of shares he holds.
2. If the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for a member to have a number of votes determined by his/her participation in the cooperative activity other than by way of capital contribution. This attribution shall not exceed five votes per member or 30% of total voting rights, whichever is the lower.

If the law of the Member State in which the SCE has its registered office so permits, SCEs involved in financial or insurance activities may provide in their statutes for the number of votes to be determined by the members' participation in the cooperative activity including participation in the capital of the SCE. This attribution shall not exceed five votes per member or 20% of total voting rights, whichever is the lower.

In SCEs the majority of members of which are cooperatives, if the law of the Member State in which the SCE has its registered office so permits, the statutes may provide for the number of votes to be determined in accordance with the members' participation in the cooperative activity including participation in the capital of the SCE and/or by the number of members of each comprising entity.

3. As regards voting rights which the statutes may allocate to non-user (investor) members, the SCE shall be governed by the law of the Member State in which the SCE has its registered office. Nevertheless, non-user (investor) members may not together have voting rights amounting to more than 25% of total voting rights.

4. If, on the entry into force of this Regulation, the law of the Member State where an SCE has its registered office so permits, the statutes of that SCE may provide for the participation of employees' representatives in the general meetings or in the section or sectorial meetings, provided that the employees' representatives do not together control more than 15% of total voting rights. Such rights shall cease to apply as soon as the registered office of the SCE is transferred to a Member State whose law does not provide for such participation.

Article 60

Right to information

1. Every member who so requests at a general meeting shall be entitled to obtain information from the management or administrative organ on the affairs of the SCE arising from items on which the general meeting may take a decision in accordance with Article 61(1). In so far as possible, information shall be provided at the general meeting in question.

2. The management or administrative organ may refuse to supply such information only where:
   — it would be likely to be seriously prejudicial to the SCE,
   — its disclosure would be incompatible with a legal obligation of confidentiality.

3. A member refused information may require that his/her question and the grounds for refusal be entered in the minutes of the general meeting.

4. Within the 10 days preceding the general meeting required to decide on the end of the financial year, members may examine the balance sheet, the profit-and-loss account and the notes thereon, the management report, the conclusion of the audit of the accounts by the person responsible and, where a parent company within the meaning of Directive 83/349/EEC is concerned, the consolidated accounts.

Article 61

Decisions

1. A general meeting may pass resolutions on items on its agenda. A general meeting may also deliberate and pass resolutions concerning items placed on the agenda of the meeting by a minority of members in accordance with Article 57.

2. A general meeting shall act by majority of the votes validly cast by the members present or represented.

3. The statutes shall lay down the quorum and majority requirements which are to apply to general meetings.

Where the statutes provide for the possibility of an SCE to admit investor (non-user) members, or to allocate votes according to capital contribution in SCEs involved in financial or insurance activities, the statutes shall also lay down special quorum requirements with relation to members other than investor (non-user) members or members that have voting rights according to capital contribution in SCEs involved in financial or insurance activities. Member States shall be free to set the minimum level of such special quorum requirements for those SCEs having their registered office in their territory.

4. A general meeting may amend the statutes the first time it is convened only if the members present or represented make up at least half of the total number of members on the date the general meeting is convened, and the second time it is convened on the same agenda no quorum shall be necessary.
In the cases referred to in the first subparagraph, at least two thirds of the votes cast validly must be cast in favour, unless the law applicable to cooperatives in the Member State in which the SCE's registered office is situated requires a greater majority.

**Article 62**

**Minutes**

1. Minutes shall be drawn up for every general meeting. The minutes shall include at least the following particulars:

   - the venue and date of the meeting,
   - the resolutions passed,
   - the result of the voting.

2. The attendance list, the documents relating to the convening of the general meeting and the reports submitted to the members on the items on the agenda shall be annexed to the minutes.

3. The minutes and the documents annexed thereto shall be preserved for at least five years. A copy of the minutes and the documents annexed thereto may be obtained by any member upon request against defrayal of the administrative cost.

4. The minutes shall be signed by the chairman of the meeting.

**Article 63**

**Sectorial or section meetings**

1. Where the SCE undertakes different activities or activities in more than one territorial unit, or has several establishments or more than 500 members, its statutes may provide for sectorial or section meetings, if permitted by the relevant Member State legislation. The statutes shall establish the division in sectors or sections and the number of delegates thereof.

2. The sectorial or section meetings shall elect their delegates for a maximum period of four years, unless early revocation takes place. Delegates so elected shall constitute the general meeting of the SCE and shall represent therein their sector or section to which they shall report on the outcome of the general meeting. The provisions of Section 4 of Chapter III shall be applied to the workings of the sectorial and section meetings.

**CHAPTER IV**

**ISSUE OF SHARES CONFERRING SPECIAL ADVANTAGE**

**Article 64**

**Securities other than shares and debentures conferring special advantages**

1. An SCE's statutes may provide for the issue of securities other than shares, or debentures the holders of which are to have no voting rights. These may be subscribed for by members or by non-members. Their acquisition does not confer the status of member. The statutes shall also lay down the procedure for redemption.

2. Holders of securities or debentures referred to in paragraph 1 may be given special advantages in accordance with the statutes or the conditions laid down when they are issued.

3. The total nominal value of securities or debentures referred to in paragraph 1 held may not exceed the figure laid down in the statutes.

4. Without prejudice to the right to attend the general meeting provided for in Article 58(2), the statutes may provide for special meetings of holders of securities or debentures referred to in paragraph 1. Before any decision of the general meeting is taken relating to the rights and interests of such holders, a special meeting may state its opinion, which shall be brought to the attention of the general meeting by the representatives which the special meeting appoints.

The opinion referred to in the first subparagraph shall be recorded in the minutes of the general meeting.

**CHAPTER V**

**ALLOCATION OF PROFITS**

**Article 65**

**Legal reserve**

1. Without prejudice to mandatory provisions of national laws, the statutes shall lay down rules for the allocation of the surplus for each financial year.

2. Where there is such a surplus, the statutes shall require the establishment of a legal reserve funded out of the surplus before any other allocation.
Until such time as the legal reserve is equal to the capital referred to in Article 3(2), the amount allocated to it may not be less than 15 % of the surplus for the financial year after deduction of any losses carried over.

3. Members leaving the SCE shall have no claim against the sums thus allocated to the legal reserve.

**Article 67**

**Allocation of available surplus**

1. The balance of the surplus after deduction of the allocation to the legal reserve, of any sums paid out in dividends and of any losses carried over, with the addition of any surpluses carried over and of any sums drawn from the reserves, shall constitute the profits available for distribution.

2. The general meeting which considers the accounts for the financial year may allocate the surplus in the order and proportions laid down in the statutes, and in particular:
   — carry them forward,
   — appropriate them to any legal or statutory reserve fund,
   — provide a return on paid-up capital and quasi-equity, payment being made in cash or shares.

3. The statutes may also prohibit any distribution.

**CHAPTER VI**

**ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS**

**Article 68**

**Preparation of annual accounts and consolidated accounts**

1. For the purposes of drawing up its annual accounts and its consolidated accounts if any, including the annual report accompanying them and their auditing and publication, an SCE shall be subject to the legal provisions adopted in the Member State in which it has its registered office in implementation of Directives 78/660/EEC and 83/349/EEC. However, Member States may provide for amendments to the national provisions implementing those Directives to take account of the specific features of cooperatives.

2. Where an SCE is not subject, under the law of the Member State in which the SCE has its registered office, to a publication requirement such as provided for in Article 3 of Directive 68/151/EEC, the SCE must at least make the documents relating to annual accounts available to the public at its registered office. Copies of those documents must be obtainable on request. The price charged for such copies shall not exceed their administrative cost.

3. An SCE must draw up its annual accounts and its consolidated accounts if any in the national currency. An SCE whose registered office is outside the euro area may also express its annual accounts and, where appropriate, consolidated accounts, in euro. In that event, the bases of conversion used to express in euro those items included in the accounts which are or were originally expressed in another currency shall be disclosed in the notes on the accounts.

**Article 69**

**Accounts of SCEs with credit or financial activities**

1. An SCE which is a credit or financial institution shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives relating to the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

2. An SCE which is an insurance undertaking shall be governed by the rules laid down in the national law of the Member State in which its registered office is situated under directives as regards the preparation of its annual and, where appropriate, consolidated accounts, including the accompanying annual report and the auditing and publication of those accounts.

