

ANNEX

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.

(...)

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 (...) 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 I: 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.