Statute for a European mutual society

1991/0390(COD) - 05/03/1992 - Legislative proposal

PURPOSE : to establish a European statute for European mutual societies, taking account of their specific nature, notably their work of general interest and to provide this sector with an appropriate legal instrument.

PROPOSED ACT : Council Regulation

CONTENT : the proposal aims to establish a European legal instrument for the benefit of mutual society having transnational activities and comprised of members from at least two Member States. The proposed statute will confer on European mutual societies (EMS) a legal personality throughout the Community.

Basic principle: the European mutual society (EMS) is defined as a grouping of persons which guarantees to its members, against the payment of subscriptions, the full settlement of contractual duties undertaken within the framework of activities authorised by its articles, particularly provident, insurance, healthcare and credit.

The EMS will have legal personality from the time of its registration in the register designated by the State where it has its headquarters.

The Regulation does not affect compulsory social security systems which are managed in some Member states by provident societies, nor does it affect the rights of Member States to decide to entrust the management of these systems to EMSs.

The regulation provides for the constitution of an EMS by national legal bodies.

The founding members must ensure the transnational character of the EMS at the time of its constitution, by verifying that the following conditions are fulfilled: the mutual societies or the comparable legal bodies should be constituted in accordance with the law of a Member State and have their statutory headquarters and their central administration within different Member States.

The Regulation also provides for constitution by conversion, without this conversion giving rise to dissolution or to the creation of a new legal body. This takes place when the EMS has an establishment or a subsidiary in a Member State other than that where its central administration is located and the EMS shows the effective and real exercise of a transnational activity.

The minimum amount of funds required to establish an EMS is EUR 100000 or its equivalent in national currency.

The headquarters of the EMS, fixed by its articles, must be situated within the Community and must correspond to the place where its central administration is located.

Operation: the statutes of the EMS stipulate the following bodies :

-a general assembly: this must be convened at least once a year, by the management or administrative body or at the request of 25% of its members;

-a management body and a supervisory body (dual system**)**: in this system, the management body takes charge of the management of the EMS. The member or members of the administrative body have the

power to direct the EMS with regard to third parties and to represent it at law. Furthermore, they are appointed or dismissed by the supervisory body. The roles of member of the management body and member of the supervisory body may not be carried out at the same time within the same EMS. However, the supervisory body may, in case of vacancy, designate one if its members to exercise the tasks of member of the management body;

OR

-an administrative body (single system): in this system, the administrative body takes charge of the management of the EMS. The member or members pf the administrative body have the power to direct the EMS with regard to third parties and to represent it at law. Only the management of the European society may be delegated by the administrative body to one or several of its members. The following operations require the authorisation of the supervisory body or the consideration of the administrative body:

-closure or relocation of a significant office or of an important part of such an office;

-restriction, extension or modification of the activity of the EMS in a significant way;

-a significant change in the organisation of the EMS;

-the establishment of a long-term and significant venture with other persons or the ending of such a venture;

-recourse to credit for operations exceeding the ceiling fixed by the statutes.

Specific provisions: the EMSis subjectto the legislation of the State of its headquarters in matters regarding the control and publication of its annual accounts and the consolidated accounts of the exiting community provisions. It is subject to the Fourth Directive 78/660/EEC on annual accounts, the seventh directive 83/349/EEC, the eighth directive 84/253/EEC of the Council concerning the accreditation of persons entrusted with the legal control of accounting documents, as well as the Council Directive concerning a general system of recognition of diplomas on profession training lasting a minimum of £ years

The dissolution of the EMS is declared, either by the decision of the general assembly, particularly at the expiry of the term fixed by statute or the diminution of capital below the fixed minimum, or when the seat of the EMS is relocated outside the Community. If EMSs are placed under liquidation or insolvency procedures, they are subject to the national provisions of the Member State where they have their headquarters.

It should be noted that the instrument proposed by the Commission is optional.