**Article 70**

**Auditing**

The statutory audit of an SCE’s annual accounts and its consolidated accounts if any shall be carried out by one or more persons authorised to do so in the Member State in which the SCE has its registered office in accordance with the measures adopted in that State pursuant to Directives 84/253/EEC and 89/48/EEC.
Article 71

System of auditing

Where the law of a Member State requires all cooperatives, or a certain type of them, covered by the law of that State to join a legally authorised external body and to submit to a specific system of auditing carried out by that body, the arrangements shall automatically apply to an SCE with its registered office in that Member State provided that this body meets the requirements of Directive 84/253/EEC.

CHAPTER VII

WINDING UP; LIQUIDATION; INSOLVENCY AND CESSION OF PAYMENTS

Article 72

Winding-up, insolvency and similar procedures

As regards winding-up, liquidation, insolvency, cessation of payments and similar procedures, an SCE shall be governed by the legal provisions which would apply to a cooperative formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

Article 73

Winding-up by the court or other competent authority of the Member State where the SCE has its registered office

1. On an application by any person with a legitimate interest or any competent authority, the court or any competent administrative authority of the Member State where the SCE has its registered office shall order the SCE to be wound up where it finds that there has been a breach of Article 2(1) and/or Article 3(2) and in the cases covered by Article 34. The court or the competent administrative authority may allow the SCE time to rectify the situation. If it fails to do so within the time allowed, the court or the competent administrative authority shall order it to be wound up.

2. When an SCE no longer complies with the requirement laid down in Article 6, the Member State in which the SCE's registered office is situated shall take appropriate measures to oblige the SCE to regularise its position within a specified period either:

— by re-establishing its head office in the Member State in which its registered office is situated, or

— by transferring the registered office by means of the procedure laid down in Article 7.

3. The Member State in which the SCE's registered office is situated shall put in place the measures necessary to ensure that an SCE which fails to regularise its position in accordance with paragraph 2 is liquidated.

4. The Member State in which the SCE's registered office is situated shall seek judicial or other appropriate remedy with regard to any established infringement of Article 6. That remedy shall have suspensory effect on the procedures laid down in paragraphs 2 and 3.

5. Where it is established on the initiative of either the authorities or any interested party that an SCE has its head office within the territory of a Member State in breach of Article 6, the authorities of that Member State shall immediately inform the Member State in which the SCE's registered office is situated.

Article 74

Publication of winding-up

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding-up including voluntary winding-up, liquidation, insolvency or suspension of payment procedures and any decision to continue operating shall be publicised in accordance with Article 12.

Article 75

Distribution

Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE. For the purposes of this Article, net assets shall comprise residual assets after payment of all amounts due to creditors and reimbursement of members' capital contributions.

Article 76

Conversion into a cooperative

1. An SCE may be converted into a cooperative governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.
2. The conversion of an SCE into a cooperative shall not result in winding-up or in the creation of a new legal person.

3. The management or administrative organ of the SCE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects as well as the employment effects of the conversion and indicating the implications of the adoption of the cooperative form for members and holders of shares referred to in Article 14 and for employees.

4. The draft terms of conversion shall be made public in the manner laid down in each Member State's law at least one month before the general meeting called to decide on conversion.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions, by a judicial or administrative authority in the Member State to which the SCE being converted into a cooperative is subject, shall certify that the latter has assets at least equivalent to its capital.

6. The general meeting of the SCE shall approve the draft terms of conversion together with the statutes of the cooperative. The decision of the general meeting shall be passed as laid down in the provisions of national law.

CHAPTER VIII

ADDITIONAL AND TRANSITIONAL PROVISIONS

Article 77

Economic and monetary union

1. If and so long as the third phase of EMU does not apply to it, each Member State may make SCEs with registered offices within its territory subject to the same provisions as apply to cooperatives or public limited-liability companies covered by its legislation as regards the expression of their capital. An SCE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SCE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SCE has its registered office, the SCE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SCE's annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for cooperatives and public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SCE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu (1).

CHAPTER IX

FINAL PROVISIONS

Article 78

National implementing rules

1. Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities within the meaning of Articles 7, 21, 29, 30, 54 and 73. It shall inform the Commission and the other Member States accordingly.

Article 79

Review of the Regulation

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the European Parliament and to the Council a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

(a) allowing the location of an SCE's head office and registered office in different Member States;

(b) allowing provisions in the statutes of an SCE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation with regard to the SCE which deviate from, or are complementary to, these laws, even when such provisions would not be authorised in the statutes of a cooperative having its registered office in the Member State;

(c) allowing provisions which enable the SCE to split into two or more national cooperatives;

(d) allowing for specific legal remedies in the case of fraud or error during the registration of an SCE established by way of merger.

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

Done at Brussels, 22 July 2003.

For the Council

The President

G. ALEMANNO

Article 80

Entry into force

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Union.

It shall apply from 18 August 2006.


On page 6, Article 7(5), last sentence:

for: ‘Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 4(4) and 16.’

read: ‘Resignation shall entitle the member to repayment of shares on the conditions laid down in Articles 3(4) and 16.’

On page 6, Article 7(6), last sentence:

for: ‘Such a decision shall be taken as laid down in Article 62(4).’

read: ‘Such a decision shall be taken as laid down in Article 61(4).’

On page 10, Article 22(1)(f):

for: ‘(f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 66, do not confer the status of members;’

read: ‘(f) the special conditions or advantages attached to debentures or securities other than shares which, according to Article 64, do not confer the status of members;’

On page 13, Article 34(2):

for: ‘2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 74.’

read: ‘2. The absence of scrutiny of the legality of the merger pursuant to Articles 29 and 30 shall constitute one of the grounds for the winding-up of the SCE, in accordance with the provisions of Article 73.’

On page 22, Article 73(4):

for: ‘4. The Member State in which the SCE’s registered office is situated shall seek a judicial or other appropriate remedy …’

read: ‘4. The Member State in which the SCE’s registered office is situated shall set up a judicial or other appropriate remedy ….’
Societas Europaea (SE)
COUNCIL REGULATION (EC) No 2157/2001
of 8 October 2001
on the Statute for a European company (SE)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas:

(1) The completion of the internal market and the improvement it brings about in the economic and social situation throughout the Community mean not only that barriers to trade must be removed, but also that the structures of production must be adapted to the Community dimension. For that purpose it is essential that companies the business of which is not limited to satisfying purely local needs should be able to plan and carry out the reorganisation of their business on a Community scale.

(2) Such reorganisation presupposes that existing companies from different Member States are given the option of combining their potential by means of mergers. Such operations can be carried out only with due regard to the rules of competition laid down in the Treaty.

(3) Restructuring and cooperation operations involving companies from different Member States give rise to legal and psychological difficulties and tax problems. The approximation of Member States' company law by means of Directives based on Article 44 of the Treaty can overcome some of those difficulties. Such approximation does not, however, release companies governed by different legal systems from the obligation to choose a form of company governed by a particular national law.

(4) The legal framework within which business must be carried on in the Community is still based largely on national laws and therefore no longer corresponds to the economic framework within which it must develop if the objectives set out in Article 18 of the Treaty are to be achieved. That situation forms a considerable obstacle to the creation of groups of companies from different Member States.

(5) Member States are obliged to ensure that the provisions applicable to European companies under this Regulation do not result either in discrimination arising out of unjustified different treatment of European companies compared with public limited-liability companies or in disproportionate restrictions on the formation of a European company or on the transfer of its registered office.

(6) It is essential to ensure as far as possible that the economic unit and the legal unit of business in the Community coincide. For that purpose, provision should be made for the creation, side by side with companies governed by a particular national law, of companies formed and carrying on business under the law created by a Community Regulation directly applicable in all Member States.

(7) The provisions of such a Regulation will permit the creation and management of companies with a European dimension, free from the obstacles arising from the disparity and the limited territorial application of national company law.

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(3) OJ C 124, 21.5.1990, p. 34.
(8) The Statute for a European public limited-liability company (hereafter referred to as 'SE') is among the measures present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.

(9) Since the Commission's submission in 1970 of a proposal for a Regulation on the Statute for a European public limited-liability company, amended in 1975, work on the approximation of national company law has made substantial progress, so that on those points where the functioning of an SE does not need uniform Community rules reference may be made to the law governing public limited-liability companies in the Member State where it has its registered office.

(10) Without prejudice to any economic needs that may arise in the future, if the essential objective of legal rules governing SEs is to be attained, it must be possible at least to create such a company as a means both of enabling companies from different Member States to merge or to create a holding company and of enabling companies and other legal persons carrying on economic activities and governed by the laws of different Member States to form joint subsidiaries.

(11) In the same context it should be possible for a public limited-liability company with a registered office and head office within the Community to transform itself into an SE without going into liquidation, provided it has a subsidiary in a Member State other than that of its registered office.

(12) National provisions applying to public limited-liability companies that offer their securities to the public and to securities transactions should also apply where an SE is formed by means of an offer of securities to the public and to SEs wishing to utilise such financial instruments.

(13) The SE itself must take the form of a company with share capital, that being the form most suited, in terms of both financing and management, to the needs of a company carrying on business on a European scale. In order to ensure that such companies are of reasonable size, a minimum amount of capital should be set so that they have sufficient assets without making it difficult for small and medium-sized undertakings to form SEs.

(14) An SE must be efficiently managed and properly supervised. It must be borne in mind that there are at present in the Community two different systems for the administration of public limited-liability companies. Although an SE should be allowed to choose between the two systems, the respective responsibilities of those responsible for management and those responsible for supervision should be clearly defined.

(15) Under the rules and general principles of private international law, where one undertaking controls another governed by a different legal system, its ensuing rights and obligations as regards the protection of minority shareholders and third parties are governed by the law governing the controlled undertaking, without prejudice to the obligations imposed on the controlling undertaking by its own law, for example the requirement to prepare consolidated accounts.

(16) Without prejudice to the consequences of any subsequent coordination of the laws of the Member States, specific rules for SEs are not at present required in this field. The rules and general principles of private international law should therefore be applied both where an SE exercises control and where it is the controlled company.

(17) The rule thus applicable where an SE is controlled by another undertaking should be specified, and for this purpose reference should be made to the law governing public limited-liability companies in the Member State in which the SE has its registered office.

(18) Each Member State must be required to apply the sanctions applicable to public limited-liability companies governed by its law in respect of infringements of this Regulation.

(19) The rules on the involvement of employees in the European company are laid down in Directive 2001/86/EC (1), and those provisions thus form an indissociable complement to this Regulation and must be applied concomitantly.

(1) See p. 22 of this Official Journal.
(20) This Regulation does not cover other areas of law such as taxation, competition, intellectual property or insolvency. The provisions of the Member States’ law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

(21) Directive 2001/86/EC is designed to ensure that employees have a right of involvement in issues and decisions affecting the life of their SE. Other social and labour legislation questions, in particular the right of employees to information and consultation as regulated in the Member States, are governed by the national provisions applicable, under the same conditions, to public limited-liability companies.

(22) The entry into force of this Regulation must be deferred so that each Member State may incorporate into its national law the provisions of Directive 2001/86/EC and set up in advance the necessary machinery for the formation and operation of SIs with registered offices within its territory, so that the Regulation and the Directive may be applied concomitantly.

(23) A company the head office of which is not in the Community should be allowed to participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State’s economy according to the principles established in the 1962 General Programme for the abolition of restrictions on freedom of establishment. Such a link exists in particular if a company has an establishment in that Member State and conducts operations therefrom.

(24) The SE should be enabled to transfer its registered office to another Member State. Adequate protection of the interests of minority shareholders who oppose the transfer, of creditors and of holders of other rights should be proportionate. Such transfer should not affect the rights originating before the transfer.

(25) This Regulation is without prejudice to any provision which may be inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention, relating to the rules of jurisdiction applicable in the case of transfer of the registered offices of a public limited-liability company from one Member State to another.

(26) Activities by financial institutions are regulated by specific directives and the national law implementing those directives and additional national rules regulating those activities apply in full to an SE.

(27) In view of the specific Community character of an SE, the ‘real seat’ arrangement adopted by this Regulation in respect of SEs is without prejudice to Member States’ laws and does not pre-empt any choices to be made for other Community texts on company law.

(28) The Treaty does not provide, for the adoption of this Regulation, powers of action other than those of Article 308 thereof.

(29) Since the objectives of the intended action, as outlined above, cannot be adequately attained by the Member States in as much as a European public limited-liability company is being established at European level and can therefore, because of the scale and impact of such company, be better attained at Community level, the Community may take measures in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in the said Article, this Regulation does not go beyond what is necessary to attain these objectives,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

1. A company may be set up within the territory of the Community in the form of a European public limited-liability company (Societas Europaea or SE) on the conditions and in the manner laid down in this Regulation.

2. The capital of an SE shall be divided into shares. No shareholder shall be liable for more than the amount he has subscribed.

3. An SE shall have legal personality.

4. Employee involvement in an SE shall be governed by the provisions of Directive 2001/86/EC.
Article 2

1. Public limited-liability companies such as referred to in Annex I, formed under the law of a Member State, with registered offices and head offices within the Community may form an SE by means of a merger provided that at least two of them are governed by the law of different Member States.

2. Public and private limited-liability companies such as referred to in Annex II, formed under the law of a Member State, with registered offices and head offices within the Community may promote the formation of a holding SE provided that each of at least two of them:

(a) is governed by the law of a different Member State, or

(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

3. Companies and firms within the meaning of the second paragraph of Article 48 of the Treaty and other legal bodies governed by public or private law, formed under the law of a Member State, with registered offices and head offices within the Community may form a subsidiary SE by subscribing for its shares, provided that each of at least two of them:

(a) is governed by the law of a different Member State, or

(b) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State.

4. A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State.

5. A Member State may provide that a company the head office of which is not in the Community may participate in the formation of an SE provided that company is formed under the law of a Member State, has its registered office in that Member State and has a real and continuous link with a Member State’s economy.

Article 3

1. For the purposes of Article 2(1), (2) and (3), an SE shall be regarded as a public limited-liability company governed by the law of the Member State in which it has its registered office.

2. An SE may itself set up one or more subsidiaries in the form of SEs. The provisions of the law of the Member State in which a subsidiary SE has its registered office that require a public limited-liability company to have more than one shareholder shall not apply in the case of the subsidiary SE. The provisions of national law implementing the twelfth Council Company Law Directive (89/667/EEC) of 21 December 1989 on single-member private limited-liability companies (1) shall apply to SEs mutatis mutandis.

Article 4

1. The capital of an SE shall be expressed in euro.

2. The subscribed capital shall not be less than EUR 120 000.

3. The laws of a Member State requiring a greater subscribed capital for companies carrying on certain types of activity shall apply to SEs with registered offices in that Member State.

Article 5

Subject to Article 4(1) and (2), the capital of an SE, its maintenance and changes thereto, together with its shares, bonds and other similar securities shall be governed by the provisions which would apply to a public limited-liability company with a registered office in the Member State in which the SE is registered.

Article 6

For the purposes of this Regulation, ‘the statutes of the SE’ shall mean both the instrument of incorporation and, where they are the subject of a separate document, the statutes of the SE.

Article 7

The registered office of an SE shall be located within the Community, in the same Member State as its head office. A Member State may in addition impose on SEs registered in its territory the obligation of locating their head office and their registered office in the same place.

Article 8

1. The registered office of an SE may be transferred to another Member State in accordance with paragraphs 2 to 13. Such a transfer shall not result in the winding up of the SE or in the creation of a new legal person.

2. The management or administrative organ shall draw up a transfer proposal and publicise it in accordance with Article 13, without prejudice to any additional forms of publication provided for by the Member State of the registered office. That proposal shall state the current name, registered office and number of the SE and shall cover:

(a) the proposed registered office of the SE;

(b) the proposed statutes of the SE including, where appropriate, its new name;

(c) any implication the transfer may have on employees' involvement;

(d) the proposed transfer timetable;

(e) any rights provided for the protection of shareholders and/or creditors.

3. The management or administrative organ shall draw up a report explaining and justifying the legal and economic aspects of the transfer and explaining the implications of the transfer for shareholders, creditors and employees.

4. An SE's shareholders and creditors shall be entitled, at least one month before the general meeting called upon to decide on the transfer, to examine at the SE's registered office the transfer proposal and the report drawn up pursuant to paragraph 3 and, on request, to obtain copies of those documents free of charge.

5. A Member State may, in the case of SEs registered within its territory, adopt provisions designed to ensure appropriate protection for minority shareholders who oppose a transfer.

6. No decision to transfer may be taken for two months after publication of the proposal. Such a decision shall be taken as laid down in Article 59.

7. Before the competent authority issues the certificate mentioned in paragraph 8, the SE shall satisfy it that, in respect of any liabilities arising prior to the publication of the transfer proposal, the interests of creditors and holders of other rights in respect of the SE (including those of public bodies) have been adequately protected in accordance with requirements laid down by the Member State where the SE has its registered office prior to the transfer.

A Member State may extend the application of the first subparagraph to liabilities that arise (or may arise) prior to the transfer.

The first and second subparagraphs shall be without prejudice to the application to SEs of the national legislation of Member States concerning the satisfaction or securing of payments to public bodies.

8. In the Member State in which an SE has its registered office the court, notary or other competent authority shall issue a certificate attesting to the completion of the acts and formalities to be accomplished before the transfer.

9. The new registration may not be effected until the certificate referred to in paragraph 8 has been submitted, and evidence produced that the formalities required for registration in the country of the new registered office have been completed.

10. The transfer of an SE's registered office and the consequent amendment of its statutes shall take effect on the date on which the SE is registered, in accordance with Article 12, in the register for its new registered office.

11. When the SE's new registration has been effected, the registry for its new registration shall notify the registry for its old registration. Deletion of the old registration shall be effected on receipt of that notification, but not before.

12. The new registration and the deletion of the old registration shall be publicised in the Member States concerned in accordance with Article 13.

13. On publication of an SE's new registration, the new registered office may be relied on as against third parties. However, as long as the deletion of the SE's registration from the register for its previous registered office has not been publicised, third parties may continue to rely on the previous registered office unless the SE proves that such third parties were aware of the new registered office.

14. The laws of a Member State may provide that, as regards SEs registered in that Member State, the transfer of a registered office which would result in a change of the law applicable shall not take effect if any of that Member State's competent authorities opposes it within the two-month period referred to in paragraph 6. Such opposition may be based only on grounds of public interest.

Where an SE is supervised by a national financial supervisory authority according to Community directives the right to oppose the change of registered office applies to this authority as well.

Review by a judicial authority shall be possible.
15. An SE may not transfer its registered office if proceedings for winding up, liquidation, insolvency or suspension of payments or other similar proceedings have been brought against it.

16. An SE which has transferred its registered office to another Member State shall be considered, in respect of any cause of action arising prior to the transfer as determined in paragraph 10, as having its registered office in the Member States where the SE was registered prior to the transfer, even if the SE is sued after the transfer.

Article 9

1. An SE shall be governed:

(a) by this Regulation,

(b) where expressly authorised by this Regulation, by the provisions of its statutes or

(c) in the case of matters not regulated by this Regulation or, where matters are partly regulated by it, of those aspects not covered by it, by:

(i) the provisions of laws adopted by Member States in implementation of Community measures relating specifically to SEs;

(ii) the provisions of Member States’ laws which would apply to a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office;

(iii) the provisions of its statutes, in the same way as for a public limited-liability company formed in accordance with the law of the Member State in which the SE has its registered office.

2. The provisions of laws adopted by Member States specifically for the SE must be in accordance with Directives applicable to public limited-liability companies referred to in Annex I.

3. If the nature of the business carried out by an SE is regulated by specific provisions of national laws, those laws shall apply in full to the SE.

Article 10

Subject to this Regulation, an SE shall be treated in every Member State as if it were a public limited-liability company formed in accordance with the law of the Member State in which it has its registered office.

Article 11

1. The name of an SE shall be preceded or followed by the abbreviation SE.

2. Only SEs may include the abbreviation SE in their name.

3. Nevertheless, companies, firms and other legal entities registered in a Member State before the date of entry into force of this Regulation in the names of which the abbreviation SE appears shall not be required to alter their names.

Article 12

1. Every SE shall be registered in the Member State in which it has its registered office in a register designated by the law of that Member State in accordance with Article 3 of the first Council Directive (68/151/EEC) of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1).

2. An SE may not be registered unless an agreement on arrangements for employee involvement pursuant to Article 4 of Directive 2001/86/EC has been concluded, or a decision pursuant to Article 3(6) of the Directive has been taken, or the period for negotiations pursuant to Article 5 of the Directive has expired without an agreement having been concluded.

3. In order for an SE to be registered in a Member State which has made use of the option referred to in Article 7(3) of Directive 2001/86/EC, either an agreement pursuant to Article 4 of the Directive must have been concluded on the arrangements for employee involvement, including participation, or none of the participating companies must have been governed by participation rules prior to the registration of the SE.

4. The statutes of the SE must not conflict at any time with the arrangements for employee involvement which have been so determined. Where new such arrangements determined pursuant to the Directive conflict with the existing statutes, the statutes shall to the extent necessary be amended.

In this case, a Member State may provide that the management organ or the administrative organ of the SE shall be entitled to proceed to amend the statutes without any further decision from the general shareholders meeting.

Article 13

Publication of the documents and particulars concerning an SE which must be publicised under this Regulation shall be effected in the manner laid down in the laws of the Member State in which the SE has its registered office in accordance with Directive 68/151/EEC.

Article 14

1. Notice of an SE's registration and of the deletion of such a registration shall be published for information purposes in the Official Journal of the European Communities after publication in accordance with Article 13. That notice shall state the name, number, date and place of registration of the SE, the date and place of publication and the title of publication, the registered office of the SE and its sector of activity.

2. Where the registered office of an SE is transferred in accordance with Article 8, notice shall be published giving the information provided for in paragraph 1, together with that relating to the new registration.

3. The particulars referred to in paragraph 1 shall be forwarded to the Office for Official Publications of the European Communities within one month of the publication referred to in Article 13.

TITLE II

FORMATION

Section 1

General

Article 15

1. Subject to this Regulation, the formation of an SE shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE establishes its registered office.

2. The registration of an SE shall be publicised in accordance with Article 13.

Article 16

1. An SE shall acquire legal personality on the date on which it is registered in the register referred to in Article 12.

2. If acts have been performed in an SE's name before its registration in accordance with Article 12 and the SE does not assume the obligations arising out of such acts after its registration, the natural persons, companies, firms or other legal entities which performed those acts shall be jointly and severally liable therefor, without limit, in the absence of agreement to the contrary.

Section 2

Formation by merger

Article 17

1. An SE may be formed by means of a merger in accordance with Article 2(1).

2. Such a merger may be carried out in accordance with:

   (a) the procedure for merger by acquisition laid down in Article 3(1) of the third Council Directive (78/855/EEC) of 9 October 1978 based on Article 54(3)(g) of the Treaty concerning mergers of public limited-liability companies (1) or

   (b) the procedure for merger by the formation of a new company laid down in Article 4(1) of the said Directive.

In the case of a merger by acquisition, the acquiring company shall take the form of an SE when the merger takes place. In the case of a merger by the formation of a new company, the SE shall be the newly formed company.

Article 18

For matters not covered by this section or, where a matter is partly covered by it, for aspects not covered by it, each company involved in the formation of an SE by merger shall be governed by the provisions of the law of the Member State to which it is subject that apply to mergers of public limited-liability companies in accordance with Directive 78/855/EEC.

Article 19

The laws of a Member State may provide that a company governed by the law of that Member State may not take part in the formation of an SE by merger if any of that Member State's competent authorities opposes it before the issue of the certificate referred to in Article 25(2).

Such opposition may be based only on grounds of public interest. Review by a judicial authority shall be possible.

**Article 20**

1. The management or administrative organs of merging companies shall draw up draft terms of merger. The draft terms of merger shall include the following particulars:

(a) the name and registered office of each of the merging companies together with those proposed for the SE;

(b) the share-exchange ratio and the amount of any compensation;

(c) the terms for the allotment of shares in the SE;

(d) the date from which the holding of shares in the SE will entitle the holders to share in profits and any special conditions affecting that entitlement;

(e) the date from which the transactions of the merging companies will be treated for accounting purposes as being those of the SE;

(f) the rights conferred by the SE on the holders of shares to which special rights are attached and on the holders of securities other than shares, or the measures proposed concerning them;

(g) any special advantage granted to the experts who examine the draft terms of merger or to members of the administrative, management, supervisory or controlling organs of the merging companies;

(h) the statutes of the SE;

(i) information on the procedures by which arrangements for employee involvement are determined pursuant to Directive 2001/86/EC.

2. The merging companies may include further items in the draft terms of merger.

**Article 21**

For each of the merging companies and subject to the additional requirements imposed by the Member State to which the company concerned is subject, the following particulars shall be published in the national gazette of that Member State:

(a) the type, name and registered office of every merging company;

(b) the register in which the documents referred to in Article 3(2) of Directive 68/151/EEC are filed in respect of each merging company, and the number of the entry in that register;

(c) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of the creditors of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(d) an indication of the arrangements made in accordance with Article 24 for the exercise of the rights of minority shareholders of the company in question and the address at which complete information on those arrangements may be obtained free of charge;

(e) the name and registered office proposed for the SE.

**Article 22**

As an alternative to experts operating on behalf of each of the merging companies, one or more independent experts as defined in Article 10 of Directive 78/855/EEC, appointed for those purposes at the joint request of the companies by a judicial or administrative authority in the Member State of one of the merging companies or of the proposed SE, may examine the draft terms of merger and draw up a single report to all the shareholders.

The experts shall have the right to request from each of the merging companies any information they consider necessary to enable them to complete their function.

**Article 23**

1. The general meeting of each of the merging companies shall approve the draft terms of merger.

2. Employee involvement in the SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each of the merging companies may reserve the right to make registration of the SE conditional upon its express ratification of the arrangements so decided.

**Article 24**

1. The law of the Member State governing each merging company shall apply as in the case of a merger of public limited-liability companies, taking into account the cross-border nature of the merger, with regard to the protection of the interests of:

(a) creditors of the merging companies;
(b) holders of bonds of the merging companies;

c) holders of securities, other than shares, which carry special rights in the merging companies.

2. A Member State may, in the case of the merging companies governed by its law, adopt provisions designed to ensure appropriate protection for minority shareholders who have opposed the merger.

**Article 25**

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning each merging company, in accordance with the law on mergers of public limited-liability companies of the Member State to which the merging company is subject.

2. In each Member State concerned the court, notary or other competent authority shall issue a certificate conclusively attesting to the completion of the pre-merger acts and formalities.

3. If the law of a Member State to which a merging company is subject provides for a procedure to scrutinise and amend the share-exchange ratio, or a procedure to compensate minority shareholders, without preventing the registration of the merger, such procedures shall only apply if the other merging companies situated in Member States which do not provide for such procedure explicitly accept, when approving the draft terms of the merger in accordance with Article 23(1), the possibility for the shareholders of that merging company to have recourse to such procedure. In such cases, the court, notary or other competent authorities may issue the certificate referred to in paragraph 2 even if such a procedure has been commenced. The certificate must, however, indicate that the procedure is pending. The decision in the procedure shall be binding on the acquiring company and all its shareholders.

**Article 26**

1. The legality of a merger shall be scrutinised, as regards the part of the procedure concerning the completion of the merger and the formation of the SE, by the court, notary or other authority competent in the Member State of the proposed registered office of the SE to scrutinise that aspect of the legality of mergers of public limited-liability companies.

2. To that end each merging company shall submit to the competent authority the certificate referred to in Article 23(2) within six months of its issue together with a copy of the draft terms of merger approved by that company.

3. The authority referred to in paragraph 1 shall in particular ensure that the merging companies have approved draft terms of merger in the same terms and that arrangements for employee involvement have been determined pursuant to Directive 2001/86/EC.

4. That authority shall also satisfy itself that the SE has been formed in accordance with the requirements of the law of the Member State in which it has its registered office in accordance with Article 15.

**Article 27**

1. A merger and the simultaneous formation of an SE shall take effect on the date on which the SE is registered in accordance with Article 12.

2. The SE may not be registered until the formalities provided for in Articles 25 and 26 have been completed.

**Article 28**

For each of the merging companies the completion of the merger shall be publicised as laid down by the law of each Member State in accordance with Article 3 of Directive 68/151/EEC.

**Article 29**

1. A merger carried out as laid down in Article 17(2)(a) shall have the following consequences *ipso jure* and simultaneously:

   (a) all the assets and liabilities of each company being acquired are transferred to the acquiring company;

   (b) the shareholders of the company being acquired become shareholders of the acquiring company;

   (c) the company being acquired ceases to exist;

   (d) the acquiring company adopts the form of an SE.

2. A merger carried out as laid down in Article 17(2)(b) shall have the following consequences *ipso jure* and simultaneously:

   (a) all the assets and liabilities of the merging companies are transferred to the SE;
(b) the shareholders of the merging companies become shareholders of the SE;

(c) the merging companies cease to exist.

3. Where, in the case of a merger of public limited-liability companies, the law of a Member State requires the completion of any special formalities before the transfer of certain assets, rights and obligations by the merging companies becomes effective against third parties, those formalities shall apply and shall be carried out either by the merging companies or by the SE following its registration.

4. The rights and obligations of the participating companies on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE upon its registration.

**Article 30**

A merger as provided for in Article 2(1) may not be declared null and void once the SE has been registered.

The absence of scrutiny of the legality of the merger pursuant to Articles 25 and 26 may be included among the grounds for the winding-up of the SE.

**Article 31**

1. Where a merger within the meaning of Article 17(2)(a) is carried out by a company which holds all the shares and other securities conferring the right to vote at general meetings of another company, neither Article 20(1)(b), (c) and (d), nor Article 22 shall apply. National law governing each merging company and mergers of public limited-liability companies in accordance with Article 24 of Directive 78/855/EEC shall nevertheless apply.

2. Where a merger by acquisition is carried out by a company which holds 90 % or more but not all of the shares and other securities conferring the right to vote at general meetings of another company, reports by the management or administrative body, reports by an independent expert or experts and the documents necessary for scrutiny shall be required only to the extent that the national law governing either the acquiring company or the company being acquired so requires.

Member States may, however, provide that this paragraph may apply where a company holds shares conferring 90 % or more but not all of the voting rights.

**Section 3**

**Formation of a holding SE**

**Article 32**

1. A holding SE may be formed in accordance with Article 2(2).

A company promoting the formation of a holding SE in accordance with Article 2(2) shall continue to exist.

2. The management or administrative organs of the companies which promote such an operation shall draw up, in the same terms, draft terms for the formation of the holding SE. The draft terms shall also set out the particulars provided for in Article 20(1)(a), (b), (c), (i), (g), (h) and (i) and shall fix the minimum proportion of the shares in each of the companies promoting the operation which the shareholders must contribute to the formation of the holding SE. That proportion shall be shares conferring more than 50 % of the permanent voting rights.

3. For each of the companies promoting the operation, the draft terms for the formation of the holding SE shall be publicised in the manner laid down in each Member State’s national law in accordance with Article 3 of Directive 68/151/EEC at least one month before the date of the general meeting called to decide thereon.

4. One or more experts independent of the companies promoting the operation, appointed or approved by a judicial or administrative authority in the Member State to which each company is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC, shall examine the draft terms of formation drawn up in accordance with paragraph 2 and draw up a written report for the shareholders of each company. By agreement between the companies promoting the operation, a single written report may be drawn up for the shareholders of all the companies by one or more independent experts, appointed or approved by a judicial or administrative authority in the Member State to which one of the companies promoting the operation or the proposed SE is subject in accordance with national provisions adopted in implementation of Directive 78/855/EEC.
5. The report shall indicate any particular difficulties of valuation and state whether the proposed share-exchange ratio is fair and reasonable, indicating the methods used to arrive at it and whether such methods are adequate in the case in question.

6. The general meeting of each company promoting the operation shall approve the draft terms of formation of the holding SE.

Employee involvement in the holding SE shall be decided pursuant to Directive 2001/86/EC. The general meetings of each company promoting the operation may reserve the right to make registration of the holding SE conditional upon its express ratification of the arrangements so decided.

7. These provisions shall apply mutatis mutandis to private limited-liability companies.

**Article 33**

1. The shareholders of the companies promoting such an operation shall have a period of three months in which to inform the promoting companies whether they intend to contribute their shares to the formation of the holding SE. That period shall begin on the date upon which the terms for the formation of the holding SE have been finally determined in accordance with Article 32.

2. The holding SE shall be formed only if, within the period referred to in paragraph 1, the shareholders of the companies promoting the operation have assigned the minimum proportion of shares in each company in accordance with the draft terms of formation and if all the other conditions are fulfilled.

3. If the conditions for the formation of the holding SE are all fulfilled in accordance with paragraph 2, that fact shall, in respect of each of the promoting companies, be publicised in the manner laid down in the national law governing each of those companies adopted in implementation of Article 3 of Directive 68/151/EEC. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.

Shareholders of the companies promoting the operation who have not indicated whether they intend to make their shares available to the promoting companies for the purpose of forming the holding SE within the period referred to in paragraph 1 shall have a further month in which to do so.

4. Shareholders who have contributed their securities to the formation of the SE shall receive shares in the holding SE.

5. The holding SE may not be registered until it is shown that the formalities referred to in Article 32 have been completed and that the conditions referred to in paragraph 2 have been fulfilled.

**Article 34**

A Member State may, in the case of companies promoting such an operation, adopt provisions designed to ensure protection for minority shareholders who oppose the operation, creditors and employees.

**Section 4**

**Formation of a subsidiary SE**

**Article 35**

An SE may be formed in accordance with Article 2(3).

**Article 36**

Companies, firms and other legal entities participating in such an operation shall be subject to the provisions governing their participation in the formation of a subsidiary in the form of a public limited-liability company under national law.

**Section 5**

**Conversion of an existing public limited-liability company into an SE**

**Article 37**

1. An SE may be formed in accordance with Article 2(4).

2. Without prejudice to Article 12 the conversion of a public limited-liability company into an SE shall not result in the winding up of the company or in the creation of a new legal person.

3. The registered office may not be transferred from one Member State to another pursuant to Article 8 at the same time as the conversion is effected.

4. The management or administrative organ of the company in question shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications for the shareholders and for the employees of the adoption of the form of an SE.

5. The draft terms of conversion shall be publicised in the manner laid down in each Member State’s law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called upon to decide thereon.
6. Before the general meeting referred to in paragraph 7 one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the company being converted into an SE is subject shall certify in compliance with Directive 77/91/EEC (1) mutatis mutandis that the company has net assets at least equivalent to its capital plus those reserves which must not be distributed under the law or the Statutes.

7. The general meeting of the company in question shall approve the draft terms of conversion together with the statutes of the SE. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

8. Member States may condition a conversion to a favourable vote of a qualified majority or unanimity in the organ of the company to be converted within which employee participation is organised.

9. The rights and obligations of the company to be converted on terms and conditions of employment arising from national law, practice and individual employment contracts or employment relationships and existing at the date of the registration shall, by reason of such registration be transferred to the SE.

TITLE III

STRUCTURE OF THE SE

Article 38

Under the conditions laid down by this Regulation an SE shall comprise:

(a) a general meeting of shareholders and

(b) either a supervisory organ and a management organ (two-tier system) or an administrative organ (one-tier system) depending on the form adopted in the statutes.

Article 39

Two-tier system

1. The management organ shall be responsible for managing the SE. A Member State may provide that a managing director or managing directors shall be responsible for the current management under the same conditions as for public limited-liability companies that have registered offices within that Member State's territory.

2. The member or members of the management organ shall be appointed and removed by the supervisory organ.

A Member State may, however, require or permit the statutes to provide that the member or members of the management organ shall be appointed and removed by the general meeting under the same conditions as for public limited-liability companies that have registered offices within its territory.

3. No person may at the same time be a member of both the management organ and the supervisory organ of the same SE. The supervisory organ may, however, nominate one of its members to act as a member of the management organ in the event of a vacancy. During such a period the functions of the person concerned as a member of the supervisory organ shall be suspended. A Member State may impose a time limit on such a period.

4. The number of members of the management organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, fix a minimum and/or a maximum number.

5. Where no provision is made for a two-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

Article 40

1. The supervisory organ shall supervise the work of the management organ. It may not itself exercise the power to manage the SE.

2. The members of the supervisory organ shall be appointed by the general meeting. The members of the first supervisory organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

3. The number of members of the supervisory organ or the rules for determining it shall be laid down in the statutes. A Member State may, however, stipulate the number of members of the supervisory organ for SEs registered within its territory or a minimum and/or a maximum number.

**Article 41**

1. The management organ shall report to the supervisory organ at least once every three months on the progress and foreseeable development of the SE's business.

2. In addition to the regular information referred to in paragraph 1, the management organ shall promptly pass the supervisory organ any information on events likely to have an appreciable effect on the SE.

3. The supervisory organ may require the management organ to provide information of any kind which it needs to exercise supervision in accordance with Article 40(1). A Member State may provide that each member of the supervisory organ also be entitled to this facility.

4. The supervisory organ may undertake or arrange for any investigations necessary for the performance of its duties.

5. Each member of the supervisory organ shall be entitled to examine all information submitted to it.

**Article 42**

The supervisory organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

**Section 2**

**The one-tier system**

**Article 43**

1. The administrative organ shall manage the SE. A Member State may provide that a managing director or managing directors shall be responsible for the day-to-day management under the same conditions as for public limited-liability companies that have registered offices within that Member State’s territory.

2. The number of members of the administrative organ or the rules for determining it shall be laid down in the SE's statutes. A Member State may, however, set a minimum and, where necessary, a maximum number of members.

The administrative organ shall, however, consist of at least three members where employee participation is regulated in accordance with Directive 2001/86/EC.

3. The member or members of the administrative organ shall be appointed by the general meeting. The members of the first administrative organ may, however, be appointed by the statutes. This shall apply without prejudice to Article 47(4) or to any employee participation arrangements determined pursuant to Directive 2001/86/EC.

4. Where no provision is made for a one-tier system in relation to public limited-liability companies with registered offices within its territory, a Member State may adopt the appropriate measures in relation to SEs.

**Article 44**

1. The administrative organ shall meet at least once every three months at intervals laid down by the statutes to discuss the progress and foreseeable development of the SE's business.

2. Each member of the administrative organ shall be entitled to examine all information submitted to it.

**Article 45**

The administrative organ shall elect a chairman from among its members. If half of the members are appointed by employees, only a member appointed by the general meeting of shareholders may be elected chairman.

**Section 3**

**Rules common to the one-tier and two-tier systems**

**Article 46**

1. Members of company organs shall be appointed for a period laid down in the statutes not exceeding six years.
2. Subject to any restrictions laid down in the statutes, members may be reappointed once or more than once for the period determined in accordance with paragraph 1.

Article 47

1. An SE's statutes may permit a company or other legal entity to be a member of one of its organs, provided that the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated does not provide otherwise.

That company or other legal entity shall designate a natural person to exercise its functions on the organ in question.

2. No person may be a member of any SE organ or a representative of a member within the meaning of paragraph 1 who:

(a) is disqualified, under the law of the Member State in which the SE's registered office is situated, from serving on the corresponding organ of a public limited-liability company governed by the law of that Member State, or

(b) is disqualified from serving on the corresponding organ of a public limited-liability company governed by the law of a Member State owing to a judicial or administrative decision delivered in a Member State.

3. An SE's statutes may, in accordance with the law applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, lay down special conditions of eligibility for members representing the shareholders.

4. This Regulation shall not affect national law permitting a minority of shareholders or other persons or authorities to appoint some of the members of a company organ.

Article 48

1. An SE's statutes shall list the categories of transactions which require authorisation of the management organ by the supervisory organ in the two-tier system or an express decision by the administrative organ in the one-tier system.

A Member State may, however, provide that in the two-tier system the supervisory organ may itself make certain categories of transactions subject to authorisation.

2. A Member State may determine the categories of transactions which must at least be indicated in the statutes of SEs registered within its territory.

Article 49

The members of an SE's organs shall be under a duty, even after they have ceased to hold office, not to divulge any information which they have concerning the SE the disclosure of which might be prejudicial to the company's interests, except where such disclosure is required or permitted under national law provisions applicable to public limited-liability companies or is in the public interest.

Article 50

1. Unless otherwise provided by this Regulation or the statutes, the internal rules relating to quorums and decision-taking in SE organs shall be as follows:

(a) quorum: at least half of the members must be present or represented;

(b) decision-taking: a majority of the members present or represented.

2. Where there is no relevant provision in the statutes, the chairman of each organ shall have a casting vote in the event of a tie. There shall be no provision to the contrary in the statutes, however, where half of the supervisory organ consists of employees' representatives.

3. Where employee participation is provided for in accordance with Directive 2001/86/EC, a Member State may provide that the supervisory organ's quorum and decision-making shall, by way of derogation from the provisions referred to in paragraphs 1 and 2, be subject to the rules applicable, under the same conditions, to public limited-liability companies governed by the law of the Member State concerned.

Article 51

Members of an SE's management, supervisory and administrative organs shall be liable, in accordance with the provisions applicable to public limited-liability companies in the Member State in which the SE's registered office is situated, for loss or damage sustained by the SE following any breach on their part of the legal, statutory or other obligations inherent in their duties.

Section 4

General meeting

Article 52

The general meeting shall decide on matters for which it is given sole responsibility by:

(a) this Regulation or
(b) the legislation of the Member State in which the SE’s registered office is situated adopted in implementation of Directive 2001/86/EC.

Furthermore, the general meeting shall decide on matters for which responsibility is given to the general meeting of a public limited-liability company governed by the law of the Member State in which the SE’s registered office is situated, either by the law of that Member State or by the SE’s statutes in accordance with that law.

Article 53

Without prejudice to the rules laid down in this section, the organisation and conduct of general meetings together with voting procedures shall be governed by the law applicable to public limited-liability companies in the Member State in which the SE’s registered office is situated.

Article 54

1. An SE shall hold a general meeting at least once each calendar year, within six months of the end of its financial year, unless the law of the Member State in which the SE’s registered office is situated applicable to public limited-liability companies carrying on the same type of activity as the SE provides for more frequent meetings. A Member State may, however, provide that the first general meeting may be held at any time in the 18 months following an SE’s incorporation.

2. General meetings may be convened at any time by the management organ, the administrative organ, the supervisory organ or any other organ or competent authority in accordance with the national law applicable to public limited-liability companies in the Member State in which the SE’s registered office is situated.

Article 55

1. One or more shareholders who together hold at least 10 % of an SE’s subscribed capital may request the SE to convene a general meeting and draw up the agenda therefor; the SE’s statutes or national legislation may provide for a smaller proportion under the same conditions as those applicable to public limited-liability companies.

2. The request that a general meeting be convened shall state the items to be put on the agenda.

3. If, following a request made under paragraph 1, a general meeting is not held in due time and, in any event, within two months, the competent judicial or administrative authority within the jurisdiction of which the SE’s registered office is situated may order that a general meeting be convened within a given period or authorise either the shareholders who have requested it or their representatives to convene a general meeting. This shall be without prejudice to any national provisions which allow the shareholders themselves to convene general meetings.

Article 56

One or more shareholders who together hold at least 10 % of an SE’s subscribed capital may request that one or more additional items be put on the agenda of any general meeting. The procedures and time limits applicable to such requests shall be laid down by the national law of the Member State in which the SE’s registered office is situated or, failing that, by the SE’s statutes. The above proportion may be reduced by the statutes or by the law of the Member State in which the SE’s registered office is situated under the same conditions as are applicable to public limited-liability companies.

Article 57

Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE’s registered office is situated requires or permits a larger majority, the general meeting’s decisions shall be taken by a majority of the votes validly cast.

Article 58

The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper.

Article 59

1. Amendment of an SE’s statutes shall require a decision by the general meeting taken by a majority which may not be less than two thirds of the votes cast, unless the law applicable to public limited-liability companies in the Member State in which an SE’s registered office is situated requires or permits a larger majority.

2. A Member State may, however, provide that where at least half of an SE’s subscribed capital is represented, a simple majority of the votes referred to in paragraph 1 shall suffice.

3. Amendments to an SE’s statutes shall be publicised in accordance with Article 13.
Article 60

1. Where an SE has two or more classes of shares, every decision by the general meeting shall be subject to a separate vote by each class of shareholders whose class rights are affected thereby.

2. Where a decision by the general meeting requires the majority of votes specified in Article 59(1) or (2), that majority shall also be required for the separate vote by each class of shareholders whose class rights are affected by the decision.

Title V

WINDING UP, LIQUIDATION, INSOLVENCY AND CESSATION OF PAYMENTS

Article 63

As regards winding up, liquidation, insolvency, cessation of payments and similar procedures, an SE shall be governed by the legal provisions which would apply to a public limited-liability company formed in accordance with the law of the Member State in which its registered office is situated, including provisions relating to decision-making by the general meeting.

Article 64

1. When an SE no longer complies with the requirement laid down in Article 7, the Member State in which the SE's registered office is situated shall take appropriate measures to oblige the SE to regularise its position within a specified period either:

   (a) by re-establishing its head office in the Member State in which its registered office is situated or

   (b) by transferring the registered office by means of the procedure laid down in Article 8.

2. The Member State in which the SE's registered office is situated shall put in place the measures necessary to ensure that an SE which fails to regularise its position in accordance with paragraph 1 is liquidated.

3. The Member State in which the SE's registered office is situated shall set up a judicial remedy with regard to any infringement of Article 7. That remedy shall have a suspensory effect on the procedures laid down in paragraphs 1 and 2.

4. Where it is established on the initiative of either the authorities or any interested party that an SE has its head office within the territory of a Member State in breach of Article 7, the authorities of that Member State shall immediately inform the Member State in which the SE's registered office is situated.

Article 65

Without prejudice to provisions of national law requiring additional publication, the initiation and termination of winding up, liquidation, insolvency or cessation of payment procedures and any decision to continue operating shall be publicised in accordance with Article 13.

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Article 66

1. An SE may be converted into a public limited-liability company governed by the law of the Member State in which its registered office is situated. No decision on conversion may be taken before two years have elapsed since its registration or before the first two sets of annual accounts have been approved.

2. The conversion of an SE into a public limited-liability company shall not result in the winding up of the company or in the creation of a new legal person.

3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.

4. The draft terms of conversion shall be published in the manner laid down in each Member State’s law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.

6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

TITLE VI
ADDITIONAL AND TRANSITIONAL PROVISIONS

Article 67

1. If and so long as the third phase of economic and monetary union (EMU) does not apply to it each Member State may make SEs with registered offices within its territory subject to the same provisions as apply to public limited-liability companies covered by its legislation as regards the expression of their capital. An SE may, in any case, express its capital in euro as well. In that event the national currency/euro conversion rate shall be that for the last day of the month preceding that of the formation of the SE.

2. If and so long as the third phase of EMU does not apply to the Member State in which an SE has its registered office, the SE may, however, prepare and publish its annual and, where appropriate, consolidated accounts in euro. The Member State may require that the SE’s annual and, where appropriate, consolidated accounts be prepared and published in the national currency under the same conditions as those laid down for public limited-liability companies governed by the law of that Member State. This shall not prejudice the additional possibility for an SE of publishing its annual and, where appropriate, consolidated accounts in euro in accordance with Council Directive 90/604/EEC of 8 November 1990 amending Directive 78/60/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as concerns the exemptions for small and medium-sized companies and the publication of accounts in ecu.

3. The management or administrative organ of the SE shall draw up draft terms of conversion and a report explaining and justifying the legal and economic aspects of the conversion and indicating the implications of the adoption of the public limited-liability company for the shareholders and for the employees.

4. The draft terms of conversion shall be published in the manner laid down in each Member State’s law in accordance with Article 3 of Directive 68/151/EEC at least one month before the general meeting called to decide thereon.

5. Before the general meeting referred to in paragraph 6, one or more independent experts appointed or approved, in accordance with the national provisions adopted in implementation of Article 10 of Directive 78/855/EEC, by a judicial or administrative authority in the Member State to which the SE being converted into a public limited-liability company is subject shall certify that the company has assets at least equivalent to its capital.

6. The general meeting of the SE shall approve the draft terms of conversion together with the statutes of the public limited-liability company. The decision of the general meeting shall be passed as laid down in the provisions of national law adopted in implementation of Article 7 of Directive 78/855/EEC.

TITLE VII
FINAL PROVISIONS

Article 68

1. The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

2. Each Member State shall designate the competent authorities within the meaning of Articles 8, 25, 26, 54, 55 and 64. It shall inform the Commission and the other Member States accordingly.

Article 69

Five years at the latest after the entry into force of this Regulation, the Commission shall forward to the Council and the European Parliament a report on the application of the Regulation and proposals for amendments, where appropriate. The report shall, in particular, analyse the appropriateness of:

(a) allowing the location of an SE’s head office and registered office in different Member States;

(b) broadening the concept of merger in Article 17(2) in order to admit also other types of merger than those defined in Articles 3(1) and 4(1) of Directive 78/855/EEC;

(c) revising the jurisdiction clause in Article 8(16) in the light of any provision which may have been inserted in the 1968 Brussels Convention or in any text adopted by Member States or by the Council to replace such Convention;

(d) allowing provisions in the statutes of an SE adopted by a Member State in execution of authorisations given to the Member States by this Regulation or laws adopted to ensure the effective application of this Regulation in respect to the SE which deviate from or are complementary to these laws, even when such provisions would not be authorised in the statutes of a public limited-liability company having its registered office in the Member State.

Article 70

This Regulation shall enter into force on 8 October 2004.

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

Done at Luxembourg, 8 October 2001.

For the Council
The President
L. ONKELINX
ANNEX I

PUBLIC LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(1)

BELGIUM:
la société anonyme/de naamloze vennootschap

DENMARK:
aktieselskaber

GERMANY:
die Aktiengesellschaft

GREECE:
εταιρεία τύπου

SPAIN:
la sociedad anónima

FRANCE:
la société anonyme

IRELAND:
public companies limited by shares
public companies limited by guarantee having a share capital

ITALY:
società per azioni

LUXEMBOURG:
la société anonyme

NETHERLANDS:
de naamloze vennootschap

AUSTRIA:
die Aktiengesellschaft

PORTUGAL:
a sociedade anónima de responsabilidade limitada

FINLAND:
julkinen osakeyhtiö/publikt aktiebolag

SWEDEN:
publikt aktiebolag

UNITED KINGDOM:
public companies limited by shares
public companies limited by guarantee having a share capital
ANNEX II

PUBLIC AND PRIVATE LIMITED-LIABILITY COMPANIES REFERRED TO IN ARTICLE 2(2)

BELGIUM:
la société anonyme/de naamloze vennootschap,
la société privée à responsabilité limitée/besloten vennootschap met beperkte aansprakelijkheid

DENMARK:
aktieselskaber,
anpartselskaber

GERMANY:
die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

GREECE:
ανώνυμη εταιρία
etαιρία περιορισμένης ευθύνης

SPAIN:
la sociedad anónima,
la sociedad de responsabilidad limitada

FRANCE:
la société anonyme,
la société à responsabilité limitée

IRELAND:
public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital

ITALY:
società per azioni,
società a responsabilità limitata

LUXEMBOURG:
la société anonyme,
la société à responsabilité limitée

NETHERLANDS:
de naamloze vennootschap,
de besloten vennootschap met beperkte aansprakelijkheid
AUSTRIA:
die Aktiengesellschaft,
die Gesellschaft mit beschränkter Haftung

PORTUGAL:
a sociedade anónima de responsabilidade limitada,
a sociedade por quotas de responsabilidade limitada

FINLAND:
osakeyhtiö
aktiebolag

SWEDEN:
aktiebolag

UNITED KINGDOM:
public companies limited by shares,
public companies limited by guarantee having a share capital,
private companies limited by shares,
private companies limited by guarantee having a share capital
European Economic Interest Grouping (EEIG)

Official Journal L 199, 31/07/1985 P. 0001 - 0009
Finnish special edition: Chapter 17 Volume 1 P. 0090
Spanish special edition: Chapter 17 Volume 2 P. 0003
Swedish special edition: Chapter 17 Volume 1 P. 0090
Portuguese special edition Chapter 17 Volume 2 P. 0003

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COUNCIL REGULATION (EEC) No 2137/85
of 25 July 1985
on the European Economic Interest Grouping (EEIG)
THE COUNCIL OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,
Having regard to the proposal from the Commission (1),
Having regard to the opinion of the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee (3),
Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishment and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;
Whereas cooperation of this nature can encounter legal, fiscal or psychological difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the abovementioned objectives and therefore proves necessary;
Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;
Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;
Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;
Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;
Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented vis-à-vis third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:
- social and labour laws,
- competition law,
- intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.
2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

(a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;

(b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;

(c) employ more than 500 persons;

(d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Member States' laws governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;

(e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:

(a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;

(b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:
(a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or
(b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or
(c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5
A contract for the formation of a grouping shall include at least:
(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;
(b) the official address of the grouping;
(c) the objects for which the grouping is formed;
(d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;
(e) the duration of the grouping, except where this is indefinite.

Article 6
A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39 (1).

Article 7
A contract for the formation of a grouping shall be filed at the registry referred to in Article 6. The following documents and particulars must also be filed at that registry:
(a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;
(b) notice of the setting up or closure of any establishment of the grouping;
(c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;
(d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;
(e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22 (1);
(f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;
(g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particulars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;
(h) notice of the conclusion of a grouping’s liquidation, as referred to in Article 35 (2);
(i) any proposal to transfer the official address, as referred to in Article 14 (1);
(j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26 (2).

Article 8
The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:
(a) the particulars which must be included in the contract for the formation of a grouping, pursuant to Article 5, and any amendments thereto;
(b) the number, date and place of registration as well as notice of the termination of that registration;
(c) the documents and particulars referred to in Article 7 (b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

Article 9
1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions laid down by the national law applicable pursuant to Article 3 (5) and (7) of Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (1).
2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

Article 10
Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

Article 11
Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the Official Journal of the European Communities after it has been published in the gazette referred to in Article 39 (1).

Article 12
The official address referred to in the contract for the formation of a grouping must be situated in the Community.
The official address must be fixed either:
(a) where the grouping has its central administration, or
(b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

Article 13
The official address of a grouping may be transferred within the Community.
When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

Article 14
1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.
No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.
2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.
3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.
4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

Article 15
1. Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.
2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.
3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9 (1).
Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16
1. The organs of a grouping shall be the members acting collectively and the manager or managers.
A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.
2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17
1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.
2. A unanimous decision by the members shall be required to:
   (a) alter the objects of a grouping;
   (b) alter the number of votes allotted to each member;
   (c) alter the conditions for the taking of decisions;
   (d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;
   (e) alter the contribution by every member or by some members to the grouping's financing;
   (f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;
   (g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.
3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.
4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

Article 18
Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records.

Article 19
1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.
   No person may be a manager of a grouping if:
   - by virtue of the law applicable to him, or
   - by virtue of the internal law of the State in which the grouping has its official address, or
   - following a judicial or administrative decision made or recognized in a Member State he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.
2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7 (d) to represent them.
   If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.
   The restrictions imposed in paragraph 1 shall also apply to those representatives.
3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the objects of the grouping; publication of the particulars referred to in Article 5 (c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1) only if it is published in accordance with Article 8.

Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall contribute to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

Article 23

No grouping may invite investment by the public. Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

Article 25

Letters, order forms and similar documents must indicate legibly:

(a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;
(b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;
(c) the grouping's official address;
(d) where applicable, that the managers must act jointly;
(e) where applicable, that the grouping is in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

Article 26
1. A decision to admit new members shall be taken unanimously by the members of the grouping.
2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9 (1), only if it is published in accordance with Article 8.

Article 27
1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

Article 28
1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4 (1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

Article 29
As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 30
Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for the remaining members after a member has ceased to belong to it, in
accordance with the conditions laid down in the contract for the formation of the grouping or
determined by unanimous decision of the members in question.

Article 31
1. A grouping may be wound up by a decision of its members ordering its winding up. Such a
decision shall be taken unanimously, unless otherwise laid down in the contract for the
formation of the grouping. 2. A grouping must be wound up by a decision of its members:
(a) noting the expiry of the period fixed in the contract for the formation of the grouping or
the existence of any other cause for winding up provided for in the contract, or
(b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it
further.
Where, three months after one of the situation referred to in the first subparagraph has
occurred, a members' decision establishing the winding up of the grouping has not been
taken, any member may petition the court to order winding up.
3. A grouping must also be wound up by a decision of its members or of the remaining
member when the conditions laid down in Article 4 (2) are no longer fulfilled.
4. After a grouping has been wound up by decision of its members, the manager or
managers must take the steps required as listed in Articles 7 and 8. In addition, any person
concerned may take those steps.

Article 32
1. On application by any person concerned or by a competent authority, in the event of the
infringement of Articles 3, 12 or 31 (3), the court must order a grouping to be wound up,
unless its affairs can be and are put in order before the court has delivered a substantive
ruling.
2. On applications by a member, the court may order a grouping to be wound up on just and
proper grounds.
3. A Member State may provide that the court may, on application by a competent authority,
order the winding up of a grouping which has its official address in the State to which that
authority belongs, wherever the grouping acts in contravention of that State's public interest,
if the law of that State provides for such a possibility in respect of registered companies or
other legal bodies subject to it.

Article 33
When a member ceases to belong to a grouping for any reason other than the assignment of
his rights in accordance with the conditions laid down in Article 22 (1), the value of his rights
and obligations shall be determined taking into account the assets and liabilities of the
grouping as they stand when he ceases to belong to it.
The value of the rights and obligations of a departing member may not be fixed in advance.

Article 34
Without prejudice to Article 37 (1), any member who ceases to belong to a grouping shall
remain answerable, in accordance with the conditions laid down in Article 24, for the debts
and other liabilities arising out of the grouping's activities before he ceased to be a member.

Article 35
1. The winding up of a grouping shall entail its liquidation.
2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by
national law.
3. A grouping shall retain its capacity, within the meaning of Article 1 (2), until its liquidation
is concluded.
4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

Article 36
Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

Article 37
1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

Article 38
Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Article 39
1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8 (c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the Official Journal of the European Communities pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

Article 40
The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

Article 41
1. The Member States shall take the measures required by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4 (4). The Commission shall inform the other Member States.

Article 42
1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its function shall be:

(a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;
(b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

Article 43

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

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


For the Council
The President
J. POOS

(2) OJ No C 163, 11. 7. 1977, p. 17.
(3) OJ No C 108, 15. 5. 1975, p. 46.
(1) OJ No L 65, 14. 3. 1968, p. 8.

Source: