



Study on the current situation and prospects of mutuals in Europe

Final report

This study has been financed by the European Commission, DG
ENTR

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Projectnumber: BA03954

Zoetermeer, November 12, 2012

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Foreword

The research team is very pleased to present in this report the outcomes of the study on the current situation and prospects of mutuals in Europe. This study was commissioned by the European Commission, DG Enterprise within the context of the Framework Contract on economic studies in support of SME policies, ENTR/2007/040, Lot 1. The research activities were carried out by Panteia /EIM between November 2011 and October 2012.

The study took as its starting point a previous European Parliament study on the role of mutual societies in the 21st century (report published in July 2011). The aim of the present study is to provide the Commission with up to date knowledge to better assess the current situation of mutuals and allow a reasoned reflection on the need for eventual future policy development.

The study would not have been possible if the research team would not have had the cooperation of the mutual sector. Therefore, the research team would, besides the policy makers of the European Commission, DG Enterprise, thank the following organisations.

- First, we would like to thank the Steering Group consisting of representatives of the European associations of mutual-type organisations (AMICE: Association of Mutual Insurers and Insurance Cooperatives in Europe; AIM: Association Internationale de la Mutualité), who provided valuable feedback on intermediate research reports and products.
- Secondly, we would like to thank ICMIF (International Cooperative and Mutual Insurance Federation), who provided the most up-to-date information on the market share of mutual-type insurance organisations.
- Thirdly, we would like to thank all those persons and organisations who have contributed to the study by drawing up the country reports, providing country information, reflecting on specific national issues, and providing other input relevant to the study.
- Finally, our thanks also go to Lieve Lowet, partner, ICODA European Affairs, who shared her knowledge of the mutual sector with us and helped us to sharpen the formulations in a consistent way in the country reports and chapters.

A full list of persons and organisations being involved in the study can be found in the annex to this report.

To conclude, we hope that this report contributes to further enhancing the knowledge base of mutual-type organisations in Europe and hence, we would like to thank the reader for taking the opportunity to read the report and learn more about mutual-type organisations in the European context.

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Abbreviations

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
EL	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SI	Slovenia
ES	Spain
SE	Sweden
UK	United Kingdom
IS	Iceland
LI	Liechtenstein
NO	Norway
EU	European Union
EP	European Parliament
SCE	European Cooperative Society
SE	European Company
EMS	European Mutual Society
AMICE	Association of Mutual Insurers and Insurance Cooperatives in Europe
AIM	Association Internationale de la Mutualité
ICMIF	International Cooperative and Mutual Insurance Federation
TFEU	Treaty on the Functioning of the European Union
EEA	European Economic Area
SSGI	Social Services of General Interest
NESGI	Non Economic Services of General Interest
SGEI	Services of General Economic Interest
PLC	Public limited company

Executive summary

The objective of the study is to “provide the Commission with up to date knowledge to better assess the current situation of mutuals and allow a reasoned reflection on the need for eventual future policy development”. The study should include inter alia: a mapping of the relevant national legislation covering various types of mutuals operating in various sectors; a comprehensive overview of the mutuals’ activities, as well as the importance and role of mutuals per country; an inventory of difficulties and barriers mutuals may have when they try to grow and expand particularly cross border; identification of national measures in support of mutuals, and; recommendations for possible actions at national or European level, for the promotion of mutuals and the elimination of barriers impeding their development. The study has been conducted by researchers from Panteia, supported by experts from the countries studied. The methodology consisted in an inventory in thirty countries; a further analysis in ten countries (the Netherlands, Belgium, Germany, France, Poland, Sweden, United Kingdom, Italy, Portugal, and Finland); five case studies on particularly interesting practices and finally, interviews with European-level stakeholders. All in all, approximately hundred people contributed to the evidence base of the study.

The importance of mutual-type organisations in the European economy and society

There is a large diversity of legal forms associated with mutualism in the different countries. The way mutualism is shared and the role mutuals play depends on the cultural and historical background of mutualism in a country. Mutual-type organisations have a long history dating back to ancient times and gained importance in the 19th and 20th century. They stand at the basis of modern social protection systems. In total, approximately 40 types of mutual-like organisations have been identified in Europe. When applying the demarcation principles (private entity, grouping of persons, democratic governance, solidarity, owned by members, and recognised as a mutual by law), a large majority (approximately 95 %) falls inside the scope of the study.

In many countries, the mutual-type organisations’ activities are restricted to insurance in general or certain lines of insurance. In other countries, or even in the same country, other mutual-type organisations are excluded from underwriting insurance and need to restrict themselves to other services such as offering assistance, health care, social services, or small loans. There are also countries in which mutuals as such are not legally foreseen at all regardless of the market they wish to operate in (this is for instance the case in Estonia, Lithuania, Czech Republic). The market share of the mutual insurers remains at an equal level around 15.8 % (12.8 % in life; 20.5 % in non-life). In health care assistance and social services, mutuals are estimated to provide services to approximately 230 million European citizens.

It is widely agreed that the financial sector - and economies in the broad sense - benefit from diversity of ownership structures and company forms. This diversity makes it possible for sectors to adjust to changing circumstances. While in times of rising stock markets

joint-stock companies have an advantage in doing their business compared to mutuals, in times of crisis the longer-term perspective inherent in the business of mutuals might be more appropriate. Based on these arguments in favour of diversification, it can be argued that the mutualist idea should be further promoted for three reasons: mutuals are less prone than joint-stock-type insurers to pursue risky speculative activity; a mixed system contributes to stability in the financial sector in times of crisis; and a stronger mutual sector enhances competition.

The mutualisation of risks, i.e. the spreading the risk over a homogeneous group of persons is the most elementary and simple form of insurance. Although and even more because it has a long history, it has proven to be an effective way of insuring people and hence has added in the past and continues to add value to the economy and the society at large.

Legal status of mutual-type organisations

Most mutual-type organisations are in fact a special kind of association (1), cooperative (2) or company (3). Only in a few countries, a special regime for mutual-type organisations (4) is established. The underlying legal framework can determine the way mutual-type organisations are treated in terms of regulations concerning creation, corporate governance, tax issues. However, even more important, it seems, are the rules that are imposed on mutual-type organisations concerning the activity they conduct. In many countries, the mutual-type organisation is explicitly described and regulated in the insurance law. Whether in the insurance law the mutual-type organisations are based on associations, cooperatives or companies' legislation, is of minor importance, but not irrelevant. When mutual-type organisations are active in social protection and when they provide social services, often the legal framework is either based on a specific legal framework, or it is based on the legal framework of associations. An underlying legal framework of cooperative or company type is more often used for insurance companies. In offering (complementary) health insurance, mutual-type organisations from all four categories can be found.

With regard to establishing new mutuals, in general, across the countries, similar issues are dealt with in the **Statutes**. Such Statutes should commonly be agreed when establishing the mutual-type organisation. Concerning the **number of (founding) members**, there is a large variety of rules concerning the number of founding members needed to establish a mutual-type organisation. This minimum number of members can range from one to five hundred members. In many countries, there is no exact indication of the **initial (foundation) capital**. The initial capital depends for a large part on the financial plan behind setting up the mutual-type organisation. The capital should at least cover operational costs for initiating the organisation. In general, the initial capital for mutual-types having an underlying legal framework similar to associations is lower than the initial capital for mutual-type organisations similar to cooperatives and companies. To obtain an **insurance licence**, the mutual-type organisations need to apply for it. Usually, they need to provide the memorandum of association (the founding act), provide details concerning the founding members, provide the Statutes and pay the initial (foundation) capital. This initial capital is often set at the minimum guarantee capital levels. Concerning the **minimum capital requirements** for establishing a mutual-type organisation, this depends mainly on the activity-related capital requirements. As most types of mutual organisations in the countries studied are

solely involved in insurance, the European agreed capital requirements (the minimum guarantee fund) are applied everywhere. Under current legislation, Member States have the possibility to lower the guarantee fund by 25 % for mutual-type associations. In addition, very small insurers do not always have to comply with the European rules: in many countries non-directive insurers' regimes (de minimis regimes) are established. In general, mutual-type organisations need to be **registered** in the commercial, companies and /or trade registers.

Complying with the **capital requirements for an insurance licence** is indeed a particular issue for mutual-type organisations, when wishing to establishing a new mutual, since the capital can only be obtained from the (founding) members, there has to be a sufficient number of members (or sufficiently potent members) to provide the minimum of 2.5 million Euro (non-life) or 3.7 million Euro (life) (according to European life and non-life insurance Directives). Concerning **taxation**, only for a limited number of mutual (associations) operating in markets subject to free competition tax benefits exist. This is not a form of preferential treatment, but results from their legal form of being an association (hence, they are not regarded being a company and hence do not pay company tax). Only for a limited number of mutual-type organisation forms, **employee involvement** is described separately. In most cases, the employee involvement is closely aligned with association, company, or co-operative law and it does not cause any major difficulties in relation to members' control over the mutual-type organisation.

Besides these legal issues, there are also barriers relating to the **knowledge and understanding of mutualism** in many countries and especially at the level of the Supervisory Authorities and national policy makers. As a cause and/or consequence of this, there is in general a lack in Europe of **academic courses focussing on the mutual-type business form**. Furthermore, it is mostly the mutual-type organisations themselves, which provide information campaigns and develop educational offers.

Management and corporate governance of mutual-type organisations

A distinction can be made between one-tier and two-tier **governance models** for undertakings. In the one-tier model, executive directors and nonexecutive directors operate together in one organisational layer (the so-called one tier board). In a two-tier governance model, an additional organisational structure exists to make a clear distinction between the executive function and the monitoring function. Whether a country adopted a one-tier or a two-tier governance model for (mutual) companies has mostly historic roots. Traditionally, the two-tier model is applied in most Western-European, continental countries. The one-tier model is mostly applied in the Anglo-Saxon world. Concerning the difference between the two models, it is often mentioned that a two-tier structure provides a better control of the members over the board, as the board is being supervised by an additional organ within the company. Whether this is truly the case, remains – within this study – under-researched.

Concerning the **rights of members** there are slight differences across mutual-type organisations in Europe. In general, upon the existence of an insurance contract, the persons be-

come a member of the organisation. However, in many countries mutual insurers have the possibility to provide in their statutes that, contracts may also be offered to non-members.

The **representation of members** can be designed in two ways, either direct, or through delegates. In general, both options are legally possible and whether the one or the other applies is commonly specified in the Statutes of the mutual-type organisation. In general, in all types of mutual organisations the one-person, one-vote principle is applied. In the general meeting, decisions are usually made by a majority of the votes cast (simple majority of votes). Changing the Statutes usually requires a three-quarter majority. Besides these general principles, there are some deviations in the legal frameworks. In addition, specific rules concerning voting rights and representation of members are often the subject to the Statutes of the individual mutual-type organisations.

The default situation is that in mutual-type organisations **do not have shares**. This is indeed the case in most countries and applies to most mutual-type organisations. There are however, a number of deviations, where mutual-type organisations have possibilities to obtain external capital. It should be emphasised that this is mostly not in the form of share capital, but in the form of guarantee capital. In a number of countries, general company law applies and references to 'share capital' should be replaced by 'guarantee capital'. Holders of guarantee capital can receive interest on their capital, but the amount of guarantee capital does not increase or decrease when the company increases or decreases in value. It can be considered a form of subordinated debt. The possibility of allowing **external investors** is pivotal for overcoming capital barriers for establishing new mutuals.

Principally, **reserves** are used for the benefit of the members. In insurance mutuals, this often means building reserves to maintain the solvency margins, investing in improving the services and /or reducing next year premiums. Reserves can also, to a certain extent, be paid back to the current members. In many countries, there are flexible regulations concerning what should be done with annual surplus; more detailed provisions are commonly included in the organisations' Statutes.

Upon winding up, in total, 6 out of 38 legal forms in the European countries have a legal system, which assures that the **remaining assets** are distributed to similar (not-for-profit) types of organisations. In other regimes, the liquidation surplus is distributed to the (current) policyholders/members unless, in some cases, the Statutes of the organisation states otherwise. Finally, there are countries that do not address the issue in legislation; and hence the distribution of assets in case of liquidation is subject to the Statutes of the organisation. Although, asset protection systems discourage demutualisations from happening, no evidence was found that asset protection systems are necessary to prevent demutualisations from happening. Despite that the Irish and United Kingdom examples in the 90s show per-verse tendencies to profit from demutualisations, in other countries this does not seem to be neither the case, nor a much debated topic: in general, either members do not know about they own the organisation, or they know that they are better off maintaining the mutual-type organisation.

Disclosure rules are fairly the same for mutual-type organisations as any other organisation. There are exceptions having to do with either the size of the organisation (lower requirements) or the field of activity in which the organisation is involved.

Issues and barriers mutual-type organisations face in Europe

As can be concluded, mutual-type organisations are facing a number of obstacles, hampering them in their development and in their efforts to add value to the European economy and to society at large.

As mentioned, complying with the capital requirements for an insurance licence is one of the major challenges when establishing a new insurance mutual. The capital can only be obtained from the (founding) members; therefore, either the number of members or the initial capital each one provides must be large enough to raise the necessary 2.5 million Euro (non-life) or 3.7 million Euro (life) (or, under current legislation, the reduced amount – 25 % less) (according to European life and non-life Directives). There are however capital instruments and other possibilities for mutual-type organisations to obtain the required funds:

- In many countries, non-member investors and **external capital** in the form of **subordinated loans or guarantee capital** (i.e. not share capital) are legally allowed for mutual-type organisations
- **De minimis regimes** exist in a large number of the countries. In many countries, (capital) requirements for non-Directive insurers are set at a lower level than for insurers subject to the insurance Directives. These non-Directive insurers can however not benefit from the single market insurance passport and in order to operate abroad, they need to register themselves in the country. In addition, there is some movement to increase the regulatory pressure on smaller insurers (including mutual-type organisations) to align more with the Solvency II Directive requirements.
- In the United Kingdom (and other countries, such as Australia), it is legally possible to establish so-called **discretionary mutuals**. A discretionary mutual is a mutual which does not engage in or carry on insurance or reinsurance business; where a member who suffers a loss resulting from a “qualifying” risk or contingency (i.e. one previously specified by the mutual as one which it may indemnify members against), can apply for a grant of assistance to meet all or part of the costs associated with such loss. The member, however, has no contractual or other form of legal or equitable right to receive a compensatory payment. The mutual has absolute discretion whether to indemnify a member, on the mutual principle, who suffers a loss resulting from a “qualifying” risk or contingency.

Larger mutual-type organisations that are competing with joint-stock competitors often have to grow to achieve appropriate risk diversification and economies of scale. They therefore, need good access to external capital while maintaining their mutuality. However, allowing external capital (in any form) has consequences with regard to the mutualistic values. Not allowing external capital can serve as a protection mechanism to maintain mutuality. In addition to the obstacles concerning capital requirements, the **lack of expertise and information** on how to establish a mutual, poses a huge obstacle. In many countries, the legal framework applying to mutuals is old-fashioned, very concise, very restrictive, or unclear with regard to establishing new mutual-type organisations.

For mutuals not involved in insurance, but offering other services such as health care assistance, social services etc., the situation is different. As they do not face the activity-related barrier of having to provide a substantial initial fund, these mutual-type organisations can

be established more easily. In fact, the barriers for establishing a mutual-type organisation relate more often to the absence of rules, regulations, and information.

It must be emphasised that there are six countries (**Estonia, Lithuania, Czech Republic, Slovakia, Liechtenstein, and Iceland**) where, due to the absence of a legal framework, it is impossible to create a mutual-type organisation. In addition, mutual-type organisations in other countries are restricted to certain activities (for instance, in the field of insurance, to life or non-life insurance).

A **merging** of mutual-type organisations is legally not considered problematic in many countries. Of course, decisions of this kind need to be supported by the members, but in general, there are no legal obstacles preventing mutuals to merge with another mutual. With regard to **converting** a mutual to a non-mutual form, this is in most countries effected through a liquidation/winding up and a portfolio transfer to a newly established legal entity. Rules concerning the protection of assets usually apply.

From a purist point of view, **grouping mutuals** (in vertical structures) is often considered diminishing the mutual values and principles. As the mutual undertaking is owned by the members, accepting another party's dominant influence, also related to financial issues, would be detrimental to the members' influence and ownership rights. In reality however, such a purist interpretation of mutualism can not be found in many countries in Europe. Predominantly in the Nordic countries, de-facto groupings are possible via the use of guarantee capital; however, the most advanced grouping instruments are developed in France.

Concerning the effect of the **Solvency II Directive** on the corporate governance of mutual-type organisations, how the rules are applied to mutual-type organisations should be closely monitored. There are a number of issues, which should receive further attention. Firstly, the required 'fitness' of the persons effectively managing the undertaking. This makes it difficult to have (only) members of the mutual in its board if the membership of the mutual is very restricted, e.g. to a professional group. Instead of examining the qualifications, knowledge and experience of individual board members, it might be essential rather to examine the competence of the board as a whole. Secondly, the principle of proportionality: it is not entirely clear how this principle should be applied and whether smaller insurance undertakings (which are often mutual-type organisations) are affected by this principle. The proportionality principle is essential in all three "pillars" of Solvency II, namely solvency requirements, governance, and disclosure. Finally, it is not entirely clear how group structures within Solvency II can apply to mutual-type insurers; or to put it the other way around, how mutual-type insurers can comply with the Solvency II group structure conditions.

In general, also for mutuals active in insurance markets, **operating across borders** remains in many countries not a much-debated issue. Typically, mutual-type organisations are small, work in the vicinity of their members, have a local focus and, all in all, their strategy is less driven by expanding their business (geographically). There are different ways to operate across borders for mutual-type (insurance) organisations. Not every possibility exists in every country. Firstly, a mutual-type organisation can have members in another country, who have the same or similar rights as the members in the home country.

Secondly, a mutual can set up a subsidiary in a host country in the form of a joint-stock company. The policyholders of the subsidiary either can be members of the mutual-type organisation in the country of origin, can obtain member-like status or benefits, or can be only 'clients' of the subsidiary. Thirdly, a mutual-type organisation can participate in a cross-border grouping of organisations.

It can be concluded that mutual-type organisations actually can operate across borders and can have members in other countries. Nevertheless, in reality, the real legal barriers concern firstly, countries where mutual-type organisations are not foreseen – and incoming ones are not accepted – and secondly, the barriers towards forming groupings of mutuals. It is not possible to create **vertical groupings of mutuals** (with a mutual being owned by another mutual), since an intrinsic element of being a mutual is to be owned by its members. Choosing the other way (i.e. a mutual owning a plc-type subsidiary) means applying a less strict definition of being mutual. It is not always clear whether **horizontal groupings** are possible and how the Supervising Authorities assess these groupings. Related to this, mutual-type organisations can have tax and solvency disadvantages compared to their plc-type peers, as they can not join in a group. What would help would be to provide legal possibilities to form (cross-border) groupings either via grouping instruments such as the French SGAM (Société de groupe d'assurance mutuelle) model, or via establishing financial ties through the exchange of guarantee capital (see Nordic countries). Concerning groupings, it should be emphasised that creating new concepts of forming groups among mutual-type organisations, may mean at the same time allowing other stakeholders (other mutual-type organisations or others) to exercise control over (a part of) the mutual-type organisation. Hence, forming groupings includes almost necessarily a decrease of members' control and hence a decrease of the strict mutual principles.

Despite the freedom of services and freedom of establishment, it is not evident that mutual-type organisations can really benefit from these freedoms. The legal barriers may – at least in theory – not be insurmountable in many instances, however, the lack of transparency on the application of the two fundamental rights causes (practical) obstacles for mutual-type organisations when planning to expand across frontiers. In other words, even more than by legal barriers, mutual-type organisations are more restricted in their cross-border ambitions by the lack of transparency concerning how mutual-type organisations operate: which legal frameworks are applicable and how national Supervisory Authorities regard domestic and incoming foreign mutual-type organisations. Working towards a more uniform, modernised and harmonised legal framework would be beneficial for mutual-type organisations willing to offer their services in other countries.

Recommendations

The study examined the legal frameworks of mutual-type organisations in thirty European countries. The mutual landscape is a very diverse one. There is no clear all-encompassing legal concept of what defines a mutual-type organisation. There are differences concerning for instance traditions, history, (political) choices, markets, businesses, governance models, and rules. Despite, or even more because of this diversity, the mutual-type organisations make a considerable contribution to the European economy and society at large and deserve a strong position in European (insurance) markets.

Some of the legal barriers encountered in the study have their roots in the mutual principles themselves. Firstly, this concerns the barrier that mutual-type organisations are not allowed in all countries. Secondly, this concerns the capital requirements for starting-up a mutual-type organisation. Thirdly, this concerns the lack of possibilities (or very limited possibilities) to form groups. In addition, pertaining to all three barriers and beyond, there is a general lack of understanding and knowledge about mutual-type organisations in Europe. This also affects the possibilities for mutual-type organisations to operate across borders. To overcome the barriers, the proposed options call for action of stakeholders at different levels. Three levels can be identified:

- **Sector level:** i.e. recommendations for mutual-type organisations;
- **National level:** i.e. recommendations for national stakeholders, policymakers and supervisors;
- **European level:** i.e. recommendations for the European organisations (e.g. European Commission, European Parliament, European Supervisory Authorities).

Here below proposals for action will be presented which could remove these barriers.

A) To enable mutual-type organisations to establish in the countries where currently no legal possibilities are available, the values and benefits for having a diversified market inhabited by a variety of legal entities should be better communicated to the responsible governmental organisations and Supervisory Authorities. As mutual-type organisations are risk-averse, have a long-term investment strategy; operate in the vicinity of the members, for particular (niche) markets they provide the answer joint-stock companies can not provide. Despite the rules on the Freedom of Services and the Freedom of Establishment, mutual-type organisations have difficulties to operate in these countries respecting their mutualistic principles (they can set of a subsidiary joint-stock company or alike, to do business of course). Efforts to establish legal possibilities for mutual-type organisations in such countries could be boosted by giving attention to the following issues:

- There should be a **clearer idea about the specific characteristics of the mutual-type legal entity** at European level, so that responsible policymakers and supervisors at national level are not confronted with a variety of different national principles. This legal characterisation should be independent from the activity it potentially is allowed (by national legislation) to conduct.
- **Knowledge exchange between supervisors, the mutual sector, and responsible policymakers could enhance the understanding** concerning mutual-type organisations in countries where they are not legally allowed. This knowledge exchange could be organised at European level, or bilaterally.
- To stimulate recognition of the legal entity of mutual-type organisations at European level, the ideas concerning the establishment of a **statute for European mutuals**, as has been discussed for over more than 30 years, could use a new impulse.

Removing the barrier that not in every country mutual-type organisations are legally foreseen, involves in the first place the national governmental organisations and supervisors in the countries concerned. However, also the (European) mutual sector could help to better clarify what mutual-type organisations are, what their general characteristics are and how they add value to the economy and to society; this could provide important arguments towards the permission of mutual-type organisations. Finally, at European level, the knowledge exchange between supervisory authorities concerning mutual-type organisations could be improved. Formal recognition of mutuals as an organisational form at European level

could be a way to stimulate this knowledge exchange. Here, the European Commission could play a role.

B) In order to **kick-start mutual-type organisations** a number of solutions have been identified, which can possibly receive attention:

- Establish a **fund to kick-start mutual-type organisations**. This can be in the form of a subordinate loan, or other types of guarantee capital. If mutual-type organisations truly believe that mutualism adds value to society, and truly believe that the capital is safe in the hand of member-owners, it should be possible to establish jointly a fund to provide the required initial capital. Such subordinate loans should be provided under strict conditions concerning interest and repayment. As a side effect, this mutual commitment to such a 'kick-start fund' could enhance the development of a common (European) identity of mutual-type organisations.
- National legal frameworks can be **modernised and amended to make clearer what the rules are for establishing mutual-type organisations**.
- Allow a **transition period for starting mutual-type organisations**. As mutual-type organisations depend for a larger part solely on the members' contributions, legal possibilities should be created that allow new mutual-type organisations to collect the initial (foundation) fund in the period where it is already providing the service. This involves at national level, changing, and modernising the legislation affecting mutual-type organisations.
- Establish a **knowledge centre specialised in the legal, managerial, and prudential aspects of mutual-type organisations** that could support and assist groups of natural and legal persons to establish a new mutual-type organisation serving their needs. In addition, it could serve as a back-office for smaller mutual-type organisations handling the administrative issues.

Levelling the barriers for starting up new mutual-type organisations, action can be taken at different levels. Firstly, the sector itself could establish the 'kick-start fund' at national or European level. Secondly, national supervisory authorities and governmental organisations could modernise and amend legislation to make clearer rules for establishing a mutual and allowing a transition period for mutual-type organisations to obtain the required capital. Finally, at national, but also at European level a knowledge centre could be established, to enhance the understanding of mutual-type organisations at European level. The role of the European Commission would be limited concerning these actions.

C) In order to allow the **grouping of mutual-type organisations**, both within a country and across-borders, a number of options have been identified, which can possibly receive attention:

- Further thoughts should be given to the establishment of a **European-level grouping instrument** respecting the mutual-type organisation characteristics. A practice to examine closely in this respect is the French SGAM (Société de groupe d'assurance mutuelle) model. Another option would be to **enlarge the scope of the Statute for European Cooperatives**, so that mutual-type organisations can choose this possibility to form a grouping based on mutualistic principles. For instance, it should be possible to change the cooperative ownership structure into one based on members, instead of based on contributed capital.

- Through the **exchange of guarantee capital** (e.g. as a kind of subordinated loan), mutual-type organisations can establish financial ties. Such financial ties include mutual governance and voting rights as well. This possibility could receive more attention.
- The **Solvency II Directive should make room to allow horizontal groupings of mutual-type organisations**, i.e. groupings where one organisation does not have a dominant position over the other organisation. By not only tolerating but allowing this, including providing applicable implementation, groupings of mutual-type organisations can have diversification and other advantages similar to those available to their plc-type competitors (i.e. group tax instead of individual company tax). Related to Solvency II, also it should be closely monitored whether both the 'fit and proper' principle and the principle of proportionality respect mutual-type organisations and do not in practice disadvantage mutual-type organisations compared to their joint-stock competitors.
- **Better understanding at supervisory level of the mutual-type organisational forms** makes establishing (financial) relationships between mutual-type organisations across border easier. This could be stimulated by:
 - Better accessible information concerning mutual-type legal entities (knowledge centre, data base)
 - Better recognition of mutual-type organisations at European level.

Removing the barrier that mutual-type organisations have difficulties to group involves actions at all levels. Firstly, the mutual-type organisations and the sector as such, should discuss whether external ownership or governance over (a part of) the mutual-type organisation and its assets is consistent with the mutual principles. This debate concerns the basic characteristics of being a mutual-type organisation. At national level, legislation can be amended to allow groupings and the exchange of guarantee capital. In addition, better understanding of the supervisory authorities concerning mutual-type organisations operating in other countries might help to ease the process of forming cross-border groupings. At European level, finally, several actions can be taken. Firstly, the Solvency II Directive can make clearer how to deal with horizontal groupings. Secondly, European level stakeholders could facilitate the knowledge base concerning mutuals and the knowledge exchange between supervisory authorities and national governmental organisations. Thirdly, European level stakeholders could further discuss and investigate the possibility to allow a grouping instrument for mutual-type organisations at European level. Finally, European level stakeholders should monitor closely the effects of the Directive on mutual-type organisations' governance structures and if they are disadvantaged, action should be taken.

To conclude, a highly topical issue is the debate concerning the **Statute for European Mutuals**. Although the study has not found conclusive evidence that a proposed Statute would overcome the principal barriers identified, the study does recognise that it could help mutual-type organisations to gain recognition, to increase the understanding concerning mutual-type organisations in the countries and to better respect mutual-type organisations interests at European level. If in the future it is desired to allow mutual-type organisations their own statute at a European level, although further feasibility studies are required, based on the study findings it is recommended to respect the following basic guidelines:

- The Statute should be used on a voluntary basis.
- The markets in which mutual-type organisations based on the Statute at European level are allowed to operate, should not be described in the Statute itself, but should be subject to activity-related European/national regulations. It should be further analysed what is the legal ground and the reasons for not allowing certain company types in particular

classes of insurance business (life/non-life). In addition, it should be analysed – prospectively - whether mutual-type organisations based on the Statute at European level will be allowed in all insurance classes. Member States have the right either to allow or not to allow mutual-type organisations based on the Statute at European level to operate on specific markets (with taking into account the freedom of services and freedom of establishment).

- The Statute should allow only a minimum of statutory freedom to align mutual-type organisations to national regimes. It should be clear for everyone, what are the characteristics of a mutual-type organisation based upon a European-level statute. Differences can be based upon the activity-related legislation and requirements.
- The Statute should be accessible to small groups of natural and legal persons, which have limited capital resources. Hence, both the minimum number of members as the minimum initial (foundation) fund should be set at reasonable levels.
- The Statute should allow non-member investments based on guarantee capital and interest instead of share-capital.
- The Statute should stipulate that the members are the owners of the mutual-type organisation. This should be reflected in the competences of the general meeting (whatever corporate model is chosen), the voting rights, and the way assets are distributed in the case of winding-up.

1 Introduction: Objectives and methodology

1.1 Aims and objectives of the study

The objective of the study is to “provide the Commission with up to date knowledge to better assess the current situation of mutuals and allow a reasoned reflection on the need for eventual future policy development”. The study should include inter alia:

- A)** a mapping of the relevant national legislation covering various types of mutuals operating in various sectors;
- B)** a comprehensive overview of the mutuals’ activities as well as the importance and role of mutuals per country;
- C)** an inventory of difficulties and barriers mutuals may have when they try to grow and expand particularly cross border;
- D)** identification of national measures in support of mutuals, and;
- E)** recommendations for possible actions at national or European level, for the promotion of mutuals and the elimination of barriers impeding their development.

Before providing a demarcation of the study (Chapter 2), first the methodology is presented in Section 1.2.

1.2 Methodology

The study has been conducted by researchers from Panteia, supported by experts from the countries studied. A Steering Group, consisting of the European Commission, DG Enterprise; the Association Internationale de la Mutualité (AIM)¹; and the Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE)², on a regular basis, provided feedback on the progress made. The following tasks have been carried out during the course of the study:

- **Task 1** included a quick scan (desk research and expert consultation) in all (30) countries (EU/EEA) that focused on: Definitions; Legal types (if more types exist); Methods of creation (required capital or assets); Management and corporate governance (rights of members, voting and representation of members in general meetings, types of shares if any, reserves, possibility for non members investors, transparency and publicity requirements, related auditing issues, protection of assets).
- **Task 2** included country studies (desk research, consultation and interviews) in a selection of 10 countries (the Netherlands, Belgium, Germany, France, Poland, Sweden, United Kingdom, Italy, Portugal and Finland): Additional legislation impacting the functioning of mutuals; Internal barriers (barriers mutuals face within their own country): Cross border barriers (barriers mutuals face when operating across barriers); National measures, for promoting mutuals and measures aiming at access to finance for mutuals.

¹ www.aim-mutual.org/

² www.amice-eu.org/

- **Task 3** included 5 case studies (desk research, interviews), where either mutuals are operating across borders, or interesting national measures are implemented to support mutualism.
- **Task 4** included EU level interviews (interviews) with EU level stakeholders.

A list of participating experts and interviewees is annexed to this report.

1.3 Structure of the report

In this report, the following issues will be dealt with:

- Chapter 2: Demarcation of the study: free markets and legal types
- Chapter 3: The role mutual-type organisations play in Europe: market share and coverage
- Chapter 4: Legal framework of mutual-type organisations in Europe
- Chapter 5: Management and corporate governance
- Chapter 6: Issues concerning the legal status and corporate governance
- Chapter 7: Operating across borders
- Chapter 8: Conclusions and recommendations

The Annex report will contain the country reports, an overview table and other additional information (list of contributors, literature etc.).

2 Demarcation of the study: free markets and legal types

Key messages

- The study is demarcated by an activity related criterion and a legal status criterion. Mutual-type organisations provide a variety of services in Europe. Social services of general interest of non-economic nature are excluded from the scope of the study.
 - There is a large diversity of legal forms associated with mutualism in the different countries. The way mutualism is shared and the role mutuals play depends on the cultural and historical background of mutualism in a country. Mutual-type organisations included in the scope of the study should at least comply with the following criteria:
 - Firstly, the legal entity has to be a private entity, falling under private law. Mutual-type organisations that are part of the public system are excluded on the basis of the legal form. They are independent organisations, neither controlled by government representatives nor funded by public subsidies.
 - Secondly, the legal entity is in the first place a grouping of persons (physical or legal), not a pooling of funds. It has to be owned by its members, at least in majority of controlling part or at least to a large extent (majority) being owned, as in the case of hybrid mutuals. “Ownership” may in this sense also mean control without having a claim to assets.
 - Thirdly, the legal entity is subject to democratic governance, i.e. each member has one vote. How this principle is further operationalised, for instance through the use of delegates or interest groups, is of secondary interest.
 - Fourthly, the legal entity embraces the principle of solidarity among members and allows free entry and exit of everyone who fulfils the conditions as agreed upon in the Statutes of the organisation.
 - Fifthly, as the members are also the owners of the organisation, profits are used for the benefit of members, usually as discounted premiums or rebates, or are reinvested to improve services for the members, finance the development of the business, to increase its own funds; or for benefit of society/community at large.
- Even more fundamental to these criteria, is the fact that the mutual-type organisation is somehow recognised *as a mutual* by law. This excludes mutual-type organisations that are legally fully recognised as associations or cooperatives.
- In total, approximately 40 types of mutual-like organisations have been identified in Europe. When applying the above-mentioned demarcation principles, a large majority (approximately 95 %) falls inside the scope of the study.

Without anticipating the detailed discussion on identifying the key determinants and key characteristics of mutual-type organisations in the Member States, in this Chapter the scope of the study will be demarcated to clarify the types of organisations in the various markets to which the analyses in the following chapters are applicable. The demarcation of the scope of the study includes two dimensions:

- Firstly, an activity related demarcation: A distinction can be made between activities falling under the scope of the Treaty on the Functioning of the European Union and activities, which are subject to national competences. The first domain is considered subject to free competition, the latter are not subject to free competition.
- Secondly, a legal status related demarcation: A second distinction can be made on the grounds of the legal form of organisations. As we will see, in a number of countries the mutual form does not exist, in others, there is only one mutual-type legal form and in

some, there is more than one mutual-type legal form. Opposed to mutuals, there is a variety of other legal forms operating on the same markets (private liability companies, cooperatives, associations, public organisations etc.).

In the sections below, the two dimensions are further described.

2.1 Activity related demarcation: Free competition

For the purposes of this study all laws and regulations referring to mutuals pursuing activities in covering risks in the area of life and non-life (for example health, motor) insurance, or providing social services including healthcare and provident schemes, or manage schemes forming part of statutory systems of social security or providing complementary health insurance and so long as these activities are exposed to free competition should be included into its scope. All these mutuals are “companies” according to the Treaty on the Functioning of the European Union (Article 54 TFEU), in the sense that they can benefit from the freedom of establishment and provision of services under the Treaty.

Hence, the demarcation related to activities concerns two questions: firstly, what kind of activities do mutuals carry out? Secondly, are these activities conducted in markets subject to free competition, i.e. are these activities falling under the scope of the Treaty.

Concerning the question, **what kind of activities mutuals** carry out, the following can be mentioned. The activities mutuals conduct vary greatly throughout Europe. In some countries, mutual insurance companies are only allowed to operate on insurance markets. In these countries (such as AT, BG, DE, DK, FI, LV, MT, NL, PL, RO, SE, SI)¹, the mutuals are by definition insurance companies. In other countries, a distinction is made between insurance mutuals and mutual benefit societies (in BE, EL, ES, FR, HU, IT, LU and PT), where the latter are allowed to pursue other objectives related to social protection and quality of life (i.e. social support services, social work, cultural activities). In addition, mutuals can be involved in operating statutory social protection schemes such as compulsory health insurance. In a minority of countries, the legal framework for mutuals is wide enough to pursue a variety of other activities, such as mortgage lending. In these countries (United Kingdom, Ireland), the term ‘mutual’ is used as a container concept covering a variety of legal forms (Building societies, credit unions, friendly societies, cooperatives, industrial and provident societies) and hence, it should be clarified in Section 2.2, which legal forms are included in the scope of the study.

Concerning the question, **which activities are falling under the scope of free competition**, the following can be mentioned. One of the EU’s assumed greatest achievements is the establishment of the internal market, which means that people, goods, services and money can move freely around the EU, without being obstructed by national boundaries and barriers. According to the Treaty, article 26 TFEU, 2, “the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, ser-

¹ See Broek, S.D. et al, (2011), The role of mutual societies in the 21st century, p. 21.

vices and capital is ensured in accordance with the provisions of the Treaties¹. Many European legislative initiatives have been taken to diminish the number of barriers and for many sectors, businesses and services the rules and regulations are the same in all Member States and operators can move freely through the European Union. Services can be regulated by European legislation, for instance the insurance business is regulated by insurance Directives Life² and non-life³, and the Solvency II Directive⁴. The Directives include demarcations of the scope in relation to the size of the company operating in markets, which are subject to the Directives. The fact that certain (smaller) companies are excluded from the scope of these Directives, however, does not mean that these companies do not compete in free competition in their countries, and hence they are included in the scope of this study.

Social services of general interest: economic or non-economic nature

The internal market does not apply to all activities in Europe and hence there are restrictions as to which activities are considered as falling under the scope of the TFEU (article 26). Within the scope of Social Services of General Interest (SSGI), there are a number of services, in which mutuals are involved, which remain the competence of the Member States and these are considered to fall outside the scope of the Treaty. These activities are hence not subject to article 26 concerning the internal market. The issue of whether an activity or service is subject to the TFEU or Member States' competence is a complex issue involving economic and political considerations concerning State aid and public service compensation and aid to public enterprises. The following section attempts to clarify the issue in relation to activities and services provided by mutual-type organisations.

Certain services can be of general economic interest (Services of general economic interest (SGEI)), which are beneficial for the general population. These services can be provided by public or private undertakings with, or without specific financial support. Examples of these services include education provision, exercise of public powers (army, policy), social secu-

¹ OJ C 115, 9.5.2008, Consolidated version of the Treaty on European Union

² There have been three Directives on life insurance: 1) The first coordinating Directive on direct life assurance (Directive 79/267/EEC) was adopted in 1979 to lay down the rules necessary to facilitate the effective exercise of the right of establishment in respect of insurance activities. 2) The second coordinating Directive on life assurance (Directive 90/619/EEC) aimed at facilitating the effective exercise of the right to supply life assurance services. 3) A third coordinating Directive on direct life assurance (Directive 92/96/EEC) was adopted by the Council in 1992 to complete the internal market for insurance activities on the basis of the principles of a single administrative license and supervision of the activities of an insurance undertaking by the authorities in the Member State where the undertaking has its head office. All three Directives have been consolidated in one coherent legal text; Directive 2002/83/EC: OJ L 345 of 19.12.2002, Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance (recast version).

³ Directive 73/239/EEC was amended by Directive 88/357/EEC, setting the necessary arrangements for guaranteeing the effective exercise of the freedom to provide non-life insurance services. A third generation of directives on non-life insurance was launched in 1992 with Directive 92/49/EEC. Directive 2002/13/EC amended the Directive 73/239/EEC on the issue of solvency margins for non-life insurance undertakings. See: OJ L 228, 16/08/1973, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; OJ L 172, 4.7.1988, Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC; OJ L 228, 11.8.1992, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) and; OJ L 77, 20.3.2002, Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.

⁴ OJ L 335/1 17.12.2009, Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)

rity, health care. It is the decision of the Member States' authorities whether services are of general interest and hence fall under the competence of the Member States.

Whether services are subject to the internal market rules, depends on whether the services are considered economic in nature, i.e. Services of General Economic Interest (Article 14 TFEU), or non-economic in nature. Protocol No 26 on Services of General Interest (SGI), article 2 mentions Non Economic Services of General Interest (NESGI). It states, "the provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest."¹ If however, a service is considered economic in nature, the service falls within the scope of the Treaty. Article 106 TFEU provides that "undertakings entrusted with the operation of services of general economic interest [...] shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance [...] of the particular tasks assigned to them".² This Article thus ensures that the specific mission of general interest is taken into account when applying the Treaty rules.³

"SSGIs are not included as such in the two categories mentioned above of SGEI and NESGI, but they oscillate between the two, depending on whether or not the criterion of economic activity is identified within the social service in question."⁴ It appears in some cases difficult to assess whether a SSGI is of an economic or non-economic nature and several cases have been recently brought before the European Court of Justice to ascertain whether internal market rules apply to concrete situations or not. Hence, a key determining factor whether internal market rules apply is whether the activity is considered economic in nature. As this is often difficult to access, the European Court of Justice has built case-law on the distinction between economic and non-economic services according to which it can be concluded that an economic activity is defined as "any activity consisting of supplying goods and services in a given market by an undertaking [...], regardless of the legal status of the undertaking and the way in which it is financed"⁵ On the other hand, if solidarity and coverage for all are at the heart of the social service, the European Court of Justice regards the providers of the service, even if they are private providers, as not involved in an economic activity and the situation as falling outside the scope of internal market regulations.⁶

Concerning social security, and when it comes to managing bodies (which can be mutual-type organisations), the question whether schemes are to be classified as involving an eco-

¹ OJ C 115, 9.5.2008, Consolidated version of the Treaty on European Union - PROTOCOLS - Protocol (No 26) on services of general interest .

² OJ C 115, 9.5.2008, Consolidated version of the Treaty on European Union

³ European Commission, 2010, Commission staff working document, Second Biennial Report on social services of general interest, Brussels, 22.10.2010, SEC(2010) 1284 final.

⁴ Belgian Presidency of the Council of the European Union (Federal Public Service Social Security), 3rd Forum on Social Services of General Interest, Social Services of General Interest: At the heart of the European social model: General background note, 2010.

⁵ See, for example, cases C-180/98 to C-184/98, Pavlov and others. See: European Commission, Communication from the Commission, Implementing the Community Lisbon programme: Social services of general interest in the European Union COM(2006) 177 final.

⁶ See e.g. joined cases C-159/91 and C-160/91, Poucet and Pistre [1993] ECR I-637, joined cases C-264/01, C-306/01, C-351/01 and C-355/01, AOK et al., [2004] ECR I-2493; case T-319/99, FENIN [2003] ECR I-357; and, Case C-205/03P, FENIN [2006] ECR I-6295 : Gronden, van de, Johan W, Financing Health Care in EU Law: Do the European State Aid Rules Write Out an Effective Prescription for Integrating Competition Law with Health Care?, in: The competition law review, Volume 6 Issue 1 pp 5-29 December 2009.

conomic activity and the mutual-type organisation in question as an enterprise depends on the way they are set up and structured. The Court of Justice and the General Court make a distinction between schemes based on the principle of solidarity and economic schemes. The range of criteria have been used to determine whether a social security scheme is solidarity-based or not (i.e. the scheme is not an economic activity and hence internal market rules do not apply). The following factors are relevant in this respect:

- A)** whether affiliation with the scheme is compulsory¹;
- B)** whether the scheme pursues an exclusively social purpose²;
- C)** whether the scheme is non-profit³;
- D)** whether the benefits are independent of the contributions made⁴;
- E)** whether the benefits paid are not necessarily proportionate to the earnings of the person insured⁵; and,
- F)** whether the scheme is supervised by the State⁶.

In case the scheme includes the above-mentioned factors, the solidarity-based scheme must be distinguished from economic schemes. Economic schemes can be characterised by the following features:

- 1 Optional membership⁷
- 2 The principle of capitalisation (dependency of entitlements on the contributions paid and the financial results of the scheme)⁸
- 3 Their profit-making nature⁹
- 4 The provision of entitlements which are supplementary to those under a basic scheme¹⁰

The distinction between economic and non-economic services, however, provides a source of uncertainty for public authorities and providers of social services. Therefore, the European Commission's Guide on the application of European Rules on State Aid¹¹ provides information on how state aid rules should be applied. The guide explicitly refers to compulsory health insurance as a non-economic activity of a purely non-economic nature, to which "the management of compulsory insurance schemes pursuing an exclusively social objective, functioning according to the principle of solidarity, offering insurance benefits inde-

¹ Joined Cases C-159/91 and C-160/91 *Poucet and Pistre* [1993] ECR I-637, paragraph 13.

² Case C-218/00 *Cisal and INAIL* [2002] ECR I-691, paragraph 45.

³ Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband* [2004] ECR I-2493, paragraphs 47 to 55.

⁴ Joined Cases C-159/91 and C-160/91 *Poucet and Pistre*, paragraphs 15 to 18.

⁵ Case C-218/00 *Cisal and INAIL*, paragraph 40.

⁶ Joined Cases C-159/91 and C-160/91 *Poucet and Pistre*, paragraph 14; Case C-218/00 *Cisal and INAIL*, paragraphs 43 to 48; Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband*, paragraphs 51 to 55.

⁷ Case C-67/96 *Albany* [1999] ECR I-5751, paragraphs 80-87.

⁸ Case C-244/94 *FFSA and Others*, paragraphs 9 and 17 to 20; Case C-67/96 *Albany*, paragraphs 81 to 85; see also Joined Cases C-115/97 to C-117/97 *Brentjens* [1999] ECR I-6025, paragraphs 81 to 85, Case C-219/97 *Drijvende Bokken* [1999] ECR I-6121, paragraphs 71 to 75, and Joined Cases C-180/98 to C-184/98 *Pavlov and Others*, paragraphs 114 and 115.

⁹ Joined Cases C-115/97 to C-117/97 *Brentjens*.

¹⁰ Joined Cases C-180/98 to C-184/98 *Pavlov and Others*.

¹¹ European Commission, Commission staff working document, Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, Brussels, 7.12.2010, SEC(2010) 1545 final, 2010.

pendently of contributions" can be added.¹ Other social services targeted to restricted groups of people (i.e. those who pay for additional coverage) have to be considered as economic activities (such as complementary/supplementary social protection schemes). In the most recent case (28 October 2010)² concerning mutuals the European Court of Justice (ECJ) considers that Belgian mutuals offering complementary social security services are enterprises to which the insurance non life directive should apply. Hence, when applied to the activities mutuals carry out, there are a number of services, which are operated by mutuals complying with the above-mentioned factors related to solidarity-based services and hence these services are not subject to internal market rules.

In relation to health insurance not being compulsory, there are many different forms, and hence different terms used. The following four types of voluntary health insurance can be classified³:

- **substitutive** - offering the same coverage as compulsory health insurance (either to people who are excluded from the compulsory system or who choose to opt out),
- **supplementary** - offering services and coverage on top of/ as a supplement to compulsory health insurance (such as faster access and enhanced consumer choice)
- **complementary** - covering co-payments/cost-sharing and additional services excluded from the statutory system
- **duplicative** – offering services and coverage next to national health systems.

In translating national voluntary health insurance into English, confusion might be caused, especially when it concerns making distinctions between supplementary and complementary schemes. However, most importantly, both are not compulsory.

State aid

When services are classified as being economic in nature, Member States' authorities can still provide compensation and state aid. When doing this they must apply rules on state aid (article 106(2) TFEU)⁴. Whether state aid and financial compensation can be applied for services, depends on a number of requirements. A key concept in applying the rules on state aid is the concept of 'undertaking'. State aid can only be received by an undertaking. The Court of Justice has defined undertakings as entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.⁵ This entails that the status of the entity under national law is not decisive. In addition, this entails that the

¹ European Commission, Commission staff working document, Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest, Brussels, 7.12.2010, SEC(2010) 1545 final, 2010. Based on: Case C-159/91 Poucet et Pistre [1993] ECR I-637; Case C-218/00 Cisal and INAIL [2002] ECR I-691, paragraphs 43-48; Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 AOK Bundesverband [2004] ECR I-2493, paragraphs 51-55.

² Case C-41/10 European Commission v. Belgium (not yet published)

³ Colombo, Francesca, Tapay, Nicole, Private Health Insurance in OECD Countries: The Benefits and Costs for Individuals and Health Systems, OECD Health Working Papers No. 15, Paris, 2004. Other classifications of voluntary health insurance include substitutive, supplementary and complementary insurance but leave out duplicative health insurance (see for instance, Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the Commission of the European Communities, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009).

⁴ Commission's Decision State Aid C50/07 France (contrats solidaires et contrats responsables) of 12-2-2008 OJ C 38/10 and France IP/05/2005 of 20 July 2005, (mutual societies of French Civil servants)

⁵ Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451.

aim of the entity is irrelevant as well (not for profit/for profit). Finally, the classification of an entity as an undertaking is always relative to a specific activity.

To conclude

Although there are exceptions, it is safe to say that in general services that are not subject to free competition, and hence services that fall outside the scope of the study, include compulsory health insurance and statutory pensions schemes. It should be mentioned that although the services are not subject to the Treaty, there could be a form of competition between different providers. The fact that there is competition does not necessarily mean that this is free competition. The Court of Justice, in its judgment in Case 173/73 *Italy vs. Commission*, stated that¹: "As the funds in question are financed through compulsory contributions imposed by State legislation and as, as this case shows, they are managed and apportioned in accordance with the provisions of that legislation, they must be regarded as State resources within the meaning of Article [107 of the Treaty], even if they are administered by institutions distinct from the public authorities."

For instance in Belgium, the mutual health societies (Ziekenfondsen/ Mutuelles/ Krankenkassen) compete with each other on compulsory health insurance and additional related health services given a closed market for newcomers. Another example is the Finnish statutory pension system. There are mutuals operating in this market, but the market is closed for foreign companies. They can only enter the market via establishing a Finnish subsidiary.

2.2 Legal status related demarcation: Legal form of mutuals

In an attempt to identify a common definition at European level, mutuals have been described by the European Commission as "voluntary groups of persons (natural or legal) whose purpose is primarily to meet the needs of their members rather than achieve a return on investment. These kinds of enterprise operate according to the principles of solidarity between members, and their participation in the governance of the business. They are governed by private law."²

In many countries, it is relatively clear what are mutuals and what are not. Often, only a single type of mutual (insurance) company exists. However, there are also a number of

¹ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 16. See also Case 78/79 *Steinike* [1977] ECR 595, paragraph 21, Case C206/06, *Essent Netwerk* [2008] 5497, paragraphs 47, 57 and 96. See as well: OJ C 8, 11.1.2012, Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest.

² European Commission, Consultation document: Mutual Societies in an enlarged Europe 03/10/2003; See as well: <http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/>: "A mutual enterprise is an autonomous association of persons (legal entities or natural persons) united voluntarily, whose primary purpose is to satisfy their common needs and not to make profits or provide a return on capital. It is managed according to solidarity principles between members who participate in the corporate governance. It is therefore accountable to those whose needs it is created to serve." In the 'Manual for drawing up the satellite accounts of companies in the social economy: cooperatives and mutual societies', prepared by CIRIEC for the European Commission in 2006, a slightly different definition is used: 'A mutual society is an autonomous association of persons (legal entities or natural persons), united voluntarily for the primary purpose of satisfying their common needs in the insurance (life and non-life), providence, health and banking sectors, which conducts activities that are subject to competition. It is managed according to the principle of solidarity between the members, who participate in the governance of the business...'

countries, where the concept of mutuality is applied to different, sometimes closely related, legal entities. In Member States such as Belgium, France, Luxembourg a distinction can be made between insurance mutuals and mutual benefit societies, or health (providence) mutuals. For instance in France, there is a distinction between Société d'assurance mutuelle (SAM) "mutual insurance companies" which are regulated under the Insurance code ("Code des assurances")¹, and mutuelles "mutuals", mainly involved in complementary health insurance, which follow the French code of mutuality ("Code de la mutualité")². In the United Kingdom and Ireland the term 'mutual' is used as a broader concept including a variety of legal forms, such as building societies, credit unions, friendly societies, cooperatives and Industrial and Provident societies.

To distinguish mutuals that are included in the scope of the study from those legal entities that are not, the following criteria are used:³

- Firstly, the legal entity has to be a **private entity**, falling under private law. Mutual-type organisations that are part of the public system are excluded on the basis of the legal form. They are independent organisations, neither controlled by government representatives nor funded by public subsidies.
- Secondly, the legal entity is in the first place a **grouping of persons** (physical or legal), not a pooling of funds. It has to be owned by its members, at least in majority of controlling part or at least to a large extent (majority) being owned, as in the case of hybrid mutuals. "Ownership" in this sense may also mean control without having a claim to assets.
- Thirdly, the legal entity is subject to **democratic governance**, i.e. each member has one vote. How this principle is further operationalised, for instance through the use of delegates or interest groups, is of secondary interest.
- Fourthly, the legal entity embraces the **principle of solidarity** among members and allows free entry and exit of everyone who fulfils the conditions as agreed upon in the Statutes of the organisation.
- Fifthly, as the members are also the owners of the organisation, **profits are used for the benefit of members**, usually as discounted premiums or rebates, or are reinvested to improve services for the members, finance the development of the business, to increase its own funds; or for benefit of society/community at large.

However, additional to these criteria, the mutual-type organisation should somehow be recognised *as a mutual* by law. This excludes mutual-type organisations that are legally fully recognised as associations or cooperatives. An example of this can be found in Romania for instance. There are associations that identify themselves as "mutuals" in the writing of their statutes but are registered legally as associations – see also FDAAM (www.fdaam.ro): small federation of Romanian mutual associations. These "mutual" associations are not ac-

¹ Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006073984>

² Code de la mutualité: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074067&dateTexte=20080505>

³ See: Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009. These elements can also be found in: CIRIEC, Manual for drawing up the satellite accounts of companies in the social economy: Co-operatives and mutual societies, 2006, p. 44.

tive in compulsory health insurance; they are members' movements offering complementary services (health/social/voluntary) to their members.

The legal frameworks in the countries differ a lot. Based on the five criteria mutual-type organisations have been included in the scope of the study which are based on different company forms. In general, a distinction can be made between mutual-type organisations having their own legal form (mutual society), mutual-type organisations based on legislation concerning associations (mutual associations), mutual-type organisations based on cooperative law and finally, mutual-type organisations based on company law. In Chapter 4 and Annex A, the different forms are presented and discussed in detail. In addition, examples are provided of each of the four types as a legal basis for mutual-type organisations. It has to be emphasised that only those mutual-type organisations are included which are explicitly mentioned as such in legal frameworks. Hence, mutual insurance cooperatives are included in the analysis (see Latvia and Greece); however, cooperative insurers are not.

In addition, in a number of countries the *de minimis* regime¹ is included in the analysis as well. For smaller insurers or non-insurers, another regime is in place.

Based on these five criteria, a number of mutual-type organisations will not be closely examined in this study. These include for instance the German Krankenkassen, since these organisations do not fulfil the first criterion of being a private legal entity.² The same applies for instance to the Czech health insurance funds. Because of criterion 3, the Irish and British Industrial and Provident societies, i.e. cooperatives, are excluded from the scope of the study as well. These organisations are based on cooperative ideas where the one who invests most, has the most to say.

In Chapter 4 and Chapter 5, more information and analysis will be provided on different legal forms and their specific characteristics.

2.3 Overview and implications

Based on these two dimensions described above, the following schematic overview of four domains can be drawn up which clarifies the demarcation and also identifies similarities of, and differences between the four domains.

¹ "de minimis non curat praetor", non-Directive insurers and other types of non-insurance mutuals.

² However, there are currently debates whether the legal status should be changed into a mutual insurance company form.

Figure 2.1 Demarcation of the study: activities and legal status

Activities Legal status	Activities subject to free competi- tion (Fall inside the scope of the TFEU)	Activities not subject to free competition (fall outside the scope of the TFEU)	This means:
Mutual status	Life, non-life insurance; comple- mentary health insurance; health care and assistance; other ser- vices offered by mutuals	Statutory protection and Social services of general interest of non-economic nature operated by mutual-type organisations	<ul style="list-style-type: none"> ■ Different market rules and rights ■ Same/similar legal form <p><i>Hence, barriers are activity related.</i></p>
Non- mutual status	Same activities offered by other types of organisations (e.g. pri- vate liability companies; coopera- tives; associations).	Statutory protection and Social services of general interest of non-economic nature operated by others (e.g. public entities).	
This means:	<ul style="list-style-type: none"> ■ Same market rules and rights ■ Different legal status <p><i>Hence, (possibly) competition be- tween legal forms, barriers re- lated to legal form</i></p>		<ul style="list-style-type: none"> ■ Different market rules ■ Different legal forms <p><i>Hence no overlapping characteristics</i></p>

Source: authors

Reality is not as clear-cut as the above schematic overview suggests. The boundary between what is considered a mutual and what is not, differs per Member State as we have seen, and also, what are considered markets subject to free competition or not, is not always clear. In order to understand better the boundaries, one sometimes needs to cross them. Hence, especially in relation to the distinction between free and closed markets, from a pragmatic viewpoint, the study will not exclusively focus on mutuals operating on free markets (horizontal lines), but will look at mutuals operating at (partially) closed markets as well to better understand boundaries and barriers which are not status, but activity related (vertical lines).

In the study, first from a pragmatic point of view, a broader perspective was chosen to deal with national and cultural differences in conceptions and attitudes towards mutual-type organisations. After the data gathering at country level, some legal entities, which are described in the country factsheets, are, based on the provided demarcation, left out of the analysis.

The following table provides an overview of the legal forms included in the analysis. In Chapter 4 and 5, the characteristics of these different legal forms will be subject of analysis.

Table 2.1 Overview of legal forms of mutual-type organisations

Country	Legal types
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)
Belgium	Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society)
	Société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)
Bulgaria	взаимозастрахователна кооперация (mutual insurance cooperative)
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)
Denmark	Gensidige selskaber (Mutual companies)
Finland	Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies)
	Vakuutusyhdistys/försäkringsförening (insurance association)
	Түөләкеvakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)
France	Société d'assurance mutuelle (mutual insurance companies)
	Mutuelles (mutuals)
Germany	Versicherungsverein auf Gegenseitigkeit (insurance mutual)
	Kleine Versicherungsvereine (small insurance mutual)
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)
	Αλληλονοϊθητικά Ταμια/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)
Hungary	Biztosító egyesület (Mutual Insurance Association)
	Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)
Ireland	Friendly societies
Italy	Società di mutuo soccorso (benefit mutual societies)
	Società di mutua assicurazione (mutual insurance companies)
Latvia	Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)
Luxembourg	Association d'assurances mutuelles (mutual insurance association)
	Société de secours mutuel (mutual aid society)
Malta	Mutual association
Netherlands	Onderlinge Verzekeringmaatschappijen/vereniging (Mutual insurance societies)
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)
Portugal	Associações mutualistas (mutual associations)
	Mútua de seguros (Mutual Insurance company)
Romania	Societăți mutuale' (mutual companies)
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)
Spain	Mutuas de seguros (mutual insurance company)
	Mutualidades de previsión social (mutual provident societies)
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)
	Försäkringsföreningar (insurance associations)
United Kingdom	In United Kingdom, mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual).
Norway	Gjensidige forsikringselskaper (mutual insurance company)

Source: Authors

A number of the organisations not included, are discussed in the country factsheets. Although these organisations will not be included in the analysis in the following chapters, still, to respect national, cultural and historical legacies concerning mutualism, here below a description is included of the Belgium mutual health societies.

The Belgium Mutual health societies (ziekenfondsen of mutualiteiten/ mutualités)

The legal type of *mutual health society* in Belgium is a legal form sui generis, defined in the 1990 Law on mutual health societies. To operate as a mutual health society in Belgium, the society has to be member of a **national union of “mutualities”** (Landsbond). A national union has to have at least three mutual health societies as members (art. 3). Every mutual health society has several local offices or contact persons, but these do not have legal personality.

The mutual health societies operate within the legal frame of the 1990 Law on mutual health society. The compulsory contributions for compulsory health insurance are paid by employers and employees. The federal Institute for Health and Disability Insurance (RIZIV/INAMI) receives its financial share of social security contributions from the RSZ (which collects and divides Social Security contributions). RIZIV/INAMI then divides these over the national unions. RIZIV is also responsible for supervision and control over these entities. Entry into this compulsory health insurance market is not free to any entity, but is directly regulated by law. Only the existing national unions (Landsbonden, by Royal Decree of 22 September 1955 of the health and disability insurance) are entitled to act as insurance institutions as determined in art. 3 of the 1994 Law on health and social security insurance. The entitlement may be withdrawn by royal decree, on the advice of RIZIV. The national unions are responsible for the implementation of all their obligations under the 1994 law. They are allowed to admit the associated mutual health societies – under specified conditions - to execute certain tasks resulting from the implementation of the said law¹. In theory, it is possible to start up a new health mutual society. In practice, however, it will be difficult to attain the required membership threshold of 15,000 members. The most recently established mutual health society was established in 1928.

Free competition in terms of “free entry” is therefore not applicable to the compulsory health insurance market. The Belgian mutual health societies, however, contend that as private institutions serving a general interest, they are responsible for the management of the compulsory health insurance for their members.

In addition, the mutual health societies offer services and products in the area of complementary services². Persons in Belgium are free to choose between about 60 different mutual health societies in Belgium. Therefore, the mutual health societies try to attract new members by offering interesting complementary services and products. Hence, a form of competition between the Belgian mutual health societies does exist, focused on the quality of compulsory services and on the range and price-quality of complementary services. It is possible to change between mutual health societies on four specific moments during the

¹ 1990 Law on mutual health societies and national unions. Art. 7.

² Used to be called “Aanvullende basisverzekering”, now its denomination is “aanvullende diensten, services not offered by the compulsory health insurance” (no reference to insurance anymore). Nota bene: this discussion does not concern complementary health *insurance*. Mutual-type organisations offering complementary health insurance, according to the ECJ case 41/10, need to comply with the European non-life insurance Directives.

year. However, compulsory health insurance is the core business of Belgian mutual health societies. Complementary health services business of the mutual health societies comprises less than 3% compared with the compulsory insurance business. Supplementary services may include (non- medical) hospitalisation coverage or reimbursements, non-cure and longer-term care services such as homecare services, information and advice and socio-educational services (prevention).

Since January 2012, members of all health insurance societies are obliged to pay for the complementary health services offered by their society. The complementary health services and fees may differ per society, but must be the same for all members. The only society that does not offer complementary health services is the Relief Fund for Health and Disability insurance (Hulpkas voor Ziekte- en Invaliditeitsverzekering - HZIV). People who do not wish complementary health services or whose employers already take care of complementary health services, may opt to join this Relief Fund for only the compulsory cover (change is possible every quarter, with a month's notice).

3 The role mutual-type organisations play in Europe: market share and coverage

Key messages

- Mutual-type organisations have a long history dating back to ancient times and gained importance in the 19th and 20th century. They stand at the basis of modern social protection systems.
- It is widely agreed that the financial sector - and the economy in the broad sense - benefits from diversity of ownership structures and company forms. This diversity makes it possible for sectors to adjust to changing circumstances. While in times of rising stock markets stock holding companies have an advantage in doing their business compared to mutuals, in times of crisis a longer-term perspective inherent in the business of mutuals might be more appropriate.
- Based on these arguments in favour of diversification, it can be argued that the mutualist idea should be further promoted for three reasons: mutuals are less prone than joint-stock-type insurers to pursue risky speculative activity; a mixed system contributes to stability in the financial sector in times of crisis; and a stronger mutual sector enhances competition.
- The following advantages can be mentioned to allow mutual-type organisations in insurance markets:
 - Mutuals have a stronger capitalisation. Most mutual companies have more and better quality capital (they generally have smaller amounts of debt in their capital structure) to absorb unexpected shocks;
 - Their business focus and product offerings are less risky;
 - They are involved in less financial/public disclosure and headline risk (i.e. since they are not publicly listed, less dependent of constantly changing stock exchange markets, they are less vulnerable to head-line stories and short-term blizzard of adverse publicity, which can potentially hurt a company's overall business position and financial strength);
 - They have diminished access to capital markets, but, as a consequence, are less dependent on it;
 - They have greater alignment of owners and creditors/policyholders with a longer-term orientation.
- In many countries, the mutual-type organisations' activities are restricted to insurance in general or certain lines of insurance. In other countries, or even in the same country, other mutual-type organisations are excluded from underwriting insurance and need to restrict themselves to other services such as offering assistance, health care, social services, or small loans.
- There are also countries in which mutuals as such are not legally foreseen at all regardless of the market they wish to operate in (this is for instance the case in Estonia, Lithuania, Czech Republic).
- Based on ICMIF data it is calculated that in 2010, the mutual insurers collected in total 179,047,755 million Euro in premiums, equally distributed over life and non-life insurance businesses. The total premium growth in 2010 was 4.9% (3.6% in life; 6.2% in non-life). This growth was similar in 2009 (5.3%) after two years of growth close to 0% (2008: -0.3%, 2007: 0.7%). In 2006, the premium growth was more than 10%. The impact of the crisis is clearly noticeable in 2007 and 2008, but the mutual insurers recovered rapidly in 2009 and 2010.
- The market share of the mutual insurers remains as an equal level around 15.8 % (12.8 % in life; 20.5 % in non-life).
- In 2010, the mutual insurers together had 1,161,397,893 million Euro of assets, portraying a growth of more than 6 % compared to 2009.
- Based on the ICMIF data, in 2010 the number of employees working in the selected companies was 221,888. This number and the data, on which this number is based, seem to be highly volatile over the years.

- In health care assistance and social services, mutuals are estimated to provide services to approximately 230 million European citizens. Since these services portray a large diversity, no consolidated data is available to sketch a European-wide picture.
- The mutualisation of risks, i.e. the spreading the risk over a homogeneous group of persons is the most elementary and simple form of insurance. Although and even more because it has a long history, it has proven to be an effective way of insuring people and hence has added in the past and continues to add value to the economy and the society at large.
- In many countries, mutuals are restricted to conduct certain activities. Generally, either they are defined as insurance operators, or they are not allowed to be involved in financial service markets. Within insurance, they can be allowed either in life or non-life insurance. Hence, the restrictions are often related to the legal status of the organisation. It would be beneficial when rules and regulations are activity related instead of legal status related, so that for each operator in the same market, the same activity-related rules apply.

The aim of this chapter is to have a better idea about the historical background of mutuals, to clarify on which markets mutual-type organisations operate and to find out the importance of mutual-type organisation in the European economy and society at large. This chapter will therefore elaborate on the following matters: Section 3.1 Historical and current role of mutual-type organisations; Section 3.2 Markets and market restrictions; Section 3.3 Mutual market share and finally, in Section 3.4 some concluding remarks will be made.

3.1 Historical and current role of mutual-type organisations¹

Mutuals and affinity groups

Mutual societies have a long history in many European countries, dating back to the middle ages. They flourished in the 19th century and the beginning of the 20th century as a safety net for industrial workers and other socio-professional groups, who pooled funds against social and property risks, and can be seen as predecessors of the modern welfare state.

The origin of mutualistic forms of organisation can be traced back to ancient times, but they gained significance in the European society and economy in the late middle ages² (e.g. insurance mutual for mills in the Netherlands in 1663 and the “British Amicable Society for Perpetual Insurance Office” in the United Kingdom in 1706). These forms were based on the idea to cover each other’s risks by contributing to a fund, which was owned by the people contributing to it³. These ideas flourished in the 19th century throughout Europe, when the industrial revolution and rural depopulation threatened the traditional solidarity existing between citizens of the same village and, more importantly, between members of one family. Socio-professional groups, such as factory workers, railway workers and later, teachers and retailers began to organise funds to cover costs related to social risks such as sickness,

¹ This section is partially based on Broek, S.D. et al, (2011), The role of mutual societies in the 21st century.

² Mutuals were first established to provide financial support for injured people and victims of fire. See: European Commission, Consultation document: Mutual Societies in an enlarged Europe, 03/10/2003. See for more information on the history of mutual societies: CIRIEC, The Social Economy in the European Union, 2007; Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009; AIM/AMICE, European Mutual Society, AMICE / AIM Draft Regulation 2007, Explanatory Memorandum, 2008.

³ See: on the Dutch mutual insurance for mills: Bert Koene, De Caeskopers. Een Zaanse koopmansfamilie in de Gouden Eeuw, 2011; on the British Amicable Society for Perpetual Insurance office in the UK, David Jenkins and Takau Yoneyama, The History of Insurance, 2000.

disability and old age. In addition, other professional groups, such as farmers, pooled their savings in a similar way for protection against risks relating to their property (for instance against risks such as fires, accidents, bad weather). As company law was modernised between 1850 and 1900, legal provisions were introduced in most European countries to regulate the establishment and operation of mutual societies. The concept of "mutual enterprise" as a specific legal entity based on the principles of solidarity and democratic governance was included in Civil Codes or special law (e.g. in France, Belgium, the Netherlands and Italy).

Mutuals and social security

In health care insurance, mutualist forms of organisations began to flourish in and after the age of industrialisation. These mutual insurance forms became cornerstones of the public social security systems. After the Second World War, in most European countries major reforms took place establishing public social insurance schemes or national health services to guarantee protection against the main social risks and to provide a safety net for citizens. They were based on the idea of offering protection against social risks (such as in France and Germany), "combating inequality and redistributing wealth" (such as in the Scandinavian countries) or on "fighting need, poverty, and unemployment" (such as in the United Kingdom)¹. What is defined as a social risk, an inequality, a need or poverty depends largely on the traditions, culture and ideologies prevailing in the different countries. Hence, what is included in national social protection schemes is subject to variations. Despite the differences, the following forms of risks protection are in one way or another regarded as being part of social protection systems in most countries²: healthcare, sickness cash benefits, maternity benefits, long-term care, invalidity benefits, old age pensions, survivors' benefits/pensions (i.e. for surviving relatives), benefits for accidents at work and occupational diseases, unemployment benefits, and family allowances. The creation of statutory social protection schemes challenged the traditional role of mutual societies,³ leading to different developments depending on the specific characteristics of the established welfare systems:

- In the United Kingdom, for example, reforms inspired by William Henry Beveridge⁴ abolished the involvement of unions and risk prevention companies in the social protection system, which led to the end of the dominance of mutual societies.
- In other Member States, mutual societies continued to function alongside the social security system and maintained a significant role.
- The example of Germany shows a third option. Mutuals were integrated into the system, becoming entities of public law (Krankenkassen), and lost in a strict sense their original status, since they are not strictly owned by the policyholders anymore. Similarly, in Sweden, mutual (benefit) societies developed into the regional organism in charge of managing the compulsory health insurance system.

¹ Palier, Bruno, Les différents modèles de protection sociale et leur impact sur les réformes nationales", in Daniel, C. and Palier, B. (Eds.), *La protection sociale en Europe. Le temps des réformes*, Paris, La Documentation française, 2001, p. 33–34.

² MISSOC, *Comparative tables*, 2010. This section is mainly based on MISSOC, *Cross-cutting introductions to MISSOC Tables 2010*.

³ Archambault, Edith, *Mutual organizations, mutual societies*, in: *International Encyclopedia of Civil Society*, Anheier H. and Toepler S. (Ed.), 2009. p. 3.

⁴ Beveridge, William Henry, *Social Insurance and Allied Services*, 1942.

In most countries, mutuals took on an alternative role and developed voluntary health insurance schemes and maintained or increased their activities in other types of risk-coverage (for instance, car and motor insurance).

Demutualisation in the United Kingdom: an argument for diversification in the market

In recent times, mutuals are faced by severe threats of demutualisation. This threat was most noticeable in the Anglo-Saxon countries.

An UK-inquiry in 2006 regarding the effects of demutualisations in the 1990s found there had been substantial increases in remuneration enjoyed by directors of those institutions, which had demutualised in the 1990s, but no corresponding improvement in performance. However, it should be pointed out, that the strategic direction chosen by an institution's board, particularly one pursuing corporate growth, might push it towards the plc (public limited company) model. This is especially so in the life sector, where some mutuals have sought extra capital.¹ Hence, reaching corporate growth can mean moving away from the mutualist company form.

The inquiry of the UK 'All-Party Parliamentary Group for Building Societies & Financial Mutuals' concluded that "the previous demutualisations have restricted consumer choice, as the mutual sector has acted as a check on the plcs [public limited company] both in terms of value and on 'non-financial' issues such as branch closures and charges on ATM machines. But it also found that competitive pressures are putting increasing strain on the mutual model."² Demutualisation in the United Kingdom weakened the diversity in the financial services sector, which is considered detrimental to the consumers.

The importance of diversity in the market is further supported by academic evidence. It is widely agreed that the financial sector - and economies in the broad sense - benefit from diversity of ownership structures and company forms.³ The diversity makes it possible for sectors to adjust to changing circumstances. While in times of rising stock markets stock holding companies have an advantage in doing their business compared to mutuals, in times of crisis a longer-term perspective inherent in the business of mutuals might be more appropriate.

As it can not be predicted which corporate form is best suited to new particular circumstances, in an uncertain and changing market environment, diversity in company structures has the advantage of being flexible in adjusting to unforeseen events and developments.⁴ Diversity reduces institutional risks defined as "the dependence on a single view of banking that may turn out to have serious weaknesses under unexpected conditions such as the

¹ The All-Party Parliamentary Group for Building Societies & Financial Mutuals (2006), Windfalls or Shortfalls? The true cost of Demutualisation

² The All-Party Parliamentary Group for Building Societies & Financial Mutuals (2006), Windfalls or Shortfalls? The true cost of Demutualisation

³ Michie, Jonathan, David T. Llewellyn, Converting Failed Financial Institutions into Mutual Organisations, in: Journal of Social Entrepreneurship, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010.

⁴ Michie, Jonathan, David T. Llewellyn, Converting Failed Financial Institutions into Mutual Organisations, in: Journal of Social Entrepreneurship, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010.

current crisis”¹. It is argued as well that diversity in financial systems promotes economic growth, reduces poverty and that a diversified landscape of ownership structures in the financial market contributes to a more competitive and less risky market than a market that is solely populated by either mutuals or joint-stock companies.²

Based on this plea for diversification, a recent study argues that the mutualist idea should be further stimulated for three reasons:

- mutuals are less prone than banks to pursue risky speculative activity;
- a mixed system produces a more stable financial sector in times of crisis; and
- a stronger mutual sector enhances competition.³

In many countries, during the nineties, the diversity in financial institutions diminished due to increased emphasis on the pursuit of return and the management of risk. The pursuit of short-term return directed all financial institutions towards the same goal, namely maximising the yield. The focus shifted from traditional banking and insurance (with a long-term strategy) towards more high-yield and high-risk banking and businesses and products (often with a shorter-term strategy). This movement, which included the dissolution of mutuals, led to a financial monoculture.⁴

It goes too far to attribute the crisis on the financial market to the lack of diversity in institutional forms, but certainly, the lack of diversity deepened the crisis and made the sector less resilient as a whole to the radically changing environments.⁵ For this reason, stimulating diversification of company forms could be seen as a means to prevent future crises or to diminish the likely impact of future crises.

Mutuals resilience against the financial and economic crisis

The demutualisations in the United Kingdom provided an argument to foster mutualism. There are however, other arguments as well which indicate the value of mutual-type organisations for the members and the society at large. A report published by the rating agency Moody's indicates that, compared to their joint-stock company peers, mutuals active on the life insurance market show better creditworthiness in times of crisis.⁶ The mentioned key differences typically existing between plc-type and mutual life insurers that af-

¹ Ayadi, Rym, Reinhard H. Schmidt, Santiago Carbó Valverde (Centre for European Policy Studies), *Investigating diversity in the Banking Sector in Europe, the performance and role of savings banks*, 2009, preface, p. iii.

² Cuevas C.E., Fischer K.P., *Cooperative Financial Institutions, Issues in Governance, Regulation, and Supervision*, World Bank Working Paper n°82, 2006.

³ Michie, Jonathan, David T. Llewellyn, *Converting Failed Financial Institutions into Mutual Organisations*, in: *Journal of Social Entrepreneurship*, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010.

⁴ “In consequence, the financial system became, like plants, animals and oceans before it, less disease-resistant. When environmental factors changed for the worse, the homogeneity of the financial eco-system increased materially its probability of collapse.” Cited from: Michie, Jonathan, David T. Llewellyn, *Converting Failed Financial Institutions into Mutual Organisations*, in: *Journal of Social Entrepreneurship*, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010. See: Haldane, Andrew G., *Rethinking the Financial Network*, Speech delivered at the Financial Student Association, Amsterdam, 2009.

⁵ This analysis is supported by the European Parliament stating: “the diversity of legal models and business objectives of the financial entities in the retail banking sector (banks, savings banks, co-operatives, etc) is a fundamental asset to the EU’s economy which enriches the sector, corresponds to the pluralist structure of the market and helps to increase competition in the internal market”. (European Parliament Resolution, 5 June 2008), citation from: Michie, Jonathan, David T. Llewellyn, *Converting Failed Financial Institutions into Mutual Organisations*, in: *Journal of Social Entrepreneurship*, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010.

⁶ Cited from: Moody’s insurance, *Revenge of the Mutuals Policyholder-Owned U.S. Life Insurers Benefit in Harsh Environment Summary Opinion*, 2009.

fect their creditworthiness in this challenging environment are listed below.¹ Most of these, such as involvement in less risky business, have already been discussed in previous sections of this report.

- Mutuals have a stronger capitalisation. Most mutual companies have more and better quality capital (they generally have smaller amounts of debt in their capital structure) to absorb unexpected shocks;
- Their business focus and product offerings are less risky;
- They are involved in less financial/public disclosure and headline risk (i.e. since they are not publicly listed, less dependent of constantly changing stock exchange markets, they are less vulnerable to head-line stories and short-term blizzard of adverse publicity, which can potentially hurt a company's overall business position and financial strength);
- They have diminished access to capital markets, but, as a consequence, are less dependent on it;
- They have greater alignment of owners and creditors/policyholders with a longer-term orientation.

Other rating institutions, such as AM Best, report that against the current background of economic and financial recession, it appears that mutuals are coping particularly well. Data from 2008 to mid-April 2010 (which include data on cooperatives, friendly societies, and non-profit companies) indicate that mutuals have shown relative stability compared to non-mutual type insurers. Their success seems to be based on the lack of pressure to return capital to stakeholders and the loyalty of their costumers.²

In a document submitted to the British Parliament by the Building Societies Association, it is underlined that "Although mutuals have been affected by the financial crisis and recession, they have generally performed better than their plc competitors, and, in comparison, have drawn on very little support from the Government [...] Mutuals have responded in a number of ways to the challenges of the financial crisis. Very many building societies, small and large, have performed well over the last few, challenging, years."³

Studies in the Netherlands indicate that mutuality is a factor contributing to solvency. A DNB⁴ investigation (de Haan and Kakes, 2007)⁵ of 350 Dutch insurance company structures over the period 1995-2005, found that a large company size⁶, a mutual organisation, high profitability, large equity investments and being a fire insurer, all contribute to higher solvency margins. Minimum solvency requirements from the supervisor would therefore not be easy to explain by firm characteristics. More than half of the insurers had surplus capital more than thrice their solvency requirement, which together with high profitability and a large company size, reduces the risk of insolvency. Another DNB study (de Haan and

¹ Cited from: Moody's insurance, Revenge of the Mutuals Policyholder-Owned U.S. Life Insurers Benefit in Harsh Environment Summary Opinion, 2009.

² A.M. Best, Mutuals Maintain Momentum, But Challenges Mount, 2010.

³ Written evidence submitted by the Building Societies Association, September 2010

⁴ De Nederlandse Bank

⁵ De Haan, L. and J. Kakes (2007). Are non-risk based capital requirements for insurance companies binding? DNB Working Paper 145

⁶ As large insurers have more scope for diversification, than small insurers, their total losses are more predictable. Hence, their lower risk of insolvency.

Kakes, 2009¹) regarding insolvency restated that being a mutual insurer is one of the factors reducing the risk of insolvency. Other contributing factors are surplus capital, large company size, high profitability and long-tailed business (with innovative niche insurance products).

However, despite interesting observations suggesting that mutual undertakings are more resilient to the current crisis than their joint-stock peers, it must be emphasised that empirical evidence, based on solid, longitudinal studies, is lacking.

3.2 Markets and market restrictions

In many countries, the mutual-type organisations' activities are restricted to insurance in general or certain lines of insurance. In other countries, or even in the same country, other mutual-type organisations are excluded from underwriting insurance and need to restrict themselves to other services such as offering assistance, health care, social services, or small loans. The following list provides an overview of the markets in which the mutual-type organisations are legally allowed to operate:

Table 3.1 Overview of markets in which mutual-type organisations operate

Country	Legal types	Lines of business the Legal type is allowed to operate in
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	Mutual insurers are allowed to be active in all insurance classes, both life and non-life.
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)	The activities of small mutual associations are restricted to the lines of business specified in positions 8 and 9 of Annex A of the Insurance Supervision Act except nuclear risks.
Belgium	Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society)	Life and non-life insurance
	Société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)	Non-life insurance: complementary health insurance
Bulgaria	взаимозастрахователна кооперация (mutual insurance cooperative)	Life insurance
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)	Life insurance
Denmark	Gensidige selskaber (Mutual companies)	Life and non-life insurance
Finland	Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies)	Life and non-life insurance
	Vakuutusyhdistys/försäkringsförening (insurance association)	Life and non-life insurance
	Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)	Statutory pensions
France	Société d'assurance mutuelle (mutual insurance companies)	Life and non-life insurance
	Mutuelles (mutuals)	Life and non-life insurance (complementary health

¹ De Haan, L and J. Kakes (2009). A probit model for insolvency risk among insurers.

Country	Legal types	Lines of business the Legal type is allowed to operate in
		insurance) They can also manage facilities dealing with health, culture and society. Some of them are also active in the compulsory statutory insurance domain.
Germany	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	Life and non-life insurance
	Kleine Versicherungsvereine (small insurance mutual)	Non-life: specific group of people or very specific risks and which are organised locally
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)	Non-life insurance
	Αλληλονοιθιτικά Ταμεία/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)	Compulsory/duplicatory health care/insurance (not part of the social protection system as such)
Hungary	Biztosító egyesület (Mutual Insurance Association)	non-life and life insurance
	Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)	Services for members that supplement or replace social security services, as well as services that promote healthy lives.
Ireland	Friendly societies	Life insurance
Italy	Società di mutuo soccorso (benefit mutual societies)	The mutual aid societies (società di Mutuo Soccorso) operate in the areas of health, social, recreational and cultural activities
	Società di mutua assicurazione (mutual insurance companies)	Life and non-life insurance
Latvia	Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)	Life and non-life insurance
Luxembourg	Association d'assurances mutuelles (mutual insurance association)	Life and non-life insurance
	Société de secours mutuel (mutual aid society)	Mutual assistance in the social domain. The main benefit offered by these latter category of mutuals consists in the payment of funeral grants, which is why they are commonly defined as "funeral funds"
Malta	Mutual association	life and non-life insurance (non-directive insurers: annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million euro)
Netherlands	Onderlinge Verzekeringmaatschappijen/vereniging (insurance mutual)	Life and non-life insurance including compulsory health insurance
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)	life, non-life and re-insurance
Portugal	Associações mutualistas (mutual associations)	Life and non-life Insurance. Mutual associations may undertake activities other than insurance – but always within the realm of welfare and health care provision.
	Mútua de seguros (Mutual Insurance company)	Mútua de seguros are allowed in life insurance, in non-life insurance and in reinsurance.
Romania	Societăți mutuale' (mutual companies)	life and non-life insurance
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP	Social services, no insurance
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)	non-life and life insurance (complementary health insurance)
Spain	Mutuas de seguros (mutual insurance company)	Life and non-life insurance
	Mutualidades de previsión social (mutual provident societies)	Life and non-life insurance

Country	Legal types	Lines of business the Legal type is allowed to operate in
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)	life, non-life and re-insurance
	Försäkringsföreningar (insurance associations)	life, non-life and re-insurance
United Kingdom	In United Kingdom, mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual).	Life, non-life and re-insurance and other (non-insurance and non-financial) services.
Norway	Gjensidige forsikringsselskaper (mutual insurance company)	life, non-life and re-insurance

Source: Authors

What can be seen is that most legal types are allowed to operate non-life, life and reinsurance. Annex III of the Solvency II Directive provides an overview of all legal types allowed per country, for each line of business. This list includes, therefore all types of 'Directive' insurers. However, if the legal type does not appear in one of these lists, it does not necessarily mean that the legal type is excluded from operating non-life, life or reinsurance. There are cases where non-directive, de minimis, regimes exist that allow, under certain restrictions, smaller and mutual-type insurers.

Concerning **insurance markets**, and whether mutual-type organisations can operate on these markets, there are some noticeable differences. In Ireland, Friendly Societies are only allowed to offer life insurance. Also, in Bulgaria, the **взаимозастрахователна кооперация** (mutual insurance cooperative), and in Cyprus, the **εταιρεία περιορισμένης ευθύνης με εγγύηση** (company limited by guarantee) are only allowed in life insurance markets, while in Greece the **αλληλασφαλιστικός συνεταιρισμός** (mutual insurance cooperatives) are restricted to non-life insurance only. In Austria, the activities of the **kleine Versicherungsvereine auf Gegenseitigkeit** (small mutual insurance association) are restricted to certain lines of business (see box).

Austria: Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance associations)

They are allowed to offer insurance against:¹

- Fire and natural forces, covering all damage to or loss of property due to a) fire; b) explosion; c) storm; d) natural forces other than storm; and f) land subsidence (i.e. excluding nuclear risks)
- Other damage to property, covering all damage to or loss of property due to hail or frost, and any event such as theft, other than those mentioned earlier.

In 2011, of the 53 existing small mutual insurance associations, 34 were essentially fire insurers, 28 were animal insurers and one was a reinsurance mutual.²

In many countries, mutual-type organisations are excluded from offering **reinsurance** (for instance in Slovenia, Spain, Romania, Hungary, Latvia and Italy (Società di mutua assicurazione; mutual insurance companies)). In Portugal one type, the **Assoção mutualista** (mutual association) is not allowed to offer reinsurance, but is allowed to cover insurance

¹ See: Austrian Versicherungsaufsichtsgesetz/Insurance Supervision Act

² Financial Market Authority, Annual Report 2011

and other services. On the other hand, the other type, the *mútua de seguros* (mutual insurance company), is allowed to offer reinsurance policies, in addition to non-life and life insurance. In Hungary, a *biztosító egyesület* (Mutual Insurance Association), according to the Insurance Act, section 21, can not enter into “financial” insurance lines of business (credit insurance, back bond, etc.) and also not be in the reinsurance business.

A special insurance business, where mutual-type organisations play a dominant role in a number of European countries is compulsory or voluntary (supplementary/complementary) **health insurance**. As has been mentioned before, mutual-type organisations stood at the basis of modern welfare states and they are still active in related businesses. In many countries, for instance in the United Kingdom, Germany, Greece, Slovenia, the State is responsible (for the larger part) for the statutory system and private providers, under which are mutuals, can offer complementary health insurance policies. In France, there is a number of mutuals, which have been assigned to operate and manage some compulsory health insurance schemes (see box below). In the Netherlands, the compulsory health insurance is almost entirely run by mutual insurance companies. This despite the fact that the market is open to other types of operators as well (in the next section a textbox is included describing the Dutch insurance market).

France: mutuelles: organismes délégués

Although the mutuals are mainly active in complementary health insurance, some are also active in the compulsory statutory insurance domain. The three large health insurance regimes (public servants, self employed (AMPI) and agricultural workers (AMEXA)), are in varying degrees managed by the mutuals, the so-called delegated organisms “organismes délégués” (OD). This delegated statutory health insurance has historic roots. In total, these delegated mutuals have 11 million members (in 2004).¹

Mutual-type organisations can also be allowed to offer **(statutory) pension policies**, such as in Finland, where a specific legal type of mutual, the *Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag* (Pension Insurance Companies) operate the statutory pension schemes. In general, these markets are considered not to be free markets but in Finland, there is no restriction concerning what type of provider operates the statutory pension scheme (see box below).

¹ Mutuelles gestionnaires du régime obligatoire: Les mutuelles de fonctionnaires : fonctionnaires civils de l'Etat et les magistrats (art L. 712-6 du code de la sécurité sociale) : 5 378 000 198 assurés par des mutuelles de la fonction publique; Les mutuelles étudiants : (art L. 381-3) : 1 600 000 étudiants sur 2 100 000 relèvent d'une mutuelle d'étudiants. Les étudiants travaillant plus de 60 heures par mois ou de 120 heures par trimestre sont gérés, pour leur part, directement par les CPAM. Une partie des autres assurés : selon l'article L. 211-4, un groupement mutualiste remplissant certaines conditions peut être habilité par la CPAM en qualité de section locale. Les prestations gérées dans ce cadre concernent 1 130 500 assurés et ayants droits. Les fonctions publiques territoriales et hospitalières sont fortement mais non exclusivement représentées, ainsi que les bénéficiaires du statut des industries électriques et gazières. Les mutuelles de travailleurs indépendants: Les prestations maladie des trois millions de bénéficiaires de l'AMPI sont gérées pour moitié par des mutuelles, et pour moitié par des sociétés d'assurances. Le régime des exploitants agricoles: L'AMEXA laisse aux assurés le libre choix entre une caisse de MSA (choix de 90% des assurés), une mutuelle ou une société d'assurance. Sur personnes protégées contre le risque maladie. Les salariés agricoles sont, quant à eux, automatiquement affiliés aux caisses de MSA sans choix possible. Tous régimes confondus, les fonctionnaires constituent près de la moitié des effectifs gérés par des mutuelles et des sociétés d'assurance, les ressortissants du régime des non salariés non agricoles un peu plus du quart et les exploitants agricoles, à peine plus de 2% du total. Au total, les mutuelles gèrent fin 2005 l'assurance maladie obligatoire de 9,6 millions de bénéficiaires, soit 85 % des assurés et ayants droits gérés par délégation. Les assurances gèrent les 15% restants (1,7 millions, tous régimes confondus) essentiellement des professions indépendantes dont elles gèrent la moitié des assurés.

Finland: Statutory pension providers

A pension insurance company is a strictly regulated company form (regulated by the Act on Pension Insurance Companies (Laki työeläkevakuutusyhtiöistä/ Lag om arbetspensionsförsäkringsbolag 354/1997)¹. A pension insurance company may be a limited liability insurance company (including a public one) or a mutual insurance company. The owners of a mutual insurance company are the policyholders, i.e. both the employers and employees, as well as any holders of guarantee shares.²

The business of statutory pension is not classified as life insurance and hence is not regulated by the EU life Directive. The business is regulated by different laws. The private sector laws have been bundled into the TyEL-law starting January 1, 2007³. Nevertheless, all these laws follow the same basic principles for private, public sector employment, and self-employed persons. The main law for private sector pensions is the Employees' Pension Act (known as TyEL), which covers three fourths of the insured in the private sector. In practice, almost all employed persons, irrespective of nationality, are covered by Finnish employment pension legislation.⁴

Foreign pension insurance companies may not directly engage in statutory pension insurance in Finland, but a foreign corporation or natural person may establish a pension insurance company in Finland. The company shall be subject to the same restrictions regarding line of industry and concessions as a pension insurance company established by Finns. So far, no foreign insurance company is engaging in the earnings-related pension insurance business in Finland.

When mutual-type organisations are restricted to offering **other services** than insurance (for instance social services, assistance etc.), the type is usually a mutual benefit (or aid) society. These types can be found in **Romania**: Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners – CARP; **Luxembourg**: Société de secours mutuel (mutual aid society), **Italy**: Società di mutuo soccorso (benefit mutual societies) and **Greece**: Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual health funds). In Greece, these mutual health funds offer health care complementary to the social protection system for instance to employees of large firms, such as banks. In Italy, the mutual aid societies (società di Mutuo Soccorso) operate in the areas of health, social, recreational and cultural activities.

In the Anglo-Saxon countries (**United Kingdom** and **Ireland**), mutualism is defined often much broader than in Continental Europe. There are often no restrictions to what kind of activities mutual-type organisations are allowed to conduct.

The list here above only includes the existing mutual-type organisations and the markets in which they can operate. With regard to these markets, a number of national restrictions have been identified (for instance, where mutual-type organisations are not allowed to offer insurance, or particular lines of insurance). There are however, also countries in which mutuals as such are not at all known and foreseen, regardless of the activity they want to carry out (this is for instance the case in Estonia, Lithuania, Czech Republic).

¹ http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

² http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

³ See: <http://tyoelakelakipalvelu.etk.fi/fi/saadokset/en/20060395/?navi=haku>

⁴ IGP (2011), Summary of Social Security and Private Employee Benefits FINLAND 2011: http://www.igpinfo.com/igpinfo/public_documents/ss_summaries/Finland.pdf

3.3 Mutual market share

Having discussed the historical background of mutuals, the role they currently play and the advantages of mutual-type organisations in financial service sectors, it is not yet identified what is the importance of mutual-type organisations in the markets they serve. In this section, information is provided on the market share of mutual-type organisations in insurance business and other services. In addition, an estimation is provided concerning the number of European citizens being a member of a mutual-type organisation.

3.3.1 Insurance business

Mutual-type organisations operating in free competition, conduct business primarily in the insurance market, but not solely. Based on ICMIF¹ statistics, fine-tuned to the scope of the current study (mutual status and free competition), the following data can be presented.² Other sources of information, such as the Fact and Figures report of AMICE is helpful for various reasons as it provides a thorough analysis of the development of the insurance sector, its main players and their legal form. It however has two disadvantages: firstly, it is based on data from 2008 and secondly, the scope is a bit wider as it includes cooperative insurers as well.³

Based on ICMIF data it is calculated that in 2010, mutual insurers in Europe collected in total 179,047,755 million Euro in premiums, equally distributed over life and non-life insurance businesses⁴. The total premium growth in 2010 was 4.9 % (3.6 % in life; 6.2 % in non-life). This growth was similar in 2009 (5.3 %) after two years of growth close to 0 % (2008: -0.3 %, 2007: 0.7 %). In 2006, the premium growth was more than 10 %. The impact of the crisis is clearly noticeable in 2007 and 2008, but the mutual insurers recovered rapidly in 2009 and 2010. Between the countries, there are large differences. In some countries mutuals do not exist, are not allowed to operate on insurance markets, are not allowed at all or are very small (Cyprus, Czech Republic, Estonia, Iceland, Liechtenstein, Lithuania, Malta) and hence the gross written premiums is zero. In other countries, such as Germany, France, the Netherlands and the United Kingdom, mutual-type organisations represent a considerable amount of gross written premiums. In Germany and France, the premiums count up to more than 50 billion Euro. If the premiums are calculated per 1,000 citizens, Luxembourg and the Netherlands represent the highest ratio (Luxembourg: 2.2 thousand Euro per thousand citizens; the Netherlands: 1.2 thousand Euro per thousand citizens).

The market share of the mutual insurers remains at an equal level around 15.8 % (12.8 % in life; 20.5 % in non-life). In Finland, France, Germany, Hungary, the Netherlands, Nor-

¹ ICMIF: International Cooperative and Mutual Insurance Federation (<http://www.icmif.org/>).

² The annex contains a list of companies that have been included in the analysis. It must be emphasised that although the statistics are more accurate with regard to the scope of the study than previous presentations (mostly they included cooperative insurers and former mutual insurers), still an exact overview of the market share is difficult to compile due to the diversity of company forms and diversities in markets. For instance, the French health mutuals are not included in the data.

³ See AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe.

⁴ ICMIF (and some other sources) includes health insurance principally in the figures for life insurance; other sources (e.g. AMICE) include health insurance in non-life insurance. Some divergences in internationally available statistics are due to this difference in treatment.

way, Romania and Sweden the market share is above the European average. In other countries, it is below the average. See the table below for an overview of the development of the market share of mutual insurers in the countries over three years:

Table 3.2 market share of mutual-type organisations in insurance in 2008-2010

Country	2010	2009	2008	Country	2010	2009	2008
<i>Germany</i>	31 %	32 %	31 %	Greece	4 %	4 %	3 %
Netherlands	27 %	28 %	28 %	Italy	3 %	3 %	4 %
France	26 %	26 %	26 %	Slovakia	2 %	2 %	2 %
Finland	23 %	26 %	26 %	Poland	2 %	2 %	1 %
Romania	22 %	20 %	19 %	<i>Bulgaria</i>	2 %	2 %	6 %
<i>Norway</i>	18 %	17 %	20 %	<i>Ireland</i>	1 %	2 %	1 %
Sweden	17 %	18 %	18 %	Portugal	1 %	1 %	1 %
Hungary	17 %	1 %	18 %	Cyprus	0 %	0 %	0 %
Spain	14 %	13 %	13 %	Czech Republic	0 %	0 %	0 %
Slovenia	13 %	14 %	13 %	Estonia	0 %	0 %	0 %
Belgium	11 %	11 %	13 %	Iceland	0 %	0 %	0 %
Austria	8 %	6 %	8 %	Latvia	0 %	0 %	0 %
UK	7 %	6 %	5 %	Liechtenstein	0 %	0 %	0 %
Denmark	6 %	6 %	6 %	Lithuania	0 %	0 %	0 %
<i>Luxembourg</i>	4 %	4 %	3 %	Malta	0 %	0 %	0 %

Source: ICMIF data, authors

The countries written in italics concern the countries where the market share of life insurance is larger than for non-life. This is for instance the case in Norway, where Norwegian mutuals hold more than 30 % of the life market and 1 % of the non-life market. Countries that present a high non-life market share are Finland (41 %), France (42 %), Sweden (45 %) and the Netherlands (31 %). Concerning the geographical balance, it is noticeable that predominantly in Western European countries and the Nordic countries mutual insurance companies show high market penetration. In southern and eastern European countries, this is less the case. Reasons for this can be found in history (general distrust in socialist structures due to socialist past in the Eastern European countries) and in culture (in southern European countries mutuals tend to have a different role, more related to providing social services and being involved in health care related activities).

In 2010, the European mutual insurers together had 1,161,397,893 million Euro of assets, portraying a growth of more than 6 % compared to 2009. In that year, the growth had been even higher with 7.6 %, after a decrease of 5.2 % in 2008. The growth level of 2007 has not been reached in the last years (16.8 %). The countries where mutuals have the largest amounts of assets are (obviously) Germany (423 billion Euro), France (333 billion Euro) and the United Kingdom (105 billion Euro). If the assets per thousand citizens are calculated however, other countries show a higher ratio: Norway (6,434 Euro per thousand citizens), Finland (5,536 Euro per thousand citizens) and Sweden (5,481 Euro per thousand citizens). France and Germany show an equal ratio of 5,150 Euro per thousand citizens.

Based on the ICMIF data, in 2010, the number of employees working in the selected companies was 221,888. This number and the data on which this number is based seem to be highly volatile over the years. The countries having the most people work for mutual-type insurance companies are France (more than 80 thousand) and Germany (nearly 70 thousand). In the United Kingdom, nearly thirty thousand people work for a mutual insurance organisation. In addition, Spain and Austria report high numbers of employees (respectively, 9 thousand and 6 thousand).

In the textbox below some examples of national insurance markets and the role mutual-type organisations play in these, are provided.

The **Finnish** insurance market is dominated by insurance groups (conglomerates of limited companies and banks) which offer comprehensive insurance products through specialised companies in particular insurance fields. These groups usually have stable market shares, with only minor changes. Increasingly, banks have formed business partnerships with insurance groups to form "financial department stores" offering a wide range of financial services.¹

In 2010, there were in total 85 non-life insurance companies with a total premium of 3.548 billion Euro. This includes the 64 mutual insurance associations of the Local Insurance Group.² In life insurance, 11 companies were active totalling 5.220 billion Euro. Within statutory employment pension insurance, 7 companies were active having a total premium value of 10.652 billion Euro. Of the 7 statutory pension insurance companies, 6 are mutual:

- Etera Mutual Pension Insurance Company
- Ilmarinen Mutual Pensions Insurance Company
- Pensions-Alandia Pension
- Fennia Mutual Insurance Company
- Tapiola Mutual Pension Insurance Company
- Varma Mutual Pension Insurance Company³

An important feature of the Finnish insurance market concerns pension insurance companies. Employers obtain pension insurance for their employees from one of the private insurance firms (which in many cases form part of insurance groups). Finland maintains a system, which requires establishment in Finland in order to offer pension insurance in Finland. This system is allowed by the EU through a non-treaty derogation, although no prospect of removing this derogation is pending since little competition is expected due to different pension systems in other Member States.⁴

According to the FSA-FIN⁵, in 2010, the number of Finnish insurance companies remained unchanged, while that of local mutual insurance associations fell from 88 to 70.⁶ Besides the 64 insurance associations grouped in Local Insurance, there are a number of 'independent associations'. Currently, Tapiola and Local Insurance are merging to form one mutual financial group. The new group, which

¹ <http://crossborder.practicallaw.com/7-504-6240?source=relatedcontent>

² The Local Insurance Group comprises 64 insurance associations plus Local Insurance Mutual Company and the Federation of the Local Insurance Group: <http://www.lahivakuutus.fi/FI/Brieflyinenglish/Sivut/default.aspx>

³ FSA-FIN (2011), The Insurance Companies 2010

⁴ <http://crossborder.practicallaw.com/7-504-6240?source=relatedcontent>

⁵ Financial Supervisory Authority Finland

⁶ FSA-FIN (2011), The Insurance Companies 2010

will be owned by its members/ policyholders, will be established by merging the Local Insurance Mutual Company and the Tapiola General Mutual Insurance Company to form the group's central company. The regional insurance associations will be transformed into mutual insurance companies. The financial ties between the group-members will be established via guarantee capital.¹ The main reason for the merger is to strengthen the mutual sector against the large bank-insurer-conglomerates operating in the Finnish market. Local Insurance-Tapiola Group will become Finland's largest and most solvent non-life insurer. Although, there is not a direct pressure from Solvency II, it relieves pressure on the insurance associations to potentially implement it for their small mutual association. The merging will be finalised in 2013.²

The Netherlands Over the past 20 years, there has been a consolidation trend across the sectors in the Dutch insurance industry¹. As illustrated in the table below, this trend accelerated after the turn of the century and continues presently at a steadier pace. Consolidation has been strong both in the non-life (P&C (property and casualty), health care) and life insurance sectors.

Number of companies	2001	2006	2010	% change	
				2001-2006	2006-2010
Life insurance	261	75	53	-71 %	-29 %
In-kind benefit & funeral expenses insurance	47	38	32	-19 %	-16 %
P&C insurance (inc. health care)	981	247	209	-75 %	-15 %

Source: Verbond van Verzekeraars, Verzekerd van Cijfers 2006, 2011. Calculations by Panteia

Consolidation through mergers and acquisitions and access to external financing and simplification of management are reasons why mutual insurance societies in the Netherlands have been converted into joint-stock companies. Often, mutual insurance societies and joint-stock insurance companies collaborate in a broader financial or insurance group ("concern") by means of a cooperative or holding company.

Historically, all health insurance providers in the Netherlands used to be mutual insurance societies. The health insurance sector is still dominated by mutual insurance societies and nowadays increasingly by cooperatives as holding companies (with members' accounts). Little demutualisation has occurred, despite many mergers.

The table below shows that the four largest insurance groups represent over 50 % of the market share. The table below illustrates the role of (previous) mutual societies within the top-10 largest insurance groups in the Netherlands.

¹ Guarantee capital is created by policyholders/owners who invest funds. They receive an interest of 5-6 per cent on the invested funds. If the funds are returned to the investors, they only receive back their own investments and not any share of the capital. Guarantee capital is therefore different from share capital as the owner will not receive a return on investment (i.e. no capital gains). Policyholders/owners that provide the guarantee capital have voting rights on how the capital will be invested. Through the guarantee capital, mutual companies (e.g. the Tapiola life, non-life and pension fund mutuals) can have financial ties as they can cross-own each others' guarantee fund. The guarantee capital is supervised by the Financial Supervisory Authority.

² Local Insurance-Tapiola Press release 7 February 2012:
<http://www.tapiola.fi/wwweng/Briefly/Media+centre/News/Local+Insurance+and+Tapiola+to+merge.htm>

Name of insurance group	Market share 2009	Market share 2007	Legal forms
Achmea / Eureko (Centraal Beheer Achmea, Zilveren Kruis Achmea, <u>Avero</u> Achmea, Agis, Hagelunie, <u>AZVZ</u> , Eurocross and <u>FBTO</u>)	23.9 %	25.5 %	Mutual insurance societies and joint-stock companies collaborating through a private limited company (AZVZ is a mutual insurance society, Zilveren Kruis and Avero previously consisted of a cooperative, joint-stock companies and a mutual insurance society, FBTO used to be a mutual insurance society, CB and Achmea are joint-stock companies)
Uvit ² (<u>Univé</u> , <u>Onderlingen Unive</u> , <u>VGZ</u> , <u>IZA</u> , <u>IZZ</u> en <u>Trias</u>), market leader health care insurance	12.5 %	12.3 %	Previous and present mutual insurance societies and joint-stock companies collaborating through non-insurance cooperative Uvit. IZZ consists of a foundation, joint-stock and limited companies
GG Groep (since 2008 includes <u>OHRA & Delta Lloyd health care insurance</u>)	9.7 %	6.6 %	2 Health care mutual insurance societies and subsidiaries Delta Lloyd and OHRA health care (joint stock companies)
ING Groep (including Nationale Nederlanden), also represented in over 50 other countries	8.3 %	9.5 %	Joint-Stock (holding)
ASR (Previously Fortis), parent company of De Amersfoortse, Europeesche Verzekeringen and Ditzo	6.5 %	8.2 %	Joint-Stock (joint-stock and limited companies)
Menzis (<u>Menzis</u> , Avizo, Anderzorg)	6.3 %	5.3 %	Mutual insurance society with 2 joint-Stock subsidiary companies, collaborating with Avizo limited company (intermediary) and joint-stock insurance company Anderzorg. Menzis is a previous health mutual
SNS Reaal (REAAL, Zwitserleven, DBV, Proteq)	5.6 %	5.1 %	Joint-Stock (a previous cooperative and joint-stock companies)
Delta Lloyd Groep (Delta Lloyd, <u>OHRA</u> , ABN-AMRO, Erasmus, Nationale Borg, NOWM)	5.2 %	7.9 %	Stock (joint-stock companies)
Aegon (AEGON, Spaarbeleg, Optas)	5.0 %	5.3 %	Stock (AEGON limited – international & holdings – and joint-stock companies, Optas: pension fund foundation and joint-stock companies)
Allianz , also international (Allianz, London, Universal Leven, Euler Hermes)	1.7 %	2.0 %	Stock (limited and joint-stock companies)

Source: Verbond van Verzekeraars: Verzekerd van Cijfers 2011. Dutch insurance industry in figures <http://financieel.infonu.nl/verzekering/> terminology streamlined with the terms of this study.

¹ Vektis Jaarcijfers 2010. Zorgverzekeraars en zorgfinanciering: Verbond van Verzekeraars, verzekerd van cijfers 2006 and 2011.

² This company was formerly known as Uvit but demerged 31 Dec 2011 into Cooperatie VGZ (which is predominantly health) and Cooperatie Univé (which is predominantly other non life excluding health).

Germany: overview insurance market

Some of the mutual insurance companies belong to the largest insurance companies in Germany. Within the top 20 of largest insurance groups in Germany, there are a number of mutual insurance groups (Debeka is ranked 7th; Signal-Iduna 10th; HUK-Coburg 11th; Gothaer 12th; Alte Leipziger-Hallesche 16th; and Continentale Versicherungs-Verbund 18th).¹

In the German market, no difference is felt between joint-stock companies and mutual insurance companies. Both are active on the market on the same conditions. Both company forms have their pros and cons.

In **Latvia**, by the third quarter of 2011, there were twelve insurance companies operating in Latvia whereof three companies were engaged in life insurance and nine companies in non-life insurance business. This included one mutual non-life insurance cooperative society: Lauto Klubs, a transport related insurance scheme organised by Latvijas Auto association, a non-governmental organisation, which unites Latvian freight and passenger road transportation companies². In addition, ten branches of foreign insurance companies were active on the Latvian insurance market.³

Services related to health care (including insurance)

In health care assistance and social services, mutuals are estimated to provide services to approximately 230 million European citizens.⁴ Since these services portray a large diversity, no consolidated data is available to sketch a European-wide picture. Therefore, we have to rely on information obtained from a limited number of countries:

- In **Italy** there are about 1,500 Società di mutuo soccorso, i.e. benefit mutual societies (active in health care, social, cultural services). About 300 of these (benefit mutuals) carry out health and assistance services. These 1,500 mutuals have approximately one million members and they represent approximately 12 % of the market in complementary health insurance. It was calculated that the 20 most active health care mutuals paid nearly 32 million Euro in complementary health insurance, including copayments shared with the statutory system (more than 8 million Euro). 530 people either worked or volunteered for these 20 health mutuals.⁵ These mutual benefit societies are not included in the ICMIF statistics on insurance.
- In **Slovenia**, there is one Družba za vzajemno zavarovanje (mutual insurance company), called Vzajemna⁶, operating complementary health insurance. It provides services to 850,000 Slovenes out of the total population of 2 million. The activities of Vzajemna are included in the ICMIF statistics.
- In **France**, mutuals provide cover for 7 million people in compulsory health insurance. With regard to complementary health insurance, the coverage is 38 million, totalling more than 50 % per of the French population. The French mutual-type organisations

¹ See: <http://de.statista.com/statistik/daten/studie/1901/umfrage/top-20-der-deutschen-versicherungen/>

² <http://www.lauto.lv/index.php/item/175>

³ See: http://www.fktk.lv/en/statistics/insurance/quarterly_reports/2012-01-18_20110930_operation_of_in/

⁴ Calculation by Association Internationale de la Mutualité (AIM), see: AIM's Memorandum to the new European Parliament.

⁵ Information provided by AIM, on the basis of Aiccon (2011), Survey on the role of complementary mutuals in Italy.

⁶ <http://www.vzajemna.si/en/>

manage their own health care facilities, such as hospitals, pharmacies, laboratories, dentists, homes for elderly.¹

- In the **Netherlands**, the compulsory health insurance is strictly regulated. On the other hand, it is open to any type of provider. In reality, mutual-type organisations (and groups) are the most dominant providers for compulsory health insurance, covering almost the entire population. The health insurance mutuals act primarily as insurance companies and do not manage their own facilities. They make arrangements with health care providers concerning services and prices. They play an important role in controlling the social security budgets in the Netherlands.
- In **Belgium**, almost the entire population is member of the Mutual Health Societies (ziekenfondsen of mutualiteiten/mutualités), which operate the statutory health insurance (not included in the scope of this study). Their members can choose for a complementary health insurance scheme in the associated mutual benefit company (maatschappijen van onderlinge bijstand/société mutuelle). It is estimated that 2.6 million Belgians have a complementary insurance via the mutual benefit company (see for a description of the Mutual benefit companies (maatschappijen van onderlinge bijstand/société mutuelle) offering complementary health insurance, Section 4.2.1).²

Other services provided by mutual-type organisations

Mutual-type organisations provide other services as well. Although consolidated data is lacking at European level, the following information at country level can be presented:

- In **Portugal**, there are 101 associações mutualistas (mutual associations), covering approximately 10 % of the total population. They operate in various lines of business including death and funeral business, life insurance and retirement savings. With regard to this last line of business, they paid 180 million Euro to their members in 2010. Approximately 1,600 people are working for a mutual association. The by far largest mutual association, Montepio, has around half a million members and net assets of nearly 3 billion Euro. Montepio has as its subsidiary a savings bank, with a total net assets of 21 billion Euro. In the domestic market, Montepio has 500 branches and nearly 4,000 employees (mostly employed in the bank).³
- In the **United Kingdom**, mutual-type organisations can be involved in many different activities. Some mutual-type organisations, for instance the discretionary are deliberately excluded from insurance business. These are discretionary mutuals (e.g. Dental Protection⁴) and the claims can only be settled after a decision by the board to pay out the claimed amount. These companies are not supervised by the Financial Supervisory Authority (FSA). Some are hybrids: a discretionary mutual, which provides an extra cover for its members by insuring the losses above the retention rate of the mutual. These companies are often referred to as hybrids (as they then fall under the supervision of

¹ Information provided by French members of AIM.

² Zorgnet Vlaanderen (2011), Hospitalisatieverzekeringen doorgelicht: Voorstellen voor een betere sociale bescherming

³ See: Montepio (2012), Annual report 2011.

⁴ Dental Protection is a wholly owned subsidiary of the Medical Protection Society designed specifically to serve the needs of the Society's dental members. MPS is not an insurance company; it is a non-profit-making mutual association of doctors, dentists and other healthcare professionals. It does not exist to make profits and has no shareholders, its funds being owned by members. Source: http://www.dentalprotection.org/uk/vdp_yd/aboutdpi/ : MPS is not authorised according to the FSA on-line register but is categorized as introducer/appointed representative. Dental Protection is not found in the register.

the FSA as insurance intermediaries). An example of a hybrid is The Benenden Healthcare Society Limited: Benenden is an incorporated friendly society, registered under the Friendly Societies Act 1992. The Society's contractual business (the provision of tuberculosis benefit) is authorised by the FSA. The remainder of the Society's business is undertaken on a discretionary basis.¹ These discretionary mutuals acts as quasi-insurers and are not subjected to the rules of the FSA (to the dislike of other larger insurance companies). Before court, the discretionary mutuals successfully argued that they indeed are not insurers.

3.4 Concluding remarks

The mutualisation of risks, i.e. sharing risks amongst a homogeneous group of persons, can be regarded the most essential, elemental, simple and long-lasting way of insurance. With regard to insurance, the different legal forms of service providers (mutuals or not) both have their advantages and disadvantages, making each of them better suited to covering particular risks, to working with different target groups and to maintaining different management and organisational structures. In general, mutual insurers focus on less risky business activities and product offerings; as a consequence of their more limited access to capital markets, mutuals are less dependent on them and have greater alignment of owners and creditors/policyholders with longer-term orientation. Moreover, it is argued that mixed sectors containing both mutuals and joint-stock companies create a systemic advantage, since a diversified landscape of ownership structures contributes to a more competitive and less risky market than an environment solely populated by either mutuals or joint-stock companies. In addition, it appears that mutuals are more resilient to the current economic downturn. Hence, mutual-type organisations have an added value in both the European insurance market and the society at large.

Although, the mutual form of insurance exists already for centuries, this does not mean that this way of providing coverage of risks is an old-fashioned way of doing business. On the contrary, because it has existed for centuries, it has proven to be an effective and valuable way of insuring people. Hence, it might be an old form; still it adds value in modern times.

Concerning the activities of mutual-type organisations, it can be concluded that there are restrictions to the activities mutual-type organisations are allowed to conduct. In many countries, mutuals are restricted to conduct certain activities. Generally, either they are defined as insurance operators, or they are not allowed to be involved in financial service markets. Within insurance, their operations may be restricted to life or to non-life insurance. Hence, the restrictions are often related to the legal status of the organisation. It would be beneficial when rules and regulations were activity-related rather than legal-status related, so that for each operator in the same market, the same activity-related rules apply.

¹ AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

4 Legal framework of mutual-type organisations in Europe

Key messages

- Most mutual-type organisations are in fact as a special kind of association (1), cooperative (2) or company (3). Only in a few countries, a special regime for mutual-type organisations (4) is established.
- The underlying legal framework can determine the way mutual-type organisations are treated in terms of regulations concerning creation, corporate governance, tax issues. However, even more important, it seems, are the rules that are imposed on mutual-type organisations concerning the activity they conduct. In many countries, the mutual-type organisation is explicitly described and regulated in the insurance law. Whether in the insurance law the mutual-type organisations are based on associations, cooperatives or companies' legislation, is of minor importance, but not irrelevant.
- When mutual-type organisations are active in social protection and when they provide social services, often the legal framework is either based on a specific legal framework, or it is based on the legal framework of associations. An underlying legal framework of cooperative or company type is more often used for insurance companies. In offering (complementary) health insurance, mutual-type organisations from all four categories can be found.
- With regard to establishing new mutuals:
 - In general, across the countries, similar issues are dealt with in the **Statutes** and the Statutes should be agreed upon when establishing the mutual-type organisation. The 'standard' content of statutes includes the name of the organisation, including words related to being mutual; the purpose of the organisation; the head office of the organisation; the way people can become member and their rights; the composition of the governance model including number of members in the management board/board of directors/supervisory board; the way the Statutes can be amended; rules concerning winding-up/ merging/ liquidation / demutualisation. For some mutual-type organisations, also the territorial range of the activity should be included in the Statutes. The bylaws of most mutual-type organisations must be drawn up in the form of a deed by a public notary. Sometimes it is explicitly mentioned that not complying with this rule results in a penalty of nullity
 - Concerning the **number of (founding) members**, there is a large variety of rules concerning the number of founding members needed to establish a mutual-type organisation. This minimum number of members can range from one to five hundred members.
 - In many countries, there is no exact indication of the **initial (foundation) capital**. The initial capital depends for a large part on the financial plan behind setting up the mutual-type organisation. The capital should at least cover operational costs for initiating the organisation. In general, the initial capital for mutual-types having an underlying legal framework similar to associations is lower than the initial capital for mutual-type organisations similar to cooperatives and companies.
 - To obtain an **insurance licence**, the mutual-type organisations need to apply for it. Usually, they need to provide the memorandum of association (the founding act), provide details concerning the founding members, provide the Statutes and pay the initial (foundation) capital. This initial capital is often set at the minimum guarantee capital levels.
 - Concerning the **minimum capital requirements** for establishing a mutual-type organisation, this depends mainly on the activity-related capital requirements. As most types of mutual organisations in the countries studied are solely involved in insurance, the European agreed capital requirements (the minimum guarantee fund) are applied everywhere. Under current legislation, Member States have the possibility to lower the guarantee fund by 25 % for mutual-type

associations. In addition, very small insurers do not always have to comply with the European rules: in many countries non-directive insurers' regimes (de minimis regimes) are established.

- In general, mutual-type organisations need to be **registered** in the commercial, companies and /or trade registers.
- Complying with the **capital requirements for an insurance licence** is indeed a particular issue for mutual-type organisations, when wishing to establishing a new mutual. Since the capital can only be obtained from the (founding) members, there has to be a sufficient number of members (or sufficiently potent members) to provide the minimum of 2.5 million Euro (non-life) or 3.7 million Euro (life) (according to European life and non-life insurance Directives).
- Concerning **taxation**, only for a limited number of mutual (associations) operating in markets subject to free competition tax benefits exist. This is not a form of preferential treatment, but results from their legal form of being an association (hence, they are not regarded being a company and hence do not pay company tax).
- Only for a limited number of mutual-type of organisation forms, **employee involvement** is described separately. In most cases, the employee involvement is closely aligned with association, company or cooperative law and it does not cause any major difficulties in relation to members' control over the mutual-type organisation.

The aim of this chapter is to explore further the different legal frameworks applicable to the different mutual-type organisation in the European countries. In Section 4.1, an overview will be provided of the laws applicable to mutual-type organisations. In Section 4.2, a classification will be provided of the legal frameworks. This section will be followed by Section 4.3 in which the legal frameworks for establishing a new mutual will be examined. Section 4.4 elaborates on additional issues concerning the legal framework and finally, in Section 4.5 some concluding remarks will be made.

4.1 Laws applicable to mutual-type organisations: an overview

In the previous chapter, distinctions have been made with regard to the activities, in which the mutual-type organisations are involved, in the current chapter a closer look will be given to the distinctions in legal forms. As has been presented in the previous chapters, a large diversity exists of legal types of mutual organisations. The list of approximately 40 different mutual-type organisations' legal types can even be enlarged when taking into account all the de minimis, non-directive regimes in the countries. Although, some examples of these de minimis regimes will be presented, the focus in this chapter is on the ordinary legal regimes for mutual-type organisations. Before providing an attempt to cluster different legal frameworks of mutual-type organisations in Section 4.2, in this introductory section the references to the main legal text, concerning the different types of mutuals in the countries is provided.

Table 4.1 Overview main legislative texts related to the different mutual-type organisations

	Legal types	Main Legal texts applicable to the mutual-type organisation
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	<ul style="list-style-type: none"> Insurance Supervision Act (Versicherungsaufsichtsgesetz)¹
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)	<ul style="list-style-type: none"> Insurance Supervision Act (Versicherungsaufsichtsgesetz)²
Belgium	Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society)	<ul style="list-style-type: none"> The Law of July 9, 1975 on the control of insurance companies (9 juli 1975 Wet betreffende de controle der verzekeringsondernemingen / 9 juillet 1975 Loi relative au contrôle des entreprises d'assurances) Law of 1995, relating to intermediation on insurance and reinsurance and to insurance products distribution (27 maart 1995 Wet betreffende de verzekerings- en herverzekeringbemiddeling en de distributie van verzekeringen/ 27 mars 1995 Loi relative à l'intermédiation en assurances et en réassurances et à la distribution d'assurances; Law of 2002, relating to state supervision on financial sector and services (co-operation agreement OCM/CBFA) (2 augustus 2002 - Wet betreffende het toezicht op de financiële sector en de financiële diensten / 2 août 2002. - Loi relative à la surveillance du secteur financier et aux services financiers. This last Law has recently in 2012 been amended to introduce a new supervisory model (twin peaks model).³
	Societe mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)	<ul style="list-style-type: none"> De Wet van 26 april 2010 houdende diverse bepalingen inzake de organisatie van de aanvullende ziekteverzekering (I) / Loi du 26 Avril 2010 portant des dispositions diverses en matière de l'organisation de l'assurance maladie complémentaire (I) 2010 Law on complementary health insurance In the Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen" / Loi relative aux mutualités et aux unions nationales de mutualités of 6 August 1990 (The law of 1990 on mutual health societies, hereafter called the 1990 Law on mutual health societies)
Bulgaria	взаимозастрахователна кооперация (mutual insurance cooperative)	<ul style="list-style-type: none"> Bulgarian Insurance Code (КОДЕКС за застраховането)⁴ Law on cooperatives¹

¹ Versicherungsaufsichtsgesetz 1978, Federal Law Gazette 569/1978, as amended. The last amendment was made by the law FLG 54/2012 (status of information: 11 July 2012). The law can be found in an updated German original version through a link on <http://www.fma.gv.at/de/rechtliche-grundlagen/gesetzliche-grundlagen/aufsichtsgesetze.html> ; A not completely up-to-date (informal) translation into English (on 11 July 2012, the latest amendment included was FLG 58/2010) can be found on <http://www.fma.gv.at/en/legal-framework/legal-foundation/supervisory-laws.html> In this chapter, all references to Articles relate to the articles of this act, unless specified otherwise.

² Versicherungsaufsichtsgesetz 1978, Federal Law Gazette 569/1978, as amended. The last amendment was made by the law FLG 54/2012 (status of information: 11 July 2012). The law can be found in an updated German original version through a link on <http://www.fma.gv.at/de/rechtliche-grundlagen/gesetzliche-grundlagen/aufsichtsgesetze.html> ; A not completely up-to-date (informal) translation into English (on 11 July 2012, the latest amendment included was FLG 58/2010) can be found on <http://www.fma.gv.at/en/legal-framework/legal-foundation/supervisory-laws.html> In this chapter, all references to Articles relate to the articles of this act, unless specified otherwise.

³ i.e.: In short: 1) the prudential supervision of most financial institutions will be in the hands of the National Bank of Belgium (the "NBB") with, however, certain types of financial institutions with a lower risk profile still subject to prudential supervision by the Financial Services and Markets Authority (the "FSMA", which is the new name of the CBFA); and 2) the supervision of the financial markets and of the so-called "conduct of business" (COB) rules will be concentrated in the hands of the FSMA: see: Etienne Dessy, Els Janssens (2011), Twin Peaks. More than a new supervision model.

⁴ Insurance Code, see: http://www.nbbaz.bg/Libraries/Norms-En/INSURANCE_CODE.sflb

	Legal types	Main Legal texts applicable to the mutual-type organisation
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)	<ul style="list-style-type: none"> Law on Insurance Services and Other Related Issues 2002-2009 (ΟΙ ΠΕΡΙ ΤΗΣ ΑΣΚΗΣΕΩΣ ΑΣΦΑΛΙΣΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΚΑΙ ΑΛΛΩΝ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ ΝΟΜΟΙ ΤΟΥ 2002 ΕΩΣ 2009)²
Czech Republic	N/A	<ul style="list-style-type: none"> N/A
Denmark	Gensidige selskaber (Mutual companies)	<ul style="list-style-type: none"> Consolidated Financial Business Act (Bekendtgørelse af lov om finansiel virksomhed, no 705 of 25/06/2012)³ Danish Act on Public and Private Limited Companies (the Danish Companies Act) (lov om aktie- og anpartsselskaber (selskabsloven))⁴
Estonia	N/A	<ul style="list-style-type: none"> N/A
Finland	Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies)	<ul style="list-style-type: none"> Insurance Companies Act, (Vakuutusyhtiölaki /Försäkringsbolagslag 18.7.2008/521)⁵
	Vakuutusyhdistys/försäkringsförening (insurance association)	<ul style="list-style-type: none"> Law on Insurance Associations (Vakuutusyhdistyslaki/Lag om försäkringsföreningar 31.12.1987/1250)⁶
	Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)	<ul style="list-style-type: none"> Act on Pension Insurance Companies (Laki työeläkevakuutusyhtiöistä/ Lag om arbetspensionsförsäkringsbolag 354/1997)⁷
France	Société d'assurance mutuelle (mutual insurance companies)	<ul style="list-style-type: none"> Insurance code ("Code des assurances")⁸
	Mutuelles (mutuals)	<ul style="list-style-type: none"> Code of mutuality ("Code de la mutualité")⁹
Germany	Versicherungsverein auf Gegenseitigkeit (mutual insurance association)	<ul style="list-style-type: none"> Insurance Supervision Act (Gesetz über die Beaufsichtigung der Versicherungsunternehmen (Versicherungsaufsichtsgesetz – VAG)
	Kleine Versicherungsvereine (small insurance mutual)	<ul style="list-style-type: none"> Insurance Supervision Act (Gesetz über die Beaufsichtigung der Versicherungsunternehmen (Versicherungsaufsichtsgesetz – VAG)
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)	<ul style="list-style-type: none"> Legislative Decree 400/1970 («Περί Ιδιωτικής Επιχειρήσεως Ασφαλίσεως»)¹⁰ Law 1667/1986 (substituted Law 602/1915)
	Αλληλοβοηθητικά Ταμεία (Mutual health funds)	<ul style="list-style-type: none"> Royal Law 15/20.05.1920 Law 281/1914 Law 2151/1920
Hungary	Biztosító egyesület (Mutual Insurance Association)	<ul style="list-style-type: none"> Act No. LX of 2003 on Insurance Institutions and the Insurance Business¹¹

¹ Cooperative Act: http://www.microfinancegateway.org/gm/document-1.9.25199/24817_file_law_Bulgaria_02.pdf

² See: ΟΙ ΠΕΡΙ ΤΗΣ ΑΣΚΗΣΕΩΣ ΑΣΦΑΛΙΣΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΚΑΙ ΑΛΛΩΝ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ ΝΟΜΟΙ ΤΟΥ 2002 ΕΩΣ 2009: [http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/\\$file/N%2035%28I%29%202002-%20105%28I%292009%20%28CE%95%CE%BD%CE%BF%CF%80%CE%BF%CE%AF%CE%B7%CF%83%CE%B7%20CF%83%CF%84%CE%B7%CE%BD%20CE%95%CE%BB%CE%BB%CE%B7%CE%BD%CE%B9%CE%BA%CE%AE%29.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/$file/N%2035%28I%29%202002-%20105%28I%292009%20%28CE%95%CE%BD%CE%BF%CF%80%CE%BF%CE%AF%CE%B7%CF%83%CE%B7%20CF%83%CF%84%CE%B7%CE%BD%20CE%95%CE%BB%CE%BB%CE%B7%CE%BD%CE%B9%CE%BA%CE%AE%29.pdf).

³ <https://www.retsinformation.dk/Forms/R0710.aspx?id=142178>; an English translation of a previous consolidated act can be found at: http://www.finanstilsynet.dk/Regler-og-praksis/Translated-regulations/-/media/Regler-og-praksis/2011/CAct_885_2011new.ashx

⁴ See English translation: <http://www.dcca.dk/graphics/ny%20eogs/English%20version/Legislation/The%20Danish%20Companies%20Act%20-%2006122010.pdf>

⁵ <http://www.finlex.fi/fi/laki/ajantasa/2008/20080521>

⁶ <http://www.finlex.fi/fi/laki/ajantasa/1987/19871250>

⁷ <http://www.finlex.fi/sv/laki/alkup/1997/19970354>; and:

http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

⁸ Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006073984>

⁹ Code de la mutualité :

<http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074067&dateTexte=20080505>

¹⁰ <http://www.eaee.gr/cms/eng/uploads/nd400-70en.pdf>

¹¹ <http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0300060.tv&dbnum=62>

	Legal types	Main Legal texts applicable to the mutual-type organisation
	Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)	<ul style="list-style-type: none"> ■ Act No. XCVI of 1993 on Voluntary Mutual Insurance Funds¹ ■ Act II of 1989 on Association ■ Act C of 2000 on Accounting²
Ireland	Friendly societies	<ul style="list-style-type: none"> ■ Friendly Societies Acts 1896 to 1977
Italy	Società di mutuo soccorso (benefit mutual societies)	<ul style="list-style-type: none"> ■ Law n° 3818 of 15 April 1886 (Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso)³ ■ Law 502 of 1992 (on complementary health funds)⁴ ■ Law 460 of 1997 (not-for-profit)⁵
	Società di mutua assicurazione (mutual insurance companies)	<ul style="list-style-type: none"> ■ Civil Code (Codice Civile)⁶ ■ The Private insurance law: legislative decreen. 209 of 7 September 2005 – Code of Private Insurance⁷
Latvia	Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)	<ul style="list-style-type: none"> ■ The Law On Insurance Companies and Supervision Thereof⁸. ■ The cooperative society law⁹
Lithuania	No mutuals	<ul style="list-style-type: none"> ■ N/A
Luxembourg	Association d'assurances mutuelles (mutual insurance association)	<ul style="list-style-type: none"> ■ Law on the insurance sector of 6 December 1991 (Loi modifiée du 6 décembre 1991 sur le secteur des assurances)
	Société de secours mutuel (mutual aid society)	<ul style="list-style-type: none"> ■ Law of 7 July 1961 concerning the mutual benefit societies (loi du 7 juillet 1961 concernant les sociétés de secours mutuels)¹⁰
Malta	Mutual association	<ul style="list-style-type: none"> ■ Insurance Business (Assets and Liabilities) Regulations¹¹ ■ Insurance Rule 5 of 2008¹²
Netherlands	Onderlinge Verzekeringmaatschappijen/vereniging (insurance mutual)	<ul style="list-style-type: none"> ■ Besluit van 12 oktober 2006, houdende prudentiële regels voor financiële ondernemingen die werkzaam zijn op de financiële markten (Besluit prudentiële regels Wft) (Decision of 12 October 2006 laying down prudential rules for financial companies operating in the financial markets (Decree on Prudential Rules Financial market supervision) ■ Burgerlijk Wetboek 2 (Civil Code 2)
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)	<ul style="list-style-type: none"> ■ Act of Insurance and Pension Funds Supervision 2003¹³ ■ Act of Insurance Activity 2003¹

¹ http://www.euro.who.int/_data/assets/pdf_file/0006/80826/E68317.pdf

² which was later amended several times but mainly by the "Act XCIX of 2004 on the Amendment of the Act C of 2000 on Accounting" in order to comply with relevant regulations of the European Union.

³ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso:
<http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

⁴ Decreto Legislativo 30 dicembre 1992, n. 502, "Riordino della disciplina in materia sanitaria, a norma dell'articolo 1 della legge 23 ottobre 1992, n. 421": <http://www.handylex.org/stato/d301292.shtml>

⁵ Decreto Legislativo 4 dicembre 1997, n. 460, "Riordino della disciplina tributaria degli enti non commerciali e delle organizzazioni non lucrative di utilità sociale":
<http://www.parlamento.it/parlam/leggi/deleghe/97460dl.htm>

⁶ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

⁷ CODICE DELLE ASSICURAZIONI PRIVATE (DECRETO LEGISLATIVO 7 settembre 2005, n. 209):
http://www.isvap.it/isvap_cms/docs/F9461/CAP_annotato.pdf

⁸ see http://www.fktk.lv/texts_files/Apdrosin_sab_un_to_uzraudz_lik_ar_groz_A.pdf

⁹ See: http://www.vvc.gov.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Co-operative%20Societies%20Law&resultsPerPage=10

¹⁰ Loi du 7 juillet 1961 concernant les sociétés de secours mutuels (Mémorial A no 28 du 21 juillet 1961); modifiée par: Loi du 18 août 1995 concernant l'assistance judiciaire et portant modification.

¹¹ Subsidiary legislation 403.16 insurance business (assets and liabilities) regulations Legal notice 286 of 2007, as amended by Legal Notices 426 of 2007 and 260 of 2009.

¹² <http://www.mfsa.com.mt/files/LegislationRegulation/regulation/insurance/insurers/Insurance%20Rule%205%20of%202008.pdf>

¹³ Act of 22 May 2003 on Insurance and Pension Funds Supervision and on Insurance Ombudsman:
http://www.knf.gov.pl/en/Images/o_nadzorze_ubezpieczeniowym_i_emerytalnym_2011_tcm81-27179.pdf

	Legal types	Main Legal texts applicable to the mutual-type organisation
Portugal	Associações mutualistas (mutual associations)	<ul style="list-style-type: none"> ■ Mutual Association Code (decreto-lei n° 72/90 of 3 March 1990, <i>codigo das associações mutualistas</i>)²
	Mútua de seguros (Mutual Insurance company)	<ul style="list-style-type: none"> ■ Law 94-B/98 of april 17 (Decreto-Lei n.o 94-B/98 de 17 de Abril) ■ Insurance law (Decreto-Lei 8-C/2002 de 11 de Janeiro)
Romania	Societăți mutuale' (mutual companies)	<ul style="list-style-type: none"> ■ Law no. 32/2000 on insurance undertakings and insurance supervision
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP	<ul style="list-style-type: none"> ■ CAR – L 122 from 1996 (restated in 2009) ■ CARP – L 540 from 2002 ■ Law 93/2009
Slovakia	N/A	N/A
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)	<ul style="list-style-type: none"> ■ Insurance act (Official Gazette of Republic of Slovenia no. 13 on 17 February 2000 and corrigendum published in no. 91 on 6 October 2000) ■ Law Amending the Law on Health Care and Health Insurance (Official Gazette of the Republic of Slovenia, no. 29/98)
Spain	Mutuas de seguros (mutual insurance company)	<ul style="list-style-type: none"> ■ Real Decreto Legislativo 6/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley de ordenación y supervisión de los seguros privados ■ Real Decreto 2486/1998, de 20 noviembre, por el que se aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados
	Mutualidades de previsión social (mutual provident societies)	<ul style="list-style-type: none"> ■ Real Decreto 1430/2002, de 27 de diciembre, por el que se aprueba el Reglamento de mutualidades de previsión social ■ Real Decreto Legislativo 6/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley de ordenación y supervisión de los seguros privados
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)	<ul style="list-style-type: none"> ■ Insurance Business Act (Försäkringsrörelselag)³
	Försäkringsföreningar (insurance associations)	<ul style="list-style-type: none"> ■ Insurance Business Act (Försäkringsrörelselag)⁴
United Kingdom	In United Kingdom mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual).	<ul style="list-style-type: none"> ■ Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 ■ Building Societies Act 1986 ■ Friendly Societies Act 1992 ■ Industrial and Provident Societies Act 1965
Iceland	N/A	<ul style="list-style-type: none"> ■ N/A
Liechtenstein	Versicherungsverein auf Gegenseitigkeit und Hilfskasse (Abolished)	<ul style="list-style-type: none"> ■ N/A
Norway	Gjensidige forsikringselskaper (mutual insurance company)	<ul style="list-style-type: none"> ■ Law on insurance companies, pension companies and their business activity (Lov om forsikringselskaper, pensjonsforetak og deres virksomhet mv. (forsikringsvirksomhetsloven))⁵

Source: Authors

¹ Act of 22 May 2003 on Insurance Activity:

http://www.knf.gov.pl/en/Images/Insurance_Activity_2011_a_tcm81-27882.pdf

² <http://www.pedromartinho.com/portal/codigo.htm>

³ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

⁴ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

⁵ Law on insurance companies, pension companies and their business activity. (Insurance Act):

<http://www.lovdato.no/all/nl-20050610-044.html>

What can be seen is firstly, that often the mutual-type organisation is described in the insurance law or the financial business supervision law. In other cases, the civil code, the cooperative law or the association law contain references to the mutual form. Secondly, in a number of countries the legal framework is rather old. This is for instance the case in Italy for both the benefit mutual societies (società di mutuo soccorso) and mutual insurance companies (società di mutua assicurazione) and in Greece in relation to the Mutual health funds (Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία).

The way mutual-type organisations are legally defined and in which legal framework they are described, provides an indication of the underlying legal traditions and historical roots and choices made with regard to mutual-type organisations. A clustering of these legal frameworks is proposed in the following section.

4.2 Mutual-type organisations and a classification of their legal framework

Generally, four legal regimes can be identified in the countries, which share the legal entity of being a mutual. Mutual-type legal entities:

- Can have their own, specific legal form;
- Can be based upon the legal framework of associations;
- Can be based on the legal framework of cooperatives;
- Can be based on another legal framework (mostly the legal framework of companies).

The distinction is not always easy to make due to changing legal frameworks and close relations between legal forms. However, usually, the name of the mutual-type organisation provides an indication for the underlying legal framework. The following overview indicates for each mutual-type organisation the underlying legal framework.

Table 4.2 Overview underlying legal frameworks for mutual-type organisations

Mutual-type organisations and their underlying legal framework
<p>Mutual-type organisations having own legal framework:</p> <ul style="list-style-type: none"> ■ France: Mutuelles (mutuals) ■ Hungary: Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund) ■ Belgium: Société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company) ■ Spain: Mutualidades de previsión social (mutual provident societies) ■ Ireland: Friendly societies ■ United Kingdom: In United Kingdom, mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual).
<p>Mutual-type organisations based on legal framework of associations:</p> <ul style="list-style-type: none"> ■ Finland: Vakuutusyhdistys/försäkringsförening (insurance association) ■ Greece: Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual health funds) ■ Hungary: Biztosító egyesület (Mutual Insurance Association) ■ Italy: Società di mutuo soccorso (benefit mutual societies) ■ Luxembourg: Association d'assurances mutuelles (mutual insurance association) ■ Luxembourg: Société de secours mutuel (mutual aid society)

<ul style="list-style-type: none"> ■ Malta: Mutual association ■ Portugal: Associações mutualistas (mutual associations) ■ Romania: Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners CARP ■ Sweden: Försäkringsföreningar (insurance associations)
<p>Mutual-type organisations based on legal framework of cooperatives:</p> <ul style="list-style-type: none"> ■ Bulgaria: взаимозастрахователна кооперация (mutual insurance cooperative) ■ Greece: αλληλσφαλιστικός συνεταιρισμός (mutual insurance cooperatives) ■ Italy: Società di mutua assicurazione (mutual insurance companies) ■ Latvia: Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society) ■ Netherlands: Onderlinge Verzekeringmaatschappijen/vereniging (Mutual insurance societies) ■ Portugal: Mútua de seguros (Mutual Insurance company)
<p>Mutual-type organisations based on other legal frameworks (such as of companies):</p> <ul style="list-style-type: none"> ■ Austria: Versicherungsverein auf Gegenseitigkeit (Insurance mutual) ■ Austria: Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association) ■ Belgium: Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society) ■ Cyprus: εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee) ■ Denmark: Gensidige selskaber (Mutual companies) ■ Finland: Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies) ■ Finland: Työeläkevakuutusyhtiöstä / arbetspensionsförsäkringsbolag (Pension Insurance Companies) ■ France: Sociétés d'assurance mutuelle (mutual insurance companies) ■ Germany: Versicherungsverein auf Gegenseitigkeit (mutual insurance association) ■ Germany: Kleine Versicherungsvereine (small insurance mutual) ■ Poland: Towarzystwo ubezpieczeń wzajemnych (mutual insurance company) ■ Romania: Societăți mutuale (mutual companies) ■ Slovenia: Družba za vzajemno zavarovanje (mutual insurance company) ■ Spain: Mutuas de seguros (mutual insurance company) ■ Sweden: Ömsesidiga försäkringsbolag (mutual insurance companies)¹ ■ Norway: Gjensidige forsikringselskaper (mutual insurance company) ■ Ireland and United Kingdom: Companies limited by guarantee

Source: Authors

Here below, examples are provided for each of the four clusters of underlying legal frameworks.

4.2.1 Own legal framework

There are not so many countries where a particular type of mutual-type organisation has its **own legal framework not related to other legal frameworks**. An example is **France**. Mutuals (also called "**mutuelles 45**", because they were dedicated in 1945 to the complementary health insurance system when the statutory health insurance system was established), according to article L 111-1 of the Code de la Mutualité, "are not-for-profit legal entities under private law. They carry out provident, solidarity and mutual aid-based work, by means including contributions paid by their members, and in the interests of these latter and their beneficiaries, in order to contribute to the cultural, moral, intellectual and physical development of their members and to improving their living conditions." Under ar-

¹ The Swedish legal framework is in a transition phase, shifting the legal basis of mutual insurance companies from company to cooperative law.

ticle L112-1: mutuals can not collect medical information from their members; or their potential members; or establishing the premiums according to the state of health of the person.

The mutuals follow the French Mutuality code ("Code de la mutualité") which consists of five Livres, or books:

- Livre (Book) I contains general provisions (e.g. definitions).
- Livre (Book) II details and specifies insurance activities.
- Livre (Book) III specifies in-kind services like prevention, social action and social and health care.
- Livre (Book) IV concerns governance and
- Livre (Book) V dealing with supervision, completes this specific legislation.

The code has separate sections for mutuals active in insurance (Livre II) and those active in prevention, social action and other health/social/cultural activities (Livre III).

The majority of them (Livre II mutuals) offer mainly complementary health insurance according to classes of insurance in annex 1 of the EU 1st non-life directive.¹

Another country having a distinct legal framework for mutual-type organisations is **Hungary**: voluntary mutual insurance fund (Önkéntes kölcsönös biztosító pénztár). In The Act XCVI of 1993 on **Voluntary Mutual Insurance**, Section 2. (2), a 'voluntary mutual insurance fund' (önkéntes kölcsönös biztosító pénztár) is defined as follows: "'voluntary mutual insurance fund' (hereinafter referred to as 'fund') shall mean an association created by natural persons (hereinafter referred to as 'fund members') under the principle of independence, mutuality, solidarity and voluntary participation for funding services to supplement, supersede or replace social security benefits and benefits for health protection (hereinafter referred to as 'services'). The fund shall record the membership payments it receives from members in individual accounts and shall organize, finance and provide its services accordingly. Regulations concerning financial management and liability and entitlements related to fund activities are governed by this Act. According to the Act (Section 3)²:

- 'Mutuality' shall mean that fund members jointly accumulate the reserves required to provide benefits. The persons eligible to receive services shall have equal rights in respect of access. Each fund member has an ownership stake in the fund.
- 'Voluntary participation' shall mean that natural persons may, of their own free will, set up funds and may join and leave such funds in accordance with the provisions of the fund's bylaws.
- 'Independence' shall mean that funds are free to devise their scope of services and business policies within the framework of legal regulations.

¹ 1. Accident (including industrial injury and occupational diseases): fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two; injury to passengers; 2. Sickness: fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two. Additionally, the mutuals can receive an agreement from the supervisory authorities for the following classes of non-life insurance: 15, 16, 17, 18, and the following in life insurance: 20, 21, 22, 24, 25, 26. Hundred mutuals in France (among these, 32 are only active in provident insurances) are active in "provident activities" both in life and non-life insurance representing 3,8 billion € in 2010. They received an agreement for the non-life insurance classes 1 and 2 for the daily sickness benefits, temporary or permanent disability, 15 (guarantee), 16 (financial losses), and for the life insurance classes 20, 22, 24, 26 (payable on death insurance, saving and pension). They can also manage facilities dealing with health, culture and society.

² Act No. XCVI of 1993 on Voluntary Mutual Insurance Funds; see: http://www.euro.who.int/_data/assets/pdf_file/0006/80826/E68317.pdf

- 'Solidarity' shall mean that the contributions payable by the fund members are established on the basis of standard principles, independent of the degree of individual risks and any settlement. The application for admission of a natural person who meets the criteria for membership can not be rejected.
- 'Principle of association' shall mean that no discrimination is permitted on the grounds of religion, race, ethnic background, political affiliation, age or sex.
- 'Non-profit operation' shall mean that the fund may not disburse the profits of its operations as either dividends or profit-sharing and that it must use such profits in the interest of its basic activity.

The title of the act on Voluntary Mutual Insurance Funds is the mirror translation of the words as used in 1993, when the general public had not been aware of the real meaning of this institution. The origin of the legislation has been rooted in the French "mutualités" and the Anglo-American occupational pension schemes. The types of entities are differentiated according to the provided benefits, and can be pension fund, healthcare fund, or social and labour (aid) benefits fund.¹ So the wording of "mutual" and "fund" is used in the meaning of mutual benefit (provident) fund, like the German "Kasse". However, in the case of a mutual pension provident fund, the rules do not require (but allow) lump sum payment at retirement. The word "provident" is used as a synonym of insurance, emphasising pre-funding.

The Act XCVI of 1993 on Voluntary Mutual Insurance Funds provides the legal framework for the establishment of provident mutuals, which can be set up within a company by the employees, or on the employer's initiative. The aim is to offer services for members that supplement or replace social security services, as well as services that promote healthy lives. There are voluntary mutual pension funds and voluntary mutual income replacement and health funds.

In **Belgium**, recently, a new type of mutual organisation can be legally established, namely mutual benefit companies (maatschappijen van onderlinge bijstand/société mutuelle). Since 1 January 2012, a new law (Wet van 26 april 2010 houdende diverse bepalingen inzake de organisatie van de aanvullende ziekteverzekering) (hereafter called 2010 Law on supplementary health insurance) applies to the organisation of the complementary (voluntary) health insurance of the mutual health societies. This is related to a decision on 20 September 2009, by the European Commission to refer Belgium to the European Court of Justice over its national rules on complementary health insurance provided by mutual health societies. In the Commission's view, the Belgian legislation applicable to mutual health societies (the 1990 Law) has not correctly and completely implemented the provisions of the First and Third Non-Life Insurance Directives, as far as the mutual health societies' complementary health insurance activities are concerned.² This finally resulted in restrictions for mutual health societies to provide complementary health insurance alongside the compulsory health insurance. The 2010 Law on complementary health insurance legally enshrines this, through provisions relating to the organisation of complementary health insurance, which will now fall under the scope of the Terrestrial Insurance Act of 1992 as well as the 1975 Act on Supervision of Insurance companies. The 2010 Law obliges the mutual health societies to create a separate legal structure – maatschappij van onderlinge bijstand or MOB/

¹ All benefits are supplementary to state benefits.

² Corens, Dirk, Health Systems in Transition, Belgium Health system review, Vol. 9 No. 2 (2007).

"société mutualiste or SM, translated as mutual benefit company for complementary health insurance products, which are submitted to the same rules as the private insurers. These mutual benefit companies are societies of people who have agreed to mutually insure themselves and share the burden of damages suffered. To this end, they create a fund that is accumulated by their contributions. Everyone is both insurer and insured; there is no share capital and no shareholders¹. These mutual benefit companies were established in order to cover the complementary health insurance services, which the mutual health societies are no longer allowed to provide without subsidiarizing this business². These mutual benefit companies are more similar to ordinary insurance companies. However, there are a few significant differences. For example, mutual benefit societies fall under the supervision and control of the Mutual health societies Supervision Authority (Controledienst van de Ziekenfondsen) and not of the BNB and the Financial Services and Markets Authority. A mutual benefit society associated with a mutual health society may only direct its services toward members of the mutual health society and not to the market in general. They may only offer services through their own network of mutual health societies. They may only offer health insurance and assistance insurance if complementary to the offered health insurance (branch 2 and 18, see article 44bis). When these mutual benefit companies operate in the complementary insurance market, they are often called insurance mutual benefit companies, whereas those that only provide complementary services are called ordinary mutual benefit societies. In the most recent case (28 October 2010)³ concerning mutuals the European Court of Justice (ECJ) considers that Belgian mutuals offering complementary social security services are enterprises to which the insurance non life directive should apply.

Complementary health insurance services may include for example an hospitalisation insurance for a private room and additional cover for services that are not fully covered under compulsory insurance. Complementary health insurance services may also be offered by any other private insurer (other than mutual benefit companies).

The examples indicate that the mutual-type organisations can be active in different types of activity, but they are always closely related to the social protection system.

4.2.2 Legal framework based on association legislation

Of mutual-type organisations based on **association legislative frameworks** there are many examples, but because evolving legislation, some of the 'associations' are more closely related to company legislation than association-legislation.

The association-type mutuals involved in insurance business, are due to the fact that they have to comply with insurance regulations (both national and European), not so much different from other types of insurance companies. Other association-based mutuals on the other hand portray a different picture. This can include non-insurance mutual-type organisations and non-directive insurers.

¹ Bijzondere commissie belast met het onderzoek naar de financiële en bankcrisis: Rapport préliminaire du collège d'experts)

² Ziekenfondsbijdrage is nu verplicht. Article in Plus Magazine. Author: Baekelandt, L. Published on 19-01-2012

³ Case C-41/10 European Commission v. Belgium (not yet published)

Most of the mutual-type associations are smaller organisations active in insurance business. An example of this can be found in **Romania**: Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners CARP. To take the example of the CAR, these Mutual Aid Associations (CAR) are private law associations without a patrimonial purpose, incorporated based on the free consent and will of membership of the members of such organizations. The goal of such organizations is to develop solidarity relations, support and give material help to its members. This is done by attracting social funds from the members and granting loans to them. Legally, CARs are associations without a patrimonial purpose. According to the legislation in force, CARs can be incorporated under the provisions stipulated in Government Ordinance no. 26/2000 on associations and foundations, completed and amended by Law no. 246 for the approval of Government Ordinance no. 26/2000 on associations and foundations. In addition to the legal incorporation framework, the Mutual Aid Associations (CARs) operated under certain special laws regulating their field of operation. These special laws are: Law no. 122/1996 (restated in 2009) on the legal regime of mutual aid associations for employees and their unions and Law no. 540/2002 on mutual aid associations for pensioners updated by Law no. 248/2011 for amending and completing Law no. 540/2002 Legal Framework for on mutual aid associations for pensioners.¹

Related to the fact that the mutual-type organization is based on association legislation is that in most cases the mutual is exempted from corporate tax and regulations. In **Italy**, mutual benefit societies, given the non-commercial nature of mutual benefit societies, are not subject to the fiscal treatment of conventional companies. In fact, the eventual profit is not taxable (article 9)².

The association-type mutual can be found in many European countries; however, they do not portray a homogenic group of organisations. They can be both large and small, subject to corporate tax or not, be described in insurance law of elsewhere.

4.2.3 Legal framework based on cooperative legislation

In some countries, mutual-type organisations are developed upon cooperative legal frameworks. In that case, they are usually described as a cooperative, allowed and at the same time, restricted to be active in insurance business. All the 'mutual cooperatives' identified in Europe are insurance mutuals. The rules by which these organisations operate are often closely related to the rules for cooperatives; however, there are a number of fundamental differences (e.g. the one-member, one-vote principle). An example of these mutual insurance cooperative can be found in **Latvia**. There is no general definition of a mutual in Latvian law. There is no definition in the insurance legislation either but the insurance legislation, the Law On Insurance Companies and Supervision, refers to mutual cooperative insurance societies³. Mutual insurance cooperative societies (Savstarpējās apdrošināšanas kooperatīvā biedrība) have members, whereas insurance companies have shareholders. Several

¹ http://www.undp.ro/libraries/projects/Ghid_UNDP_EN.pdf, p 65-66

² Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

³ see http://www.fktk.lv/texts_files/Apdrosin_sab_un_to_uzraudz_lik_ar_groz_A.pdf

articles in the insurance legislation refer to the rights/duties of members but the legislation falls short of providing a definition. The mutual insurance cooperative seems to be a cooperative and falls, as legal entity, under the cooperative society law.¹ Both in terms of legal framework and market share, the Latvian mutual insurance cooperatives are not well developed (there is only one mutual insurance cooperative active). In other countries, such as **the Netherlands** mutual-type organisations based on cooperative legislation are well developed. Although in the Netherlands, the mutual insurance society is a specific variety of the legal entity "society" ('vereniging'), the laws and regulations applicable to this legal form are fairly similar to those applicable to cooperatives². The **Italian** Società di mutua assicurazione (mutual insurance companies) is based on 19th century legislation. Mutual insurance companies are covered by articles 2546-2548 of the Civil Code (Codice Civile)³, which states that certain rules established for cooperatives (in that same Code) also apply to them. In addition, they are subject to authorization, supervision and other controls established by special laws concerning insurance. According to the Civil Code (Codice Civile), members of a mutual insurance society (società di mutua assicurazione) are also policy holders, and vice versa. Specifically with regard to the mutual insurance companies, two currently existing mutual insurance companies, Reale Mutua⁴ and ITAS Mutua⁵ have been founded in the 19th century. Reale Mutua was established by Royal decree in 1828; ITAS Mutua was established in 1821 by the Austrian Emperor.

Concerning this category, firstly, it remains difficult to distinguish clearly between mutual-type organisations and cooperatives as they have a number characteristics in common. The demarcation criteria, mentioned in Chapter 2 however, can include these type organisations if the members' rights, ownership, voting rights are related to the members (one member, one vote) instead on the amount of funds contributed to the organisation. This distinction between the cooperative and the 'mutual cooperative' is not always clearly stated in the legal framework and depends in some cases on the Statutes of the individual company.

Secondly, when compared to the association-type mutuals, it is clearer that the cooperative-types are more often, and almost entirely, involved in insurance business and are subject to the European insurance and financial market Directives. The legal frameworks do allow non-directive mutual-cooperative insurers in many countries (de minimis regime).

4.2.4 Mutual-type organisations based on other legal frameworks (such as of companies)

The category of mutual-type organisations based on other legislation, mostly related to general company law portrays a large variety. In general, the mutual-type organisations included in this category are mostly regarded as 'ordinary' companies, having some additional characteristics. This is for instance the case in countries where the mutual-type organisations' legal framework is solely described within the insurance legislation. In **Ger-**

¹ See: http://www.vvc.gov.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Co-operative%20Societies%20Law&resultsPerPage=10

² Kamer van Koophandel (2010). De coöperatie en de onderlinge waarborgmaatschappij.

³ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

⁴ <http://www.realemutua.it/RMA/rmaweb/reale-mutua.html>

⁵ <http://www.gruppoitas.it/>

many, the Versicherungsverein auf Gegenseitigkeit (insurance mutual) is regarded first of all an insurance company. As a general characteristic, an insurance mutual (Versicherungsverein auf Gegenseitigkeit) is a private insurance company on the basis of an association with legal personality (Art 15: "becomes a legal person by obtaining permission from the supervisor to do insurance business as a 'Versicherungsverein auf Gegenseitigkeit'"). its members are the policyholders¹. A German insurance mutual has the following characteristics:

- **insurance** only – no statutory social protection: unlike in some other Member States, where mutuals are allowed to operate in all fields of human endeavour, mutuals in Germany are restricted to operate in insurance services only. Insurance means private insurance as defined under Article 2 and 3 of the Solvency II Directive (L335/19, 17.12.2009). There are no mutual benefit or health provident societies and insurance activities forming part of the statutory social security system are excluded from the scope of this study.
- **private** legal entities: Mutuals are private legal entities. They do not belong to the statutory social protection system nor do they depend on state subsidies to exist.
- generally **inseparable** relationship between membership and being a policyholder; exceptionally **non-member business** is permitted. Generally, the membership in a mutual insurance association is acquired at the same time as signing an insurance contract, no special membership fee is required. As an exception, non-member business is also permitted by law and must be foreseen in the mutual's statutes (VAG § 21 para.2).
- jointly **owned** by the members-policyholders: The members of a German mutual insurance association are owners of the company and hold ownership rights. The own funds of a mutual insurance association remain the property of all its current members and are therefore truly collective and indivisible.
- **democratically** controlled by the member-policyholders: The democratic control of the mutual insurance association in Germany can be granted by way of an assembly of all members or an assembly of delegates of the members, both are co-equal under German law.
- **solidarity** among members: The equality principle (Gleichbehandlung) among members is stipulated in VAG § 21.
- **no shares**; limited access to capital markets: The German mutual insurance association has no shares and thus only limited access to capital markets.

Within the German Insurance Supervision Act, a distinction is made between the large and the small insurance mutuals. For the smaller insurance mutuals that insure only a specific group of people or very specific risks and which are organised locally, simplified statutory provisions are stipulated (§ 53 VAG). Small mutual insurance associations are according to article 53(1) associations which pursue activities limited to certain geographical areas, insurance lines, and/or circles of customers. They are called kIVaG although this is not a legal term. The difference between the small and large insurance mutuals is not only a matter of size; as the small ones are not considered trading entities according to the Commercial Code (Handelsgesetzbuch).² The classification of a mutual as large or small insurance mutuals is made by the national supervising authority (DE: Bundesanstalt für Finanzdienstleis-

¹ See: <http://www.versicherungsnetz.de/onlinelexikon/VersicherungsvereinaufGegenseitigkeit.html>

² <http://www.versicherungsnetz.de/onlinelexikon/VersicherungsvereinaufGegenseitigkeit.html>

tungsaufsicht (BaFin))¹. In general, the smaller mutuals (under 5 million Euro gross premiums as mentioned in the SII Directive) are supervised by the Länder, the larger ones fall under the supervision of BaFin.

In some countries, there is not a specific legal entity for being mutual, but the legislative framework allows companies that are instead limited by share capital, limited by guarantee. This is for instance the case in **Ireland** and **United Kingdom** concerning the companies limited by guarantee and **Cyprus**. According to Article 15 of the Cyprian Law on Insurance Services and Other Related Issues 2002-2011, a mutual organisation (αλληλοασφαλιστικός οργανισμός οργανισμός) is a company limited by guarantee (εταιρεία περιορισμένης ευθύνης με εγγύηση), without a share capital, which is established by virtue of the provisions of this Law and of the Companies Law, has as exclusive purpose the mutual insurance of its members, and holds a licence to carry on this business granted in accordance with the provisions provided in the Law.²

Another interesting example of the mutual-type organisation based on other legal frameworks is **Sweden**, as this country is currently witnessing a change in the legal foundation for mutual-type organisations. It shifted from company law to cooperative law (see box).

Changing legal framework in Sweden

The reason for the change in legislation is that voting power often lies in the hands of organisations such as trade unions, rather than individual policyholders. This issue of policyholder influence itself was also controversial. More specifically, the motive for the changes in the legislation has to do with the hybrid mutual Skandia life insurance company. Around the turn of the century, the company, despite having a solid financial position, suffered a scandal concerning misbehaviour of the top management. Despite that legally, providing excessive bonuses was allowed, since the public felt that it was their money, this behaviour was not acceptable. The Skandia life scandal³ influenced all life insurance companies in Sweden and political action was taken to enhance the influence of the policyholders in the hybrid and 'real' mutual companies.

In December 2010, a new Insurance Business Act was adopted in Sweden, which entered into force on April 1, 2011. The old Insurance Business Act of 1982 and the Benevolent Societies Act of 1972 were repealed. In the New Act, the general Companies Act will (by reference) be applicable to limited liability insurance companies, while mutual insurance companies and insurance associations (previously called benevolent societies) will be covered by the Cooperative Societies Act.⁴ Originally, the Insurance Company Committee had proposed that under the new Act, only policyholders should have voting power. This attracted criticism because such direct democracy would be difficult to apply in practice. The compromise reached is that half of the voting power should be held by policyholders or organisations that can be considered to represent their interests.⁵ The new Act and the harmonisation of mutual and cooperative legal frameworks, do not affect the way mutuals operate on insurance mar-

¹ See: <http://www.bafin.de>

² See: ΟΙ ΠΕΡΙ ΤΗΣ ΑΣΚΗΣΕΩΣ ΑΣΦΑΛΙΣΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΚΑΙ ΑΛΛΩΝ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ ΝΟΜΟΙ ΤΟΥ 2002 ΕΩΣ 2009: [http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/\\$file/N%2035%28I%29%202002-N%20105%28I%292009%20%28CE%95CE%BDCE%BF%CF%80CE%BFCE%AFCE%B7CF%83CE%B7%20CF%83CF%84CE%B7CE%BD%20CE%95CE%BBCE%BBCE%B7CE%BDCE%B9CE%BACE%AE%29.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/$file/N%2035%28I%29%202002-N%20105%28I%292009%20%28CE%95CE%BDCE%BF%CF%80CE%BFCE%AFCE%B7CF%83CE%B7%20CF%83CF%84CE%B7CE%BD%20CE%95CE%BBCE%BBCE%B7CE%BDCE%B9CE%BACE%AE%29.pdf).

³ See for instance: <http://knowledge.insead.edu/finance-skandia-scandals100419.cfm?vid=406>

⁴ <http://www.sweden.gov.se/sb/d/12677/a/152256/>, <http://www.sweden.gov.se/sb/d/13416/a/152060>.

⁵ Eckerberg, Per Johan, Peter Morawetz and Per Brandt, A possible modernization of the Swedish Insurance Business Act. In: Nordisk Försäkringstidskrift, 2009: <http://www.nft.nu>

kets in Sweden.

Until April 1st 2011, mutual insurance companies' legislation was built on the legislation for stock companies ("aktiebolag"). From that date, the legislation is built on the legislation for cooperatives and other economical societies ("ekonomiska föreningar").

Until April 1st 2011 there was also the possibility to establish life and non-life "closed" mutuals ("understödsföreningar", "kassor"), only open for a group of people with common interests (pensions, funeral, etcetera), comparable to German "Kassen". After that date, "understödsföreningar" still exists for a transfer period. The Solvency II Implementation Committee however, suggests that tjänstepensionskassor (i.e. occupational pension Kassen)¹ will transfer to IORP (Institutions for occupational retirement provision) Institutions and be able to continue to exist (the suggestion is negotiated with the Ministry of Finance and the social partners).

Whether the Companies Act or the Cooperative Societies Act should be applicable to mutual insurance companies was a controversial issue, because many features of the leading Swedish mutual insurance societies have been borrowed from general company law, rather than cooperative law.

The remaining of the existing "understödsföreningar" will be considered cooperatives. Within the Swedish tradition, the distinctions between societies ("ideella föreningar"), cooperatives and other economical societies ("ekonomiska föreningar"), foundations ("stiftelser"), partnerships and mutuals or mutual-like organisations are weak, making the legal system difficult to understand.

All in all, the underlying legal framework can determine the way mutual-type organisations are treated in terms of regulations concerning creation, corporate governance, tax issues. However, even more important, it seems, are the rules that are imposed on mutual-type organisations concerning the activity they conduct. As can be seen (see Section 4.1 as well as Section 4.2), in many countries the mutual-type organisation is explicitly described and regulated in the insurance law. Whether in the insurance law the mutual-type organisations are based on associations, cooperatives or companies' legislation, is of minor importance, however not irrelevant.

When mutual-type organisations are active in social protection and when they provide social services, often the legal framework is either based on an own legal framework, or it is based on the legal framework of associations. The cooperative and company underlying legal framework is more often used for insurance companies. In offering (voluntary: complementary/supplementary) health insurance, mutual-type from all four categories can be found.

4.3 Establishing a new mutual: legal frameworks

Concerning the methods of creating a new mutual, as the legal types differ, also the legal frameworks for establishing new mutuals differ per legal form. In trying to classify legal types, it appears that in general a distinction can be made between those mutual associations/cooperatives and companies being restricted by their legal form to insurance and

¹ There are also some minor pensionskassor that have non-occupational pensions and they should not be considered as IORPs.

those mutual-type organisations being restricted to other types of business. Again, there is a large diversity with regard to countries and legal forms. Some countries have elaborated legal frameworks for establishing mutual-type organisations, others, for instance Cyprus refer to the method of creation of insurance companies in general and no specific rules are applicable for mutual-type insurance companies. In addition, the countries, which do not allow mutual-type organisations, obviously do not have regulations concerning their establishment either.

In the Annex A, the table includes information concerning methods of creation for each of the mutual-type organisations identified. The focus in this table is on required capital or assets. The country factsheets include more information on the method of creation of mutual-type organisations, concerning whether the organisations need to be registered, what should be included in the memorandum of association (founding document) and in the Articles of association (Statutes/Bylaws). In the following sections, without intending to provide a complete overview, a number of issues described in the country factsheets (and the overview table) will pass in review concerning the method of creation.

4.3.1 Registration of the mutual-type organisation in a register

Concerning the **registration** of the mutual-type organisation in a register, this depends – again - on both the underlying legal framework and the activity the organisation is willing to conduct. In general, they need to be registered in the commercial, companies and /or trade registers. Here below a number of examples are provided:

- In **Slovenia**, according to article 41 of the insurance law, a mutual insurance company shall acquire legal personality upon being entered in the companies' register.
- In **Latvia**, according to article 9 of the Insurance law, an insurer may only launch its operations after it has been entered in the Commercial Register and after the requirements of this Law have been met. Licences to provide insurance shall be issued for an unlimited duration in accordance with this Law, other regulatory enactments and procedures prescribed by the Financial and Capital Market Commission. A licence to provide insurance issued to an insurance company is valid in a Member State by exercising the right of establishing a branch or, under the freedom to provide services, by providing insurance services without opening a branch. For establishing a mutual insurance cooperative society (savstarpējās apdrošināšanas kooperatīvā biedrība), one first needs an acceptable memorandum of association and the articles of association, secondly entry into the Commercial register and thirdly the insurance licence.
- In **Luxembourg**, the mutual insurance association (association d'assurances mutuelles) needs to be registered in the trade and company register.
- In **Germany**, due to the licensing system an insurance mutual needs the permission of the German Insurance Supervisory Authority, BaFin¹ to become effective in law. Once the insurance license is received, the insurance mutual will be registered in the commercial register.

¹ Bundesanstalt für Finanzdienstleistungsaufsicht: <http://www.bafin.de>

Being in most cases financial institutions, the Authority supervising the mutual-type organisation is mostly the National Financial Supervisory Authority. In cases where the mutual-type organisation has a non-financial status, (e.g. being involved in social assistance, running medical facilities etc.), the mutual-type organisations are supervised by the Ministry of social affairs, health care or alike.

4.3.2 Statutes

Concerning the **Statutes**, in general, across the countries, similar issues are dealt with in the Statutes and the Statutes should be agreed upon when establishing the mutual-type organisation. These similar issues include, the name of the organisation, including words related to being mutual; the purpose of the organisation; the head office of the organisation; the way people can become member and their rights; the composition of the governance model including number of members in the management board/board of directors/supervisory board; the way the Statutes can be amended; rules concerning winding-up/ merging/ liquidation / demutualisation. For some mutual-type organisations, also the territorial range of the activity should be included in the Statutes.

The bylaws of most mutual-type organisations must be drawn up in the form of a deed by a public notary. Sometimes it is explicitly mentioned that not complying with this rule results in a penalty of nullity (see for instance in Luxembourg concerning the mutual insurance associations: Article 87 of the Law 1991¹).

The box below provides some examples of what should, according to the legal framework be included in the Statutes.

<p>Portugal, mutual associations (associações mutualistas)</p> <p>According to article 18 (of the 72/1990 decree), the statutes of mutual associations should specify the following:</p> <ul style="list-style-type: none">a) The name, which can not be confused with names of existing institutions and that is always preceded or followed by the words "mutual association";b) The primary and secondary purposes that the association intends to pursue;c) The headquarters and the field, which can be territorial, professional, business, company or group of companies;d) the manner and conditions of admission of members, their rights and duties and penalties for non-compliance;e) The composition, powers and operation of the Association;f) The form of the association it takes;g) The revenue and expenditure as well as the principles agreed upon for the establishment and management of the fund;h) The way the statutes may be amended or how a merger, division or integration into another association can be approved;i) The conditions under which it may be decided to dissolve the association;j) The conditions of membership or affiliation in national and international organizations, particularly those that continue to defend and promote mutuality and social economy;l) the electoral system of the corporate bodies of the association.
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¹ Law on the insurance sector of 6 December 1991 (Loi modifiée du 6 décembre 1991 sur le secteur des assurances) (hereafter called Law 1991).

In **Poland**, the Statutes/ articles of association of a mutual insurance company (Towarzystwo ubezpieczeń wzajemnych (TUW)) must specify¹:

1. the name and registered office of the mutual insurance company;
2. the territorial range of activity;
3. the number of management board and supervisory board members;
4. the material scope of activity, with the determination of the section, classes and types of insurance and the scope of reinsurance activity;
5. the amount of the share capital (wysokość kapitału zakładowego) i.e. initial capital;
6. rules for using the balance sheet surplus and the manner of covering losses;
7. rules for the redemption of shares;
8. rules for obtaining and losing membership and the types of membership;
9. the manner of dissolving the mutual insurance company;
10. rules for placing the mutual insurance company's announcements, including designation of the newspaper in which announcements are to be made;
- 11) the body empowered to approve the general insurance conditions.

In **Slovenia**, the bylaws of a mutual insurance company must lay down the following:

1. the firm name and head office;
2. the type of insurance business to be performed by the mutual insurance company;
3. the form and method of announcing the facts relevant to the company or its members;
4. the beginning of membership;
5. the amount of initial capital;
6. the terms and conditions, and the method of paying the funds by the members;
7. the amount and method of forming contingency reserves;
8. the terms and conditions, and the method of using profits and covering loss;
9. the number of members of the board of directors and supervisory boards;
10. the minimum number of members participating in the general meeting who can exercise minority rights.

In **Austria**, the articles of association of any mutual insurance association shall stipulate: (Art 29(2))

1. the name and the head office of the association;
2. the object of the undertaking;
3. the form of the association's publications;
4. the beginning of the membership;
5. the initial (foundation) fund;
6. the raising of funds by the members;
7. the contingency reserve (Sicherheitsrücklage);
8. the appropriation of the surplus;
9. the kind of composition of the management board (number of management board members);
10. the number of members of the supreme body required for exercising minority rights (not applicable for small mutuals).

4.3.3 Number of (founding) members

Concerning **number of (founding) members**: There is a large variety of rules concerning the number of founding members needed to establish a mutual-type organisation. This minimum number of members can range from one to five hundred members. Here below the issue is described for a number of mutual-type organisations in the countries:

¹ Act of 22 May 2003 on Insurance Activity, art. 41

- For instance in **Sweden**, to establish a mutual insurance company (ömsesidiga försäkringsbolag), according to Chapter 12, § 6 of the Insurance Business Act (2010:2043)¹, one or several founders are needed. A founder will be: a natural person residing in a country within the EEA; a Swedish legal entity; or a legal entity incorporated under the laws of a country within the EEA and having its registered office, central administration or principal place of business in this area. Partnerships or similar legal entities formed under the legislation of a country within the EEA may be founders under the condition that every unlimited liability partner resides in this area.
- In **France** on the other hand, according to Article R 322-47 of the Code des assurances, the minimal number of members needed for establishing a mutual insurance company (Société d'assurance mutuelle (SAM)) is five hundred.
- Also in **Bulgaria**, according to the Insurance Code, article 19 (1), the mutual insurance cooperative (взаимозастрахователна кооперация) is incorporated by not less than 500 capable natural persons. The founders are obliged to be insured in the cooperative, as well as to make the first-year payment for the insurance chosen by them².
- In **Portugal**, in relation to the Mutual associations (associações mutualistas), a rather variable and multi-interpretable rule is provided concerning the minimum number of founding members. The law on the mutual associations mentions that minimum number of members should be 'sufficient' to ensure the functioning and delivery of services.³
- In **Norway**, at least half of the founders shall be resident in the Kingdom and have lived here in the past two years, if not the King can make exceptions in individual cases.⁴
- In **Germany**, at least two natural persons are needed who agree on the statutes/articles of association and the appointment of the executive board and the supervisory board.
- In **Hungary**, the mutual benefit provident funds according to Act XCVI of 1993, section 5, may only be established by natural persons. At least fifteen founding members are required for establishment.
- In **Luxembourg**, a mutual insurance association (association d'assurances mutuelles) has at least three members.
- In the **United Kingdom**, to establish a Friendly Society seven or more persons are required, taking the following steps:
 - agreeing upon the purposes of the society and upon the extent of its powers in a memorandum the provisions of which comply with the requirements of this Schedule;
 - agreeing upon rules for the regulation of the society which comply with the requirements of this Schedule; and
 - sending to the Authority 3 copies of the memorandum and the rules, each copy signed by at least seven of those persons (or, if there are only seven, by all of them) and (unless the secretary is to be elected) by the intended secretary.⁵

In a lot of countries there is no mentioning of the minimum number of persons (natural or legal) for establishing a mutual-type organisation, as is the case in for instance **Austria** and **Portugal** (mutual insurance companies (Mutua de seguros)).

¹ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

² <http://www.bcci.bg/infobus/year1998/infobus1.htm#it7>

³ <http://www.dre.pt/pdf1s/1990/03/05200/09030915.pdf> (this is the legislation on the website of the ministry of social affairs) Decreto-Lei 72/90: Código Mutualista: <http://www.pedromartinho.com/portal/codigo.htm>

⁴ Law on insurance companies, pension companies and their business activity. (Insurance Act): <http://www.lovdاتا.no/all/nl-20050610-044.html>, section 4-1.

⁵ Friendly Societies Act, 1992, Schedule 3

Hence, it can be concluded that the rules in relation to the founding members differ across types of mutuals and countries. The differentiation appears in relation to the number, the legal status of the founding members and where they should originate.

4.3.4 Capital requirements

Concerning **capital requirements**, these differ to some extent between the different mutual-type organisations and depend for a large part on the activity in which they are involved. In addition, the underlying legal framework is an important denominator of the amount of capital needed.

For mutual-type organisations involved in insurance business, a distinction can be made between the initial capital and minimum guarantee fund. For some types of mutual-organisations, the initial (foundation) capital is equivalent to the guarantee fund. This is usually the case when the mutual-organisation is defined as an insurance undertaking. For other mutual-type organisations, the issue of establishing a mutual and the issue of obtaining a insurance licence is not the same and hence, the initial capital is different from the guarantee fund.

Initial (foundation) capital

Usually, the initial (foundation) capital for a mutual-type organisation is considered the working capital, i.e. the capital needed to make sure the foreseen activities can be carried out for a certain period of time. Here below some examples are provided of how in the countries the issue of the initial capital for different kinds of mutual-type organisations is described in law:

- In **Austria**, according to article 34 of the Versicherungsaufsichtsgesetz/ Insurance Supervision Act, upon the establishment of a mutual association, a foundation fund shall be created, which is earmarked for the defrayal of the cost of the establishment and the initial set-up of the association, the organisation cost as well as the other expenses incurred by commencing the business activities. Unless the articles of association determine otherwise, the fund may also be used to cover operating losses. The FMA¹ may relieve a mutual association of creating a foundation fund if the defrayal of the cost of the establishment and the initial set-up of the association, the organisation cost as well as the other expenses incurred by taking up the business activities are secured in another way. There is no minimum amount set in the legislation.
- In **Finland**, an insurance association (Vakuutusyhdistys/försäkringsförening) foundation capital (authorized capital) must total at least 42,000 Euro. If the association's activities include personal insurance, or its business scope covers more than 25 municipalities, the foundation capital must be at least 84,000 Euro (see: Vakuutusyhdistyslaki/ Lag om försäkringsföreningar 31.12.1987/1250, article 5).
- In **France**, as explained in the AISAM/AMICE study, upon formation of a mutual insurance company, and before the subscription of any policy or the receipt of the first con-

¹ The Austrian Financial Market Authority

tribution/premium, a minimum amount of own funds/equity is required, including the initial fund (article R322-44 of the Insurance Code). The minimum amount for mutual insurance companies with variable premiums is the following:

- 400,000 Euro in case of activities in insurance classes 10 to 15, 20, 21, 22, 24, 25 of section A. 321-1 and reinsurance operations¹;
- 240,000 Euro for the activities in any other insurance class

No minimum initial fund exists for insurance mutual companies with fixed premiums (R322-99 of the Insurance Code) by law; the level must be laid down in their articles of association. For tontines, the initial fund is 160,000 Euro (R322-158). The role of the initial fund is to meet the expenses of the first five years and to guarantee the commitments of the company (article R322-47 of the Insurance Code).²

- For the **French** Mutuelles, according to article R212-1 of the Code de la mutualité, the initial fund (Fond d'établissement) for Livre II mutuals is:
 - 381,000 Euro for activities related to life insurance
 - 228,000 Euro for activities related to non-life insurance
- A **German** mutual, before becoming an insurance mutual, does not have authorised capital. Costs for formation and operating costs for the first years are covered by an effective initial fund (is that called eingezahlte Gründungsstock). Creation, interest calculation and repayment of the initial fund are subject to the approval of BaFin and are laid down in the statutes of the insurance mutual. The initial fund has to be paid in cash and has to be repaid by using the annual surplus in the first years. There is no minimum threshold determined as initial fund. The insurance mutual has to provide evidence that it is able to fulfil the obligations of the insurance contracts on a sustained basis.
- For establishing an association (Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)) in **Greece**, a specific capital is not required. The aims of the association are implemented through their resources, which are mainly the contributions of its members.
- In **Hungary**, to establish a mutual insurance association (Biztosító egyesület), an initial fund of 1 million HUF (≈3,600 Euro) is needed and at least 70 % of the initial fund shall be paid in cash. An insurance association shall receive authorization to commence operations only if all of the cash contributions of the initial capital are paid up in full [IA § 20]. For the voluntary mutual insurance fund (önkéntes kölcsönös biztosító pénztár) there are no explicit capital requirements except that upon obtaining an operating licence the fund needs to present, amongst else, a financial management plan.
- In **Spain**, the mutual insurance companies (mutuas de seguros) with fixed premiums, need to have a mutual fund (fondo mutual) of three quarter of the generally minimum capital requirements:

¹ That is: 10) Third-party liability insurance for motor land vehicles: all liability arising out of the use of motor land vehicles (including carrier's liability). 11) Third-party aircraft liability: all liability arising out of the use of aircraft (including carrier's liability). 12) Third-party liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability). 13) General liability: all liability other than those forms mentioned under 10), 11) and 12). 14) Credit: insolvency (general), export credit, instalment credit, mortgages and agricultural credit. 15) Suretyship; 20) . General life Assurance; 21) Marriage assurance and birth insurance; 22) Insurance attached to collective investment funds; 24) Capitalisation; 25) Management of collective funds:
http://www.legifrance.gouv.fr/affichCode.do?sessionId=DB52A775916526D1CCC2EBAD8E0B445F.tpdjo05v_1?IdSectionTA=LEGISCTA000019749388&cidTexte=LEGITEXT000006073984&dateTexte=20120420

² See as well: AISAM/AMICE (2007), Mutual Insurance Companies in France: The regulatory, financial and fiscal arrangements

- 9,015,181.57 Euro in life or suretyship, or credit, or liability or reinsurance classes
- 2,103,542.37 Euro in the fields of accident, health, legal assistance and death.
- 3.005.060,52 Euro, for the other classes.

Mutual insurance companies with variable premiums need to have a permanent mutual fund whose amount shall be at least 30,050.61 Euro.

For a number of mutual-type organisations, in the law no minimum capital level is determined. Mostly, this involves mutual-type organisations not active in insurance and not supervised by Financial Supervisory Authorities. For instance in **Luxembourg** the capital and required reserve capital is not mentioned in the 1961 law on the mutual benefit societies (société de secours mutual)¹. In practice, the text of the statutes adopted by the society is sent to the Supreme Council for Mutuals (Conseil Supérieur de la Mutualité, or CSM) within the Ministry of Social Security for review and advice. Hearing the opinion of the Supreme Council, the Minister shall then, if necessary, approve the statutes in the form of ministerial decree, which states "the conformity of statutes with the laws and regulations" and that "the receipts provided are sufficient to meet the statutory expenditure of the society." The amount of the social and reserve funds is not specified in the law.

In many countries, there is not an exact indication of the initial (foundation) capital. The initial capital depends for a large part on the financial plan behind setting up the mutual-type organisation. The capital should at least cover operational costs for initiating the organisation. In general, the initial capital for mutual-types having an underlying legal framework similar to associations is lower than the initial capital for mutual-type organisations similar to cooperatives and companies.

Guarantee fund (obtaining an insurance licence)

To obtain an insurance licence, the mutual-type organisations need to apply for it. In order to get an **insurance licence**, often the mutual-type organisation (or any other undertaking applying for an insurance licence), has to submit additional documents such as a plan of operations. This is for instance the case in **Norway**, where according to the Insurance Act, act on insurance activity², any application for authorisation for a new insurance company (mutual or other) shall include a plan of operations for the company's first three years of operation. The plan of operations shall contain:

- (1) an overview of the kind of insurance products the company will offer,
- (2) information on the company's capital base,
- (3) budget for establishment and administrative expenses
- (4) information on what principles the company will employ for calculating premiums,
- (5) information on how the company intends to arrange the reinsurance cover, and
- (6) a forecast for the financial position after three years' operation.

In addition, the application for an insurance license shall be accompanied by: (1) the company's articles of association, (2) a certified copy of the memorandum of association, and (3) a certified copy of the minutes of the statutory meeting.

¹ Loi du 7 juillet 1961 concernant les sociétés de secours mutuels (Mémorial A no 28 du 21 juillet 1961); modifiée par: Loi du 18 août 1995 concernant l'assistance judiciaire et portant modification.

² Law on insurance companies, pension companies and their business activity. (Insurance Act): <http://www.lovdato.no/all/nl-20050610-044.html>, section 2-3.

Usually, to obtain a licence, the mutual insurance undertakings need to provide the memorandum of association, provide details concerning the founding members, provide the Statutes and pay the initial (foundation) capital. This initial capital is often set at the minimum guarantee capital levels.

The guarantee fund is subject to EU-Directives of life and non-life insurance. For life insurance, according to article 29 of Directive 2002/83/EC, one third of the required solvency margin shall constitute the guarantee fund. This guarantee fund may not be less than a minimum of 3 million Euro. Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations and tontines.

With regard to non-life insurance, Article 17 of Directive 2002/13/EC states that one third of the required solvency margin shall constitute the guarantee fund. This guarantee fund may not be less than 2 million Euro. Where, however, all or some of the risks included in one of the classes 10 to 15 listed in point A of the Annex are covered, it shall be 3 million Euro.¹ Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations.

According to article 30 of Directive 2002/83/EC and article 16 of Directive 2002/13/EC, the amount of the guarantee fund shall be reviewed annually, in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat. The amount shall be adapted automatically, by increasing the base amount in Euro by the percentage change in that index over the period between 20 March 2002 and the review date and rounded up to a multiple of 100,000 Euro. If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place. Currently² the following minimum guarantee funds are set at 3.7 million Euro for life insurance and 2.5 million Euro for non-life insurance.

Given these EU Directives in a large number of countries the guarantee fund is reduced for mutual-type organisations, provided that they allow supplementary calls upon their members (i.e. variable premiums). In addition, there are differences between countries as to whether the required capital should be fully paid in cash or not.

- For instance in **Portugal** with regard to mutual insurance companies (mútuas de seguros), on the date of creation, half of the capital required is provided. The remaining (if any) will have to be provided within six months. The minimum capital, fully paid, for the formation of mutual insurance companies is 3,750,000 Euro (See article 40, Law 94-B/98 of April 17 (Decreto-Lei n.o 94-B/98 de 17 de Abril and amendment Decreto-Lei 8-C/2002 de 11 de Janeiro).
- In **Norway**, there are no specific rules for required capital for mutual insurance companies to be established. The Regulation in accordance with § 5 of the "Regulations on minimum equity in Norwegian insurance companies" provides an overview of the minimum amount of capital for different operators³. To start up a new insurance company

¹ Classes 10 to 15 include: motor vehicle liability, road transport liability, aircraft liability, marine vessels liability, general liability or credit and security.

² See: OJ C 365/5 15.12.2011 Notice regarding the adaptation in line with inflation of certain amounts laid down in the life and non-life insurance directives (2011/C 365/06)

³ http://www.finanstilsynet.no/Global/Venstremeny/Rundskriv_vedlegg/2012/1_kvartal/Rundskriv_3_2012.pdf

(including a mutual one), in 2012 one needs 40 million NOK (5.5 million Euro). Specifically for a mutual life insurance company the start up amount is 16 million NOK (2.2 million Euro).

- In **Slovenia**, the Insurance Act, Article 44/2 provides that the minimum initial capital of a mutual insurance company shall be equal to the guarantee fund referred to in the second paragraph of Article 112 of the same Act (2.3 million Euro). According to article 45, a mutual insurance company may only start its operations when the initial capital has been paid in cash.
- In **Latvia**, according to the Article 32 Paragraph 1.¹, Clause 2 of the Law On Insurance Companies and Supervision Thereof, the minimum size of a guarantee fund shall be 2.7 million Euro equivalent in lats, recalculated according to the exchange rate set by the Bank of Latvia, for mutual insurance cooperative societies which provide insurance for the classes referred to in Article 12, Paragraph one, Clauses 10, 11, 12, 13, 14, 15 and 19 of this Law while for other mutual insurance cooperative societies, 1.8 million Euro equivalent in lats, recalculated according to the exchange rate set by the Bank of Latvia.
- Insurance associations in **Sweden** need only start-up capital. According to Chapter 13 concerning insurance associations, § 5, an insurance association may not be formed without working (guarantee) capital. The capital may be contributed also by non-members. The guarantee capital is predetermined by the founders and is paid back when it is no longer needed any more. The amount of the required capital is the same as for other insurance operators.
- For **Romanian** insurance mutual companies (societăți mutuale'), the law does not provide any indication of rules on management and corporate governance specific for mutual companies. Only concerning the minimum guarantee fund a specific rule is mentioned: According to article 16 of Law 32/2000, one third of the minimum solvency margin set out in paragraph (1) letter b) shall account for the guarantee fund. The items, which account for the guarantee fund shall be set out in the norms issued for the implementation of this law. The amount of the guarantee fund can not be lower than the amount set out in the European legislation concerning insurance business and shall be updated in norms issued in compliance with the provisions of the said legislation. Depending on the risk classes written, the minimum amount of the guarantee fund shall be set out in the norms issued for the implementation of this law. For mutual insurance undertakings, the guarantee fund shall account for at least three quarters of the minimum amount of the safety fund established for insurance undertakings.
- The guarantee fund (Fond de garantie) of the **French** mutual insurance companies (société d'assurance mutuelle), is according to Article R334-7 of the Insurance code for those operating in one or more non-life classes (classes 1 to 18, mentioned in article R321-1 of the Insurance code), equal to one third of the minimum solvency margin as defined in Article R. 334-5. The guarantee fund can not be less than 2.3 million Euro. For insurers active in classes 10-15, the fund can not be less than 3.5 million Euro. These amounts of the guarantee fund apply to all insurance companies. The mutual insurance companies have a diverging size of the guarantee fund. Mutual insurance companies, and their unions should have a guarantee fund of respectively 1.8 and 2.6 million Euro. When a company is licensed to practice operations falling into several classes, to calculate the guarantee fund, the class is considered having the highest amount.
- In **Luxembourg**, there are no explicit legal requirements regarding the minimum subscribed initial (foundation) fund of a mutual insurance association (association d'assurances mutuelles) at creation. However, from a prudential supervisory perspec-

tive, the Commissariat aux Assurances requires a minimum capital of 5.500.000 Euro. Afterwards, a mutual insurance association is required to have, on a permanent basis, a minimum guarantee fund ranging from 2,300,000 Euro to 3,500,000 Euro, the exact amount depending on the business plan and the classes of insurance it covers. If appropriate, the Commissariat aux Assurances has the power to grant the mutual insurance association a 25 % discharge of that amount. Those companies are **exempt** from the requirement to have a minimum guarantee fund ranging 2.3 to 3.5 million Euro, whose income from premiums or contributions for the credit class is less than 4 % of their total premiums or total contributions are below 2.5 million Euro (article 81).

In a lot of countries a non-Directive regime, de minimis regime is set up to reduce the capital requirements for smaller insurance companies:

- In **Malta**, for non-directive insurers (mutual and other), the guarantee fund depends for non-life insurance on the class of risk covered (ranges from 400,000 to 200,000 Euro). For non-directive mutuals, this is reduced by 25 %. For non-directive mutuals in long term (=life) business the guarantee fund is 600,000 Euro.
- In **Belgium** for both the mutual insurance society and the mutual benefit company, de minimis regimes exist:
 - De minimis regime for the association d'assurance mutuelle/onderlinge verzekering-vereniging (Mutual insurance society): The law regarding the supervision of insurance undertakings does not apply to mutual (or cooperative) insurers that limit their activity to one municipality or a group of adjacent municipalities.
 - De minimis regime for the société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company): Also, by law the MOB/SM can be exempted from some of the regulations of the Law of July 9, 1975 on the control of insurance companies (see Art 30, 1°, last paragraph).
- **Denmark** has two de minimis regimes for one mutual-type organisation, the mutual company (Gensidige selskaber):
 - A special regime for non-life mutual insurance companies with limited objects on condition (de minimis regime I)
 - An exempted regime for mutual non-life insurance companies (de minimis regime II) Note that the Danish FSA has the discretionary potential to apply the de minimis II regime to other mutual insurance companies not falling under art 294 (2) on condition that no liability insurance, industrial injuries insurance, motor vehicle insurance, credit or suretyship insurance are underwritten.
- Art 43 of the 2003 Act on insurance activity, describes a de minimis regime for **Polish** Towarzystwo ubezpieczeń wzajemnych (mutual insurance company): A mutual undertaking which possesses a limited scope of activity because of the small number of members and the small number or low amount of insurance contracts concluded or an inconsiderable territorial range of activity may be recognised by the supervision authority as a small mutual insurance undertaking. The supervision authority may recognise a mutual undertaking as a small mutual insurance undertaking if the mutual undertaking fulfils the following conditions:
 - 1) the mutual undertaking only insures its own members;
 - 2) the mutual undertaking's members belong to the circle of entities defined in the articles of association;
 - 3) the annual premium written does not exceed the PLN equivalent of 5 million Euro.

The decision on recognising a mutual undertaking as a small mutual insurance undertaking by the supervision authority is subject to entry in the National Court Register. Some articles do not apply to small mutual insurance companies whose articles of association provide for supplementary contributions by members or a decrease in the mutual undertaking's benefits to its members

- In **Portugal** with regard the Mútua de seguros (Mutual Insurance company), there is a de minimis regime for specific livestock insurers.
- In the **Norwegian** legislation concerning the gjensidige forsikringssselskaper (mutual insurance company), according to § 15-4 of the Insurance Act, with regard to small mutual insurance companies, The King can do full or partial exemption from the Insurance Act for small mutual insurance companies (de minimis regime).
- In **Germany**, there are different regimes for these small insurance mutuals (Kleine Versicherungsvereine):¹
 - The first is an easing of requirements at the discretion of the supervisor.
 - The second one is exemption on the basis of the size of a small mutual. If a mutual is too small according to certain standards, it is eligible for exemption.
 - The third regime applies to small mutual insurers with limited operations in certain lines of business. Additionally, these small non-life mutual insurers may not write any liability, credit and suretyship insurance and life insurers may not write pension or funeral insurance. Furthermore, they should include in their bylaws the possibility for supplementary calls or proportional claims settlement.
 - The fourth regime is related to pension funds of considerable economic importance, which fulfil the solvency rules. They are subject to rules applicable to small mutual insurers but with additional requirements as long as they fulfil solvency rules. If a pension fund has total assets (Bilanzsumme) of more than 250 million Euro, or if a sectoral pension fund has total assets of more than 50 million Euro and a yearly premium income of 2.5 million Euro, it no longer qualifies for this regime.²
- In **the Netherlands**, there is also a **de minimis regime**, applicable to all three legal types of mutual insurance societies (sometimes called "declaration regime"). Under current Dutch law, certain smaller low risk mutual insurance societies with premium turnover up to 5 million Euro are not falling under the financial supervision regime. These non-directive or exempted mutual insurance societies can not write accident, health, liability, credit and suretyship, and assistance insurance.³ None of these 3 categories of mutual insurers have a licence. Three categories can be identified:
 - Category 1 mutual insurers (very small, 200 members and 91,000 Euro in GPW: Gross Premiums Written) may only write one non-life class but may not write accident, health, liability, credit, surety and assistance insurance.
 - Category 2 (max 3,000 members or max 455,000 Euro in GPW) and

¹ See: AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

² In Germany, the regimes are called "Sonderregelungen" (special arrangements), distinguishing between "kleine VVaG", "kleine VVaG mit Erleichterungen kraft Ermessensentscheidung", "kleinste VVaG mit Freistellung", "kleine VVaG mit grössenmässig begrenzter Geschäftsfähigkeit in bestimmten Sparten" and "kleine VVaGPensionskassen mit erheblicher wirtschaftlicher Bedeutung und Erfüllung der Solvabilitätsregeln" (small mutuals/small mutuals with reduced requirements due to individual decision/very small, exempt mutuals/small mutuals with restricted business in terms of size and lines of business/small pension mutuals with significant economic importance and fulfilling solvency requirements). Martin Prölss, the author of "Versicherungsaufsichtsgesetz", the source of this part on regimes for small mutual insurers, deplores in his commentary the complexity and fragmentation of the regulatory regime. For him the value of such detailed regulations for tiny operators is doubtful and he suggests streamlined standards for all lines of business.

³ Besluit vrijgestelde onderlinge waarborgmaatschappijen 1994

- category 3 mutual insurers (more than 3,000 members and max 5 million Euro GPW) may write more than one non-life class of insurance but the excluded classes for category 1 are also excluded for categories 2 and 3.¹

Regarding the de minimis regime, these mutual insurance societies currently do not need to apply for a license and are not licensed by the DNB; a “declaration” is sufficient.

Similar to a license, the declaration involves a check of legal requirements, but the regime and regulations are lighter. When the requirements are met, DNB provides the declaration to the insurer. The costs involved are 1,800 Euro. Depending on the type of declaration (which varies in terms of strictness), the insurer either does or does not have to pay for continuous supervision².

- In **France**, concerning the Société d'assurance mutuelle (mutual insurance companies) a de minimis regime is applied only to non-life mutual insurance companies and concerns the guarantee fund: “small” mutual insurance companies are exempt from the minimum amount of the guarantee fund but must comply with the minimum amounts of the initial fund. Small mutual insurance companies are mutual insurance companies which meet certain conditions laid down in article R334-9 of the Insurance Code:
 - Their articles of association envisage the possibility of making calls for contributions/premiums
 - As a general rule, they do not cover liability risks
 - The annual amount of contributions/premiums, including accessories and cancellations deducted, does not exceed 5,000,000 Euro;
 - At least half of their contributions/premiums comes from natural persons³
- In the **United Kingdom**, the Friendly societies have two regimes: the ordinary regime and the de minimis regime or non-directive regime. There are also companies providing protection for their members in a mutual form, but not as insurers.⁴ These are discretionary mutuals (e.g. Dental Protection⁵) and the claims can only be settled after a decision by the board to pay out the claimed amount. These companies are not supervised by the FSA. Some are hybrids: a discretionary mutual, which provides an extra cover for its members by insuring the losses above the retention rate of the mutual. These companies are often referred to as hybrids (as they then fall under the supervision of the FSA as insurance intermediaries). An example of a hybrid is The Benenden Healthcare Society Limited: Benenden is an incorporated friendly society, registered under the Friendly Societies Act 1992. The Society's contractual business (the provision of tuberculosis benefit) is authorised by the FSA. The remainder of the Society's business is undertaken on a discretionary basis.⁶ These discretionary mutuals acts as quasi-insurers and are not subjected to the rules of the FSA (to be dislike of other larger insurance compa-

¹ See: AISAM/AMICE (2007), Mutual Insurance Companies in the Netherlands. The regulatory, financial and - fiscal arrangements.

² Interview DNB -Markttoegang

³ See: AISAM/AMICE (2007), Mutual Insurance Companies in France: The regulatory, nancial and scal arrangements

⁴ See: AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

⁵ Dental Protection is a wholly owned subsidiary of the Medical Protection Society designed specifically to serve the needs of the Society's dental members. MPS is not an insurance company; it is a non-profit-making mutual association of doctors, dentists and other healthcare professionals. It does not exist to make profits and has no shareholders, its funds being owned by members. Source: http://www.dentalprotection.org/uk/vdp_yd/aboutdpi/ : MPS is not authorised according to the FSA on-line register but is categorized as introducer/appointed representative. Dental Protection is not found in the register.

⁶ AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

nies). Before court, the discretionary mutuals successfully argued that they indeed are not insurers.

- In Spain, in relation to the mutual insurance companies, there is a de minimis regime: exempted from the minimum mutual guarantee fund are those mutuals not operating in the fields of life, liability and credit or bond or reinsurance and where its annual amount of premiums or contributions is not exceeding 750,000 Euro.¹

There are also countries where a de minimis regime is explicitly excluded, such as **Sweden**: all insurance activities in Sweden require a license. There used to be exemptions, but they only related to reporting requirements and applied only to cattle insurance companies (Kreatursförsäkringar) and insurance associations (understödsförening) that operated under the Benevolent Societies Act of 1972, which has been repealed in 2011. In **Luxembourg**, there is no explicit de minimis regime for very small mutual insurance associations, however, smaller companies in general are exempted from complying with the regulations concerning minimum guarantee capital.

Minimum capital requirements for establishing a mutual-type organisation, this is commonly dependent on any activity-related capital requirements. As most types of mutual organisations in the countries studied are solely involved in insurance, the European agreed capital requirements (the minimum guarantee fund) is applied everywhere. Under current law, Member States have the possibility to lower the guarantee fund by 25 % for mutual type associations. In addition, smaller insurers do not have to comply with the European rules and in many countries, non-directive insurers' regimes are established.

4.3.5 Examples of newly established mutual-type organisations

Although in a number of countries the number of mutual-type organisations is decreasing (e.g. in France), in other countries, certain types of mutuals are being established in recent years. In this section, exemplary evidence is provided, concerning newly established mutual-type organisations, without attempting to provide a full picture of what happens across the European countries. In particular, Italian mutual benefit societies and the Swedish re-mutualisation of Skandia Liv will be examined.

¹ See: Real Decreto Legislativo 6/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley de ordenación y supervisión de los seguros privados: http://noticias.juridicas.com/base_datos/Privado/rdleg6-2004.html#, article 18,2

Italian società di mutuo soccorso (mutual benefit societies)

One example is Italy. In Italy, in recent year (5-6 years) about 100 new mutual benefit societies have been established, being active in complementary health services (sanitaria integrativa). The legal framework for the **società di mutuo soccorso**, mutual benefit societies, dates back to 1886 (Law 3818/1886¹), however, the model used to establish one is closely related to the cooperative model. The Law 3818/1886 indicates that an Italian **mutual benefit society** is set up based on notary statutory constitution of a legal entity. The statute must indicate (article 3)²:

- The registered office;
- Mutual objectives (purpose);
- Conditions for members: admission and withdrawal or exclusion and corresponding rights and duties;
- Regulation concerning the mutual equity;
- Governance;
- Statute amendments, winding up, etc.

The application for the registration of the Company will be submitted to the Civil Court along with certified copies of the memorandum and articles of association (article 4).³ There is no indication of the required capital or assets.

Another particular example of a newly established mutual, is the remutualisation of the Swedish Skandia Liv company (see textbox below).

Remutualisation of Skandia Liv in Sweden

Introduction

"Livförsäkringsaktiebolaget Skandia ("Skandia Liv") becomes an independent company which acquires Försäkringsaktiebolaget Skandia (publ) ("Skandia AB") with the Nordic insurance - and banking businesses Skandia Link, Skandiabanken and Skandia Lifeline (health insurance), from Old Mutual plc ("Old Mutual"). Following the acquisition, Skandia Liv will initiate a mutualisation process. After completion of the mutualisation, Skandia Liv will be a mutual, i.e. customer - owned, company. The new group will have leading positions within savings and insurance in the Swedish market with approximately SEK 440 billion of assets under management. For Skandia Liv, the acquisition of Skandia AB is carefully considered and a strategically important investment, as the acquisition and mutualisation will bring significant cost and revenue synergies for the benefit of its customers, which could not be achieved in the current corporate structure."⁴

Background of the operation

When the life insurance business in Sweden at the beginning of the millennium was facing a crisis and Skandia was damaged heavily by the so-called Skandia-Scandal (Swedish: Skandiaaffären), the South-African Old Mutual plc in 2005 acquired the shares of Skandia Nordic/AB, and with it the hybrid

¹ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

² Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

³ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

⁴ See: PRESS RELEASE, Stockholm, 15 December 2011, Skandia Liv acquires Skandia – One of the largest customer - owned bank and insurance groups in Sweden is formed.

mutual Skandia Liv.

Skandia Liv, like a number of other (life) insurance companies in Sweden is a so-called hybrid mutual, meaning that it was a fully "capitalistic" limited company, owned by shareholders, but governed in the interest of the policyholders (employers and employees).¹

The entire share capital (0.6 million SEK) in Skandia Liv was up to closing date for the transaction in March this year owned by Skandia. All risk capital other than the small share capital has been contributed to the company by its policyholders over the years. Skandia Liv is prohibited by law to distribute in any form profit to its shareholder. Although, Skandia Liv is subject to the normal company law rules, it is, because of its hybrid nature and its status as an insurance company, subject to a number of special rules under both company law and business law. Those rules are aimed at protecting policyholders' interests.

It imposes significant demands on the organisation within the hybrid mutual to ensure an arm's length relationship between the hybrid and its parent. The uncertainty as to what is acceptable could significantly reduce the focus on business.

The major problem within hybrid mutuals is that parent company's (investors) and policyholders' interests are sometimes irreconcilable. An example of this is different opinions concerning the risk appetite of the company: A restrictive risk appetite within the parent company due to a weak financial position of the parent company itself, for example, could clash with a more liberal risk appetite in the hybrid due to significantly strong solvency in the latter company. Hence, what is best for the investors, is not always best for the policyholders.

The governance structure of mutually run Skandia Liv as subsidiary of Skandia Nordic (owned by Old Mutual) caused major efficiency problems as, by law, the dividends of the mutual subsidiary can not be distributed to the parent company Skandia AB. This meant that cooperation might not cause any value-transfer to occur, leading to high administrative costs and limited possibilities for synergy and utilisation of each other's business opportunities.

The independent board members of Skandia Liv, whose overall objective is to protect policyholder interests, have concluded that the most attractive solution for the policyholders of Skandia Liv is to create a corporate structure that enables increased integration of the two organisations and that the

¹ Life insurance companies can be categorised in three different forms: (i) mutual companies; (ii) limited liability companies that are entitled to distribute profits to their shareholders; and (iii) limited liability companies that are operated on a mutual basis. The third category of companies is generally referred to as "hybrid companies" as they are, on the one hand, limited by shares but, on the other, not entitled to distribute any profits to their shareholders. With some exceptions (e.g., Nordea, Handelsbanken and SPP), all major traditional life insurance companies in Sweden are either mutual companies (e.g., Alecta and Folksam) or hybrid companies (e.g., AMF, Skandia and LF). This means that most Swedish traditional life insurance companies only distribute profits to their policyholders and beneficiaries. These companies hold 95 per cent of the risk capital in the entire Swedish life insurance sector. See: Sweden — current solvency regulation and efforts towards Solvency II Jan 08 2010 Per Johan Eckerberg and Katarina.

² See: <http://www.oldmutual.com/skandia/>

³ See: PRESS RELEASE, Stockholm, 15 December 2011, Skandia Liv acquires Skandia – One of the largest customer - owned bank and insurance groups in Sweden is formed.

⁴ See: PRESS RELEASE, Stockholm, 15 December 2011, Skandia Liv acquires Skandia – One of the largest customer - owned bank and insurance groups in Sweden is formed.

⁵ See: Press Release, March 15, 2012, The shareholders of Old Mutual approved the deal - new management at Skandia

⁶ <http://www.fi.se>

⁷ Press Release, March 8, 2012: Financial Supervisory Authority approves acquisition of Skandia Life Skandia AB.

new entity will be customer - owned. The best alternative to create value and at the same time shape a strong and competitive Skandia Nordic was found through a combination of Skandia Nordic and Skandia Liv in a new mutualised structure. The possibilities of a demutualisation of Skandia Liv (as well as other changes of the structure) had earlier been carefully analysed. However it was very clear that such a demutualisation (for example linked to an IPO: initial public offering) was not a realistic alternative given the existing liabilities in Skandia Liv. The hybrid structure could have been retained if a permanent Foundation or a similar body had been accepted as a long-term owner of the company. The desire to create a more full-worthy corporate governance resulted in the choice of a remutualisation. The challenge is to create a governance so that the highest governing body is a genuine counterweight to management keeping a proper flexibility as well as stability.

Operation

The independent board members of Skandia Liv initiated a process, which led to Skandia Liv becoming an independent company that subsequently acquired Skandia AB on 21 March 2012 from Old Mutual plc. The deal included the Skandia businesses in Sweden, Norway, and Denmark. All Skandia businesses and their customers outside of Sweden, Norway and Denmark are unaffected by this transaction. These businesses will continue to be owned by Old Mutual and operate under the Skandia brand.² Skandia Liv will initiate a process of mutualisation. Following completion of the transaction, the new Skandia group will have assets under management of approximately SEK 440 billion from more than 2 million customers in Sweden, Norway and Denmark.³ The following timetable has been agreed upon⁴:

- 15 December 2011: Announcement of the transaction
- February/March 2012: Approvals from regulatory authorities
- End of first quarter 2012: Closing of the transaction
- During 2013: Mutualisation of Skandia Liv completed

The whole operation of a subsidiary (Skandia Liv) acquiring the parent company (Skandia Nordic) is rather complex. In order to facilitate the process, a separate interim Foundation was established, to break the group connection with Skandia and to buy the shares of Skandia Liv for the nominal value of 600,000 Swedish Kronor. After this, Skandia Liv will acquire Skandia Nordic. In March, the shareholders of Old Mutual approved the deal⁵. In addition, the Swedish Financial Supervisory Authority (Finansinspektionen)⁶ approved the acquisition in March 2012⁷.

In order to make the necessary transfers, an 'empty' new mutual will be established and will apply for a licence to operate life insurance. Swedish law does in fact recognise two types of mutual life insurance companies. One more classically cooperative, one with greater similarity to limited companies. One of these forms will be chosen. In spring 2013, after discussions with all relevant interest groups and stakeholders, the regulator and the FSA, Skandia Liv will be ready to file its request for a licence with the FSA. After this, the new company can start its operations. The last day of 2013, the portfolios will be transferred from the old hybrid mutual to the new mutual.

Many issues have at this point not been fully resolved or clarified, for instance,

- Taxation: it remains in a few issues unclear how the transfers will affect taxation.
- Governance: the new mutual will not from the very start have a fully democratic governance structure. This structure will have to be developed in the initial phases of the new mutual.
- Interest groups: In Sweden, life insurance companies have often in their board delegates of different representative groups (often employers/employees). It is unclear if and how such 'collective interest groups' will be included in the general meeting and the board.

In spring 2014, an internal re-structuring and revision of the governance model towards a more democratic one, will finalise the transition period. The elections will probably be organised via multiple channels (web, telephone, and mail).

Consequences

Due to the complexness of the operation, high (external) costs are involved to clarify legal, fiscal and governance problems. Additionally, as the time-period for preparing the operation was rather short, external consultant were needed to support the process.

Although the subsidiaries, which will fall under the mutual Skandia Liv (the Skandia Bank and Unit-link company) have clients in Denmark and Norway, the life insurance policies only has clients/members/policyholders in Sweden. The right to attend and be heard in different forums for such categories of clients will be investigated. That investigation will include efforts to reach new and better forms for communication between the company and the clients. Yet only the members of Skandia Liv will have ownership rights and voting rights.

4.4 Additional issues concerning the legal framework

4.4.1 Taxation issues and preferential treatment

As we have seen in the previous sections concerning the legal frameworks of mutual-type organisations in Europe, there is a large diversity of legal frameworks stemming from national cultural and historical developments. This diversity can also be found in relation to the question whether there are measures to promote mutuals. The following information contained in the country reports can be regarded as illustrative for the situation throughout Europe:

- In **Finland**, there is no special treatment for mutual insurers, neither for insurance associations, nor for statutory pension mutual insurance companies.¹ Although there is no preferential treatment concerning particular company forms, there is some preferential treatment concerning specific lines of business. Insurance and reinsurance companies and other providers of insurance-related services are subject to tax on the company's income (based on the company's financial results) at the flat rate of 26 %.² Different tax rules apply to different business forms, such as partnerships or limited partnerships. In Finland, an insurance premium tax of 23 % is imposed on insurance premiums when the insured property is situated in Finland. Life insurance and pension insurance are not subject to insurance premium tax.³ Insurance tax is a substitute for value added tax (Value Added Tax: VAT). However, it is separate from VAT, and therefore VAT deductions can not be deducted from insurance tax (or vice versa).⁴

¹ PWC (2011), International comparison of insurance taxation:

<http://www.pwc.com/at/de/publikationen/financial-services/international-comparison-of-insurance-taxation-2011/finland-insurance-taxation-2011.pdf>

² PWC (2011), International comparison of insurance taxation:

<http://www.pwc.com/at/de/publikationen/financial-services/international-comparison-of-insurance-taxation-2011/finland-insurance-taxation-2011.pdf>

³ PWC (2011), International comparison of insurance taxation:

<http://www.pwc.com/at/de/publikationen/financial-services/international-comparison-of-insurance-taxation-2011/finland-insurance-taxation-2011.pdf>

⁴ <http://crossborder.practicallaw.com/7-504-6240?source=relatedcontent>

- In **Portugal**, mutual associations are exempted from income tax, which may vary between 15-30 %. They are not subject to company tax as they are not regarded being a commercial entity. Until recently, this exemption also counted for the subsidiaries of mutual associations. This rule has been adapted after EU interventions in relation to austerity measures and the financial crisis. The impact on mutual associations is considerable, as some (4) mutual associations own savings banks (caixa) that profited from this exemption.
- In **Germany**, there is no preferential tax treatment for insurance mutuals under German law. Generally, direct insurers, reinsurers and other persons or entities providing insurance and reinsurance-related services are subject to regular taxation. The income of direct insurers and reinsurers is subject to corporate income tax at 15 % (plus solidarity surcharge at 5.5 % on this), and trade tax whose rate depends on the multiplier set by the competent municipality. Persons or entities providing insurance and reinsurance-related services are also either subject to personal or corporate income tax. In both cases solidarity surcharge and trade tax applies. Certain specific rules and exemptions from general rules apply¹. Very small insurance mutuals, as non trading entities, can be exempted from corporate income tax, depending on their business model. According to the law for corporate income tax and its specification (DE: Körperschaftsteuergesetz (KStG): § 5 I Nr. 4 (in connection with § 4 Körperschaftsteuer-Durchführungsverordnung (KStDV))²: turnover must be less than 0.798 million Euro when the insurance mutual underwrites life insurance or health insurance. For other types of insurance (non-life) the turnover must be less than 0.307 million Euro.
- In **the Netherlands**, similar to joint stock companies, mutual insurance societies do pay corporate income tax over their profits. Similarly, for the employees of mutual insurance societies, payroll tax must be paid. If members receive profit, they pay income tax of the amount. In that case, dividend tax is not required.
- In **France**, from 1945 to 2012, the mutuals (under the Mutuality code) were exempted from corporate tax and business tax. Today the legislation has changed because the European Commission decided that this was contrary to EU rules on state aid. This is the reason why, from 1 January 2012, the formerly exempted mutuals will gradually be taxed:
 - regarding corporate tax, they will pay 40 % of the normal rate in 2012, 60 % in 2013, and 100 % thereafter.
 - regarding the business tax (now replaced by the territorial economic contribution mechanism –called “CET”), they will pay 40 % of the normal rate in 2013, 60 % in 2014, and 100 % thereafter.
- In the **United Kingdom**, Friendly societies have their own taxation rules, which provide some preferential treatment for some products, and for smaller organisations, there are corporate tax advantages. For example, exemptions are obtainable from income and corporation taxes in respect of certain profits from:
 - life and endowment business

¹ http://crossborder.practicallaw.com/0-501-3460?q=* &qp=&qo=&qe=

² See: http://www.gesetze-im-internet.de/bundesrecht/kstg_1977/gesamt.pdf; http://www.gesetze-im-internet.de/kstdv_1977/BJNR008480977.html

- profits from other business where the society was registered before June 1973¹
Overall, these concessions are very limited and have not been modified or inflation indexed since 1996. They do not extend to mutual insurance companies or other 2007 Act mutuals.

It can be concluded that when there are tax advantages or when there is a form of preferential treatment, this concerns mostly mutual-type organisations closely related to associations, not involved in insurance services. In other cases, the same rules apply for mutuals as for joint-stock companies or for cooperatives. In all countries, there are exemptions of general rules for small insurance operators, however, there is some movement to increase the regulatory pressure on smaller insurers to align more with the Solvency II Directive requirements. Finally, there might be a form of preferential treatment concerning the amount of guarantee fund, as mutuals are allowed to reduce this fund as they state in their articles of association that they can organise a supplementary call upon its members.

4.4.2 Employee involvement

Concerning employee involvement in the mutual-type organisations, for most mutual-type organisations the same rules apply as for other types or organisations. Here below some examples are provided:

- In **Austria**, concerning legislation on employee involvement systems, there is nothing specifically for mutual insurance associations. When mutual insurance associations have a supervisory board, the rules for joint-stock companies with regard to employees' representation apply.
- In **Finland**, there is nothing specific to mutual-type organisations concerning employee involvement. Standard Finnish legislation for all companies applies here.
- In **Italy**, for both the mutual benefit societies (*società di mutuo soccorso*) and the mutual insurance companies (*società di mutua assicurazione*) there is no specific legislation on this issue of employee involvement
- In **Slovenia**, in all types of organisations, employees have up to one third of members in the supervisory board.
- There is no specific legislation on social rights, as regular **Belgian** social law is applicable. There is no difference with other kinds of (insurance) companies with regard to employee involvement. This applies to both mutual insurance societies as well as mutual benefit companies.

For other types of mutuals, there can be specific provision regarding employee involvement:

- In **Portugal**, most employees of mutual associations are a member of the mutual association themselves. As a member, they have their own rights and duties, as do all other members. To avoid an overruling majority of the employees, the Mutual Association Code prevents them from being in a majority position in all governing bodies, except in the General Assembly (optional, and in case there is one).

¹ Friendly Societies Commission Fact Sheet 1999.

- In **Hungary**, concerning **mutual benefit provident funds**, the individual members are in the core of regulation, employers have only a limited role or rights in the present system.
- In **France**, Art. L322-26-2 of the Insurance code¹ provides that "A board of directors shall manage a mutual insurance company. [...] In addition to the directors, the number and method of appointment of which are provided for in this Code, the board of directors or the supervisory board shall include one or two directors appointed by the wage-earning staff. The number of said directors, which is set by articles of association, may not exceed four or exceed one third of the number of the other directors. When the number of directors or members of the supervisory board appointed by the wage-earning staff are equal to or superior to two, the management and assimilated staff shall have one less seat". This provision is meant to avoid 'over-representation' by member-employees, as most employees of mutual insurance companies are a member of the mutual insurance company for which they work. As a member, they have their own rights and duties, as do all other members. To avoid an overruling majority of the employees, the Law prevents them from being in a majority position in all governing bodies.

The situation in Germany is rather complex. The box below describes how employee involvement and members' control over the insurance mutual co-exists.

Employee involvement: The German case

The general regulations concerning employee involvement systems are also applicable to insurance mutuals. A staff council is not obligatory, but employees have a right (but not the duty) to establish a staff council in case there are at least five employees. There is no special treatment with regard to insurance mutuals. That means that works councils may be established in an insurance mutual according to the Works Council Constitution Act (German: Betriebsverfassungsgesetz²). If the insurance mutual has more than 500 employees, 2/3 of the supervisory board members have to be employees of the insurance mutual (§ 1 para.1 no. 4 One-Third Participation Act-Drittelbeteiligungsgesetz³).

There are two systems of employees' participation according to German law. The **operational co-determination** on the one hand, dealing with the establishment and rights of a workers' council at operational level and the **corporate co-determination** on the other hand, stipulating the rules for employees' participation in the supervisory board of a company. Conditions, requirements, rights and duties of the workers' council and the employees' representatives in the supervisory board are very different. The latter do have the same functions in the supervisory board as the other supervisory board members have. Members of the workers' council may, but not automatically are at the same time employees' representatives in the supervisory board.

In terms of corporate structure a mutual (as well as the joint-stock company) consists of three corporate bodies:

- **management board** (manages the company on operational level)
- **supervisory board** (monitors and controls the operational work of the management board)
- **supreme representation (general assembly)** (convention of the members of the mutual or, as the case may be, members' representatives) The general assembly has the right and duty to take decisions in all questions of strategic importance to the company. It has the right to appoint the

¹ Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006073984>

² See: <http://www.gesetze-im-internet.de/betrvg/>

³ See: <http://www.gesetze-im-internet.de/drittelbg/index.html>

members of the supervisory board (except the employees' representatives which are elected/appointed by the employees' side) by the appoints the members), to grant discharge to the members of the management board and the supervisory board, to decide on the allocation of net income etc.

As the supervisory board only has the function to supervise and control the operations of the management board, the legislation on employees' participation does not impair the ownership rights of the members of the mutual. The supreme representation of the mutual, the general assembly, has the over all responsibility for all strategic decisions of the mutual.

Overall, employee involvement for mutual-type organisations does not diverge from the regular schemes applicable in the countries and does commonly not cause any difficulties as far as members' control over the mutual-type organisation is concerned.

4.5 Concluding remarks

The diversity in legal forms of mutuals, makes it difficult to make clear how they differ from other (similar) types of organisations, but also, it makes it difficult to see in what way the mutual-type organisations differ from each other or are similar to each other. The diversity causes a lack of overview of what are mutual-type organisations in Europe; whether they share the same characteristics; whether they are governed according to the same principles and finally, whether they are facing the same obstacles.

Although Chapter 6 of this report will focus on particular barriers mutual-type organisations face, already here it can be mentioned that one of the largest barriers existing in Europe both for establishing new mutual-type organisations and for the further development of mutual-type organisations, is the lack of information, overview and expertise concerning mutual-type organisations. This lack of information hampers:

- the comparability of mutual-type organisations in different countries;
- the understanding of the legal frameworks applicable to mutuals, also for establishing them;
- the modernising and attuning of the legal frameworks in order to maintain the frameworks up to date for mutual-type organisation to continue to add value to the members and the European society at large.

5 Management and corporate governance

Key messages

- A distinction can be made between one-tier and two-tier **governance models** for undertakings. In the one-tier model, executive directors and nonexecutive directors operate together in one organisational layer (the so-called one tier board). In a two-tier governance model, an additional organisational structure exists to make a clear distinction between the executive function and the monitoring function. Whether a country adopted a one-tier or a two-tier governance model for (mutual) companies has mostly historic roots. Traditionally, the two-tier model is applied in most Western-European, continental countries. The one-tier model is mostly applied in the Anglo-Saxon world. Concerning the difference between the two models, it is often mentioned that a two-tier structure provides a better control of the members over the board, as the board is being supervised by an additional organ within the company. Whether this is truly the case, remains – within this study – under-researched.
- Concerning the **rights of members** there are slight differences across mutual-type organisations in Europe. In general, upon the existence of an insurance contract, the persons become a member of the organisation. However, in many countries mutual insurers have the possibility to provide in their statutes that contracts may also be offered to non-members.
- The **representation of members** can be designed in two ways, either direct, or through delegates. In general, both options are legally possible and whether the one or the other applies is commonly specified in the Statutes of the mutual-type organisation. In general, in all types of mutual organisations the one-person, one-vote principle is applied. In the general meeting, decisions are usually made by a majority of the votes cast (simple majority of votes). Changing the Statutes usually requires a three-quarter majority. Besides these general principles, there are some deviations in the legal frameworks. In addition, specific rules concerning voting rights and representation of members are often the subject to the Statutes of the individual mutual-type organisations.
- The general rule is that mutual-type organisations **do not have shares**. This is indeed the case in most countries and applies to most mutual-type organisations. There are however, a number of deviations, where mutual-type organisations have possibilities to obtain external capital. It should be emphasised that this is mostly not in the form of share capital, but in the form of guarantee capital. In a number of countries, general company law applies and references to 'share capital' should be replaced by 'guarantee capital'. Holders of guarantee capital can receive interest on their capital, but the amount of guarantee capital does not increase or decrease when the company increases or decreases. It can be considered a form of subordinated debt.
- The possibility of allowing **external investors** is pivotal for overcoming capital barriers for establishing new mutuals.
- Principally, **reserves** are used for the benefit of the members. In insurance mutuals, this often means building reserves to maintain the solvency margins, investing in improving the services and /or reducing next year premiums. Reserves can also, to a certain extent, be paid back to the current members. In many countries, there are flexible regulations concerning what should be done with annual surplus; more detailed provisions are commonly included in the organisations' Statutes.
- Upon winding up, in total, 6 out of 38 legal forms in the European countries have a legal system, which assures that the **remaining assets** are distributed to similar (not-for-profit) types of organisations. In other regimes, the liquidation surplus is distributed to the (current) policyholders/members unless, in some cases, the Statutes of the organisation states otherwise. Finally, there are countries that do not address the issue in legislation; and hence the distribution of assets in case of liquidation is subject to the Statutes of the organisation. Although, asset protection systems discourage demutualisations from happening, no evidence was found that asset protection systems are necessary to prevent demutualisations from happening. Despite that the Irish and

United Kingdom examples in the 90s show per-verse tendencies to profit from demutualisations, in other countries this does not seem to be neither the case, nor a much debated topic: in general, either members do not know about they own the organisation, or they know that they are better off maintaining the mutual-type organisation.

- **Disclosure** rules are fairly the same for mutual-type organisations as any other organisation. There are exceptions having to do with either the size of the organisation (lower requirements) or the field of activity in which the organisation is involved.

As has been stated earlier in this report, the core characteristics of mutual-type organisations concern: that it is a private entity, that it is a grouping of persons not a pooling of funds, that the legal entity is subject to democratic governance, i.e. each member has one vote, that the legal entity embraces the principle of solidarity among members and finally, that profits are used for the benefit of members (see Chapter 2). Many of these core characteristics determine the way the legal entity is managed and governed. However, whether the governance and management models for mutual-type organisations are specified in law is not always clear. In this chapter, the issue of management and corporate governance will be examined. First, the way democratic governance and members' control over the organisation is exercised, is closely looked at (corporate governance, rights of members, voting and representation of members in general meetings). Second, the financial characteristics are examined. This entails studying whether mutual-type organisations can have non-member investors, shares, reserves and analysing what happens with the assets in case of dissolution. Thirdly, the way mutual-type organisations are handled in terms of disclosure and transparency is being described. Finally, in Section 5.4, some concluding remarks will be made.

5.1 Democratic governance

As has been elaborated on earlier, one of the core characteristics of being a mutual-type organisation is the fact that they put the members central in the organisation. This entails that some kind of democratic governance is practiced and that the members can influence the way the company is run. In this section, a number of related issues are being examined.

5.1.1 Management and (corporate) governance

In general, the following bodies can be identified associated with the management and governance of mutual-type organisations. Firstly, the general meeting/assembly, which can consist of all members or delegates/representatives of members. In some cases, also non-members/ investors could take part in the general meeting. Secondly, the board of directors, which conduct the daily management of the organisation. Thirdly, (not in all), a supervisory board is in place, supervising the board of directors and being elected by the general meeting/assembly. In addition to these bodies, there can be an internal auditor.

A distinction can be made between one-tier and two-tier governance models for undertakings. In general, Anglo-Saxon countries such as the United States, the United Kingdom and Canada have adopted variants of the one-tier board model. On the other hand, continental European countries, such as the Netherlands, Germany and Finland have adopted variants

of the two-tier board model for corporations. In the one-tier model, executive directors and nonexecutive directors operate together in one organisational layer (the so-called one-tier board). Some one-tier boards are dominated by a majority of executive directors while others are composed of a majority of non-executive directors. In addition, one-tier boards can have a board leadership structure that separates the CEO (chief executive officer) and chair positions of the board. One-tier boards can also operate with a board leadership structure that combines the roles of the CEO and the chairperson. This is called CEO duality. One-tier boards also make often use of board committees like audit, remuneration and nomination committees.¹ Within a two-tier governance model, an additional organisational structure has been introduced to make a distinction between the executive function of the board and the monitoring function. The supervisory board is entirely composed of non-executive supervisory directors, being the members of the mutual-type organisation. The management board, with represents a lower organisational level is usually composed of executive managing directors. "It is generally not accepted by corporation laws that corporate statutes foresee in the possibility that directors combine the CEO and chairman roles in two-tier boards. Because the CEO has no seat in the supervisory board, its board leadership structure is formally independent from the executive function of the board. This is particularly the case in two-tier boards in the Netherlands and Germany. In variants of the two-tier board model in these countries, executive managing directors are not entitled to have a position in the supervisory board of the corporation."²

In some countries, when there is more than one legal mutual-type, different governance models apply. This due to the fact that often one organisation has an underlying legal framework related to cooperatives or companies, and the other has a underlying legal framework related to associations. In **Norway**, the insurance companies can themselves decide whether they apply a monistic or dualistic governance structure. Here below, examples are provided of countries applying a one-, two, or mixed governance model to mutual-type organisations.

One-tier governance model

In one-tier governance models in general, there is a (board of) Directors and a general assembly. One-tier model can be found in **Greece**, where the mutual health funds (Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία) are governed by the general director and the general meeting. Also in **Luxembourg**, the association d'assurances mutuelles (mutual insurance association) are governed by a one-tier model. They are administered by a board consisting of at least three directors. The Board has the authority to perform all necessary or appropriate actions to achieve the corporate purpose, except those that as stipulated in the memorandum of association are reserved for the General Assembly of the members of the association (1991 Insurance law, article 89³). Another one-tier model can be found in **Romania** with regard to the mutual aid societies. The association bodies are: a) general meeting; b) the board; c) the auditor or, where appropriate, the audit commission. The General Assembly is the governing body, composed of all shareholders. In **Sweden**, both the mutual insurance company (ömsesidiga försäkringsbolag) and the insurance association

¹ See: Gregory Francesco Maassen (2002), An International Comparison of Corporate Governance Models.

² See: Gregory Francesco Maassen (2002), An International Comparison of Corporate Governance Models.

³ Law on the insurance sector of 6 December 1991 (Loi modifiée du 6 décembre 1991 sur le secteur des assurances).

(forsakringsforeningar) has a board of Directors, which is elected by the general meeting, and hence applies a one-tier model. In **Denmark**, all financial undertakings including the mutual insurance companies shall have a board of directors and board of management. The right of members and guarantors to make decisions in a mutual insurance company shall be exercised at the general meeting. There are special regulations for mutual non-life insurance companies with limited object whose articles of association state (Financial Business Act, Section 294-1): these mutual insurance companies may function without a board of management (art 295 (2)). If the company has no board of management, the duties imposed on the board of management by this Act shall be performed by the board of directors (art 299).

Two-tier governance model

Two-tier governance models can be found in:

- In **Bulgaria**, the mutual insurance cooperatives (взаимозастрахователна кооперация) have a managing board, a supervisory board, but the supreme authority is the General meeting.
- Most, if not all mutual companies in **Finland** apply a two-tier governance structure, where the Board consists of knowledgeable persons from the company and where the supervisory board is composed of members or representatives of members. The requirements for board members are strict (and will under pressure of Solvency II even become stricter). The administrative structure of insurance associations resembles the administrative structure of mutual insurance companies.
- In **Portugal**, the legislation on mutual association (associações mutualistas) provides some rules regarding governance and the organisation of the internal democracy.¹ The governance bodies are the General Assembly, the Board of Directors and the supervisory board. The law allows the possibility of an assembly of delegates in case the association has a national scope (article 75). A 'Fiscal committee' is required, next to a General Assembly and a Board of Directors.
- In **Hungary**, the bodies of the Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund) are (section 19):
 - general meeting and, in the cases defined in the bylaws, the delegates' meeting or partial general meeting;
 - the board of directors;
 - the supervisory board.

The bylaws may prescribe the establishment of expert committees. The board of directors and the supervisory board shall be composed of an odd number of members between three and seven persons. The number of board members may be increased by the bylaws consistent with the fund's membership. Members of the board of directors and the supervisory board (hereinafter referred to as "executive officers") shall be elected by secret ballot for a maximum term of five years. The appointment of an executive officer shall take effect when accepted by the person appointed. The chairpersons of the board of directors and the supervisory board shall be elected from among the members of the board of directors and the supervisory board, respectively, by secret ballot. The persons nominated for the office of chairperson of the board of directors and the supervisory board must have a degree in higher education. Unless provided in the bylaws to the con-

¹ See: chapter 5 of decreto-lei n° 72/90 of 3 March 1990, código das associações mutualistas.

trary, the board of directors may employ a managing director to perform the day-to-day responsibilities. The managing director shall be invited to the meetings of the board of directors, except when matters affecting his person are discussed. The managing director shall attend the meetings of the board of directors in an advisory capacity.

According to section 21, the fund's supreme body shall be the general meeting composed of all the members or, as defined in the bylaws, the body elected by the members directly or indirectly (delegates' meeting). In addition to the rules of competence and procedure, the bylaws may also provide for holding partial general meetings.

A Biztosító egyesület (Mutual Insurance Association) (with more than hundred members) shall at least have a board of directors, consisting of a minimum of five and a maximum of eleven members and a supervisory board, consisting of a minimum of three and a maximum of fifteen members. The General Meeting will elect the members of the board of directors and the supervisory board.

- In **Slovenia**, the bodies of a mutual insurance company (družba za vzajemno zavarovanje) shall be the board of directors, the supervisory board and the general meeting (article 50). The Corporate governance is arranged by means of a two tier model.
 - The board of directors of a mutual insurance company shall be appointed by the supervisory board (article 51).
 - A mutual insurance company must have a supervisory board consisting of at least three members. The bylaws may stipulate that the supervisory board has more than three members but not more than twenty members (article 52).
 - The members of a mutual insurance company shall exercise their rights in the mutual insurance company by means of a general meeting, unless otherwise stipulated by law (article 53).

Concerning the general meeting (article 53), the general meeting of shareholders may be organised as a general meeting of all the members (meeting of members) or as a meeting of representatives, who themselves must be members (representatives' meeting). Should the bylaws stipulate that the general meeting of a mutual insurance company be organised as a representatives' meeting, they must also lay down the composition of the general meeting and the procedure of appointing representatives. The general meeting shall adopt decisions with regard to the issues for which it is explicitly stipulated by law or the bylaws that decisions relating to them must be adopted by the general meeting. Decisions regarding the management of operations may only be adopted by the general meeting if this is required by the board of directors or, where permitted under the Company Act (CA) provisions regulating the responsibilities of the supervisory board, this is required by the supervisory board¹. If the provisions of the CA applying to the general meeting of a mutual insurance company pursuant to this Act stipulate the minority rights of members whose joint holdings reach a certain share in the equity, the bylaws must lay down an appropriate number (minority) of members of the general meeting.

- The corporate governance bodies of a **German** insurance mutual (Versicherungsverein auf Gegenseitigkeit) are:
 - the general assembly (of members or of members' representatives): highest authority in the organisation (VAG § 29)
 - the supervisory board and

¹ Act amending the Insurance Act (ZZavar-C). Official Gazette of the Republic of Slovenia, no: 79/2006. Article 17.

- the management board (two-tier system).

The management board has to consist of at least two natural persons (VAG § 34). The management board manages the insurance mutual. The member or members of the management board shall have the power to represent the insurance mutual in dealings with third parties and in legal proceedings.

The supervisory board has to consist of at least three natural persons (VAG § 35). The supervisory board shall supervise the duties of the management board. It may not itself exercise the power to manage the insurance mutual and can not represent the insurance mutual in dealings with third parties. It shall represent the insurance mutual in dealings with members of the management board, or one of them, in case of litigation.

The general assembly can be organised as assembly of all members, which occurs in nearly all small insurance mutuals and to a lesser extent of the medium-sized and big insurance mutuals or the assembly of delegates of the members. The latter occurs in a significant number of the medium-sized and big insurance mutuals.

There is a wide legal framework for the corporate governance of insurance mutuals. With the exception of a few binding regulations, the German law allows insurance mutuals to define their own corporate governance in their statutes. According to VAG § 29 the composition of the corporate bodies of the mutual insurance mutual has to be laid down in the statutes.

Countries with different governance models for different types of mutuals

A number of countries have a mixed model, where either a one-tier model is applicable to one mutual-type organisation and a two-tier system to another, or where the individual organisation can determine in its Statutes whether it adopts a one- or two-tier governance model. The latter is for instance the case in Austria and Cyprus:

- **Austria** has different governance models for different types of mutuals. The ordinary mutual insurance associations must have a management board, a supervisory board and a general meeting of members or a council of members' representatives as supreme body (Art 43). The small mutual associations on the other hand, must have a management board and a general meeting of members or a council of members' representatives as supreme body (Article 66). For them, a supervisory board is only facultative (Art 70(1)). The management board shall manage the association on its own responsibility in the way the interest of the association requires, taking into consideration the interest of the members and employees as well as the public interest (Article 44). The supervisory board members shall be elected by the supreme body (Art. 47(1) and 70(2)). The supervisory board shall supervise the management. It shall convene the supreme body when the interest of the association requires it (Art 47).
- In **Cyprus**, with respect to the management and corporate governance of mutual insurance organisations (εταιρεία περιορισμένης ευθύνης με εγγύηση), there are no specific references in Cyprus legislation for this type of insurer. The statutes of insurance companies, as a general rule, are not made publicly available by the Insurance Companies Control Service. The management and corporate governance of the mutual insurance organisations is not stipulated in the insurance code and are also not covered by company law. The way mutual insurance organisations are governed is laid down in the Bylaws of the organisation.
- Where the **Luxembourgish** mutual insurance associations apply a one-tier model, for the Société de secours mutuel (mutual aid society) this is decided upon in the Statutes of the organization.

Whether a country adopted a one-tier or a two-tier governance model for (mutual) companies has mostly historic routes. Traditionally, the two-tier model is applied in most Western-European, continental countries. The one-tier model is mostly applied in the Anglo-Saxon world. Concerning the difference between the two models, it is often mentioned that a two-tier structure provides a better control of the members over the board, as the board is being supervised by an additional organ within the company. Whether this is truly the case, remains –within this study – under researched.

In some countries, the law determines the requirements for management board members. For instance in **Poland**, the same requirements are set for both joint-stock and mutual insurance companies:

- In order to be allowed on the management board of a domestic insurance undertaking, management board members must have a higher education qualification¹.
- At least two members of the management board of a domestic insurance undertaking, including the president of the board, must have a certified knowledge of Polish²
- The above obstacles may be abandoned on request of the insurance undertaking, taking into account the professional experience of that person and the scope of the undertaking
- A person being a member of the managing body of the following entities can not be a member of the managing body of an insurance undertaking:
 - 1) a national investment fund or a company managing the assets of the national investment fund,
 - 2) an investment fund management company;
 - 3) an entity performing brokerage activities within the meaning of the Act on Trading Financial Instruments of 29 July 2005 (Journal of Laws No. 183, item 1538, as amended 14) or any other activities in the scope of trading in financial instruments within the meaning of this Act;
 - 4) a general pension society;
 - 5) a bank;
 - 6) a reinsurance undertaking.

In **France**, with regard the Société d'assurance mutuelle (mutual insurance companies), there are two type of management methods in France. The change of governance from one system to another can be decided along the life course of the company. According to the Insurance code³ Art. L322-26-2, the mutual insurance company is managed by a board of directors and a Director General. In the board of directors, one or two directors represent the wage-earning staff and are elected by the staff. The directors are chosen from members, which have paid their contributions/premiums (R322-55-2 of the Insurance code). The Director General is nominated by the Board of Directors (R322-53-2). In mutual insurance companies whose statutes subject the quality of member to the exercise of a specific professional activity, the statutes may envisage the election of non-member directors, maximum one-third of the Board. However, it may be stipulated by the statutes of any mutual insurance company that it is may be managed by an Executive Board and a Supervisory Board. Members of the Executive Board are nominated by the Supervisory Board. Members of the Supervisory Board are members which have paid their contribu-

¹ Act of 22 May 2003 on Insurance Activity, art. 27

² Act of 22 May 2003 on Insurance Activity, art. 27

³ Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006073984>

tions/premiums and which are elected by the General Assembly (R322-55-2 of the Insurance code).

5.1.2 Rights of members

Concerning the rights of members there are slight deviations across mutual-type organisations in Europe. In general, upon the existence of an insurance contract, the persons become members of the organisation. However, in many countries there are possibilities to obtain an insurance contract without becoming member. Another issue is whether the members are liable to the obligations of the company. Here below a number of examples are provided, describing the variety of situations members are in.

The most basic right of the members is to participate in the general assembly and to be able to elect the members of the supervisory board /management board, or to be elected themselves for these positions. An example for this is **Italy**, where members of the Società di mutuo soccorso (benefit mutual societies) participate in elections and where the board can only be composed of members. This can be considered a wide-spread characteristic of mutual-type organisations. Having representative power, does not necessarily mean that the organisation is *owned* by its members. In **Sweden**, for example, this is however clearly stipulated in the law on mutual insurance companies (Ömsesidiga försäkringsbolag): according to the Insurance Business Act (chapter 12, article 1)¹, the policyholder is co-owner of the mutual insurance company (the beneficiary can be co-owner only if the articles of association stipulates it). As such, they have voting rights in general meetings.

Insurance contracts and membership

Having an insurance policy, does not necessarily mean being a member. This can be illustrated by the Austrian mutual insurance associations and the Italian Società di mutua assicurazione (mutual insurance companies). Other examples can be found in Poland, Finland, Portugal and Slovenia:

- In **Austria**, having an insurance contract does not necessarily include being member. The membership of a mutual insurance association (Versicherungsverein auf Gegenseitigkeit) is dependent on the existence of an insurance contract.
 - However, mutual insurance associations may also conclude insurance contracts without establishing membership, provided that it is specifically permitted in the articles of association (Art 32).
 - Small mutual insurance associations may not conclude insurance contracts with non-members

The members shall exercise their rights in matters of the association in the supreme body unless the law stipulates otherwise (art 49,1)

- In **Italy**, in relation to the Italian Società di mutua assicurazione (mutual insurance companies), there are two types of members according to the Codice Civile: member policyholders and member-investors (socio sovventore). Investor-members may be appointed as directors, however, the majority of directors must consist of insured members (article 2548).

¹ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

- In addition, in **Poland** the law states that those who contribute to the initial capital may be members of the mutual insurance company's (Towarzystwo ubezpieczeń wzajemnych) management board or the mutual insurance company's supervisory board, to the extent specified in the articles of association, until the time of capital repayment. Mutual insurance undertakings may also cover persons who are not members, provided that they pay a fixed premium and the total size of their premiums does not exceed 10 % of the total insurance premiums¹.
- In **Finland**, with regard to the mutual insurance companies (keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag, all policyholders of mutual insurance companies are members. Nevertheless, not all members are policyholders. There are also member investors. The Statute determines what right non-member investors have. The rights of the members are essentially those of owners of limited companies, where applicable. According to article 21, chapter 1 of the Insurance Company Act, the shareholders exercise their power of decision at the general meeting. Decisions are taken by simple majority of votes cast, unless otherwise provided in the Act or the statutes.
- For one of the two **Portuguese** mutual-type organisations, the Associações mutualistas (mutual associations), the law mentions different types of members:
 - Effective members: They are active members who subscribe to any of the types of regulatory benefits and pay the corresponding levy.
 - Associate members: Workers covered by supplementary occupational schemes managed by mutual associations, may register as associated members of these associations, and their contributions to those schemes are then treated as shares. The conditions are regulated by the Statutes.
 - Contributing members: The Statutes can allow individuals or entities supporting the association with relevant services or financial contributions.
 As the law mentions, many mutual associations have to specify further these rules in their by-laws (which can vary a lot and which can not be categorised).
- Also in **Slovenia**, membership of a mutual insurance company shall be related to the existence of an insurance contract entered into by the company. A mutual insurance company may, if this is explicitly stipulated in its bylaws, also enter into insurance contracts in such a way that by making the contract the policyholder does not acquire the status of a member of the mutual insurance company.
- In **Germany**, the rights of members are usually laid down in the statutes of the insurance mutual (Versicherungsverein auf Gegenseitigkeit). Generally, there is an **inseparable** relationship between membership and being a policyholder; exceptionally **non-member business** is permitted. Generally, the membership in a mutual insurance association is acquired at the same time as signing an insurance contract, no special membership fee is required. Only exceptionally non-member business is also permitted by law (VAG § 21 para.2).

In **Hungary** on the other hand, in relation to the Biztosító egyesület (Mutual Insurance Association), entering into the association is only on condition having an insurance contract, by the expiration of the contract, the membership doesn't cease unless the member stops paying membership fee or if she/he is not obliged paying a fee, comply with other obligations and enter into a new contract within one year [Insurance Act § 19 (2)-(3)]; refers to

¹ "Towarzystwo ubezpieczeń wzajemnych (TUW)", <http://www.money.pl>

the Civil Code 1 § 62 (3) voting right and right of eligibility on General Assembly, right to take part on the events of the association. The members of the management board and supervisory board shall be elected by the General Assembly. Concerning the **Hungarian** Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund) Section 16 of the act on Voluntary Mutual Insurance Funds states that

- Fund members shall have the right to vote and, unless this Act or the bylaws provide otherwise, to be elected to the bodies of the fund.
- Fund members are entitled to have access, in the manner defined in the bylaws, to the documents and books of the fund (other than the minutes taken of closed meetings and the draft resolutions discussed there); they are also entitled to request information on the operation of the fund. Fund members may not use the information so obtained in a manner that violates the fund's interests, nor may they use the personal data of fund members in a manner that violates their personality rights.
- Fund members may use the services of the fund on the basis of the provisions of the bylaws.

There are also countries where the rights of members are described in the Statutes of the organisation. This is for instance the case in **Luxembourg**, in relation to the Association d'assurances mutuelles (mutual insurance association); in **Romania**, in relation to the mutual aid societies²; the **Portuguese** Mútua de seguros (Mutual Insurance company); and **Norway**.

Members' liability

Besides the rules concerning the membership, there are also other issues, which have to do with the rights and obligations of members. For instance, the issue whether members are liable to the obligations of the organisation.

In **Denmark**, members are liable for the obligations of the organisation. Concerning the ordinary mutual insurance companies (Gensidige selskaber) and companies falling under de minimis regime I (i.e. non-life mutual insurance companies with limited objects on condition), the Financial Business Act, Section 112 states that the articles of association of mutual insurance companies shall [...], contain provisions regarding: the liability of members and guarantors to the obligations of the company, and regarding the mutual liability of members and guarantors, cf. section 284(2). Financial Business Act, Section 111. The right of members and guarantors to make decisions in a mutual insurance company shall be exercised at the general meeting. According to Financial Business Act, Section 284 (1) Members of a mutual insurance company shall only be the policyholders of said company. (2) If the members are to be liable for the liabilities of the company, the extent of such liability shall be stipulated in the articles of association. Additionally for the De minimis regime I³ mutual insurance companies, art 296 stipulates that no members or guarantors may be enrolled before draft articles of association have been drawn up. The draft articles of association shall be available on such enrolment.

¹ The Civil Code has been updated 22th December, 2011.

² Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP

³ De minimis regime I: non-life mutual insurance companies with limited objects on condition.

In other countries, the members' liability is explicitly excluded. This is for instance the case in:

- **Poland**, where members of a mutual insurance company shall not be liable for the obligations of that mutual insurance company¹.
- **Slovenia**, where concerning rights, obligations and responsibilities of members (Article 43) states that (1) Members shall not be responsible for the mutual insurance company's obligations; (2) A member may not offset his/her obligations to the mutual insurance company as regards the payment of contributions and subsequent payments with his/her claim on the mutual insurance company; (3) Contributions and subsequent payments of the members, as well as the obligations of the mutual insurance company in relation to its members, may only be determined upon equal assumptions and by applying the same criteria.

5.1.3 Voting and representation of members in general meetings

The representation can be in two ways, either direct, or by means of delegates. In general, both options are legally possible and whether the one or the other applies should be specified in the Statutes of the mutual-type organisation.

In general, in all types of mutual organisations the one-person, one-vote principle is applied. In addition, in the general meeting, decisions are made requiring a majority of the votes cast (simple majority of votes). For changing the Statutes mostly a three-quarter majority is required. Besides these general principles, there are some deviations in the legal frameworks and even more, specific rules concerning voting rights and representation of members are subject of the Statutes of the individual mutual-type organisations. Here below a number of mutual-type organisations' rules are presented²:

- In **Austria**, concerning voting (applicable to all mutual insurance associations, ordinary and small), the decisions of the supreme body require a majority of the votes cast (simple majority of votes) unless the law or the articles of association stipulate a larger majority. For elections, the articles of association may stipulate otherwise. In addition, if the supreme body is a general meeting of members, the voting right may be exercised by a proxy. The power of attorney must be in writing; the power of attorney shall remain in the association's custody. A member of the supreme body who is to be discharged or released from an obligation by resolution can exercise the voting right neither for himself nor for another member. The same shall apply when a resolution is passed on whether the association shall assert a claim on the member. Otherwise, the conditions and the form of exercising the voting right shall depend on the articles of association.
- In **Denmark** in relation to the ordinary mutual insurance companies and de minimis regime I, the Financial Business Act, Section 111 states that each member and guarantor shall have at least 1 vote, also, the articles of association may stipulate that the general

¹ Act of 22 May 2003 on Insurance Activity, art. 45

² The study examined legal frameworks in relation to member right. It did not examine the question whether these rights are actually practiced. However, to provide an illustration, the voting practice in the French mutual MGEN can be examined. In 2010, there were 475,000 voting members, being 26.9 % of the total member population.

meeting shall consist of representatives elected by the members and guarantors, or their proxies.

- In **Poland**, the members of mutual insurance companies (Towarzystwo ubezpieczeń wzajemnych (TUW)) entitled to participate in the general meeting may exercise the right to vote in person or by proxies¹. In addition, persons who contributed the share [initial] capital may be members of the mutual insurance company's management board or the mutual insurance company's supervisory board.
- In **Finland**, with regard to the insurance association (vakuutusyhdistys/ försäkringsförening), decisions are taken by simple majority of votes cast, unless otherwise provided in the Act or the statute. In addition, all members of the insurance association have one vote, unless otherwise provided in the statute. The member exercises his right at the meeting personally or through representation. With regard to the mutual insurance companies (Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag), the starting point is that all members are equal. Company rules (laid down in the Statutes) may, however, alter the voting rights to be contribution based, so that the each member receives an amount of votes in general meetings related to the size of his contribution to the mutual. For instance in Tapiola, every policyholder has at least one vote, with additional votes being conferred on the basis of insurance premiums (Tapiola General and Tapiola Pension) or life insurance savings (Tapiola Life).²
- In principle, each policyholder/owner of an **Italian** mutual insurance company (società di mutua assicurazione) has one vote. The Codice Civile, however, does mention the issue of voting rights: it states that the bylaws may allocate to each of the investor-members more votes than one, but not more than five, in relation to the amount of the contribution. The votes allocated to investor-members, must in any case be less than the number of voting rights of the insured members.
- In **Belgium**, in relation to mutual benefit companies (companies (maatschappijen van onderlinge bijstand/société mutuelle), only persons, which are members of one of the associated mutual health societies can become member of the mutual benefit company. The members do not have a direct right of electing representatives. This will be done by the representatives of the general meeting of the associated mutual health societies.
- The voting rights, membership etc. are described in the articles of association of the **Swedish** mutual insurance company (Ömsesidiga försäkringsbolag). In principle in general meetings, the one man, one vote principle is applied. However, in larger mutual insurance companies it is common that the articles of association stipulate that the voting rights are conferred on representatives appointed by explicitly mentioned organisations or by members. At least half of such representatives should however be appointed by the members or by organisations representing members' interests. In case of indirect representation, the organisation representing the members may not have been founded for that purpose, organisation within the cooperative movement (labour union, consumer cooperative, etc.) are however accepted. Within the framework of the new legislation, there is currently a governmental committee assigned to look into if and how to enhance policyholders'/owners' influence in mutual insurance companies.

¹ Act of 22 May 2003 on Insurance Activity, art. 73

² See:

<http://www.tapiola.fi/wwweng/Briefly/The+Tapiola+Group/Business+idea+and+values/Policyholders%E2%80%99+influence.htm>

- In **Norway**, the rules for membership, the composition of the General Assembly and to vote at a general meeting is subject to the Statutes of the organisation. Holders of the loan (guarantee) capital (negotiable primary capital) can have a right of representation at the general meeting.
- As in Norway, in **Germany** as well the voting rights in the general meeting are subject to the Statutes.

As can be assessed in the presented illustrations from the countries, there are a number of countries where the Law allows deviations from the general one-person, one-vote principle. Predominantly, the Nordic countries provide possibilities to have another organisation of voting rights. For instance, in Finland, the voting rights can be altered to be contribution based instead of membership based. In Sweden, indirect voting systems (organisations representing (groups) of members, such as employees) are common practice in larger mutual insurance companies. In Norway, loan capital holders have the right to be represented in the general meeting. The 'Nordic mutual model' of representation and voting rights have their background in the advanced way in which mutual-type organisations can make use of external capital in the form of guarantee funds (see later in this chapter, Section 5.2).

The rules concerning some mutual-type organisations in Europe restrict the possibility to form groupings of members and to organise representative voting in the general meeting. This is for instance the case in **Portugal**. Within a mutual association (Associações mutualistas), representation of votes is limited to one vote per member. There is no possibility to represent fractions and/ or groupings of members; however, there is the possibility to establish an assembly of delegates in case the association has a national scope.

5.2 Financial rules

Principally, as mutuals are groupings of persons instead of pooling of funds, the capital has to be obtained from the members. Hence, mutual-type organisations essentially do not allow any kind of external capital. In this section, the legal possibilities are examined which mutual-type organisations have to obtain external capital. After this, the way mutual-type organisations need to handle their reserves is discussed and finally, the financial rules concerning asset protection are examined.

5.2.1 Possibility of shares and non-member investors

The default mode is that in mutual-type organisations no shares are allowed. This is indeed the case in most countries and applies to most mutual-type organisations. There are however, a number of deviations, where mutual-type organisations have possibility to obtain external capital. It should be emphasised that this is mostly not in the form of share capital, but in the form of guarantee capital. In a number of countries, general company law applies where 'share capital' should be replaced by 'guarantee capital'. Holders of guarantee capital can receive interest over their capital, but the amount of guarantee capital does not increase or decrease when the company value increases or decreases. It can be considered a subordinated debt. Here below examples are provided:

- In **Austria**, mutual insurance associations can not issue shares. (Ordinary) mutual insurance associations may however – with the supreme body’s consent – raise participation capital and supplementary capital¹ and issue securities on it in accordance with Art 73c(7). Participation capital (Partizipationskapital) (Art 73c(1)) has equity features while supplementary capital (Ergänzungskapital) (Art 73c(2)) is a form of subordinated loan/bond. *Participation capital* is paid-up capital:
 - which is made available during the existence of an undertaking waiving the right of ordinary and extraordinary call-in;
 - which can be repaid by the insurance undertaking only by applying the relevant provisions for capital reduction of the stock corporation law;
 - the income from which is profit-linked, with the profit being the accounting income after having taken into account the net change in disclosed reserves;
 - which – like the share capital – participates in the loss up to the full extent, and
 - which is connected to the right to participation in the liquidation proceeds and may only be repaid after all other creditors’ claims have been satisfied or secured.
- In **Denmark**, the mutual companies (gensidige selskaber) can have guarantors, which are holders of guarantee capital. On this capital, they receive guarantee interest (if allowed in the articles of association).
- In **Finland**, through the use of guarantee capital, non-member investors are possible in mutual insurance companies (Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag). Guarantee capital is constituted by policyholders/owners who invest funds. (only at foundation or throughout the life of the mutual insurance). They receive an interest of 5-6 % (set by the statutes) on the invested funds. If the funds are returned to the investors, you only receive back your own investments (book value) and not the share of the capital. Guarantee capital is therefore different from share capital as the owner will not receive the return on investment. Just like the policyholders/ members, the owners of the guarantee capital, have voting rights on how the capital will be invested.² Through the guarantee capital mutual companies (i.e. Tapiola, life, non-life and pension insurance) can have financial ties as they can cross-own each other’s guarantee fund. The guarantee capital is supervised by the Financial Supervisory Authority. Similar rules apply to the Finnish insurance association (Vakuutusyhdistys/försäkringsförening).
- Although **German** insurance mutuals do not have shares, according to Article 1 para. 3 (a) Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings which has been transposed into German national law under VAG § 53c, insurance mutuals are allowed to issue profit-participation certificates and subordinated loans also to non-member investors. The small mutual insurance associations (Kleine Versicherungsvereine) can neither issue shares nor have non-member investors.
- In **Italy**, with regard the mutual insurance companies (Società di mutua assicurazione), due to the outdated legal framework, whether shares are possible depends on the Statutes of the organisation. In addition, according to article 2548 in the Codice Civile, the bylaws may provide for the establishment of guarantee funds for the payment of allowances, through special contributions from policyholders or third parties, which then also

¹ Article 73c paras. 1 and 2

² This is similar to rules that apply to cooperatives.

become members¹. These policyholders or third parties are called socio sovventore. The votes allocated to investor-members, must in any case be less than the number of voting rights of the insured members.

- In **Poland**, shares are possible and the rules should be stated in the articles of association. According to Article 46 of the Insurance Activity Act, the articles of association of a mutual undertaking may provide for the repayment of share capital only out of annual surpluses, and within the period of creating supplementary capital, to persons who contributed the share capital, or may provide for not repaying share capital to specific persons.
- In **Slovenia**, shares are not allowed, but, on the basis of an approval from the general meeting, a mutual insurance company may raise additional capital by issuing subordinate debt instruments, such as securities and other financial instruments which, in the event of the bankruptcy or liquidation of the issuer, are repayable only after other debts of the issuer have been satisfied, or which, with regard to their maturity and other characteristics, are appropriate for covering possible losses due to risks to which the insurance undertaking is exposed (Article 107, par. 3). There are no voting rights attached to these debt instruments.
- In **Norway**, it is not possible to issue shares, but the guarantee fund (guarantee capital) may consist of subordinated loan capital. The loan may be granted by a private limited company or a public limited company that is founded for this purpose, by another company or by other parties. Loan capital may also be raised by issuing negotiable primary capital certificates conferring the right of representation at the general meeting.

In other countries external investors, non-member investors, guarantee capital and share capital are not allowed for mutual-type organisations (for instance in **Hungary, Greece, Belgium, France, Italy** (mutual benefit societies (Società di mutuo soccorso), **Portugal, Romania**. For others, the possibility depends on the Statute of the organisation (for instance in **Luxembourg** (Association d'assurances mutuelles (mutual insurance association))).

The possibility of allowing external investors is pivotal for decreasing capital barriers for establishing new mutuals. In Chapter 6, the issue of obstacles for creating new mutual-type organisations is discussed, together with options to diminishing the barriers. A number of solutions already described in this section, will be mentioned again.

5.2.2 Handling of reserves

Principally, reserves are used for the benefit of the members. This entails in insurance businesses often maintaining the solvency margins, investing in improving the services and /or reducing next year premiums. Reserves can also be reimbursed to the current members. In many countries, there are flexible regulations concerning what should be done with annual surplus and this is mainly left open to the organisations' Statutes. For **Austrian** mutual insurance associations, for instance, the Law states that any annual surplus shall be distributed to the members unless:

¹ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

- it is allocated to the contingency reserve or other reserves stipulated in the articles of association or
- it is used for the repayment of the foundation fund (initial fund) or
- it is used for the payment of remunerations according to the articles of association or
- it is carried forward to the next financial year.

The articles of association shall determine the principles of distribution of the annual surplus and stipulate in particular whether the annual surplus is also to be distributed to members who withdrew during the financial year. A participation in the surplus of a financial year must not be denied for the sole reason that membership was discontinued after the end of the financial year. In addition, the articles of association may provide that the providers of an initial (foundation) fund may be entitled to an interest payment out of annual income or to a share in the annual surplus.

In **Hungary**, the gains of the mutual Insurance Association (Biztosító egyesület) can be returned to the members (if statutes allow this) only if the reserves exceed the solvency margin requirement, or double the guarantee fund (Insurance Act § 23)¹.

According to Financial Business Act, section 290 (1), in **Denmark** only the profit of the mutual company (gensidige selskaber) for the year in accordance with the audited annual report for the most recent financial year, retained earnings from previous years, and other reserves that are not non-distributable in pursuance of legislation or the articles of association of the company after deduction of both uncovered losses and amounts that must be allocated to a contingency fund or other purposes in pursuance of legislation or the articles of association of the company may be used as dividends to shareholders, interest to guarantors, or payments to members of mutual companies. (2) Funds covered by subsection (1) and the profit for the current financial year up to the date of the interim balance sheet, cf. section 183(2) of the Companies Act, may be utilised for extraordinary dividends, if the amount has not been distributed, used or tied. Distributable reserves arising or released in the current financial year may also be utilised for extraordinary dividends.

In many countries across Europe, such as **Germany, Finland and Italy** (Società di mutua assicurazione (mutual insurance companies)) the same rules apply as for other insurance providers.

5.2.3 Protection of assets

The issue of asset protection is a pivotal issue at European level, as it provides an indication who actually 'owns' the organisation and the accumulated assets. Hence, to provide a full picture on this matter, the table below is provided, describing the situation of what happens in case of dissolution of mutual-type organisations in the European countries.

¹ The extent of the share of profits in a year and the mode by which this share is distributed among the insured persons shall be defined in the charter (IA Section 23).

Table 5.1 Overview table protection of assets (what happens in case of dissolution?)

Country	Legal types	Protection of assets (what happens in case of dissolution?)
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	According to Article 57, in the case of dissolution, the initial (foundation) capital needs to be repaid first, when all other claims have been resolved. The remaining assets will, when the Statutes do not state otherwise, be transferred to the persons which were at the time of dissolution, member.
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)	
Belgium	Association d'assurance mutuelle/onderlinge verzekeringvereniging (Mutual insurance society)	There is no procedural protection in the case of insolvency: The law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) applies to all authorized insurers, the insurance creditors have broad privileges regarding the assets. In case of a voluntary liquidation where the balance is positive, the (General Meeting of the) society may – after settlement of liabilities – freely decide on the use of the liquidation proceeds unless the statutes have different provisions. De minimis regime: The law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) does not apply to (insurance) societies who practice territorial mutual insurance.
	Société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)	Concerning the mutual benefit companies, being active in insurance the same rules apply as for other insurance undertakings. It is up to the general meeting to decide what will happen in case of liquidation. There is no procedural protection in the case of insolvency and the law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) applies to all authorized insurers, the insurance creditors have broad privileges regarding the assets.
Bulgaria	взаимозастрахователна кооперация (mutual insurance cooperative)	Upon the mutual insurance co-operative society's termination, the participating contributions, the additional contributions and the special-purpose instalments shall be subject to repayment only after all other liabilities have been redeemed.
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)	No specific information in the law concerning mutual insurance organisations
Denmark	Gensidige selskaber (Mutual companies)	Ordinary mutual insurance companies/de minimis regime I: There is no asset protection regulation. Any payment to members is subject to the articles of association.
Finland	Keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag (mutual insurance companies)	In case of demutualisation of a mutual insurance company, the assets will be distributed amongst the shareholders (i.e. the policyholders). The same rules apply for mutual insurance companies as for incorporated company models.
	Vakuutusyhdistys/försäkringsförening (insurance association)	In case of demutualisation, the assets will be distributed amongst the policyholders (i.e. the members).
	Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)	In case of demutualisation of a mutual insurance company, the assets will be distributed amongst the shareholders (i.e. the policyholders). The same rules apply for mutual insurance companies as for incorporated company models.
France	Société d'assurance mutuelle (mutual insurance companies)	Concerning transparency and publicity requirements: Article R322-59 prescribes that the articles of association (statutes) must set out the conditions under which the notice of the general meeting is made. The meeting must be advertised in a newspaper authorized to publish legal notices in the headquarters' department and is preceded by at least fifteen days of the date fixed for the general meeting. The announcement shall state the agenda. The meeting can not change the issues that are on the agenda. The agenda may only contain the proposals of the board of directors, management or supervisory board and those, which shall have been notified at least twenty days before the General Assembly, signed by a tenth of the members, or at least one hundred members if a tenth is more than one hundred. Concerning related auditing issues: the mutual insurance companies report to the ACP-Banque de France and are supervised by the ACP-Banque de France.

Country	Legal types	Protection of assets (what happens in case of dissolution?)
	Mutuelles (mutuals)	Concerning transparency and publicity requirements, according to Article L114-14, the procedures to make available documents to the members attending the general meeting should be fixed before the meeting. Concerning related auditing issues, according to article 114-15, the annual accounts are provided by the mutuals, unions and federations to anyone who requests it, under conditions set by order of the Minister responsible for mutual affairs.
Germany	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	Special protective regulations against demutualisation like the "French lock" (i.e. in case of demutualisation, the assets need to be transferred to a similar organisation, and not to the members) do not exist in Germany. In addition, it appears not to be necessary to have such asset protection system. As the insurance mutuals have a comprehensive legal framework and are widely recognised legally and politically and have shown their advantages over centuries, this legal form is well established enough that there is no fear of demutualisation and no demutualisations have taken place in the last 50 years.
	Kleine Versicherungsvereine (small insurance mutual)	Also with regard the small insurance mutuals, there is no specific protective legislation. Again, this specific legislation is not felt necessary.
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)	No specific provision in the law concerning mutual insurance cooperatives.
	Αλληλονοϊθητικά Ταμεία/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)	In case of demutualisation for: a) the Mutual health funds T.Y.P.E.T. – A.T.P.S.Y.T.E. – E.D.O.E.A.P., it is provided that property will be allocated for purposes similar to those indicated in the Funds' Statutes and in benefit of their members, following relevant resolutions of the General Assembly. Regarding b) the Mutual health fund T.Y.P.A.T.E., the property goes either to the Employees' Association of the Agricultural Bank or the Welfare Fund of the Agricultural Bank.
Hungary	Biztosító egyesület (Mutual Insurance Association)	In case of liquidation, the sequence of payment of the remaining insurance contracts are mentioned in the law: firstly health- and third-party insurance allowance liabilities, secondly life-insurance liabilities, thirdly liabilities of insurance events that occurred before the declaration of liquidation and originated from third-party insurance, fourthly the liabilities of insurance events occurred before the declaration of liquidation, fifthly the premiums paid in advance, and finally, the other liabilities. Hence, there is no mentioning that the assets will have to be transferred to another similar type organisation.
	Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)	According to section 13 of the Act, the bylaws shall provide for settlement with departing members as well as for the distribution of the assets of a fund terminating without a successor by taking into consideration the individual accounts as well as the fund's rules on the creation of reserves and cost accounting.
Ireland	Friendly societies	In the case of termination of the society, after all payments have been made the funds and property will be divided, unless it is decided otherwise. According to article 15 of the friendly Society Act: "A society (other than a benevolent society or working men's club) shall not be disentitled to registry by reason of any rule for or practice of dividing any part of the funds thereof if the rules of the society contain distinct provision for meeting all claims upon the society existing at the time of division before any such division takes place."
Italy	Società di mutuo soccorso (benefit mutual societies)	the reserves are indivisible during the mutual's life and also when it is wound up. For mutual benefit societies, if the Company is liquidated, as well as if it lost its legal personality, the existing rules on charitable organizations will apply to those bequests and donations (Law of 1886, article 8) ¹ .
	Società di mutua assicurazione (mutual insurance companies)	There is no legal system for assets protection in case of demutualisation.

¹ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso:
<http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

Country	Legal types	Protection of assets (what happens in case of dissolution?)
Latvia	Savstarpējās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)	There is no specific information in the Law on mutual insurance cooperative societies. In general, mutual insurance cooperative societies are for the Law similar organisations as a joint stock company. Specific information on management and corporate governance can be found in the Cooperative Societies law ¹ and more specifically in the Bylaws of the cooperative.
Luxembourg	Association d'assurances mutuelles (mutual insurance association)	The same requirements as for any other insurance undertaking are applicable. There are set out by the Law. Mutual insurance associations have to establish sufficient technical provisions to cover their entire business. The technical provisions must be covered at all times by equivalent and matching assets ("the matching assets of underlying technical provisions"). Movable matching assets must be deposited with a financial institution approved by Commissariat aux Assurances. All the matching assets of underlying technical provisions constitute a segregated group of assets allocated preferentially to guaranteeing payment of the insurance claims. The way the organisation handles assets in case of liquidation is included in the memorandum of association (Statutes).
	Société de secours mutuel (mutual aid society)	In case of dissolution, the reserves are not distributed to members, but they are spread to other mutual aid societies.
Malta	Mutual association	This is for the larger part not subject to the insurance business act and hence left to be arranged in the bylaws of the mutual.
Netherlands	Onderlinge Verzekering-maatschappijen/vereniging (insurance mutual)	Protection of assets, for example in the case of demutualisation is not specifically provided for by law.
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)	In the case of demutualization following a transformation, there is no specific asset protection in the case of demutualization. The assets of the mutual insurance company converted shall become the assets of the joint-stock company established. The provisions of the Code of Commercial Partnerships and Companies concerning contributions in kind and the shares delivered to shareholders against those contributions shall apply to the assets of the joint-stock company established and to the shares taken up by its shareholders ² .
Portugal	Associações mutualistas (mutual associations)	Asset protection is barely regulated. Articles 55 and 56 do list assets, but do not set limits, nor requirements. The articles seem to state that assets are in order 'as long liquidity position justifies'. In practice, regulator and supervisor do not control or adjust malpractice, it is said. In case of liquidation the assets will be distributed according to the following priorities (article 108): Payment of public debts and debts to the social security system Payment of the employees of the mutual Payment of third party debts Payment of debts to the members Attribution of rest sums to a mutual solidarity fund (fundo de solidariedade mutualista)
	Mútua de seguros (Mutual Insurance company)	In principle as other insurance companies.
Romania	Societăți mutuale' (mutual companies)	For insurance mutual companies, the law does not provide any indication of rules on management and corporate governance specific for mutual companies.
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP	Because they are first registered as NGOs (associations), these mutuals are defined as non-patrimonial organization. They have protected assets, as established by GO 26/2000. According to the GO 26/2000, Article 60 1-2, in case of dissolution of the association or foundation, the assets remaining after liquidation can not be transferred to individuals. These assets may be transferred to legal persons similar to the dissolved entity.

¹ http://www.vvc.gov.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Co-operative%20Societies%20Law&resultsPerPage=10

² Act of 22 May 2003 on Insurance Activity, art. Article 89.

Country	Legal types	Protection of assets (what happens in case of dissolution?)
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)	The assets left after the obligations have been met or adequate security have been provided shall be distributed to persons having the status of members of the mutual insurance company at the moment the resolution to dissolve the company was adopted. The distribution shall be subject to the criteria laid down by the bylaws with regard to the distribution of profits to members.
Spain	Mtuas de seguros (mutual insurance company)	According to the AISAM/AMICE study, in case of winding-up, liquidation, all members, current and past (minimum of the last three years) are entitled to the net assets according to the articles of association. In case of "aportaciones al fondo mutual", only the members who have contributed to the "fondo mutual" have preferential rights to the reimbursement of their investment under the terms foreseen at the origin of the "aportacion". If no rules were foreseen, other conditions are applicable. For the rest of the "Fondo", all members including the members who have contributed are entitled to those assets. ¹
	Mutualidades de previsión social (mutual provident societies)	The same rules apply as for the mutual insurance companies (see above).
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)	Protection of assets is no different from other companies. Assets will be distributed amongst the policyholders.
	Försäkringsföreningar (insurance associations)	Protection of assets is no different from other companies. Assets will be distributed amongst the policyholders.
United Kingdom	In United Kingdom, mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mutual).	There is no legislative protection of assets. Usually, mutual-type organisations involved in insurance business do adopt a rule of asset protection in their articles, for example, a charitable assignment on conversion.
Norway	Gjensidige forsikringselskaper (mutual insurance company)	As other organisations ² , the law does not provide a specific asset protection scheme for mutuals.

Source: Authors

What can be seen is that the legal frameworks concerning assets protection differ across Europe. In many countries, there is no explicit legislation on this issue and it is being dealt with in the Statutes of the individual organisation. This is for instance the case in **Malta**, as the Maltese mutual associations are not subject to supervision. Mostly, the issue is subject to the Statutes in cases where mutual-type organisations are not involved in insurance business and smaller (de minimis) mutual-type insurance organisations.

In most countries, where the mutual-type organisations are described in the insurance law and where they are closely related to either company law or cooperative law, the policyholders/members are treated as 'shareholders'. As they own the organisation, when all debts are paid, the remaining assets will be distributed amongst them. Countries specify this by mentioning that the policyholders are the current members. In addition, in some countries it is mentioned that the general law is applicable only when the Statutes do not state otherwise. This is for instance the case in **Austria**, where according to the insurance law the remaining assets will be distributed among the policyholders, unless the Statute

¹ AISAM/AMICE (2007), Mutual Insurance Companies in Spain, The regulatory, financial and fiscal arrangements

² See chapter 16 of the Companies Act 13th June 1997:

http://www.regjeringen.no/nb/dep/jd/dok/lover_regler/reglement/1997/lov-om-aksjeselskaper---informasjonsbros.html?id=106662

states otherwise. In most countries, the dissolution process is supervised by the responsible (financial) supervisor.

A number of countries have an asset protection system, which determines that the remaining assets will have to be distributed to another, similar, not-for-profit type of organisation. This is the case in:

- **France** with regard to all types of mutuals (Société d'assurance mutuelle (mutual insurance companies), Mutuelles (mutuals));
- **Romania** with regard to the Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR and the Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners –CARP,
- **Luxembourg** for the Société de secours mutuel (mutual aid society).
- **Portugal** in relation to the Associações mutualistas (mutual associations), the rest sum is attributed to a mutual solidarity fund (fundo de solidariedade mutualista)
- **Italy** concerning the Società di mutuo soccorso (benefit mutual societies). Here the existing rules on charitable organisations will apply to those bequests and donations (Law of 1886, article 8)¹.

In **Greece**, in relation to the Allilovoithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual Health Funds), the asset protection is subject to the statutes of the organisation.

It can be seen that in the cases where asset protection systems are legally established, the mutual-type organisations are mostly mutual benefit societies and mutual associations. One noticeable exception is **France**, where the asset protection system applies to large mutual-type organisations involved in insurance markets as well (so-called French-lock²). Here, the legal framework for the mutual insurance companies (Société d'assurance mutuelle) indicates that in case of winding-up (Art L322-26 of the insurance code), the net assets will be transferred to "mutual insurance companies, or associations of public benefit". In addition, the legal framework for mutuals falling under the Mutuality Code, the winding-up of a mutual, union or federation is decided by the general assembly (Art L113-4). The net assets will be transferred to other mutuals, union or federation, as will be decided by the general assembly (art L114-12).

In total, 6 out of 38 legal forms in the European countries have a legal system, which assures that the remaining assets will have to be distributed to similar (not-for-profit) types of organisations. For the others, the remaining assets will be distributed to the (current) policyholders/ members unless, in some cases, the Statutes of the organisation states otherwise. Finally, there are countries that do not deal with the issue in the legislation and hence the distribution of assets in case of dissolution is subject to the Statutes of the organisation.

Although, asset protection systems discourage demutualisations from happening, no evidence was found that asset protection systems are necessary to prevent demutualisations from happening. Despite that the Irish and United Kingdom examples in the 90s show per-

¹ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

² See for instance: http://www.stopsolvabilite2.com/pdf/Article_ODesert.pdf

verse tendencies to profit from demutualisations, in other countries this does not seem to be neither the case, nor a much debated topic: in general, either members do not know about they own the organisation, or they know that they are better off maintaining the mutual-type organisation.

However, the **United Kingdom** Ownership Commission (2012) has recently proposed – amongst others - that mutuals should have the opportunity to choose a legally binding corporate form that enshrines the principle of disinterested distribution: “We recommend that mutuals become permanent through emulating in Britain the European principle of disinterested distribution so that when mutuals are wound up their assets have to be placed with another mutual [...] Public sector mutuals should be protected from demutualisation by a clear ‘asset lock’.”¹

5.3 Disclosure: transparency and auditing

In general, mutual-type organisations involved in insurance need to follow the same rules as all undertakings active on the market. They must submit their reports, mathematical tests, accounting books to the Financial market Supervisory Authority a number of times per year (four times a year) and they need to pay a fee to the Supervisory Authority.

Often for association-type mutual insurers and smaller ones countries provide lower disclose and accounting rules for smaller insurers. This is for instance the case in **Austria**, where for small mutual insurance associations (unless their premiums have been above 5 million Euro for three years), Art 86 provides for considerably lower accounting and reporting requirements.² The insurance company must report to the FMA (Financial Market Authority) any change of the members of the executive board and the supervisory board of a domestic joint-stock company or mutual insurance association.³ Also in **Finland**, the insurance association (Vakuutusyhdistys/ försäkringsförening) must submit annual accounts, key figures and analysis of insurance business to the Financial Supervisory Authority annually instead of four times a year (as is the case for mutual insurance companies (Keskinäinen vakuutusyhtiö/ ömsesidigt försäkringsbolag)).

For those mutual-type organisations not involved in insurance, different rules apply and a different supervisor is in place. For instance in **Luxembourg**, mutual aid societies (société de secours mutuel) are required to present the financial report to the “Conseil supérieur de la Mutualité”. With regard the **Portuguese** mutual associations (associações mutualistas), the Mutual Association code does not foresee any obligations or requirements, other than handing over the annual accounts to the responsible Ministry (i.e. Ministry of Social Affairs). Some mutual associations, like Montepio, do publish annual accounts and annual records publicly, but as a voluntary act only. Auditing issues are dealt with by Articles 20 and 51 of the Mutual Association Code and state that a ‘Fiscal committee’ is required, next to a

¹ The Ownership Commission (2012). Plurality, Stewardship and Engagement. The Report of the Ownership Commission, March 2012.

² More detailed regulations are specified in a Regulation by the Ministry of Finance (RLVkv, FLG 749/1990, as amended)

³ http://crossborder.practicallaw.com/7-501-3169?q=* &qp=&qo=&qe=#a949726

General Assembly and a Board of Directors. A 'technical balance' has to be presented to the members once every three years in order to examine the financial position of the mutual association. In **Romania** for the mutual benefit societies, there is no obligation for an external audit, only internal audit is required.

An interesting situation can be found in **Ireland** concerning the impact of not disclosing your books to the Supervisory Authority. The Registrar of Friendly Societies is responsible for the assessment and registration of applications and any subsequent amendment of rules which societies are obliged to render to the Registrar, and to ensure that registered societies meet their statutory obligations with regard to filing returns, which once registered are made available for inspection by the public. In this regard, the following three classes of body come under the remit of the Registrar of Friendly Societies:

- Industrial and Provident Societies
- Friendly Societies
- Trade Unions

The Friendly Societies have an obligation to file annual returns to the Registry, failure of which results in cancellation or suspending.¹ During 2010, the Registry undertook a review of Friendly Societies, which had annual return filings outstanding for a period. As a result of this review a number of societies were either cancelled or suspended for failure to send annual returns to the Registrar. In advance of cancellation for failing to meet their statutory filing obligations, each society was afforded time to file all outstanding annual returns and given an opportunity to show cause as to why they should not be cancelled. As a consequence of the cancellation exercise some forty-three societies were cancelled and a further two societies were suspended for failure to send annual returns to the Registrar. In 2010, the number of Friendly Societies in the registrar dropped from 93 to 48.

All in all, disclosure rules are fairly the same for mutual-type organisations as any other organisation. There are exceptions having to do either with the size of the organisation (lower requirements) or the field of activity in which the organisation is involved.

5.4 Concluding remarks

What can be seen is that in countries where the large mutual-type organisations are active in the insurance business, more complex legal structures on corporate governance and corporate management are developed. These complex legal structures include more possibilities for non-member investors (see later as well); more indirect (representative) structures to guarantee democratic governance (less direct democratic governance) and in some cases deviations on the principle one-person, one-vote (voting rights of non-member investors, guarantors etc.). On the other side, more 'simple' forms of management and governance can be found in the mutual benefit/aid societies and legal structures that are attuned to small type of organisations (e.g. association-type mutuals).

An often heard remark concerning corporate governance and democratic governance within mutual-type organisations, is that despite control mechanisms, in the end the character of

¹ For its importance see for example : <http://debates.oireachtas.ie/dail/2011/11/30/00091.asp>

the Board and the executive director determines the way the organisation is run and whether it fully complies with the mutualistic values or whether it takes slightly different choices. Hence, the situation could be that, according to the written governance, the members are in control of the mutual-type organisation, while in reality, the day-to-day management rests with the managing bodies and the influence of the members is limited. Only in the case of very small mutual-type organisations, the direct influence of members can extend to day-to-day management decisions.

With regard to the non-directive regime, the insurance undertaking not falling under the Solvency II regime, and which are regulated by the national regime, there is a threat that countries firstly will apply different rules to these undertakings and secondly, that these rules will be similar to the Solvency II requirements. Concerning the first, countries will apply different rules within similar (single) markets. With regard the second, the Solvency II requirements can not be borne by small, specialised insurance undertakings and this will probably push them from the market.

As activity related (insurance) legal frameworks have been adjusted to modern times and are often continuously updated, at the same time, in many countries the framework for mutual-type organisations appears largely outdated and not attuned to the demands of current days. This does not mean that the concept of mutualism is outdated, but in many countries modernising the legal framework would not harm, especially when it comes to creating new possibilities for establishing new mutual-type insurance organisations.

6 Issues concerning the legal status and corporate governance

Key messages

- Concerning issues related to **establishing a mutual-type organisation** the following can be concluded:
 - Complying with the capital requirements for an insurance licence is one of the major challenges when establishing a new insurance mutual. The capital can only be obtained from the (founding) members; therefore, either the number of members or the initial capital each one provides must be large enough to raise the necessary 2.5 million Euro (non-life) or 3.7 million Euro (life) (or, under current legislation, the reduced amount – 25 % less) (according to European life and non-life Directives). There are however capital instruments and other possibilities for mutual-type organisations to obtain the required funds:
 - In many countries, non-member investors and **external capital** in the form of **subordinated loans or guarantee capital** (i.e. not share capital) is legally allowed for mutual-type organizations.
 - **De minimis regimes** exist in a large number of the countries. In many countries, (capital) requirements for non-Directive insurers are set at a lower level than for insurers subject to the insurance Directives. These non-Directive insurers can however not benefit from the single market insurance passport and in order to operate abroad, they need to register themselves in the country. In addition, there is some movement to increase the regulatory pressure on smaller insurers (including mutual-type organisations) to align more with the Solvency II Directive requirements.
 - In the United Kingdom (and other countries, such as Australia), it is legally possible to establish so-called **discretionary mutuals**.
 - Allowing external capital (in any form) has consequences with regard to the mutualistic values. Not allowing external capital can serve as a protection mechanism to maintain mutuality.
 - In addition to the obstacles concerning capital requirements, the **lack of expertise and information** on how to establish a mutual, poses a huge obstacle. In many countries, the legal framework applying to mutuals is old-fashioned, very concise, very restrictive or unclear with regard to establishing new mutual-type organisations.
 - For mutuals not involved in insurance, but offering other services such as health care assistance, social services etc., the situation is different. As they do not face the activity-related barrier of having to provide a substantial initial fund, these mutual-type organisations can be established more easily. In fact, the barriers for establishing a mutual-type organisation relate more often to the absence of rules, regulations and information.
 - It must be emphasised that there are six countries (**Estonia, Lithuania, Czech Republic, Slovakia, Liechtenstein** and **Iceland**) where, due to the absence of a legal framework, it is impossible to create a mutual-type organisation. In addition, mutual-type organisations in other countries are restricted to certain activities (for instance, in the field of insurance, to life or non-life insurance).
- A **merging** of mutual-type organisations is legally not considered problematic in many countries. Of course, decisions of this kind need to be supported by the members, but in general, there are no legal obstacles preventing mutuals to merge with another mutual.

- With regard **to converting** a mutual to a non-mutual form, this is in most countries effected through a liquidation/winding up and a portfolio transfer to a newly established legal entity. Rules concerning the protection of assets usually applies here as well.
- From a purist point of view, **grouping mutuals** (in vertical structures) is often considered diminishing the mutual values and principles. As the mutual undertaking is owned by the members, accepting another party's dominant influence, also related to financial issues, would be detrimental to the members' influence and ownership rights. In reality however, such a purist interpretation of mutualism can not be found in many countries in Europe. Predominantly in the Nordic countries, de-facto groupings are possible via the use of guarantee capital; however, the most advanced grouping instruments are developed in France.
- Concerning the effect of the **Solvency II Directive** on the corporate governance of mutual-type organisations, it should be closely monitored how the rules are applied to mutual-type organisations. There are a number of issues, which should receive further attention.
 - Firstly, the required 'fitness' of the persons managing effectively the undertaking. This makes it difficult to have (only) members of the mutual in its board if the membership of the mutual is very restricted, e.g. to a professional group. Instead of examining the qualifications, knowledge and experience of individual board members, it might be essential rather to examine the competence of the board as a whole.
 - Secondly, the principle of proportionality: it is not entirely clear how this principle should be applied and whether smaller insurance undertakings (which are often mutual-type organisations) are affected by this principle. The proportionality principle is essential in all three "pillars" of Solvency II, namely solvency requirements, governance, and disclosure.
 - Finally, it is not entirely clear how group structures within Solvency II can apply to mutual-type insurers; or to put it the other way around, how mutual-type insurers can comply with the Solvency II group structure conditions.
- Besides these legal issues, there are also restrictions having to do with **knowledge and understanding of mutualism** in the countries and especially at the level of the Supervisory Authority and national policy makers. Related to the lack of knowledge concerning mutual-type undertakings, there is in general a lack in Europe of **courses focussing on the mutual-type business form**. Furthermore, it are mostly the mutual-type organisations themselves, which provide information campaigns and develop educational offer.

In the last two chapter (Chapter 4 on Legal framework of mutual-type organisations in Europe and Chapter 5 on Management and corporate governance), the legal frameworks associated with the functioning of mutual-type organisations have been analysed. As the focus in these chapters was foremost on describing the legal frameworks, less emphasis was put on barriers the mutual-type organisations face. In the current chapter, however, the focus will shift from mapping frameworks to identifying legal issues hampering mutuals in their establishment and further development. Section 6.1 will focus on issues in relation to creating a mutual-type organisation; Section 6.2 will elaborate on issues in relation to merger/conversion of mutuals. Thereafter, issues in relation to forming groupings of mutual-type organisations will be analysed in Section 6.3. In Section 6.4, issues in relation to the Solvency II Directive receive attention and finally, in Section 6.5, some concluding remarks will be made.

6.1 Issues in relation to creating a mutual-type organisation

Since there are different types of mutuals in the countries, the rules for establishing one are also different. The rules firstly, relate to whether the mutual-type organisation is based on its own legal framework, or whether the legal framework is based on the framework of other types of legal entities (associations, cooperatives, corporations). Secondly, and more importantly, concerning the issue of barriers, a distinction can be made between on the one hand insurance mutuals and on the other hand non-insurance mutuals. With regard to the first group of mutuals, the largest obstacle is the gathering of the initial (foundation) fund and complying with the requirements concerning the minimum guarantee fund. As mutuals in principle have to rely on their (founding) members for gathering the fund, it is difficult to reach the threshold for obtaining an insurance licence. With regard to the second group, the barriers are more related to unclarity in the legal frameworks.

A particular issue for mutual-type organisations, with regard to establishing a new one, involved in insurance business, is indeed complying with the capital requirements for an insurance licence. Because the capital can only be obtained from the (founding) members, either the number of members or the initial capital they provide should be large enough to count to the 2.5 million Euro (non-life) or 3.7 million Euro (life).¹ In general, it can be stated that for insurance organisations and their joint stock competitors on the market the same rules apply. This is explicitly stated in a large number of country reports. For instance in **Luxembourg**, no mutual specific barriers are reported, apart from the fact that any new (mutual) insurance association must be able to come up with a start-up capital of 5.5 million Euro in order to get a licence from the Commissariat aux Assurances. The principle barriers mentioned concern the forming of the initial fund. Here below other descriptions are provided concerning obstacles for establishing insurance mutuals:

- In **Finland** for instance, it is mentioned that there are no legal-form specific barriers for mutual-type organisations. The **only limitation would be the method how the initial fund is gathered (i.e. not using share capital)**. In relation to limited companies, however, mutuals (of all types) do have the disadvantage not to be able to issue shares and hence easily raise capital levels. Through this disadvantage, mutuals need to be able to maintain capital levels continuously above the solvency requirements, which prevents/refrains them from conducting short-term investments. Particular financial instruments to raise capital levels for mutual companies could be: 1) possibility to raise additional guarantee capital; and 2) possibility for mutuals to issue subordinated loans.
- In **Sweden**, since both mutual types (mutual insurance companies and insurance associations) are based on policyholder ownership and there is solvency requirements for insurance undertakings there can be a **funding problem when starting a new mutual**. However, there is a possibility to start the undertaking with non members' investors, but in that case, the capital should be repaid as soon as possible.
- In the **United Kingdom**, the **high level of capital required**, the **lack of advice** and the **lack of expertise** make it difficult to establish a new retail consumer mutual. The registration costs to the Financial Supervisory Authority (FSA) may be high for a mutual. Yet, the capital requirements (by FSA based on Solvency II) for financial services busi-

¹ Or a reduced amount (25 per cent reduction).

nesses are the major hurdle for the creation of any new mutual. The manner in which mutuals raise capital through retained earnings means that without new capital instruments, new financial service mutuals are unlikely to be established. Very few new mutual insurers are therefore being created nowadays, the exception being **discretionary “club type” insurers** such as property insurance and insurance for specific professionals or businesses. It simply takes too much time for the organic capital growth of a mutual society to become sufficient for compliance with the requirements. The FSA does not distinguish between companies (PLCs) and mutuals as a separate class. Regulation in the financial services industry therefore does not take account of the special nature of mutually owned firms. As a result, mutuals are forced to “respond to a regulatory regime that does not take account of their different capital structure and business purpose”¹. The financial legislation equally applies to all types of companies. There is little proportionality in the regulation for small entities, particularly those focused on retail consumers. This means that unless the organisation has immediate scale or access to appropriate member capital, they are unlikely to be viable. This is being accelerated by European rules such as Solvency II, which are very expensive to implement, particularly by nature of the way they are transposed into the UK rulebook. As a result, no new consumer retail mutual has been created since 1996, and organisations are more likely to be established with private/ venture capital, or established as a business-to-business partnership.

- In **Italy**, concerning the Società di mutua assicurazione (mutual insurance companies) obstacles of a different kind appear: there are practical barriers related to the legal framework in Italy for creating mutual insurance companies. The legal framework is largely outdated (from the 19th century) and therefore there is not a clear idea what should be done to create a new mutual. In addition, in recent years (last decades) there are no experiences with newly established mutuals.

In other countries, such as **Germany**, there are no obstacles known regarding the new creation of insurance mutuals in Germany except that it might be difficult to obtain sufficient own (initial) funds. There are reduced requirements for non-Directive insurers and there is a comprehensive legal framework (VAG). The foundation process is assisted and controlled by the German Insurance Supervisory Authority (BaFin). As insurance mutuals are by definition insurance undertakings, there are no possibilities to establish mutual-type organisations active in other businesses. In Austria, the supervisory authority may relieve an insurance mutual from having a foundation capital if the financing of the start-up is guaranteed in another way.

The Finnish, Swedish and British descriptions are illustrative for many countries’ insurance mutuals: while they can not be founded based on share capital, it is difficult to reach the threshold. The Finnish example provides two methods of going around this obstacle. These two methods, the use of a guarantee fund and subordinated loans are common in the Nordic countries, but less common in other European countries. Another method for circumventing this obstacle is to set up a so-called discretionary mutual, as is mentioned in the British country report. Here, below a number of structures found in the countries are presented to overcome the issue of insufficient own funds for establishing a mutual insurance organisation:

¹ The Ownership Commission (2012). Plurality, Stewardship and Engagement. The Report of the Ownership Commission, March 2012.

- In many countries, non-member investors and **external capital** in the form of **subordinated loans or guarantee capital** (i.e. not share capital) is legally allowed for mutual-type organisations (i.e. in Denmark, Norway, Sweden, Finland, Germany, Austria, Poland, Slovenia, The Netherlands, United Kingdom, France (Mutuelles)). In other countries, such as Italy (Società di mutua assicurazione (mutual insurance companies)), Luxembourg (Association d'assurances mutuelles (mutual insurance association)) the possibility depends on what is included in the Statutes. In Portugal (Associações mutualistas (mutual associations)) it is possible to have investing members.
- **De minimis regimes** exist in a large proportion of the countries. For non-Directive insurers the (capital) requirements are set at a lower level as the Directive insurers. These non-Directive insurers can however not benefit from the single insurance passport and operate abroad. In addition, the way the Member States currently thinking about implementing a national Solvency II regime for non-Directive insurers, might cause increased (capital) requirements for these small insurance undertakings (including mutual-type organisations).
- In the United Kingdom (and other countries, such as Australia), it is legally possible to establish so-called **discretionary mutuals**. A discretionary mutual is a mutual:
 - which does not engage in or carry on insurance or reinsurance business;
 - where a member who suffers a loss resulting from a risk or contingency previously specified by the mutual as one which it may indemnify members against, can apply for a grant of assistance to meet all or part of the costs associated with such loss, but has no contractual or other form of legal or equitable right to receive a compensatory payment; and
 - which has an absolute discretion whether to indemnify a member, on the mutual principle, who suffers a loss resulting from a risk or contingency previously specified by the mutual as one, which it may indemnify members against.

Larger mutual-type organisations that are active in the insurance business are competing with joint-stock competitors and often have to grow to achieve appropriate risk diversification and economies of scale. They therefore, need good access to external capital while maintaining their mutuality, with the aim of continuing to offer to society insurance solutions, based on mutualistic principles. However, allowing external capital (in any form) has consequences with regard to the mutualistic values. This can be illustrated by the **Austrian** use of the possibility to allow share capital. In 1991, Bundesgesetz n° 411/1991 was developed with the aim to facilitate conversion of insurance mutuals into stock insurance companies, without having to first liquidate. The rationale behind this was that the (mutual) insurers could merge for market concentration and solvency purposes. The proposal to convert must be accepted by means of voting, by a 75 % majority of the votes in the general assembly. Existing and new policyholders will still have membership rights in this new company. However, if the mutual association's share in the joint-stock company falls below 26 % of the voting shares, the mutual association must be dissolved¹. A vast 95 % (in terms of market weight) majority of the previously mutual insurance societies have nowadays transformed into joint stock companies² and can no longer be classified as insurance mutuals.

¹ VVO, Versicherungsverband Österreich (Austrian Insurance Association).

² For example: Uniqa and Wiener Städtische

Hence, disallowing external capital can serve as a protection mechanism to maintain mutuality as is described in the Finnish country report: The only limitation for establishing a mutual-type organisation would be the method how the initial fund is gathered (i.e. not using share capital). In relation to limited companies, mutuals (of all types) do have the disadvantage of not being able to issue shares and hence to easily raise capital levels. Due to this disadvantage, mutuals need to be able to maintain capital levels continuously above the solvency requirements, which may prevent/discourage them from conducting short-term investments. Because of the capital limitations, mutuals tend to operate with more long-term investments, instead of 'quick wins and high risks'.

In addition to the obstacles concerning capital requirements, the **lack of expertise and information** on how to establish a mutual poses a huge obstacle. In many countries, the legal framework is old-fashioned, very concise, very restrictive or unclear with regard to establishing new mutual-type organisations. Although there are de minimis regimes, how to apply the rules for these regimes is unclear, blurring the options for establishing non-directive insurers.

The remutualisation of Skandia Liv indicates the complexity of forming a new mutual. This not only in legal terms, but even more in practical terms with regard to fiscal and governance issues.

For mutuals not involved in insurance, but offering other services such as health care assistance, social services etc., the situation is different. As they are not confronted with the activity-related obstacle for providing a substantial initial fund, the way these mutual-type organisations can be established does not come with substantial barriers either. In fact, the barriers for establishing a mutual-type organisation relate more to the absence of rules, regulations and information. Here below, the situation of mutual associations in Portugal is described as illustrative for many other countries (two other examples are provided from the United Kingdom and Italy).

- Creating a mutual association in **Portugal** is considered 'easy' and is just a matter of following the formalities as described in the Mutual Association Code (Decreto-Lei No 72/90 of 3 March). Everybody can create a mutual association and there are hardly any formal requirements that are difficult to meet. However, despite that it is said that the Decreto 72/90 is that 'easy', it leaves much unclarity and this is the main problem with legislation on mutual associations in Portugal. For example, Article 20 states that mutual associations have to have a guaranteed financial balance. This requirement is easy to fulfil as, due to the fact that in principle, the legal form of the mutual association is activity-neutral, supervision is lacking or insufficient and mutual associations' management thus can comply themselves. The supervision comes in when the mutual association is involved in types or financial services. The meaning of Article 20 goes much further, though. In practice, the requirements of a guaranteed financial balance is hard to meet for most Portuguese mutual associations and it is in this way that it is difficult (at least for small entities) to create a sustainable mutual association.
- In the non-insurance branches in the **United Kingdom**, contrary to the setting up mutuals in insurance markets, there happens to be in fact a mini-boom of cooperatives and friendly societies. This is partly related to the transfer of the provision of public services, which were previously provided by the state and municipalities (such

as NHS Foundation Trusts, Leisure Trusts, Co-operative schools and community mutual housing schemes¹), as well as new start-ups.

- Also in **Italy**, increasingly new mutual benefit societies are being established. In recent years (5-6 years), due to increased demand for complementary coverage besides the National Health Service (Servizio Sanitario Nazionale: SSN), around 100 new mutual benefit societies have been established.

It appears to be less problematic to establish a mutual-type organisation not involved in insurance business in many countries, however, this is not completely true. In Portugal for instance, judging from the legal requirements, it is considered not to be problematic to establish a mutual association, but upon further examination, smaller entities would have severe problems complying with the regulations on guaranteed financial balance.

It must be emphasised that as in the previous sections we have been looking at countries where there are particular obstacles for establishing a mutual, there are six countries (**Estonia, Lithuania, Czech Republic, Slovakia, Liechtenstein and Iceland**) where, due to the lack of legal possibilities, it is impossible to create a mutual-type organisation.. This is, of course, the most important legal barrier for mutual-type organisations, resulting in a standstill concerning the development of mutualism in these countries and no possibilities to improve this situation in the future: if there are no mutual-type organisations to advocate mutualism, there will be very limited possibilities in the future to create the legal framework needed for establishing mutuals.

6.2 Issues in relation to merger/conversion of mutuals

Merging of mutual-type organisations is legally not considered problematic in many countries. Of course, decision of this kind need to be supported by the members, but in general, there are no legal obstacles preventing mutuals to merge with another mutual. Here below illustrations are provided obtained from the country reports:

- In **Sweden**, two (or more) mutual insurance companies (ömsesidiga försäkringsbolag) may merge on similar conditions as other companies, but when the transformations include other type of companies the only possible way is via portfolio transfer. However, a wholly owned daughter company may be absorbed by the mother company (merger by absorption).
- In **Italy**, concerning the mutual insurance companies (società di mutua assicurazione) there are no legal obstacles in the sense that the former members of the previous entity become new members of the new one, or of the absorbing company.
- In **Germany**, it is possible to merge two or more insurance mutuals and to merge an insurance mutual and an insurance joint-stock company. In the latter case, the insurance mutual has to be the ceding company (there is no need for liquidation first). A resolution of the general assembly is required. The resolution needs the approval of $\frac{3}{4}$ of the votes casted. The approval of the German Insurance Supervisory Authority is required (VAG § 14). A merger of mutuals has to be proceeded according to the general rules of the Ger-

¹ The Mutuals Manifesto 2010, Mutuo

man Transformation Act (DE: Umwandlungsgesetz) § 109. There are no particular obstacles recorded. Due to the absence of shares and the ownerships structure (the insurance mutual is owned by its members), an acquisition of an insurance mutual by another organisation is not possible.

- In **the Netherlands**, mergers of entities are legally restricted as follows: entities may only merge with entities of the same legal form. The exception is, that a joint stock company of which all shares are held by a mutual or cooperative, may merge as a disappearing entity. Similarly, a mutual which has a NV as its only member, may merge and disappear into the NV (naamloze vennootschap: public limited liability company)¹. The Dutch competition authority (NMa) only assesses mergers and acquisitions over the gross income limit of 30 million Euro (earned within the Netherlands)². In the assessment of mergers and acquisitions in the insurance market, the legal form of businesses is not taken into account. Only economic activities, size and market share do matter.

Legally, mergers between mutual insurance societies are as such unproblematic. The assets are for example averaged through a distribution to its members by the wealthiest mutual, before the merger takes place. As far as mergers between mutual insurance societies are concerned, other than legal issues are generally more critical and problematic, such as: 'what to do with two directors, where will the head office be and what to do about the pensions of the employees?'. The accommodation of mutual societies within a larger firm is often accompanied by demutualisation. Although the creation of a *joint stock mutual* is possible, this is not yet very common³.

- In **Finland**, in case of a merger of mutuals, all debts and assets will be put together and policyholders/owners become the owner of the new company. In practice, for the policyholders/owner nothing changes as their positions are not changed. There are no legal barriers within a merger, it might be more time consuming for mutuals to merge as the owners need to be convinced of why the merger would benefit them. However, the same applies to incorporated companies. By means of the use of guarantee capital, financial ties can be established between different mutual insurance companies and insurance associations

An example of a current complex merger, which takes place in Finland, is the merger between Tapiola and Local Insurance (see box). This merger involves two types of mutuals and more than 20 separate legal entities.

Merging Tapiola and Local Insurance in Finland

Currently, Tapiola⁴ and Local Insurance⁵ are merging to form one mutual financial group. The new company group, which will be owned by its customers, will be established by merging the Local Insurance Mutual Company and the Tapiola General Mutual Insurance Company to form the company group's central company.

Historically, there have been close links between the mutual companies and associations in Finland. On particular issues and topics, the mutuals already established joint platforms. In recent years the

¹ BW. Artikel 2:310

² Mededingingswet

³ Banking Review 01-01-1996. Als het onderlinge jasje gaat knellen.

⁴ <http://www.tapiola.fi/www/yksityisasiakkaat/>

⁵ <http://www.lahivakuutus.fi>

market situation in the insurance business developed. Nowadays stock listed companies and groups are the major players and concern mostly bank-driven groups which offer insurance policies as well. The mutual companies remain insurance-driven organisations facing increased competition from the bank-driven groups. Given this development, Tapiola, as insurance-driven mutual in 2001 established an own asset management company and in 2004 formed its own bank. Currently the bank has, as a considerable, but minor player on the Finnish market, around 200,000 clients. Tapiola is one of the largest non-life insurers in Finland. Tapiola is the result of a merger in 1982 between Aura and Pohja.

Local Insurance consisted of more than 100 insurance associations. Through consolidation, this number has decreased to currently 52 insurance associations plus Local Insurance Mutual Company and the Federation of the Local Insurance Group. The Local Insurance Group is Finland's 5th largest non-life insurer in terms of premium income. Its market share is 9 % of Finnish direct insurance income. The Group has some 545,000 customers and it has responsibility for almost 2,000,000 policies.¹

One of the key strategic aims of the merger is to strengthen the mutual sector against the large bank-insurer-conglomerates operating in the Finnish market. Local Insurance-Tapiola Group will become Finland's largest and most solvent non-life insurer. Although, there is not a direct pressure from Solvency II, it relieves pressure on the insurance associations to potentially implement it for their small mutual association. The merging will take two years and will be finalised in 2014². The merger consists of two phases: first in the beginning of 2013 and latter in the beginning of 2014.

The new group LocalTapiola (in Finnish LähiTapiola) will consist of a central mutual company based in Espoo, which will cover the Helsinki area and the general operations. In addition, services for major corporate customers in the group are organized in the central company plus statutory insurances third-party motor insurance and employment accident insurances. Besides non-life companies the group consists also of the mutual life insurance company and occupational pension insurance company plus the limited companies (bank, asset management and real estate). Alongside the central company 19 regional mutual insurance companies are formed. Aside these 20 mutual insurance companies, one mutual insurance company, Turva,³ will also be (and has already been) included in the group. The main reason why it has been decided to form a group of 21 mutual insurance companies instead of forming one overarching mutual insurance company is that the Local insurance associations are well embedded in the regions and are valued for their vicinity to the members. Going from more than 50 associations to only one Helsinki-based company has been evaluated to have consequences for the policyholders and the service level they experience. In general, both new group model inherits

¹ See: <http://www.lahivakuutus.fi/FI/Brieflyinenglish/Sivut/default.aspx>

² Local Insurance-Tapiola Press release 7 February 2012:

<http://www.tapiola.fi/wwweng/Briefly/Media+centre/News/Local+Insurance+and+Tapiola+to+merge.htm>

³ <http://www.turva.fi/>

⁴ Covered by the Law on Insurance Associations (Lag om försäkringsföreningar 31.12.1987/1250). With the merger, the legal status of insurance association will not be used very often.

⁵ Insurance Act (Försäkringsbolagslag 18.7.2008/521)

⁶ According to the Law on Insurance Associations, an insurance association is an insurance company based on the members' mutual liability, which operates in no more than 40 municipalities within a single area or is exclusively engaged in insurance of fishing equipment. These insurance associations may only underwrite voluntary non-life insurance (Lag om försäkringsföreningar 31.12.1987/1250).

⁷ Guarantee capital is created by policyholders/owners who invest funds. They receive an interest of 5-6 per cent over the invested funds. If the funds are returned to the investors, you only receive back your own investments and not the share of the capital. Guarantee capital is therefore different from share capital as the owner will not receive the return on investment. As the policyholders/owners are the guarantee capital they have voting rights on how the capital will be invested. Through the guarantee capital mutual companies (i.e. Tapiola, life, non-life and pension fund) can have financial ties as they can cross-own each others guarantee fund. The guarantee capital is supervised by the Financial Supervisory Authority.

⁸ See: Local Insurance-Tapiola Press release 7 February 2012:

<http://www.tapiola.fi/wwweng/Briefly/Media+centre/News/Local+Insurance+and+Tapiola+to+merge.htm>

⁹ http://www.fin-fsa.fi/en/About_us/Pages/Default.aspx

¹⁰ <http://www.kilpailuvirasto.fi/cgi-bin/english.cgi>

components of both the Tapiola-model and the Lähi-model. The argument why the insurance association legal status⁴ will be abandoned to obtain a mutual insurance company statute⁵, is twofold: first of all, the larger companies do not fit well in the association statute as there are certain legal restrictions to the operations for associations⁶; secondly, as a group is it clearer and easier to adopt the same legal status for each of the companies.

The LocalTapiola conglomerate is linked through guarantee capital⁷. The regional mutual insurance companies are for the larger part owned by the policyholders/members resident in the area it covers and for the remaining part (at most 35 %) "owned" by the holders of the guarantee funds (which is the central company). In fact, the percentage demonstrates the maximum voting rights in the general meeting. The use of guarantee funds enables the mutual insurance companies to have internal cross-ownership to tie the companies of the group together and to help each other out when needed. Although the Solvency II regulation will be applied to all 21 mutual insurance companies, the concept of the Guarantee shares, which is a Nordic concept, allows the central company to have partial ownership of the regional companies. As determined by the Statutes of the company, the holder of the guarantee fund (i.e. the central company) has voting rights and it can nominate representatives in the board of the regional mutual insurance company. The guarantee fund count as capitalisation for the regional mutual insurance companies. The financial entanglement through the guarantee shares helps the group for some part of the SII-requirements since the companies form a group according to a definition in the SII directive 212. A concept that needs to be further studied within the context of Solvency II is financial solidarity: How does financial solidarity of group members affect the solvency levels of the individual companies and how does it affect the solvability of the central company?

Through the merger, the group estimates that it is more resilient to the competition of bank-driven conglomerates. In addition, it estimates that it will be in the future better equipped to strengthen and grow the own LocalTapiola Bank to be better able to profit from cross-selling (bank products and insurance products). Also forming future alliances with other players in the banking market belongs to the possibilities.

To arrive at this situation, a number of steps need to be taken. The merger is progressing as follows:⁸

- Approval of the Annual General Meetings of Local Insurance Mutual Company and Tapiola General in spring 2012 is a prerequisite for the merger, as is obtaining consent from the Financial Supervisory Authority and the Finnish Competition Authority.
- By the end of 2012, Local Insurance-Tapiola, a mutual company engaging in non-life insurance business, will be established.
- During 2012, 19 regional mutual insurance companies will be set up.
- It is intended that the transfers of insurance portfolios to regional companies will be completed by the end of 2013.
- During 2012, the new name and visual look of Local Insurance-Tapiola will be decided.

The total merger will be completed in two years. In the beginning of next year, the two central companies will be merged. In this year the 19 regional, so-called 'Spearhead' associations will be formed and will be transformed into mutual insurance companies. By the end of 2013 portfolios will be transferred between Tapiola and the regional companies (i.e. the portfolios of members of Tapiola not residing in Helsinki will be transferred to the regional companies. In addition to this, assets will be transferred between the regional and central company. In this process there are a number of challenges and issues which need to receive attention:

- First of all, as Tapiola and the new group has a specific status in the Finnish financial landscape, i.e. it is insurance-driven financial conglomerate as opposed to bank-driven groups, issues have to be solved at group level concerning how reporting, capital eligibility in the future should be treated at the different levels. In addition, the use of the mutual guarantee fund system within the group

should be further examined and how this should be treated given the Solvency II framework. This is currently being discussed with the supervising authority.

- Secondly, there are tax issues, which need to be solved – similar to other mergers. There are fiscal questions attached to the assets transfer between the regional and central company. Already consultants are involved to solve these fiscal uncertainties.
- Finally, there are practical matters, such as mainstreaming procedures, services, IT systems, products, etc. Key question is how to manage and time developments with regard to these practical issues.

The merger is being examined by both the Financial Supervisory Authority (FSA)⁹ and the Finnish Competition Authority¹⁰. Both organisations reacted positive to the negotiated merger. It is assumed that, due to the fact that insurance associations will cease to exist with all Lähi-associations merging into mutual insurance companies, the Supervisory Authority does not have to work on how Solvency II applies to these (smaller) insurance associations.

It can be concluded that there are no particular legal issues in relation to merging mutual-type organisations.

With regard **to converting** a mutual to a non-mutual form, this is in most countries considered a liquidation/winding up followed by a port-folio transfer to a newly established legal entity. In many countries, there is not an explicit legal framework covering the conversion. The rights of the members should in this case be respected and the relevant supervisory authority should be informed and involved and finally permission is needed from the authority. With regard the members' rights in the event of liquidation/winding up and de facto demutualisation, as has been discussed in Section 5.2.3 on asset protection, a small number of countries include in the legal frameworks covering mutual-type organisations, the requirement to transfer the remaining assets to a similar type organisation (so-called 'French lock'). Other countries have no requirements of this kind, leave it up to the Statutes of the organisation or explicitly state that assets are transferred to the current members (See Section 5.2.3).

6.3 Issues in relation to forming groupings of mutual-type organisations

From a purist point of view, grouping mutuals in this sense is considered diminishing the mutual values and principles. As the mutual undertaking is owned by the members, accepting another party's dominant influence, also related to financial issues, would be detrimental to the members' influence and ownership rights. In reality however, such a purist interpretation of mutualism can not be found in many countries in Europe. This point can be illustrated by looking at the German legal framework for forming groupings.

In **Germany**, grouping instruments exist. According to the German Stock Companies Act (§ 18 II Aktiengesetz – AktG), companies can form vertical or horizontal groupings. This legal norm regulates the requirements for horizontal and vertical groups under German law irrespective of the legal form of the constituting group companies. Thus, these provisions are also applicable to mutual insurance associations.

- The vertical grouping (Unterordnungskonzern), however, is not possible for insurance mutuals since they can not be owned by something else than the members.

- According to the legal norm, a horizontal group (Gleichordnungskonzern) is a voluntary combination of legally independent companies under central management without financial links. Central management and uniform direction is usually achieved by identity of executive board members in all group companies (as far as legally permitted and approved by the insurance supervisor). According to § 7a I VAG the number of mandates in an executive board of an insurance company is generally restricted to two mandates per person. If group companies are concerned, it is BaFin's (Federal Financial Supervisory Authority) discretion to allow more mandates per person. Rules of interpretation are laid down in an administrative act¹.

Because the same legal regulations apply to mutual insurance societies as to insurance stock companies, mutuals have a disadvantage as they can not form a vertical grouping of mutuals which gives them a disadvantage to cooperate with other mutuals (either German or foreign) on corporate tax and solvency issues.

The **Danish** legislation for financial businesses provides grouping possibilities similar to the Solvency II, 212 article. The Consolidated Financial Business Act (Bekendtgørelse af lov om finansiel virksomhed, no 705 of 25/06/2012)² includes a section on groups. Groups shall mean a parent undertaking and its subsidiary undertakings. A parent undertaking together with one or more subsidiary undertakings comprise a group. An undertaking may only have one direct parent undertaking. The undertaking that actually exercises the controlling influence over the undertaking's financial and operating decisions shall be deemed the parent undertaking. Controlling influence is authority to control the financial and operating decisions of a subsidiary undertaking. Controlling influence in relation to a subsidiary undertaking exists when the parent undertaking, directly or indirectly through a subsidiary undertaking, owns more than one-half of the voting rights in an undertaking, unless, in exceptional circumstances, it can be clearly demonstrated that such an ownership does not constitute controlling influence. Where a parent undertaking holds no more than one-half of the voting rights in an undertaking, controlling influence exists if the parent undertaking has

- the power to exercise more than one-half of the voting rights by virtue of an agreement with other investors,
- the power to control the financial and operating policies of an undertaking pursuant to the articles of association or an agreement,
- the power to appoint or remove the majority of the members of the supreme management body, and this body has controlling influence on the undertaking, or
- the power to exercise the actual majority of votes at the general meeting or an equivalent body and thus hold actual controlling influence of the undertaking.

The existence and effect of potential voting rights, including rights to subscribe for and purchase equity investments that are currently exercisable or convertible, shall be taken into account when assessing whether an undertaking has controlling influence. Any voting rights attaching to equity investments owned by the subsidiary undertaking itself or by its

¹ Bafin, VA 5 -I 2234 - 2011/0005, Merkblatt zu Geschäftsleiter-Mehrfachmandaten. According to this, the Supervisory Authority is obliged to take into account the specific characteristics of mutual insurance associations when deciding on admission of additional board mandates.

² <https://www.retsinformation.dk/Forms/R0710.aspx?id=142178>; an English translation of a previous consolidated act can be found at: http://www.finanstilsynet.dk/Regler-og-praksis/Translated-regulations/-/media/Regler-og-praksis/2011/CAct_885_2011new.ashx

subsidiary undertakings shall be disregarded in the determination of the voting rights in a subsidiary undertaking.

Predominantly in the Nordic countries de facto groupings are possible via the use of guarantee capital (see Section 5.2.1 Possibility of shares and non-member investors, the Finnish description). In Austria, the hybrid mutual company form allow far-reaching non-member influence. The most advanced grouping instruments are developed in France. The box below provides an extensive description of the French SGAM (Société de groupe d'assurance mutuelle) and UMG (Union mutualiste de groupe) models.

Grouping instruments in France

In France, there are a number of grouping instruments which are at the disposal of mutual type organisations, including Union de mutuelles, Société de groupe d'assurance mutuelle (SGAM), Union de groupe mutualiste (UGM) and Union mutualiste de groupe (UMG). In this case study, two of these grouping instruments will be further analysed: the SGAM and the UMG. For each grouping instrument, the general characteristics (background, legal texts, regulations etc.) will be discussed. Secondly, examples of each grouping instrument will be presented (reasons for establishing the group, approach taken and results of the grouping) and finally, conclusions will be drawn on the basis of the analysis.

Société de groupe d'assurance mutuelle (SGAM)

Background

Around the turn of the millennium, in many European countries there was a strong movement towards consolidation in the (mature) insurance market (for instance in the United Kingdom, Italy and France). This movement was caused by increased competition of foreign providers (e.g. Bancassurers) in domestic markets. In addition, the insurers' economic model has evolved from a "single-production, single-distribution, single-handling"-oriented model to a multi-producer, multi-distributor model which favours partnerships.

Mutuals could form a group with combined accounts with other mutuals, but the holding company model would not portray the characteristics of a mutual. Secondly, mutuals could transfer portfolios to other operators (either mutual or not) in the market. This would in many cases mean demutualisation.

Hence, for mutual insurance companies, consolidation meant in many cases demutualisation as no legal instruments were available to consolidate and to maintain the mutualistic principles. The SGAM provides the possibility to group with having a holding company structure respecting the principles of the social economy (democratic governance) and non-profit making purposes.

Legislation

The SGAM was created by French Law with the Ordinance of 29 August 2001. The SGAM is included in the Insurance Code (Code des assurances), articles L 322-1-2 and L 322 1-3 (Decret D 2002-943 of 26 June 2002 to transpose the Directive 98/78/CE of the European Parliament and the Council of October 27 1998 on the supplementary supervision of insurance undertakings in an insurance group).

Before introducing the concept of the SGAM in article L 322 1-3, in article L 322 1-2, 1° the concept of the SGA (sociétés de groupe d'assurance) is described. It includes groups of undertakings that manage important and sustainable financial solidarity ties ("gérer des liens solidarité financière importants et durables"). This group structure is applicable to all types of European insurance organisations what ever the legal status: Private liability companies, mutuals, cooperatives, reinsurance providers etc. when at least one of the organisations is situated in France and falls under the insurance

code. As there are different types of mutual organisations in France, the Article further explains which mutual type organisations can be included in a SGA: mutuals or unions of mutuals that fall under Book II of the Law on Mutuals¹; social welfare institutions or unions of these institutions fall under title III of Book IX of the Social Security Law²; insurance mutuals that fall under the Insurance Law.³ The group legal entity can not practice insurance business. Its purpose is to manage investments. Article L 322 1-2 2° provides a definition of the hybrid insurance group (sociétés de groupe mixtes d'assurance).

Article L 322 1-3 provides a definition of the SGAM. An SGAM is a legal entity which enables the grouping or cooperation of companies within the social economy. In fact, the SGAM is not only for mutual insurance companies, but also for health mutuals, pension institutions and insurance and reinsurance companies whether they be mutual, cooperative or paritarian (jointly administered by the social partners, i.e. employers' and employees' organisations) having their Head Office in a European Union Member State or in another state party to the European Economy Agreement.

Its main operations concern:

- **Either** acquiring or managing stakes in insurance or reinsurance companies
- **Or** creating or managing sizeable and long-lasting links of financial solidarity with mutuals or social welfare institutions or unions of these institutions that fall under title III of Book IX of the Social Security Law; insurance mutuals that fall under the Insurance Law; or mutual or cooperative or paritarian or reinsurers with headquarters in the European Union or the European Economic Area.

The SGAM members agree to create financial solidarity among them, the conditions, amounts and limits of which are determined by an affiliation agreement. The affiliation is not considered a merger. The supervisory authorities ensure that such solidarity does not endanger the soundness of the SGAM's members. They also determine the exact role of the SGAM with regard to member mutuals, conditions of membership, forms of governance etc.

The following criteria need to be met in order to establish a SGAM (above the criteria for establishing a SGA):

- It functions without a social capital or fund
- It counts at least two organisations, of which at least one is a société d'assurance mutuelle
- It groups only mutuals and unions according to Livre II or III; social welfare institutions or unions of these institutions that fall under title III of Book IX of the Social Security Law; insurance mutuals that fall under the Insurance Law; or mutual or cooperative or paritarian or reinsurers with headquarters in the European Union or the European Economic Area.
- At least one of these companies has to be subject to the control of the State according to article L. 310-1 and has to have its headquarters in France.
- The constitution/statutes of the mutuals must foresee the possibility to form a SGAM

¹ Law on Mutuals or Code de la Mutualité: the mutual companies that fall under this are commonly called "Mutuelles 45" and predominantly insure additional health care. These Mutuelles 45 are subject to insurance supervision since 2003.

² See article L. 931-1 of the Code de la Sécurité Sociale which defines these "institutions de prévoyance" as "des personnes morales de droit privé ayant un but non lucratif et étant administrées paritairement par des membres adhérents (entreprises) et des membres participants (salariés et anciens salariés)". These social welfare institutions are mainly active in the life insurance line of business, predominantly concerning pensions with a possibility to offer some other coverage.

³ See as well: Lowet, Lieve (2008), Wat is een "SGAM"?, in: Larcier: Forum Financier/ Revue bancaire et financière 2008/8.

The main distinction with the SGA is the bases of the financial tier between the companies in the group. Where in the SGA the ties are established by the (financial) participation of the company in the group, in the SGAM the ties are defined in an affiliation agreement (convention d'affiliation). The SGAM model allows with the affiliation agreement different levels of integration of companies within a SGAM:

- A simple cooperative partnership agreement to create synergy and opinion sharing, as well as forming broad alliances,
- A common development partnership agreement with strong financial links,
- A concentrative agreement with strong and industrialised integration.

The Insurance Code states that the Affiliation Agreement between the Mutual Insurance Group Company and the affiliated companies shall describe the links, duties, commitments, how costs are shared and all other forms of cooperation. In practical terms, according to the level of integration desired by the affiliated members, the SGAM may be:

- Either a structure of political consensus, for joint studies, for lobbying,
- Or a structure for cooperation, for joint initiatives and creation of joint projects, even for the development of joint projects,
- Or an integrated structure with a joint global strategy (holding) or joint specific strategy (of a joint venture type), with more integrated mechanisms of governance, finance, and monitoring. With regard to Solvency II, this type of structure constitutes a real group with responsibilities incumbent upon the head of the group.

The grouping of mutuals has to be approved by the Autorité de contrôle prudentiel (ACP) and the contrôle de l'autorité de la concurrence.

The instrument is considered a flexible tool for mutuals to cooperate and/or consolidate without losing their mutual identity and with preserving their particular identities in the market.

Examples of SGAMs existing in France are:

- Covéa (MAAF, GMF, MMA, 2003)¹;
- SMABTP (SMABTP, SMAvie BTP, 2006)²;
- AG2R Prévoyance, La Mondiale (2007)³;
- Sferen (MACIF, MAIF, MATMUT, 2010)⁴; and
- MACSF (MACSF, le Sou Médical, 2009)⁵.

Approach: An example of a SGAM: Covéa

Covéa is a mutual insurance group company consisting of three major brands, each with a high market profile and specific positioning: GMF (Garantie Mutuelle des Fonctionnaires), insurance coverage for civil servants; MAAF (Mutuelle d'Assurance Artisanale de France), insurance coverage for the general public, private individuals and professionals, and MMA (Mutuelles du Mans Assurances), a multi-sector, insurance coverage for the general public and the corporate sector, with tied agents.

¹ <http://www.covea.eu/index.php>

² <http://www.smabtp.fr/>

³ <http://www.ag2ramondiale.fr/>

⁴ <http://www.sferen.fr/>

⁵ <http://www.macsf.fr>

⁶ <http://www.covea.eu/index.php/en/key-figures.html>

⁷ <http://www.covea.eu/index.php/en/international.html>

⁸ See: <http://www.sferen.fr/organisation-chiffres-cles/chiffres-cles>

Covéa, as a platform for cooperation between the three companies was initiated in 2001. In 2003, when the possibility existed, Covéa transformed in a SGAM. The aim of Covéa is to ensure the development and permanence of its 3 mutual companies. Thanks to its weight on the market, as well as its financial capacities and shared skills, together the member companies can: realise economies of scale; access external resources; weigh more in negotiations with partners and service providers; mutualise investments; share good practices; make their voice heard on the market; and intervene on new markets with high added value.

By the end of 2010, Covéa had 10.6 million members and customers; 25,000 employees (including 5,000 abroad); some 3,000 points of sale; 13.6 billion Euros in gross premiums (France and abroad combined) and 356 % regulatory solvency ratio (including unrealised capital gains).⁶

Covéa is studying the possibility of making investments and setting up partnerships outside France. Covéa is established in particular in Spain (Caser), in the United Kingdom (MMA Insurance, Swinton, etc.), in the United States (CSE - Civil Service Employees Insurance Group) as well as in Luxembourg, Canada, etc.⁷ In total (both in France and abroad), Covéa has around 20 subsidiaries.

The level of financial integration allows the group to present consolidated balance sheets to the Supervisor.

Approach: An example of a SGAM: Sferen

For several years, the MAIF (Mutuelle d'Assurance des Instituteurs de France), MACIF (Mutuelle Assurance des Commerçants et Industriels de France) and MATMUT (Mutuelle assurance des travailleurs mutualistes) have been used to working together at the heart of joint structures such as the GEMA (Groupement des entreprises mutuelles d'assurance) or within the framework of joint subsidiaries. The alliance which started among these players is the logical follow-up to their long-held partnerships agreements. This alliance is wanted because:

- It helps to secure MAIF, MACIF and MATMUT Groups' future: as much by the means of financial solidarity as by reaching critical size,
- It brings new means of action (increasing investment capacity in France or on an international level, increasing lobbying and influence capacities),
- It shares best practices (to continue to meet the members' needs and thereby get a head start on the competition)
- It helps to speed up the implementation of our respective strategies:
 - Concerning diversification, through enhancing our offer more quickly for members (personal lines, financial services, offers for group or business lines, etc).
 - Concerning historical activities, through sharing or saving to help obtaining the right price, especially on what is not visible by the member/policyholder.

However, concerns which may arise on the part of the stakeholders must not be overlooked when building an alliance to which they will be committed for decades to come:

- There is a risk of how the project is perceived by members and the general public.
- The project requires all of the mutual players to join (militants, employees)

Given the mutualist approach and that all affiliated members belong to the social economy, special attention is reserved for members and their representatives, as well as to employees and their representatives.

The Sferen SGAM provides a financial mechanism based on solidarity at two levels. The first provides solidarity of 25 million Euros per member (or 50 million Euros in the event of two members' contributions benefiting the third). The second level is 75 million Euro per member (totalling 150 million Euro

in the presence of two affiliated member contributors).

The benefits for all stakeholders of the mutual (members, managers, employees):

- Help to make the member mutuals last in the future
- Speed up the implementation of our respective strategies to benefit our members:
 - Mutualisation of certain sectors may help to guarantee the right prices more quickly,
 - Regrouping makes sizeable savings,
 - Joining together speeds up the enhancement of our offer and increases equipment for our members,
 - Joining together may also speed up diversification through joint investment or via joint negotiations with providers or suppliers.
- Increasing investment capacity in France or on an international level
- Increase lobbying and influence capacity of member mutuals
- Integrate a group inspired by mutual specificities through strategic selection while maintaining autonomy in the governance of the member mutuals' activities
 - The Boards of Directors of the member mutuals maintain their sovereignty, in particular with regard to each step of the joint construction (especially with regard to information disclosed by the partners).

The Sferen affiliates in 2011 had together 11 million members and collected 10.6 billion Euro in gross premiums. The societies had nearly 25 thousand employees and more than 1,200 points of sale.⁸

Union mutualiste de groupe (UMG)

Analogue to SGAM for mutuals falling under the insurance code, for the mutuals subject to Book II of the Code de la Mutualité a similar grouping instrument is created: the Union mutualiste de groupe (UMG). The group structure was created in 2008 as, similar to the reasons for creating the SGAM, there was a need to build a group while maintaining the identities of the individual mutuals. The reason is primarily an economic one, to work more efficient, to be better equipped to comply with the Solvency II regulations and to maintain sustainable in the future.

According to article L 111-4-2 of the Code de la Mutualité, the UMG is an enterprise, but not a mixed financial holding companies, within the meaning of Article L 212-7-1, and whose principal activity is to acquire and manage equity interests, within the meaning of Article L212-7-1 second subparagraph, in enterprises submitted to the state's control pursuant to Article L 310-1 or article L 310-1-1 of Code des Assurances, or in insurance or reinsurance undertakings whose head office is located outside France, or to build and manage important and sustainable links of financial solidarity with mutuals or unions ruled by book II of the Code de la mutualité, with pension institutions or unions ruled by title III, book IX of the code de la sécurité sociale, with mutual insurance companies ruled by the code des assurances or with insurance or reinsurance undertakings of mutual or cooperative type or paritarian whose head office is in a Member state of the European Community or in another state that is part of the agreement on the European economic area. Of its members, at least one is a mutual or a union according to Book II of the Code de la Mutualité. The mutuals subject to the code de la mutualité should at least hold half of the seats in the general assembly and in the board.¹

An important element of the UMG (and SGAM) is the concept of financial solidarity between the partners. This financial solidarity, or guarantee, is laid down in a private contract and assures the financial liability of the group and its subsequent partners/ members. It also differentiates the UMG from the Union des mutuelles. UMGs are not considered an insurance organisation neither a reinsurance

¹ Argus reports that, contrary to the SGAM, the UMG is allowed to include Sociétés Anonymes: <http://www.argusdelassurance.com/acteurs/code-de-la-mutualite-ugm-umg-trois-lettres-pour-deux-unions.43971>. This can however not be found in the code de la mutualité.

structure, neither a self reinsurers between the constitutive members. In a sense, the UMG is a social economy structure to participate in capitalistic structures.

To form an UMG the partners should be authorised to do so by their own constitutions. The UMG then is formed by its constituent assembly, composed of representatives of the founding members. The assembly deliberates by majority of the members present or represented. It adopts the constitution, and names the board of directors (for one year).¹

There are currently three UMGs. The Istya UMG will be, as illustration, described a bit more in detail:

- Groupe Interiale²: created in 2010 and consisting of four organisations: Intériale Mutuelle, MGAS, Intériale Filia and Intériale Prévoyance. In total, 500,000 people are members of the affiliated organisations.
- Solimut: created in 2012 and consisting of six mutuels: Mutuelle de France Bretagne-Centre-Océans, mutuelle Mutami, Mutuelle de France Prévoyance, Mutuelle de France Plus, Mutuelle Familiale de la Corse, Mutuelle de France 04-05. In total, 610,000 citizens are covered.
- ISTYA³: Created in 2011, Istya is a Union mutualiste de Groupe (UMG) consisting of the Mutuelle Générale de l'Education Nationale (MGEN), the Mutuelle Nationale Territoriale (MNT), the Mutuelle Nationale des Hospitaliers (MNH), the Mutuelle Générale Environnement et Territoires (MGET), the Mutuelle des Affaires Etrangères et Européennes (MAEE) and the Mutuelle Civile de la Défense (MCDEF). Together, ISTYA offers products and services to 6.3 million people and has a turn-over of 3.5 billion Euro. Istya will focus on civil servants in a first instance, but will enlarge the scope of its activities to other populations in the future. The basis of this grouping is the mechanism of financial solidarity between the members of the UMG. In total 50 million Euro is reserved and put aside to support one of the mutual members that enter into difficulties.⁴ This deposit fund is under control and managed by Istya. The board is elected by the affiliated organisations' general assembly. Istya conduct a number of synergetic activities such as risk control, actuary, development of offers in the interprofessional domain, contractual arrangements, and purchases. From 1st of January 2013, MGEFI - Mutuelle Générale de l'Economie, des Finances et de l'Industrie, will join Istya.

There is no strict way of organising a UMG. Each UMG has a different purpose, structure and level of integration, where the Istya UMG portrays the most advanced example. Depending on the level of integration, the Supervisors (ACP and Autorité de la concurrence) can apply different rules, and either treat the group as a joint account or supervise the affiliated organisations separately.

Foreign organisations can be affiliated with an UMG. Although it is practically difficult, there are no legal obstacles for having foreign members. One difficulty is that the supervisor might not recognise the legal status of a foreign entity. Another difficulty is that the foreign entity needs to apply French prudential rules in the balance sheets.

In recent years, the numbers of mutual-type of organisations is decreasing in France. Smaller organisations are either merging or are increasingly forming groups. Both the SGAM and the UMG have been created on the basis of requests from the mutual type or-

¹ Article L.113-1 Code de la Mutualité

² <http://www.groupe-interiale.org/web/groupe-interiale/accueil>

³ COMMUNIQUÉ DE PRESSE 10 mai 2011:

http://www.mgen.fr/fileadmin/user_upload/Accueil/Communiqués_de_presse/20110510creationIstya.pdf
http://www.mgen.fr/fileadmin/user_upload/Accueil/Communiqués_de_presse/20110510creationIstya.pdf

⁴ <http://www.argusdelassurance.com/a-la-une/cinq-mutuelles-de-la-fonction-publique-creent-le-groupe-istya.49613>

ganisations and provides an opportunity to establish economies of scale while maintaining the identities of the individual mutual organisations. It combines therefore the mutual strength of operating in proximity of the members with economies of scale.

In a way, the grouping structures conflict with strict mutualistic principles. For instance, it could conflict with the principle that the member contributions should be maintained within the society and should be used for the benefit of the members. With the idea of financial solidarity and financial ties between the SGAM and UMG members, it can be the case that funds from one society will be used to support another society. Hence, the funds are not used for the benefit of the own members. This, of course, depends on what is considered 'for the benefit of the own members', as investing in the SGAM/UMG might add value to the functioning of the affiliated societies and hence provide additional benefit for the members (e.g. lower prices, better service). In addition, as a second example of where the grouping might conflict strict mutualistic principles, the Board of the SGAM or UMG (in integrated structures) has authority over an agreed amount of funds. This conflicts with the principle that the members (or representatives) perform democratic governance on the way the society is managed. In the case of a SGAM/UMG, the management is elected by the delegates of the societies and hence there is an indirect democratic influence of the members over a part of their funds. These 'conflicts' are by no means serious threats, but could include a slippery slope when it comes to maintaining mutualistic values. In the end, the grouping instruments impose more capitalistic features on the affiliated mutuals, by means of which the societies can better compete with capitalistic competitors.

The French grouping instruments can be used by foreign organisations as well. However, there are a number of legal restrictions (for instance the majority of seats in the general meeting has to be occupied by French mutuals). Another difficulty is how national supervisory authorities regard the French grouping instruments when one organisation would like to join the SGAM or UMG. Being unfamiliar with this grouping structure for mutual-type organisations, they are hesitant in allowing national organisations to affiliate. For this reason, there are voices that advocate the establishment of a grouping instrument for mutuals at a cross-national European level, so that the same rules apply to everyone and supervisors are better informed about possibilities, barriers and consequences of groupings of mutual-type organisations.

To conclude, it is true that grouping is legally difficult for mutual-type organisations, however, in a number of countries, there are legal possibilities to establish financial ties between mutual-type organisations. In addition, one could argue that grouping means allowing external control over (a part) of the mutual organisation or its assets, which would diminish the control and ownership of the members.

6.4 Issues in relation to the Solvency II Directive

The basic principles behind the so-called 'Solvency II' directive¹, which was adopted in 2009 and will enter into force on 1st January 2014² is that insurance institutions in Europe should be based on better risk assessment, better spreading of risks and better financial foundations, so as to improve the stability of the market and reinforce consumer protection.

The main innovation introduced by this directive is that, in establishing an improved foundation for the insurance sector, the directive concerns more than only capital solvency requirements as they currently exist. It also lays down rules concerning the whole organisation of insurance undertakings in Europe. It concerns:

- the taking-up and pursuit, within the European Union, of the self-employed activities of direct insurance and reinsurance;
- the supervision of insurance and reinsurance groups;
- the reorganisation and winding-up of direct insurance undertakings.

The system set up by 'Solvency II' is based on three pillars. The first pillar contains two capital requirements, the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR), which represent different levels of supervisory intervention. The second and third pillar provide for qualitative requirements (such as risk management and supervisory activities) and supervisory reporting and disclosure respectively.

Therefore, the 'Solvency II' Directive affects the way insurance businesses are organised, what kind of internal control mechanisms they have, how supervisors work, the way insurers report on solvency and financial conditions, how they can acquire other financial undertakings, etc.

Excluded from the scope of this directive is the insurance forming part of a statutory system of social security (article 3).³ Also for small undertakings with an annual gross written premium income not exceeding 5 million Euro, the Solvency II Directive does not apply (article 4). The national supervisory authorities check whether undertakings are excluded from the directive.⁴

¹ OJ L 335/1 17.12.2009, Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), Section 2, Article 3.

² The deadline for transposition of the Solvency II Directive (2009/138/EC) is 31 October 2012. This date would be extended by the Omnibus II Directive, for which negotiations are still ongoing. As the negotiations have taken longer than expected, the Omnibus II Directive may not be published before 31 October 2012, when Solvency II is supposed to be transposed. In order to avoid that situation, the Commission has adopted on 16 May 2012 a targeted proposal for a Directive that will move the implementation date of Solvency II by Member States to 30 June 2013, and the application date by companies to 1 January 2014. See: European Commission, 16 May 2012, COM(2012) 217 final, Proposal for a Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) as regards the dates of its transposition and application and the date of repeal of certain Directives.

³ OJ L 335/1 17.12.2009, Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), Section 2, Article 3.

⁴ It could be argued whether the 5 million Euro premium income is the right threshold for making a distinction between those insurers falling under the Directive and those that do not. As most smaller insurers are mutual-type organisations, amending the threshold directly affects the regimes by which mutual-type organisations are regulated.

To facilitate the implementation of Solvency II, a five year transition period has been negotiated to comply with the regulatory demands. If, after five years, insurance undertakings do not comply with the Solvency II rules, they will no longer be entitled to benefit from the so-called 'single passport' authorising the insurer to sell insurance throughout the EU and EEA on the basis of authorisation in its home Member State.

Principle of proportionality

Besides that smaller insurers are excluded from the scope of the Solvency II Directive, with regard medium-sized insurance undertakings, the Directive mentions the principle of proportionality. In its introductory statements, the Directive mentioned that "the Directive should not be too burdensome for small and medium-sized insurance undertakings. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance undertakings and to the exercise of supervisory powers." Furthermore, "in particular, this Directive should not be too burdensome for insurance undertakings that specialise in providing specific types of insurance or services to specific customer segments, and it should recognise that specialising in this way can be a valuable tool for efficiently and effectively managing risk. In order to achieve that objective, as well as the proper application of the proportionality principle, provision should also be made specifically to allow undertakings to use their own data to calibrate the parameters in the underwriting risk modules of the standard formula of the Solvency Capital Requirement." In general, the rules applied should be proportionate to the **nature, scale and complexity** of the risks supported by insurance and reinsurance undertakings. However, effectively, it remains unclear how this principle of proportionality should be applied and whom it should apply to as small insurers often deal with complex risks.

6.4.1 Corporate governance and Solvency II

The Solvency II Directive, applicable to all Directive insurers having a single licence to operate in all European countries, includes articles concerning the system of governance (Chapter IV, Section 2, article 41-50). Herein, whether a one-, or two-tier model is applied has been left open. It however does include a statement on the fit and properness of the persons who effectively run the undertaking or have other key functions (article 42). All there persons should fulfil at all times the following requirements:

- Their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit)
- They are of good repute and integrity (proper).

According to article 41 (2), the system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

This Solvency II requirement of 'fit' persons does not always do justice to how mutual-type organisations involved in insurance business organise their corporate governance. As the Directive refers to the 'fitness' of all persons who effectively run the undertaking, this applies as well to the elected members in the management board or supervisory board of mutual-type insurance organisations. Therefore, this rule of the 'fitness' excludes all those

members not having the right qualifications, knowledge and experience. Strangely enough, given the recent financial and economic crisis, it was not the unqualified persons, but more the financial experts that caused financial institutions to take too large a risk. Without stating that a minimum level of knowledge and experience is necessary to guarantee a prudent management of the insurance undertaking, in order for the Directive to fit better with the mutual governance, it would be good to review the scope of the 'fitness' principle. Instead of focussing on an individual level, the board (or supervisory board) should include a minimum level of qualifications, knowledge and experience to manage prudently the insurance undertaking.

6.4.2 Financial governance and Solvency II

The Solvency II Directive calls for increased solvency margins and a larger amount of own funds for insurance undertakings. Although the necessity for this is generally accepted, for (smaller) mutuals the new solvency regime can have severe effects. The increasing need for own funds, risk differentiation and solvency requirements could prove to be difficult for small and medium-sized insurance companies, and for mutuals in particular, to comply with, since they are often focussed on niche markets and specialised in very select types of risks. Coping with the new solvency regime could force smaller mutuals to raise contributions from members, or to reject partially their mutualistic values in order to obtain additional (external) funds or to merge with other companies (leading to demutualisation).

Specifically for mutual insurers and the way they acquire additional funds, it is mentioned in the directive that for mutual-type associations with variable contributions, ancillary own funds may comprise any future claims on their members by means of a call for supplementary contributions¹.

Under the principle of proportionality, the supervisory authority could apply slightly different rules proportionate to the nature, scale and complexity of the risk. As smaller mutual-type insurers often operate in niche markets, with a single product, they might be regarded as running more complex risks in case the market for this one product collapses and hence, these insurers run the risk of having to comply with the general regime in the Solvency II Directive, instead of being exempted for certain rules due to the principle of proportionality.

6.4.3 Disclosure and Solvency II

The Solvency II Directive emphasises the need to disclose publicly the performance of the insurance undertakings. In comparison to earlier regimes, the rules under Solvency II will become stricter and more burdensome. Also with regard to the disclosure requirements, to relieve the smaller and medium-sized insurers, the principle of proportionality should apply.

¹ OJ L 335/1 17.12.2009, Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), Article 89.

6.4.4 Grouping and Solvency II

In the countries studied a number of possibilities have been encountered by which mutual-type organisations can form groupings in the sense of article 212 of Solvency II.

According to Solvency II Directive article 212 (1c) 'group' means a group of undertakings that:

- (i) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; or
- (ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:
 - one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,
 - the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor, where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries.

Article 212 (2): the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking.

The key elements, according to Solvency II, for being supervised as a group concern the availability of financial ties between companies and the availability of a dominant influence of one of the undertakings over the other group-partners.

As has been illustrated in describing the Danish legal framework for groupings (see earlier), countries already implement the Solvency II provision in relation to grouping in their national legal frameworks. Concerning the grouping of companies, however there are two issues, which may affect insurance mutuals and which need close monitoring when further implementing and transposing the Solvency II Directive into national legislation:

- The current Solvency II Directive is at this moment not clear how to treat horizontal groupings concerning calculation of capital requirements, governance (dominance of one organisation over the other) and hence needs to be completed.
- Groups of companies can have a corporate tax advantage when the companies can report the accounts of the group instead of the separate companies. This is however only possible for vertical groups and not for horizontal groups. Hence insurance mutuals, due to the fact that they can not be owned by something else than the members, have a tax disadvantage.

6.5 Concluding remarks

In this chapter, issues and barriers have been identified of a legal nature, i.e. for instance legal restrictions to establish mutuals. Besides these legal issues, there are also restrictions

having to do with **knowledge and understanding of mutualism** in the countries and especially at the level of the Supervisory Authority and national policy makers. For instance in **Sweden**, where despite that mutuals have a long tradition in Sweden, there is a general misunderstanding of the mutual form and mutualistic ideas. As Folksam mentions: "In Sweden, [...] the legislation only recognises mutual insurance companies ("ömsesidiga försäkringsbolag") as defined in the insurance business act ("försäkringsrörelselagen"). The Swedish language even lacks the word for other activities in the mutual form; i.e. democratic societies owned by and built for its customers (could be called "ömsesidningar"). It could therefore sometimes be difficult to explain the idea on which the mutual insurance companies are built as people don't understand the difference between a stock and a mutual company in the first place." The same argument applies to the insurance associations: these are also explicitly defined as insurance operators, even more than that they are defined as mutual-type organisations.

Related to the lack of knowledge concerning mutual-type undertakings, there is in general a lack in Europe of **courses focussing on the mutual-type business form**. In Ireland a programme has been identified, but with a focus on cooperatives more than on strict mutual-type organisations (although the distinction in the Irish context is difficult to make). Furthermore, it are mostly the mutual-type organisations themselves which provide information campaigns and develop educational offer.

Concerning Solvency II, the expectation is that it should be a useful instrument to improve managing the risks of the insurance company. A question however remains whether the costs for implementing Solvency II and the changes that need to be made within the organisations are comparable to the advantages it brings.

7 Operating across borders

Key messages

- In general, also for mutuals active in insurance markets, **operating across borders** remains in many countries not a much-debated issue. Typically, mutual-type organisations are small, work in the vicinity of their members, have a local focus and, all in all, their strategy is less driven by expanding their business (geographically).
- There are different ways to operate across borders for mutual-type (insurance) organisations. Not every possibility exists in every country.
 - Firstly, a mutual-type organisation can have members in another country, who have the same or similar rights as the members in the home country.
 - Secondly, a mutual can set up a subsidiary in a host country in the form of a joint-stock company. The policyholders of the subsidiary can be either members of the mutual-type organisation in the country of origin, can obtain member-like status or benefits, or can be only 'clients' of the subsidiary.
 - Thirdly, a mutual-type organisation can participate in a cross-border grouping of organisations.
- It can be concluded that mutual-type organisations actually can operate across borders and can have members in other countries. In reality, the real legal barriers concern firstly, countries where mutual-type organisations are not foreseen – and incoming ones are not accepted – and secondly, the barriers towards forming groupings of mutuals:
 - It is not possible to create **vertical groupings of mutuals** (with a mutual being owned by another mutual), since an intrinsic element of being a mutual is to be owned by its members. Choosing the other way (i.e. a mutual owning a plc-type subsidiary) means applying a less strict definition of being mutual.
 - It is not always clear whether **horizontal groupings** are possible and how the Supervising Authorities assess these groupings. Related to this, mutual-type organisations can have tax and solvency disadvantages compared to their plc-type peers, as they can not join in a group. What would help would be to provide legal possibilities to form (cross-border) groupings either via grouping instruments such as the French SGAM (Société de groupe d'assurance mutuelle) model, or via establishing financial ties through the exchange of guarantee capital (see Nordic countries).
- Concerning groupings, it should be emphasised that creating new concepts of forming groups among for mutual-type organisations, may mean at the same time allowing other stakeholders (other mutual-type organisations or others) to exercise control over (a part of) the mutual-type organisation. Hence, forming groupings includes almost necessarily a decrease of members' control and hence a decrease of the strict mutual principles.
- Despite the freedom of services and freedom of establishment, it is not evident that mutual-type organisations can really benefit from these freedoms. The legal barriers may – at least in theory – not be insurmountable in many instances, however, the lack of transparency on the application of the two fundamental rights causes (practical) obstacles for mutual-type organisations when planning to expand across frontiers. In other words, even more than by legal barriers, mutual-type organisations are more restricted in their cross-border ambitions by the lack of transparency concerning how mutual-type organisations operate: which legal frameworks are applicable and how national Supervisory Authorities regard domestic and incoming foreign mutual-type organisations. Working towards a more uniform, modernised and harmonised legal framework would be beneficial for mutual-type organisations willing to offer their services in other countries.

7.1 Freedom of establishment and freedom of services

The freedom of establishment, set out in Article 49 (ex Article 43 TEC) of the Treaty and the freedom to provide cross border services, set out in Article 56 (ex Article 49 TEC), are two of the “fundamental freedoms” which are central to the effective functioning of the EU Internal Market. The principle of freedom of establishment enables an economic operator (whether a person or a company) to carry on an economic activity in a stable and continuous way in one or more Member States. The principle of the freedom to provide services enables an economic operator providing services in one Member State to offer services on a temporary basis in another Member State, without having to be established. These provisions take direct effect and Member States need to modify their legal frameworks in order to comply with these two fundamental freedoms. There are however exceptions concerning these fundamental freedoms, when a particular service is considered to be outside the scope of the TFEU (see Chapter 2 on the demarcation of the study). There are considerable case-law and infringement procedures against Member States on whether services fall inside the scope of the Treaty or not and whether the freedom of establishment and freedom of services applies.¹

The Directive 2006/123/EC² made application of the two fundamental freedoms more easy and establishes a general legal framework promoting the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services. This 'Services' Directive aims to facilitate freedom of establishment for providers in other Member States and the freedom of provision of services between Member States. It also aims to increase the choice offered to recipients and improve the quality of services both for consumers and for businesses using these services. However, this Directive does not apply to financial services and healthcare services, which have to rely on the articles in the TFEU and service-related legislation. With regard to insurance services there is a complex European level legal framework covering both life and non-life insurance business and granting, upon certain conditions, a single official authorisation, issued by the competent authorities of the Member State in which an insurance undertaking has its head office. Such authorisation is valid throughout the European Union and shall permit an insurance undertaking to carry on business in all the Member States, under either the right of establishment or freedom to provide services. In terms of prudential control, the principle

¹ See: http://ec.europa.eu/internal_market/services/infringements/index_en.htm

² OJ L 376 of 27 December 2006, Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

of supervision by the home Member State applies.¹ Smaller, non-directive insurers (including mutual-type insurers) can not benefit from the single official authorisation and need to request registration in the country to which they would like to expand. This can be problematic if the supervisory authority does not recognise the legal form.

Without going into detail in the different Directives and the implications of the Solvency II Directive, it can be concluded that the insurance service market is highly regulated by European Directives and that there should be no obstacles for companies to make use of the two fundamental freedoms: freedom of establishment and freedom of services. In the following section, the situation concerning crossing borders is examined.

7.2 Operating across borders: the situation in the countries studied

The issue of expanding across borders is more related to mutual-type organisations involved in the insurance business than mutual-type organisations involved in health care, assistance and other services. The latter usually have a local focus and operate in accordance with (complicated) national activity-related legal frameworks. The first on the other hand, are more confronted with increasing cross-border competition and consolidation-pressure from European insurance and financial services Directives (i.e. Solvency II).² This can be illustrated by the situation in **Luxembourg**: In Luxembourg cross border expansion is not provided for in the legislation regarding mutual benefit societies. However, mutual benefit societies are not interested in expanding across the borders. The mutual insurance associations fall under the scope of the provisions of freedom to provide services and of freedom of establishment provided for by EU directives.

In general, also for mutuals active in insurance markets, operating across borders remains in many countries not a much-debated issue. In general, mutual-type organisations are

¹ See the following life and non-life Directives: Life: 1) The first coordinating Directive on direct life assurance (Directive 79/267/EEC) was adopted in 1979 to lay down the rules necessary to facilitate the effective exercise of the right of establishment in respect of insurance activities. 2) The second coordinating Directive on life assurance (Directive 90/619/EEC) aimed at facilitating the effective exercise of the right to supply life assurance services. 3) A third coordinating Directive on direct life assurance (Directive 92/96/EEC) was adopted by the Council in 1992 to complete the internal market for insurance activities on the basis of the principles of a single administrative license and supervision of the activities of an insurance undertaking by the authorities in the Member State where the undertaking has its head office. OJ L 345 of 19.12.2002, Directive 2002/83/EC of the European Parliament and the Council of 5 November 2002 concerning life assurance (recast version). Non-life: Directive 73/239/EEC was amended by Directive 88/357/EEC, setting the necessary arrangements for guaranteeing the effective exercise of the freedom to provide non-life insurance services. A third generation of directives on non-life insurance was launched in 1992 with Directive 92/49/EEC. Directive 2002/13/EC amended the Directive 73/239/EEC on the issue of solvency margins for non-life insurance undertakings. See: OJ L 228, 16/08/1973, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; OJ L 172, 4.7.1988, Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC; OJ L 228, 11.8.1992, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) and; OJ L 77, 20.3.2002, Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings.

² See amongst others: Sterzynski, Maciej (2003), The European Single Insurance Market: Overview and impact of the liberalization and deregulation processes, Belgian Actuarial Bulletin, Vol. 3, No. 1, 2003.

small, work in the vicinity of their members, have a local focus and all in all, are less driven by expanding their business.

The legal frameworks often do not refer to operations across borders and generally allow mutual-type organisations to have members from other countries. For instance in **Portugal**, the insurance law (Decreto-Lei n.o 94-B/98 de 17 de Abril) does not provide rules for cross-border activities. However, under the EU legislation of freedom of services, the mutual insurance companies are allowed to operate in other Member States. In **Hungary**, the voluntary mutual insurance funds (önkéntes kölcsönös biztosító pénztár) provide service only to its members. Citizens of an EU Member State can become members in the mutual benefit insurance fund. The idea of cross-border establishment has not been incurred yet. The Act on the other hand does not prevent them from operating across borders. Also the mutual insurance associations (Biztosító egyesület), do not operate across borders. The possibility of cross-border mutuals is not regulated by the law, but as it is not forbidden, it is possible. However, there are no examples of it in the Hungarian market.

There are different ways to operate across borders for mutual-type (insurance) organisations. Not every possibility exists in all countries, as will be explained below:

- Firstly, a mutual-type organisation can have members in another country, who have the same, or similar rights as the members in the home country.
- Secondly, a mutual can set up a subsidiary or branch in the other country in the form of a joint-stock company. The policyholders of the subsidiary can be either member of the mutual-type organisation in the other country, or only 'clients' of the subsidiary.
- Thirdly, a mutual-type organisation could participate in a grouping of organisations.

The following sections elaborate on the three types of cross border operations.

7.2.1 Mutual-type organisations having members in other countries

Concerning the first, **mutual-type organisations having members in other countries**, this is generally possible in all countries. If there are obstacles for having foreign members, these barriers predominantly are activity related. An example can be found in **Belgium**, where the société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company), can only have as members the members of the associated mutual health societies (Mutualité/ ziekenfonds (mutual health societies)). All citizens who are member of a Belgian mutual health society, can ask the coverage of an insurance product offered by a society of mutual assistance (for example: a French frontier worker working in France and living in Belgium can also be a member of a society of mutual assistance). Those societies can not offer their services to citizens in other (European) countries who are not working or living in Belgium. The mutual insurance societies (Association d'assurance mutuelle/onderlinge verzekeringvereniging) do not face any more obstacles than a commercial enterprise. However, the establishment of a mutual insurance society in another Member State may be hindered by the absence of legislation in relation to mutual insurance societies in that state. In addition, cross-border merger or regrouping while maintaining the mutual format is not possible across the EU.

In some countries, it seems that there are barriers for foreign mutual-type organisations to be recognised as a mutual. For instance in the **United Kingdom**, the foreign undertakings that are recognised as a mutual (an EEA mutual) are:

- a body which is a European Cooperative Society for the purposes of Council Regulation (EC) No 1435/2003 (statute for a European Cooperative Society);
- a body which is established as a cooperative under the law of an EEA state as mentioned in that Regulation;
- a body which is a cooperative or mutual undertaking of such description as the Treasury specify by order and which is established or operates in accordance with the laws of an EEA state or any of the Channel Islands or the Isle of Man.

This implies that a mutual insurer of another EU Member State can not automatically be considered as a mutual in the United Kingdom.

In other cases, it is legally possible to have members in other countries as can be illustrated by the box below concerning the German mutual insurance companies Vereinigte Hagel VVaG.

Vereinigte Hagel VVaG: Cross border membership

Introduction

Vereinigte Hagel VVaG¹ is a German mutual insurance company founded in 1993 through a merger of two former mutuals: "Leipziger Hagel" and "Norddeutsche Hagel", respectively founded in 1824 and 1869. Vereinigte Hagelversicherung is a specialist insurer for farmers, winemakers and market gardeners. In 1996, Vereinigte Hagel established AGRORISK-GROUP together with Gartenbau-Versicherung² a specialised insurer in horticulture.

Vereinigte Hagel has approximately 100,000 members and operates in 7 countries. The total acreage insured is 4.5 million hectares in Germany and 1.0 million hectares in other European countries (Italy, Luxembourg, Denmark, Netherlands, Lithuania and Poland). This is comparable with twice the size of Belgium.³ The insured sum in 2011 was 8.5 billion Euro.

The main question with regard to the case study of Vereinigte Hagel is how they started up, organised and managed the cross border operations.

Rationale for starting operations abroad

The reason to go abroad as an insurance company was to increase the region in which we cover different risks. Also, risks other than hail, such as storm, intense rain, frost, drought and fire. Weather extremes are not always the same in Europe and hence the wider the area you cover, the lower the volatility.

Operations abroad

Vereinigte Hagel's first operation abroad was in 1991 in Luxembourg, where farmers well accepted the insurance products. Afterwards, in 1999, Vereinigte Hagel acquired shares in the Polish mutual (TUW) Concordia Polska. The policy holders are therefore member of Concordia, not of Vereinigte Hagel. Hence, they have no voting rights. In 2005, VH established an Italian branch, in 2007, it started operations in the Netherlands and in 2008, a branch office was established in Lithuania. Also in 2008, policies were sold in Denmark. As hail insurance (as crop insurance) in Italy is offered by subsidised

¹ <http://www.vereinigte-hagel.net/>

² <http://www.gevau.de/de/startseite.html>

³ See: AMICE (2011), Cross-border business and cooperation in the mutual and cooperative insurance sector.

protective consortia and hence the costumers can not be direct members of Vereinigte Hagel, despite being insured by the company. The list below provides an overview of the operations abroad by Vereinigte Hagel:

- Luxembourg Branch Office since 1999 (Luxembourg; 2.5 million Euro)
- Poland: Shares in Concordia Polska TUW since 1999 (Posen; 30 million Euro)
- Italy: Branch Office since 2005 (Verona; 27 million Euro)
- Netherlands: Branch Office since 2007 (Smilde; 5.6 million Euro)
- Lithuania: Branch Office since 2008 (Kaunas; 2.7 million Euro)
- Denmark: Services since 2008 - no Branch Office; 115,000 Euro.

Membership and representatives

In principle, each farmer that signs the insurance contract becomes member of Vereinigte Hagel. The Bylaws are provided together with the insurance contract. The Bylaws provide the possibility to have non-member policy holders (up to 10 % of the total insured value), which make it possible to have clients, instead of members, in Italy and Poland.¹

Germany, the Netherlands, Luxembourg and Lithuania are divided in 66 regional districts. All members in one district are united in a district union. The district assembly represents the regional interest of the members and they meet once a year. The districts are established on the basis of the number of members, the size of the coverage and the area it covers. Luxembourg and Lithuania only have district, in the Netherlands there are two. Each district has a district assembly where decisions are taken at district level and which appoints a delegate (and replacement) for the General Assembly. Usually, 8 to 10 % of the members will attend the district assembly. Each of the 66 districts has one delegate to attend the General Assembly (members' representatives meeting) which is organised every year. Usually 97 % of the delegates attend the General Assembly and travel costs are covered by the company. The members' representatives meeting is the supreme organ of the company and represents all the members. In addition, the representatives meeting elects the 15 members of the supervisory board. The supervisory board supervises the management and appoints the managing directors (two individuals).

There are no difficulties having foreign members. The Bylaws fall under German law and hence the members are subject to this law. This means for instance that in the unlikely event of dissolution, the assets (based on last year calculations) will be transferred to the members, including the foreign members. If difficulties occur, (e.g. in Italy), it has to do with activity-related regulations rather than status-related regulations.

Another example is the **French/Portuguese Europamut**². MGEN (a mutual run under the Mutuality Code) offers through Europamut (a joint-stock subsidiary and distribution company) services to its Portuguese clients, who become a member of the French mutual. Europamut – Mediação de seguros S.A. is a fast-growing co-operation between 3 mutual insurers: MGEN (code de la Mutualité, focused on health insurance), UMR (Union Mutualiste Retraite) (France) and Intégrale (Belgium mutual insurer) (the latter are both focused on life and retirement products). So far, as a joint-stock company, Europamut sells the MGEN health insurance products on the Portuguese market. In fact, the 6,000 (February 2012) clients in Portugal are members of MGEN and will soon be represented in the governance bodies of MGEN. The reason to choose for the joint-stock company statute of Europamut

¹ See Statutes § 2: http://www.vereinigte-hagel.net/satzung0_0.html?&L=0

² www.europamut.pt/

has everything to do with the need to be visible on the Portuguese market. In fact, Europamut works as a Portuguese insurance broker to MGEN, which is the risk carrier. This Europamut example shows both the possibility to have members in another country and the possibility to operate in other countries via a subsidiary (discussed below).

7.2.2 Setting up a subsidiary or branch in the other country

Concerning the second option, **setting up a subsidiary or branch in the other country**, many examples are found. In general, it can be stated that for these mutual-type insurance organisations the same rules apply as to other insurance organisations and that the mutuals operate similar as other insurance undertakings. In addition, they do not feel (legally) hindered by the fact that the core company is owned by the members. For instance in **Austria**, through the provision of cross-border services in the context of the Internal Market, ordinary insurance mutuals may offer their services abroad, regardless of whether mutuals are permitted to do insurance business in the country where the services are being provided (small mutual insurance associations may not as they do not have a single license). Ordinary insurance mutuals are free to set up subsidiaries which may either be located abroad, may set up branches in other countries or may provide cross-border services. The provisions about transferring all insurance activities to a subsidiary joint stock company (Art 61a-61c) provide the opportunity to take in external capital for the subsidiary without necessarily losing control of the activities of the subsidiary. This concept was developed in Austria with the express purpose of strengthening the sector and overcoming financing (and hence growth) challenges for insurance mutuals. If the operative subsidiary company obtains clients abroad (through the provision of services or through branches), these clients become members of the mutual (parent) association, until arranged otherwise in the articles of the operative company. For foreign insurance undertakings in the legal form of a mutual (or in a similar form) establishing a branch in Austria, Art 61d contains certain provisions about registration in the Austrian company register. Art 61d(7) provides that the liquidation of the Austrian branch of a foreign mutual must follow host state principles, i.e. the principles for the liquidation of a domestic mutual insurance association (in essence Art 57).

Another example can be found in Germany. In **Germany**, the legal framework explicitly refers to operations across borders for insurance companies, including mutuals. According to VAG Articles 13 a to c, it is possible for German mutuals to set up branches in other EU Member States or to transact insurance business by way of services. The VAG Articles 13 a to c are based on standards set by the EU Insurance Directives. Articles 110 a to d of the VAG deal with the reverse case, i.e. business operations of an insurance company domiciled in another EU or EEA Member State via a branch or by way of services in Germany. These rules are based on Community law as well. For instance, Gothaer is one of the leading insurers of wind generators. It operates by way of services or via foreign branches. The same legal regulations apply to mutual insurance societies as to insurance stock companies. In general, there is no indication that companies with a mutual insurance company legal form have a disadvantage in operating across borders compared to their joint stock peers.

The box below provides some examples of cross border operations of this kind.

There are a number of **German** insurance mutuals that do operate cross-borders. This is mostly done through subsidiaries or local branches of which the mutual insurance association is (partly) the owner. To mention a few examples:

- In 2010, German Gothaer Group (Gothaer Finanzholding AG) acquired a majority stake in Polskie Towarzystwo Ubezpieczeń S.A. (PTU)¹. Gothaer's subsidiaries are also active in cross-border co-insurance and reinsurance.
- HUK-Coburg a. G. (insurance mutual) as well as HUK Coburg Allgemeine AG (p&c insurance joint-stock company) manages in Germany claims files while acts as correspondent for foreign insurance companies. The assistance group companies HUK-Coburg Assistance GmbH and Private Healthcare Assistance GmbH organise in Germany the processing of health insurance claims and assistance services abroad (to some extent with the assistance of foreign correspondents).
- WWK Lebensversicherung auf Gegenseitigkeit (life insurance mutual) has a majority shareholding in Luxemburg, namely, WWK Investment².
- A number of mutual (and non-mutual) insurance groups organised themselves into Eurapco³. Eurapco serves as the preferred platform for knowledge exchange, aiming at being the number one source of practical information for the Partners in order to enable them to leverage pan-European business. The following companies are member of Eurapco: Achmea (The Netherlands), Caser (Spain), Covéa (France), Gothaer (Germany), LF (Sweden), Swiss Mobiliar (Switzerland) and Tapiola (Finland).⁴

In **Italy**, Reale Mutua (Società di mutua assicurazione (mutual insurance companies)) as a group controls a number of subsidiaries in Spain. In Spain, Reale Mutua has been operating since 1988. Since that date, it has grown steadily and has acquired several insurance companies. Today, Reale Mutua owns, indirectly, a 100 % participation in Reale Seguros (RS) Generales SA, active in property & casualty insurance, and in Reale Vida SA, a life insurer. The two companies operate through a network of agents and intermediaries. In 2010, RS had a premium income of more than 765 Million Euro. Thanks to the success of the bancassurance distribution channel in Spain, Reale Mutua, through Reale Seguros, has acquired 50 % of UNNIM PROTECCIO and CAI SEGUROS GENERALES, belonging to savings banks of the same name, has thus entered the banking distribution channel, and has seen growing market shares. At the moment, Reale Seguros is among the top ten companies of the Spanish insurance market for car and 'multi risks' insurance.⁵

With regard to the use of subsidiaries or branches, there are significant differences. The most important one is whether the clients of the subsidiary are also members of the mutual-type (insurance) organisation. This is the case for instance in the French/Portuguese Europamut subsidiary, but this is not the case when it concerns the clients of the subsidiaries of the Gothaer Finanzholding AG in other countries. These clients are not considered members of the mutual-type organisation on the top of the organisational structure. However, these differences stem from choices made by the board of directors and do not necessarily find their ground in legislation: in Germany for instance, there are examples of mutual-type organisations having foreign members and foreign delegates in the general meeting.

¹ <http://www.ptu.pl/1402/>

² <http://www.wwk-investment.lu/>

³ https://www.eurapco.com/eurapco_web_db/web/website-T.nsf/welcome_page.xsp

⁴ https://www.eurapco.com/eurapco_web_db/web/website-T.nsf/public_page.xsp?page=view_partners&Menu=3

⁵ AMICE (2011), Cross-border business and cooperation in the mutual and cooperative insurance sector.

7.2.3 Participation in a cross border group (horizontal grouping)

Concerning **participation in a cross border group**, mutual-type (insurance) organisations do touch upon legal barriers, as this is, in many countries, legally not foreseen, i.e. there are no grouping instruments available. The issue of forming grouping within a country has been described in Section 6.3. Although, the international dimension was not focused on explicitly, the possibility to form groupings across borders was mentioned in some examples. For instance in **Germany**, it is legally possible to form vertical groups; i.e. a mutual-type organisation can have a subsidiary in another country, which is not a mutual. This is possible in many countries as has been explained in the previous section. On the other hand, horizontal groups of mutual-type organisations with a cross-border dimension, is only possible via the **French** SGAM and UMG grouping instruments (see descriptions in Section 6.3). In other countries, the ownership structure of mutual-type organisations prevents them of forming these horizontal groupings. For instance, the **Swedish** country report states that there are principally no differences between mutual insurance companies and other types of insurance operators concerning working across borders, however due to the “policyholder ownership” principle a mutual can not be a subsidiary in a group. This principle on the one hand prevents mutuals from take-overs, but on the other hand, it limits them in forming groupings. In addition, the **Finnish** report indicates mutual-type organisations can not merge or regroup cross-border.

An alternative to form grouping is to use the **European Cooperative Society statute (SCE)**. The Statute for European Cooperative Society¹ is recently used by mutuals as well to facilitate their cross-border operations. One example is the establishment of the SCE Flandria² (Belgium and Poland), the other example is Fondo Salute³ (France and Italy) (see text box below).

The use of the SCE to facilitate cross-border operations involving mutual-type organisations

Case 1: Flandria

The Flandria group consists of three parts:

- SWP “Flandria”: The Association of Mutual Help „Flandria”, which was created in May 1995 in Inowroclaw. The Association is a social movement with members, and representing the interests of patients in relations with providers and public authorities. The main objectives of SWP „Flandria” are: increasing the availability to the good quality medical equipment, good quality medical services, and professional volunteers’ help to the children, sick people, elderly and disabled.⁴
- FWP “Flandria”: The Fundacja Wzajemnej Pomocy (Foundation of Mutual Help), which was founded in March 1997. The main goal of the Foundation is to strengthen awareness about the benefits of mutual help associations on regional, national and international level.⁵
- SCE “Flandria”: The European Cooperative SCE „Flandria”, which was initiated by SWP „Flandria”, FWP and their Belgian partners: Escapo, De Lindeboom and the Christian Mutuality. The first gen-

¹ See: Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE). Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.

² <http://www.flandria.pl/en/sce/>

³ <http://www.fondosalute.it/>

⁴ See: <http://www.flandria.pl/en/swp/>

⁵ See: <http://www.flandria.pl/en/fundacja/>

eral meeting as organised 30-11-2010. Real start of activities in the new structure was June 2011.¹ The aim of the SCE Flandria is to develop health shops and social pharmacies in the regions Kujawsko-Pomorski, Pomorski, Wielkopolski and in the other Polish regions.

SCE „Flandria” works closely with the branches of the mutual association SWP Flandria, including the volunteer movement. Financial benefits of the health shops and the social pharmacies will be reinvested in the social activities of the mutual help association “Flandria”. The management of both the Association (SWP Flandria) and the SCE is closely related.

The reason why the SCE was established was to strategically bring in Belgian expertise in the developing the cooperative movement and to strengthen the social dimension. The Belgian partners provide technical support and contribute to the management of the SCE. The choice for the SCE was necessary in order to maintain cooperative and non-for-profit principles in the cooperation between the Polish and Belgian partners.

According to the Statute, the aim of the SCE is to “manage and support the activities of the members of the SCE aimed at health protection for their mutual benefit, conduct business activities consisting in provision of health care services, conduct business activities consisting in sale or therapeutic products and medical materials in specialized outlets, run a rental of rehabilitation medical equipment, manage the property of the Cooperative, manage other movable and immovable property transferred to the Cooperative under separate contracts of hire, lease, usufruct and other contracts, construct or purchase buildings or premises for statutory activities, construct or purchase building or premises or rental or sale of the premises situated in the buildings, purchase other movable and immovable property for purposes connected with the activities of the Cooperative, educate in the sphere of health protection.”²

The SCE Flandria is, by Polish law, not allowed to provide health insurance as this is strictly the domain of the State and regional health funds. Mutual insurers (Towarzystwo ubezpieczeń wzajemnych (TUW), as well as other insurers, are not active in health insurance. The core business of the Flandria SCE (and the group as such) is to provide good quality products and services in shops and rental of-fices; establish information centres about medical services and reimbursement possibilities and reinvest profit made in mutual help and volunteers’ movement. The Association/SCE currently has approximately 16,000 members which receive a discount in the connected shops and pharmacies.

If the possibility existed to use a statute for European mutual societies, the Flandria partners would probably have used this statute instead of the SCE.

Case 2: Fondo Salute³

Fondo salute is a European Cooperative Society that provides and manages complementary health funds. It has been established by the French Harmonie Mutuelles⁴ and the Italian Cesare Pozzo⁵ in

¹ See: <http://www.flandria.pl/en/sce/>

² The Statute of the SCE “Flandria”, Consolidated text of 30 September 2011, § 2.

³ www.fondosalute.it/

⁴ <http://www.harmonie-mutuelles.fr/index.html>

⁵ <http://mutuacesarepozzo.org/>

⁶ Decreto Legislativo 30 dicembre 1992, n. 502, “Riordino della disciplina in materia sanitaria, a norma dell’articolo 1 della legge 23 ottobre 1992, n. 421”: <http://www.handylex.org/stato/d301292.shtml>

⁷ Decreto Legislativo 4 dicembre 1997, n. 460, “Riordino della disciplina tributaria degli enti non commerciali e delle organizzazioni non lucrative di utilità sociale”: <http://www.parlamento.it/parlam/leggi/deleghe/97460dl.htm>

⁸ Official Journal L 199, 31/07/1985, Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG)

2010. Harmonie Mutuelle is the First mutual group in France, major actor throughout the non-profit health system, managing a network of more than 1,000 care facilities and services and providing complementary health insurance benefits, as well as disability, Long Term Care more than 4.5 million members. Cesare Pozzo is an Italian mutual benefit society serving over 300,000 people with health care provision.

To understand why Fondo Salute was established, it is necessary to understand the situation of Italian mutual benefit societies. Law 502 of 1992 (on complementary health funds)⁶ and Law 460 of 1997 (not-for-profit)⁷ have given mutual benefit societies competences especially for complementary health care and social assistance (so-called Fondi Sanitari Integrativi). In Italy, mutual benefit societies (società di mutuo soccorso) can not provide insurance and also can manage collective company health funds. These complementary health care funds complement the statutory health care system and people can use these funds to avoid waiting list and to cover out-of-pocket payments.

Due to this change in legislation, insurance companies set up mutual benefit societies in order to manage the complementary health funds. The mutual benefit society Cesare Pozzo, wanted to operate the other way around in order to strengthen the mutual sector. Hence, it was searching for a partner, which could provide the opportunity to operate on the complementary health insurance market.

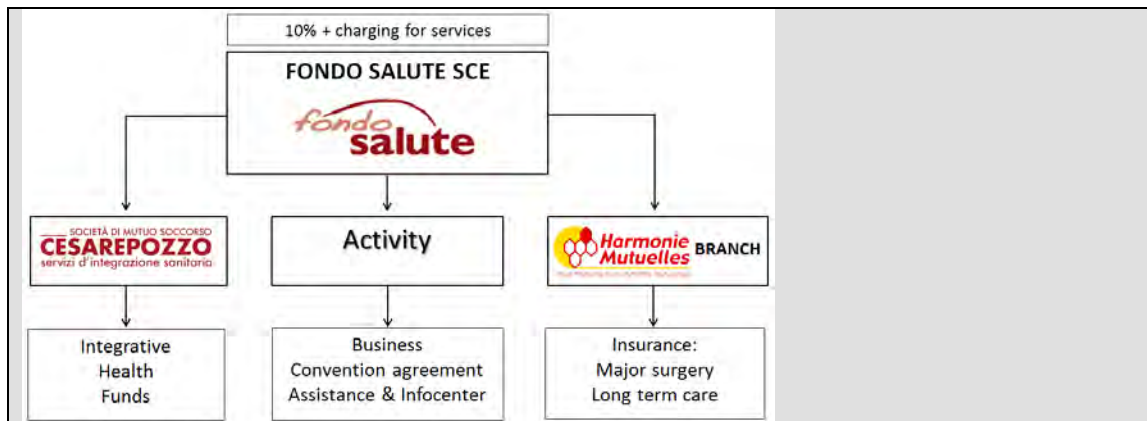
The French Union Harmonie Mutuelles, already had the ambition to operate across the frontiers for the reason to strengthen the mutual, not for profit, way of providing insurance.

The reason why the SCE was chosen to facilitate the cooperation between Cesare Pozzo and Harmonie Mutuelles was that there was no other possibility which remains close to the mutualistic values. As no statute for European Mutuals exists and the European Economic Interest Grouping⁸ appeared not to be a sustainable solution, the remaining option of the SCE was embraced to formalise the cooperation. The two mutuals each contributed one million Euro to launch the operation.

The Fondo Salute is basically a 'vehicle' for the operations of Cesare Pozzo and Harmonie Mutuelles. Via Fondo Salute, insurance policies are sold (Branch of Harmonie Mutuelles in Italy) and the management of complementary health funds are agreed upon (Cesare Pozzo). Fondo Salute therefore has three tasks:

- 1) sell products, also sell the management of collective funds to companies. The employees become individual members of Cesare Pozzo.
- 2) Develop partnerships and a network of health care providers to improve the services offered by Cesare Pozzo
- 3) Providing assistance for individual members of Cesare Pozzo and Harmonie Mutuelles.

Of each contract signed, Fondo Salute will be provided a percentage to conduct the tasks described here above. Here below the organisation model is presented.



At the end of the 2010, Fondo Salute hired their first sales representatives and the following year signed on with several companies to offer health fund to their clients. In 2012 there are eleven sales staff, developing a network with health professionals and helping their members with their appointments with those referenced health professionals. Fondo Salute intends to develop the insurance business and acquire a position in domestic tenders.

Although Fondo Salute is the agency selling the products, clients become members of Cesare Pozzo (management of fund) and Harmonie Mutuelles (insurance). These members have the same rights as other members of both mutuels. Until now, no insurance policies have been sold because Harmonie Mutuelles will start its products and operations by the end of 2012. When there are Italian members, the same principles apply as to the French members. Italy will be considered one additional region, which has its delegated in the General Assembly of Harmonie Mutuelles.

The structure of the cooperation by means of Fondo Salute can be applied in other countries as well. It can be considered as a "business structure" to bring together two operations which, in many countries, different types of mutuels carry out: insurance and assistance. In the future Fondo Salute will investigate additional border crossing initiatives.

In both cases, the SCE is used to establish cooperation between different types of organisations in two countries. Flandria involves amongst others a Belgian mutual benefit society and a Polish association. The input from the Belgian mutual up to now is supporting the development of the organisation and providing specific expertise. Fondo Salute on the other hand is used to combine two different operations, i.e. selling management of collective complementary health funds (Cesare Pozzo) and selling insurance policies (Harmonie Mutuelles). It is used as a vehicle to combine both services, to build a network of health care providers and to provide assistance to members of the two different mutuels.

7.3 Concluding remarks

The issue of cross-border operations of mutuels is a multi-facet one and different perspectives blur the debate. In general, there are two perspectives: one from the side of smaller mutuels and one from the side of larger mutuels. For smaller mutuels, the issue of operating across borders is not considered important: either they have a local focus, or they already work across borders. For larger mutuels, the issue of operating across borders is a more important one as they are faced with consolidation and creating economies of scale.

However, as can be seen, (larger) mutual-type organisations can operate across borders and can have members in other countries. The real legal barrier for mutual-type organisations to operate across border, and where the mutuals face a disadvantage compared to their competitors, is the fact that mutual-type organisations have difficulties in the forming of groupings of mutuals. Firstly, it is not possible to create vertical groupings of mutual-type organisations. As creating a vertical grouping of mutuals has as a consequence that one mutual will have control over the other, the latter will no longer be owned and controlled by its members. Consequently, it no longer is a mutual-type organisation. Hence, solving this problem, i.e. allowing vertical groupings, means applying a less strict definition of being mutual. Secondly, it is not always clear whether horizontal groupings are possible and how the Supervising Authorities assess these groupings. Here, a similar argument can be applied (Solvency II calls for one dominant partner in a grouping), towards the question who finally controls the cooperating mutual-type organisations: either the members or the other mutual. Related to diminished possibilities to form groupings, mutual-type organisation can have tax and solvency disadvantages compared to their joint stock peers.

For mutual-type insurance organisations, there can be restrictions given the freedom to provide services. Although the home countries prudential rules apply, the insurance undertaking has to inform the competent authority in the host country (for instance when the undertaking would like to establish a branch). The competent authority has authority to refuse the branch to be established.¹ This can be disadvantageous for mutual-type organisations when the particular form is not recognised in the host country. The study, however, did not encounter any examples of this barrier to occur. As mentioned, there are examples where mutual-type organisations established branches in countries that do not recognise mutual-type insurance organisations (see the example of Vereinigte Hagel VVaG in Lithuania).

Concerning mutual-type organisations not regulated by the European insurance directives, either due to size (not benefitting from a single authorisation), or due to providing non-insurance services, the situation is different. Concerning the smaller insurance undertakings, they need to receive authorisation from the host countries competent authority as well, which could be refused due to a lack of familiarity with the specific mutual-type organisations' form. In addition, countries apply different regimes to smaller insurance undertakings, creating difficulties complying with two different regimes in two countries. Concerning mutual-type organisations operating non-insurance business, the situation becomes legally complex for the same reason as they are facing different national activity-related legislations. The example of the use of the SCE in Poland shows that it was not possible to use a mutual-type organisation in Poland to offer the services which are allowed in Belgium. In Poland, the mutual-type form is restricted to offering insurance. Hence, despite the freedom of services and freedom of establishment, it is not evident that mutual-type organisations can benefit from this. The legal barriers might – in theory – not be insurmountable in many instances, the lack of transparency of the application of the two fundamental rights causes (practical) obstacles for mutual-type organisations to go in the direction of expanding across frontiers.

¹ See for instance: Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), article 10.

What would help is to provide legal possibilities to form (cross-border) groupings either via grouping instruments such as the French SGAM (Société de groupe d'assurance mutuelle) model, or via establishing financial ties through the exchange of guarantee capital (see Nordic countries). However, it should be emphasised that increasing possibilities to group for mutual-type organisations, means at the same time, allowing other stakeholders (e.g. other mutual-type organisations) to practice control over (a part of) the mutual-type organisation. Consequently, forming groupings includes necessarily a decrease of members' control and hence a decrease of the strict mutual principles.

Concerning the legal need for a statute for European mutuals, the examples of mutual-type organisations having members in other countries, do not provide an argument in favour of the Statute. For instance, the German mutual Vereinigte Hagel VVaG is free to operate throughout Europe and to have members in countries other than Germany. These members have the same rights and obligations. Left aside the countries where mutual-type organisations are prohibited, not the legal status, but activity related legislation poses legal difficulties for mutual-type organisations to expand their business to other countries. These restrictions concern mostly restrictions in the home country (for instance in the case of the Belgian société mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company).

To conclude, even more than legal barriers, mutual-type organisations are more restricted to work across borders by the lack of transparency concerning how mutual-type organisations operate; which legal frameworks are applicable and how national Supervisory Authorities regard domestic mutual-type organisations and foreign ones. Working towards a more uniform, modernised and harmonised legal framework would be beneficial for mutual-type organisations willing to offer their services in other countries.

8 Conclusions and recommendations

8.1 Conclusions

The mutualisation of risks, i.e. the spreading the risk over a homogeneous group of persons is the most elementary and simple form of insurance. Although and even more because it has a long history, it has proven to be an effective way of insuring people and hence has added in the past and continues to add value to the economy and the society at large.

Most mutual-type organisations are in fact a special kind of association (1), cooperative (2) or company (3). Only in a few countries, a special regime for mutual-type organisations (4) is established. The underlying legal framework can determine the way mutual-type organisations are treated in terms of regulations concerning creation, corporate governance, tax issues. However, even more important, it seems, are the rules that are imposed on mutual-type organisations concerning the activity they conduct. In many countries, the mutual-type organisation is explicitly described and regulated in the insurance law. Whether in the insurance law the mutual-type organisations are based on associations, cooperatives or companies' legislation, is of minor importance, but not irrelevant. When mutual-type organisations are active in social protection and when they provide social services, often the legal framework is either based on a specific legal framework, or it is based on the legal framework of associations. An underlying legal framework of cooperative or company type is more often used for insurance companies. In offering (complementary) health insurance, mutual-type organisations from all four categories can be found. Both in terms of legal status, legal frameworks, management and corporate governance matters, a large diversity exists, between countries and even within countries concerning different mutual-type organisations.

In many countries, the mutual-type organisations' activities are restricted to insurance in general or certain lines of insurance. In other countries, or even in the same country, other mutual-type organisations are excluded from underwriting insurance and need to restrict themselves to other services such as offering assistance, health care, social services, or small loans. There are also countries in which mutuals as such are not legally foreseen at all regardless of the market they wish to operate in (this is for instance the case in Estonia, Lithuania, Czech Republic). The market share of the mutual insurers remains at an equal level around 15.8% (12.8% in life; 20.5% in non-life). In health care assistance and social services, mutuals are estimated to provide services to approximately 230 million European citizens.

As can be concluded, mutual-type organisations are facing a number of obstacles, hampering them in their development and in their efforts to add value to the European economy and to society at large.

Complying with the capital requirements for an insurance licence is one of the major challenges when establishing a new insurance mutual. The capital can only be obtained from the (founding) members; therefore, either the number of members or the initial capital each one provides must be large enough to raise the necessary 2.5 million Euro (non-life)

or 3.7 million Euro (life) (or, under current legislation, the reduced amount – 25 % less) (according to European life and non-life Directives). There are however, capital instruments and other possibilities for mutual-type organisations to obtain the required funds:

- In many countries, non-member investors and **external capital** in the form of **subordinated loans or guarantee capital** (i.e. not share capital) are legally allowed for mutual-type organizations.
- **De minimis regimes** exist in a large number of the countries. In many countries, (capital) requirements for non-Directive insurers are set at a lower level than for insurers subject to the insurance Directives. These non-Directive insurers can however not benefit from the single market insurance passport and in order to operate abroad, they need to register themselves in the country. In addition, there is some movement to increase the regulatory pressure on smaller insurers (including mutual-type organisations) to align more with the Solvency II Directive requirements.
- In the United Kingdom (and other countries, such as Australia), it is legally possible to establish so-called **discretionary mutuals**. A discretionary mutual is a mutual which does not engage in or carry on insurance or reinsurance business; where a member who suffers a loss resulting from a “qualifying” risk or contingency (i.e. one previously specified by the mutual as one which it may indemnify members against), can apply for a grant of assistance to meet all or part of the costs associated with such loss. The member, however, has no contractual or other form of legal or equitable right to receive a compensatory payment. The mutual has absolute discretion whether to indemnify a member, on the mutual principle, who suffers a loss resulting from a “qualifying” risk or contingency.

Allowing external capital (in any form) has consequences with regard to the mutualistic values. Not allowing external capital can serve as a protection mechanism to maintain mutuality. In addition to the obstacles concerning capital requirements, the **lack of expertise and information** on how to establish a mutual, poses a huge obstacle. In many countries, the legal framework applying to mutuals is old-fashioned, very concise, very restrictive or unclear with regard to establishing new mutual-type organisations.

For mutuals not involved in insurance, but offering other services such as health care assistance, social services etc., the situation is different. As they do not face the activity-related barrier of having to provide a substantial initial fund, these mutual-type organisations can be established more easily. In fact, the barriers for establishing a mutual-type organisation relate more often to the absence of rules, regulations and information.

It must be emphasised that there are six countries (**Estonia, Lithuania, Czech Republic, Slovakia, Liechtenstein and Iceland**) where, due to the absence of a legal framework, it is impossible to create a mutual-type organisation. In addition, mutual-type organisations in other countries are restricted to certain activities (for instance, in the field of insurance, to life or non-life insurance).

A **merging** of mutual-type organisations is legally not considered problematic in many countries. Of course, decisions of this kind need to be supported by the members, but in general, there are no legal obstacles preventing mutuals to merge with another mutual. With regard **to converting** a mutual to a non-mutual form, this is in most countries effected through a liquidation/winding up and a portfolio transfer to a newly established legal entity. Rules concerning the protection of assets usually apply.

From a purist point of view, **grouping mutuals** (in vertical structures) is often considered diminishing the mutual values and principles. As the mutual undertaking is owned by the members, accepting another party's dominant influence, also related to financial issues, would be detrimental to the members' influence and ownership rights. In reality however, such a purist interpretation of mutualism can not be found in many countries in Europe. Predominantly in the Nordic countries, de-facto groupings are possible via the use of guarantee capital; however, the most advanced grouping instruments are developed in France.

Concerning the effect of the **Solvency II Directive** on the corporate governance of mutual-type organisations, it should be closely monitored how the rules are applied to mutual-type organisations. There are a number of issues, which should receive further attention. Firstly, the required 'fitness' of the persons managing effectively the undertaking. This makes it difficult to have (only) members of the mutual in its board if the membership of the mutual is very restricted, e.g. to a professional group. Instead of examining the qualifications, knowledge and experience of individual board members, it might be essential rather to examine the competence of the board as a whole. Secondly, the principle of proportionality: it is not entirely clear how this principle should be applied and whether smaller insurance undertakings (which are often mutual-type organisations) are affected by this principle. The proportionality principle is essential in all three "pillars" of Solvency II, namely solvency requirements, governance, and disclosure. Finally, it is not entirely clear how group structures within Solvency II can apply to mutual-type insurers; or to put it the other way around, how mutual-type insurers can comply with the Solvency II group structure conditions.

In general, also for mutuals active in insurance markets, **operating across borders** remains in many countries not a much-debated issue. Typically, mutual-type organisations are small, work in the vicinity of their members, have a local focus and, all in all, their strategy is less driven by expanding their business (geographically). There are different ways to operate across borders for mutual-type (insurance) organisations. Not every possibility exists in every country. Firstly, a mutual-type organisation can have members in another country, who have the same or similar rights as the members in the home country. Secondly, a mutual can set up a subsidiary in a host country in the form of a joint-stock company. The policyholders of the subsidiary can be either members of the mutual-type organisation in the country of origin, can obtain member-like status or benefits, or can be only 'clients' of the subsidiary. Thirdly, a mutual-type organisation can participate in a cross-border grouping of organisations. By stating that it is legally possible to operate across borders, it is not being said that it is easy. The most dominant factor that hampers the cross border operations is a lack of clarity concerning, which rules apply, how should the legal entity be registered, who supervises the activity.

It can be concluded that mutual-type organisations actually can operate across borders and can have members in other countries. Nevertheless, in reality, the real legal barriers concern firstly, countries where mutual-type organisations are not foreseen – and incoming ones are not accepted – and secondly, the barriers towards forming groupings of mutuals. It is not possible to create **vertical groupings of mutuals** (with a mutual being owned by another mutual), since an intrinsic element of being a mutual is to be owned by its members. Choosing the other way (i.e. a mutual owning a plc-type subsidiary) means applying a

less strict definition of being mutual. It is not always clear whether **horizontal groupings** are possible and how the Supervising Authorities assess these groupings. Related to this, mutual-type organisations can have tax and solvency disadvantages compared to their plc-type peers, as they can not join in a group. What would help would be to provide legal possibilities to form (cross-border) groupings either via grouping instruments such as the French SGAM (Société de groupe d'assurance mutuelle) model, or via establishing financial ties through the exchange of guarantee capital (see Nordic countries). Concerning groupings, it should be emphasised that creating new concepts of forming groups among mutual-type organisations, may mean at the same time allowing other stakeholders (other mutual-type organisations or others) to exercise control over (a part of) the mutual-type organisation. Hence, forming groupings includes almost necessarily a decrease of members' control and hence a decrease of the strict mutual principles.

Despite the freedom of services and freedom of establishment, it is not evident that mutual-type organisations can really benefit from these freedoms. The legal barriers may – at least in theory – not be insurmountable in many instances, however, the lack of transparency on the application of the two fundamental rights causes (practical) obstacles for mutual-type organisations when planning to expand across frontiers. In other words, even more than by legal barriers, mutual-type organisations are more restricted in their cross-border ambitions by the lack of transparency concerning how mutual-type organisations operate: which legal frameworks are applicable and how national Supervisory Authorities regard domestic and incoming foreign mutual-type organisations. Working towards a more uniform, modernised and harmonised legal framework would be beneficial for mutual-type organisations willing to offer their services in other countries.

8.2 Recommendations

The study examined the legal frameworks of mutual-type organisations in thirty European countries. The mutual landscape is a very diverse one. There is no clear all-encompassing legal concept of what defines a mutual-type organisation. There are differences concerning for instance traditions, history, (political) choices, markets, businesses, governance models, and rules. Despite, or even more because of this diversity, the mutual-type organisations make a considerable contribution to the European economy and society at large and deserve a strong position in European (insurance) markets.

Some of these legal barriers have their roots in the mutual principles themselves. Firstly, this concerns the barrier that mutual-type organisations are not allowed in all countries. Secondly, this concerns the capital requirements for starting-up a mutual-type organisation. Thirdly, this concerns the lack of possibilities (or very limited possibilities) to form groups. In addition, pertaining to all three barriers and beyond, there is a general lack of understanding and knowledge about mutual-type organisations in Europe. This also affects the possibilities for mutual-type organisations to operate across borders. To overcome the barriers, the proposed options call for action of stakeholders at different levels. Three levels can be identified:

- **Sector level:** i.e. recommendations for mutual-type organisations;
- **National level:** i.e. recommendations for national stakeholders, policymakers and supervisors;
- **European level:** i.e. recommendations for the European organisations (e.g. European Commission, European Parliament, European Supervisory Authorities).

Here below proposals for action will be presented by which these barriers could be removed.

A) To enable mutual-type organisations to establish in the countries where currently no legal possibilities are available, the values and benefits for having a diversified market inhabited by a variety of legal entities should be better communicated to the responsible governmental organisations and Supervisory Authorities. As mutual-type organisations are risk-averse, have a long-term investment strategy; operate in the vicinity of the members, for particular (niche) markets they provide the answer joint-stock companies can not provide. Despite the rules on the Freedom of Services and the Freedom of Establishment, mutual-type organisations have difficulties to operate in these countries respecting their mutualistic principles (they can set of a subsidiary joint-stock company or alike, to do business of course). Efforts to establish legal possibilities for mutual-type organisations in such countries could be boosted by giving attention to the following issues:

- There should be a **clearer idea about the specific characteristics of the mutual-type legal entity** at European level, so that responsible policymakers and supervisors at national level are not confronted with a variety of different national principles. This legal characterisation should be independent from the activity it potentially is allowed (by national legislation) to conduct.
- **Knowledge exchange between supervisors, the mutual sector, and responsible policymakers could enhance the understanding** concerning mutual-type organisations in countries where they are not legally allowed. This knowledge exchange could be organised at European level, or bilaterally.
- To stimulate recognition of the legal entity of mutual-type organisations at European level, the ideas concerning the establishment of a **statute for European mutuals**, as has been discussed for over more than 30 years, could use a new impulse.

Removing the barrier that not in every country mutual-type organisations are legally foreseen, involves in the first place the national governmental organisations and supervisors in the countries concerned. However, also the (European) mutual sector could help to better clarify what mutual-type organisations are, what their general characteristics are and how they add value to the economy and to society; this could provide important arguments towards the permission of mutual-type organisations. Finally, at European level, the knowledge exchange between supervisory authorities concerning mutual-type organisations could be improved. Formal recognition of mutuals as an organisational form at European level could be a way to stimulate this knowledge exchange. Here, the European Commission could play a role.

B) In order to **kick-start mutual-type organisations** a number of solutions have been identified, which can possibly receive attention:

- Establish a **fund to kick-start mutual-type organisations**. This can be in the form of a subordinate loan, or other types of guarantee capital. If mutual-type organisations truly believe that mutualism adds value to society, and truly believe that the capital is safe in the hand of member-owners, it should be possible to jointly establish a fund to provide the required initial capital. Such subordinate loans should be provided under strict conditions concerning interest and repayment. As a side effect, this mutual commitment to such a 'kick-start fund' could enhance the development of a common (European) identity of mutual-type organisations.
- National legal frameworks can be **modernised and amended to make clearer what the rules are for establishing mutual-type organisations**.
- Allow a **transition period for starting mutual-type organisations**. As mutual-type organisations depend for a larger part solely on the members' contributions, legal possibilities should be created that allow new mutual-type organisations to collect the initial (foundation) fund in the period where it is already providing the service. This involves at national level, changing, and modernising the legislation affecting mutual-type organisations.
- Establish a **knowledge centre specialised in the legal, managerial, and prudential aspects of mutual-type organisations** that could support and assist groups of natural and legal persons to establish a new mutual-type organisation serving their needs. In addition, it could serve as a back-office for smaller mutual-type organisations handling the administrative issues.

Levelling the barriers for starting up new mutual-type organisations, action can be taken at different levels. Firstly, the sector itself could establish the 'kick-start fund' at national or European level. Secondly, national supervisory authorities and governmental organisations could modernise and amend legislation to make clearer rules for establishing a mutual and allowing a transition period for mutual-type organisations to obtain the required capital. Finally, at national, but also at European level, a knowledge centre could be established to enhance the understanding of mutual-type organisations at European level. The role of the European Commission would be limited concerning these actions.

C) In order to allow the **grouping of mutual-type organisations**, both within a country and across-borders, a number of options, which can possibly receive attention, have been identified:

- Further thoughts should be given to the establishment of a **European-level grouping instrument** respecting the mutual-type organisation characteristics. A practice to examine closely in this respect is the French SGAM (Société de groupe d'assurance mutuelle) model. Another option would be to **enlarge the scope of the Statute for European Cooperatives**, so that mutual-type organisations can choose this possibility to form a grouping based on mutualistic principles. For instance, it should be possible to change the cooperative ownership structure into one based on members, instead of based on contributed capital.
- Through the **exchange of guarantee capital** (e.g. as a kind of subordinated loan), mutual-type organisations can establish financial ties. Such financial ties include mutual governance and voting rights as well. This possibility could receive more attention.
- The **Solvency II Directive should make room to allow horizontal groupings of mutual-type organisations**, i.e. groupings where one organisation does not have a

dominant position over the other organisation. By not only tolerating but allowing this, including providing applicable implementation, groupings of mutual-type organisations can have diversification and other advantages similar to those available to their plc-type competitors (i.e. group tax instead of individual company tax). Related to Solvency II, also it should be closely monitored whether both the 'fit and proper' principle and the principle of proportionality respect mutual-type organisations and do not in practice disadvantage mutual-type organisations compared to their joint-stock competitors.

- **Better understanding at supervisory level of the mutual-type organisational forms** makes establishing (financial) relationships between mutual-type organisations across border easier. This could be stimulated by:
 - Better accessible information concerning mutual-type legal entities (knowledge centre, data base)
 - Better recognition of mutual-type organisations at European level.

Removing the barrier that mutual-type organisations have difficulties to group involves actions at all levels. The mutual-type organisations and the sector as such, should discuss whether external ownership or governance over (a part of) the mutual-type organisation and its assets is consistent with the mutual principles. This debate concerns the basic characteristics of being a mutual-type organisation. At national level, legislation can be amended to allow groupings and the exchange of guarantee capital. In addition, better understanding of the supervisory authorities concerning mutual-type organisations operating in other countries might help to ease the process of forming cross-border groupings. At European level, finally, several actions can be taken. Firstly, the Solvency II Directive can make clearer how to deal with horizontal groupings. Secondly, European level stakeholders could facilitate the knowledge base concerning mutuals and the knowledge exchange between supervisory authorities and national governmental organisations. Thirdly, European level stakeholders could further discuss and investigate the possibility to allow a grouping instrument for mutual-type organisations at European level. Finally, European level stakeholders should monitor closely the effects of the Directive on mutual-type organisations' governance structures and if they are disadvantaged, action should be taken.

To conclude, a highly topical issue is the debate concerning the **Statute for European Mutuals**. Although the study has not found conclusive evidence that a proposed Statute would overcome the principal barriers identified, the study does recognise that it could help mutual-type organisations to gain recognition, to increase the understanding concerning mutual-type organisations in the countries and to better respect mutual-type organisations interests at European level. If in the future it is desired to allow mutual-type organisations their own statute at a European level, although further feasibility studies are required, based on the study findings it is recommended to respect the following basic guidelines:

- The Statute should be used on a voluntary basis.
- The markets in which mutual-type organisations based on the Statute at European level are allowed to operate, should not be described in the Statute itself, but should be subject to activity-related European/national regulations. It should be further analysed what is the legal ground and the reasons for not allowing certain company types in particular classes of insurance business (life/non-life). In addition, it should be analysed – prospectively - whether mutual-type organisations based on the Statute at European level will be allowed in all insurance classes.

- The Statute should allow only a minimum of statutory freedom to align mutual-type organisations to national regimes. It should be clear for everyone, what are the characteristics of a mutual-type organisation based upon a European-level statute. Differences can be based upon the activity-related legislation and requirements.
- The Statute should be accessible to small groups of natural and legal persons, which have limited capital resources. Hence, both the minimum number of members as the minimum initial (foundation) fund should be set at reasonable levels.
- The Statute should allow non-member investments based on guarantee capital and interest instead of share-capital.
- The Statute should stipulate that the members are the owners of the mutual-type organisation. This should be reflected in the competences of the general meeting (whatever corporate model is chosen), the voting rights, and the way assets are distributed in the case of winding-up.

Annex report

Annex A: Overview table legal issues

The following table indicates for each form of mutual-type organisation the following:

- Legal types
- Definitions of mutuals
- Methods of creation (required capital or assets)
- Corporate governance
- rights of members
- voting and representation of members in general meetings
- types of shares if any
- reserves
- possibility for non members investors
- transparency and publicity requirements / related auditing issues
- protection of assets

Furthermore, it mentioned whether the form is included in the analyses and the markets, in which this type is involved.

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Austria	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	An insurance mutual ("Versicherungsverein auf Gegenseitigkeit") is defined as an association that provides insurance to its members under the principle of reciprocity ¹ . Mutual insurance associations are allowed to be active in all insurance classes, both life and non-life and reinsurance (hereafter called 'ordinary mutual insurance association' for purposes of this study)	Art 34 (1): Upon the establishment of an insurance mutual, a foundation fund shall be created, which is earmarked for the defrayal of the cost of the establishment and the initial set-up of the association, the organisation cost as well as the other expenses incurred by commencing the business activities. Unless the articles of association determine otherwise, the fund may also be used to cover operating losses. (2) The articles of association shall contain provisions concerning the repayment of the foundation fund and, if it is not repaid, provisions concerning its use. (3) The FMA may relieve a mutual association of creating a foundation fund if the defrayal of the cost of the establishment and the initial set-up of the association, the organisation cost as well as the other expenses incurred by taking up the business activities are secured in another way. ²	The Versicherungsaufsichtsgesetz/Insurance Supervision Act contains the legislation and regulations for mutual insurance associations. The Act specifically refers to small insurance associations ³ . Ordinary mutual insurance associations: The association must have a management board, a supervisory board and a general meeting of members or a council of members' representatives as supreme body (Art 43). Small mutual associations must have a management board and a general meeting of members or a council of members' representatives as supreme body (Article 66). For them, having a supervisory board is facultative (Art 70(1)).	The membership of an insurance mutual association is dependent on the existence of an insurance contract. - However, insurance mutuals may also conclude insurance contracts without establishing membership, provided that is is specifically permitted in the articles of association (Art 32). - Small mutual insurance associations may not conclude insurance contracts with non-members The members shall exercise their rights in matters of the association in the supreme body unless the law stipulates otherwise (art 49,1)	Voting (applicable to all insurance mutuals, ordinary and small): Article 50 (3). The decisions of the supreme body require a majority of the votes cast (simple majority of votes) unless the law or the articles of association stipulate a larger majority. For elections, the articles of association may stipulate otherwise. (4) If the supreme body is a general meeting of members, the voting right may be exercised by a proxy. The power of attorney must be in writing; the power of attorney shall remain in the association's custody. (5) A member of the supreme body who is to be discharged or released from an obligation by resolution can exercise the voting right neither for himself nor for another member. The same shall apply when a resolution is passed on whether the association shall assert a claim on the member. Otherwise, the conditions and the form of exercising the voting right shall depend on the articles of association.	Insurance mutuals can not issue shares. (Ordinary) mutual insurance associations may however – with the supreme body's consent – raise participation capital and supplementary capital ⁴ and issue securities on it in accordance with Art 73c(7). Participation capital (Partizipationsskapital) (Art 73c(1)) has equity features ⁵ while supplementary capital (Ergänzungsskapital) (Art 73c(2)) is a form of subordinated loan/bond.	Any annual surplus shall be distributed to the members unless ■ it is allocated to the contingency reserve or other reserves stipulated in the articles of association or ■ it is used for the repayment of the foundation fund (initial fund) or ■ it is used for the payment of remunerations according to the articles of association or ■ it is carried forward to the next financial year. The articles of association shall determine the principles of distribution of the annual surplus and stipulate in particular whether the annual surplus is also to be distributed to members who withdrew during the financial year. A participation in the surplus of a financial year must not be denied for the sole reason that membership was discontinued after the end of the financial year.	Insurance mutuals (except small ones) may however – with the supreme body's consent – raise participation capital and supplementary capital ⁶ and issue securities on it in accordance with Art 73c(7). Participation capital (Partizipationsskapital) (Art 73c(1)) has equity features ⁷ while supplementary capital (Ergänzungsskapital) (Art 73c(2)) is a form of subordinated loan/bond.	Accounting, auditing and reporting rules for (ordinary) insurance mutuals follow in general the rules for all insurance undertakings. For small mutual insurance associations (unless their premiums have been above EUR 5 million for three years), Art 86 provides for considerably lower accounting and reporting requirements. ⁸	According to Article 57, in the case of dissolution, the initial (foundation) needs to be repaid first, when all other claims have been resolved. The remaining assets will, when the Statutes do not state otherwise, be transferred to the persons which were at the time of dissolution, member.	YES	Mutual insurers are allowed to be active in all insurance classes, both life and non-life.
	Kleine Versicherungsvereine auf Gegenseitigkeit (small mutual insurance association)	Small mutual insurance associations: according to Art. 62, a small mutual association is a mutual association which is limited in its operation with regard to territory, type of business and group of persons, specified in positions 8 and 9 of Annex A of the Versicherungsaufsichtsgesetz/Insurance Supervision Act except nuclear risks. The operation of a death benefits fund in connection with employment contracts or the professional activity of the members as well as an association which is exclusively engaged in the reinsurance of small mutual associations shall also be deemed a small mutual association. ¹ For further business restrictions for small mutual associations (which are exempted from some legal provisions) see below. The FMA (Financial Market Authority) ² shall decide whether a mutual association shall be considered a small mutual association.	Article 35. (1) The business activities may only be commenced after the foundation fund has been fully paid in cash. (2) The FMA shall make the issue of the licence for further insurance classes conditional on an appropriate increase in the foundation fund if it has not been repaid and the defrayal of the cost incurred by commencing the operation of these insurance classes can not be deemed secured in another way. (3) The foundation fund may only be repaid out of the annual surplus. The repayment made in one year must not be in excess of the amount which is allocated to the contingency reserve (Article 41) in the same year. (4) Those persons who have made the foundation fund available must not be granted a right to premature repayment. The articles of association may stipulate that and to what extent these persons shall be entitled to participate in the management of the association, or that they are entitled to an interest payment from the annual income as well as a share in the surplus	The management board shall manage the association on its own responsibility in the way the association requires, taking into consideration the interest of the members and employees as well as the public interest (Article 44).	The supervisory board members shall be elected by the supreme body		According to Art. 35(4), the articles of association may provide that the providers of a initial (foundation) fund may be entitled to an interest payment out of annual income or to a share in the annual surplus.		The insurance company must report to the FMA any change of the members of the executive board and the supervisory board of a domestic joint-stock company or mutual insurance association. ⁹		YES	The activities of small mutual associations are restricted to the lines of business specified in positions 8 and 9 of Annex A of the Insurance Supervision Act except nuclear risks.	

¹ FMA (Financial Market Authority) glossary at <http://www.fma.gv.at/en/footer/glossary.html>. See also Art. 26 which talks (in its unofficial translation) about "the principle of mutuality".

² There is no minimum amount set in the legislation.

³ Versicherungsaufsichtsgesetz/Insurance Supervision Act, §62 – 73

⁴ Versicherungsaufsichtsgesetz/Insurance Supervision Act Article 73c paras. 1 and 2

⁵ Participation capital is paid-up capital: 1. which is made available during the existence of an undertaking waiving the right of ordinary and extraordinary call-in; 2. which can be repaid by the insurance undertaking only by applying the relevant provisions for capital reduction of the stock corporation law; 3. the income from which is profit-linked, with the profit being the accounting income after having taken into account the net change in disclosed reserves; 4. which – like the share capital – participates in the loss up to the full extent, and 5. which is connected to the right to participation in the liquidation proceeds and may only be repaid after all other creditors' claims have been satisfied or secured.

⁶ Versicherungsaufsichtsgesetz/Insurance Supervision Act Article 73c paras. 1 and 2

⁷ Participation capital is paid-up capital: 1. which is made available during the existence of an undertaking waiving the right of ordinary and extraordinary call-in; 2. which can be repaid by the insurance undertaking only by applying the relevant provisions for capital reduction of the stock corporation law; 3. the income from which is profit-linked, with the profit being the accounting income after having taken into account the net change in disclosed reserves; 4. which – like the share capital – participates in the loss up to the full extent, and 5. which is connected to the right to participation in the liquidation proceeds and may only be repaid after all other creditors' claims have been satisfied or secured.

⁸ More detailed regulations are specified in a Regulation by the Ministry of Finance (RLVKV, FLG 749/1990, as amended)

⁹ http://crossborder.practicalallaw.com/7-501-31697q=*%&q=&qo=&qe=#a949726

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
			resulting from the financial statements. The conditions to obtain a license are the same for mutual insurers versus other insurers. There is no mentioning that the initial fund is 25% lower for mutuals.	(Art. 47(1) and 70(2)). The supervisory board shall supervise the management. It shall call convene the supreme body when the interest of the association requires it (Art 47). In Art 50(1) and (2), the convening, participation, attendance list, minutes, and information rights with regard to the meetings of the supreme body are regulated with broad references to the respective provisions of the Companies Act. For small mutual insurance associations, the parallel provisions are in Art. 69 with slightly different references to the Companies Act.									
Belgium	Association d'assurance mutuelle/onderlinge verzekeringsvereniging (Mutual insurance society)	The Law of July 9, 1975 on the control of insurance companies (9 juli 1975 Wet betreffende de controle der verzekeringsondernemingen / 9 juillet 1975 Loi relative au contrôle des entreprises d'assurances) does not contain a definition of mutual insurance societies. However, it does include their rules for establishment. Depending on their articles of association, they can be of the fixed premium or of the variable premium type. In addition to these 'regular' mutual insurance companies, there are Municipality funds (Gemeenschappelijke Kassen/ Caisses Communes), which are mutual insurers specific for worker's compensation cover (arbeidsongevallen/accident de travail) and pension insurance but they are considered to be mutual insurance companies for prudential supervisory purposes. De minimis regime for OVV/AAM The law regarding the supervision of insurance undertakings does not apply to mutual (or cooperative) insurers that limit their activity to one municipality or a group of adjacent municipalities.	Individuals or entities, exposed to a similar insurance risk, may freely decide to mutually insure themselves against this risk within an organisation which they have founded. This is not subject to any formality and they may write the articles freely. There is not a minimum number of members (natural or legal persons) needed for establishing a mutual insurance society. After establishing the mutual insurance society, it will have to apply for an insurance license. If they apply for approval by the supervisory authorities, they must comply with the "Law regarding the supervision of insurance undertakings" of 9 July, 1975 (Wet betreffende de controle der verzekeringsondernemingen, hereafter called the Controlewet). This law prescribes that the statutes must contain a number of mandatory provisions and must be published officially (gazetted). There is also a minimum capital requirement called "the minimum guarantee fund", which depends on the type of insurance envisaged. The law contains special provisions for mutual insurance societies regarding their establishment, finances, demutualization and mergers. According to this law, mutual insurance societies have the same obligations as joint-	In general, the bodies of the mutual society are 1) the general meeting, 2) the board of directors (raad van bestuur/conseil d'administration) and 3) Managing director. (Belgium has a monistic system, the managing director is appointed by the Board of Directors or the General meeting). They also have the right to share the excess receipts in case of liquidation. Or, in case of any losses, the obligation to take part in the loss. Generally, policyholders have special rights, as stipulated in the articles of association of mutual insurance societies. The possibility to organise a supplementary call (variable premiums) should be explicitly mentioned in the insurance con-	The Law is unclear on the issue whether mutual insurance societies can sell insurance policies to non-members. Also, it is unclear whether the Law allows non-member investors. Members generally have the right to participate in the management of their society, for example with a representation or presence in the management bodies. They also have the right to share the excess receipts in case of liquidation. Or, in case of any losses, the obligation to take part in the loss. Generally, policyholders have special rights, as stipulated in the articles of association of mutual insurance societies. The possibility to organise a supplementary call (variable premiums) should be explicitly mentioned in the insurance con-	Members are entitled to attend general meetings and vote, according to the principle: "one member, one vote". For some mutual insurance societies however, the number of votes that a member may cast may depend on the amount that the member has contributed if provided for in the statutes. However, the general meeting may not be composed of delegates and must always be directly attended by the members. Member-policyholders may add items to the agenda of a general meeting. For mutual insurance societies in general, there are no rules setting a quorum either for the Ordinary General Meeting or the Extraor-	Issuing of shares is possible, but has not been regulated. One Belgian mutual insurance society uses subordinated debts (<i>parts de cautionnement</i>) which are a kind of long term external loans. In addition, it is left to the statutes of the individual mutual insurance societies to either allow shares or not. The Law is not explicit about the use of external investors/sponsors for obtaining the initial capital.	Generally, reserves are set freely by mutual insurance societies, but should be in compliance with the articles of association. As far as recognised societies are concerned, the reserves must comply with the provisions in the Controlewet or Law regarding the supervision of insurance undertakings. This involves the formation and maintenance of a solvency margin - which must be free of all commitments - and the formation and maintenance of a technical reserve representative of the insurance commitments at any time. Free reserves are used as equity.	Generally, investment by non-members is possible, but not regulated. See above under issuance of shares.	For mutual insurance societies in general, the requirements regarding transparency and publicity are the same as for joint stock companies. Authorized mutual insurance societies are required to disclose their statutes, the composition of their bodies, their annual accounts, etc. This is not different from any other kind of insurance company (see article 10 of the Control Law, which refers to the general company	There is no procedural protection in the case of insolvency: The law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) applies to all authorized insurers, the insurance creditors have broad privileges regarding the assets. In case of a voluntary liquidation	YES	Life and non-life insurance

¹ Essentially, they may insure against fire, explosion, storm, other natural forces (notably illness and death of animals), landslide, hail, frost and theft: all these, however, only for property other than vehicles, aircraft, vessels and goods in transit. De facto these small mutual associations are mainly active in cattle insurance and fire insurance.

² Finanzmarktaufsicht: <http://www.fma.gv.at/en/legal-framework/legal-foundation/supervisory-laws.html>

Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
		stock insurers. The application should include amongst others the Articles and proof that the company has a minimum guarantee fund of 2.5 million Euro, for an insurer active in branches such as sickness and accident, fire, legal assistance, travel or other assistance and various pecuniary losses. For civil liability and life insurance the minimum guarantee fund is 3.7 million Euros. If it is a mutual insurance society, with variable contributions, this amount is reduced by 25%, i.e. 1,875,000 Euros and 2,775,000 Euros.		tract.	dinary General Meeting ¹ .				law). Mutual insurance societies fall under the Act on the Supervision of Insurers, which includes both general regulations that apply to all insurers and specific regulations for mutual insurers societies. There is, however no difference with other kinds of insurance companies regarding accounting requirements.	where the balance is positive, the (General Meeting of the) society may – after settlement of liabilities – freely decide on the use of the liquidation proceeds unless the statutes have different provisions. De minimis regime. The law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) does not apply to (insurance) societies who practice territorial mutual insurance.		
Mutualité/ziekenfonds (mutual health societies)	The legal type of <i>mutual health society</i> in Belgium is a legal form sui generis, defined in the 1990 Law on mutual health societies) mentioned under point 1. To operate as a mutual health society in Belgium, the society has to be member of a national union of "mutualities" (Landsbond). A national union has to have at least 3 mutual health societies as members (art. 3). Every mutual health society has several local offices or contact persons, but these do not have legal personality. The mutual health societies operate within the legal frame of the 1990 Law on mutual health society. The compulsory contributions for compulsory health insurance are paid by employers and employees. The federal Institute for Health and Disability Insurance (RIZIV/INAMI) receives its financial share of social security	Art 3 of the 1990 Law stipulates the conditions that have to be respected for the creation of a mutual health society. The mutual health society has to: a) Participate in the compulsory health insurance after receiving the authorisation by its national union; b) Intervene financially, regarding the costs of prevention and treatment of sickness and disability and provide income security in case of disability; c) Provide information and assistance to promote the wellbeing of its members; d) Offer complementary services, next to the services offered in the compulsory health insurance; e) Start with at least 15.000 members, as determined by the King.	In general, the bodies of the mutual society are 1) the general meeting, 2) the board of directors (raad van bestuur/conseil d'administration) and 3) Managing director. (Belgium has a monistic system, the managing director is appointed by the Board of Directors or the General meeting).	A mutual health society may not refuse membership, if the person applying commits himself to the statutes of the mutual health society and if the refusal appears to be an individual exception. Members can participate in the governance by presenting themselves when the official bodies are elected.	Members are entitled to attend general meetings and vote, according to the principle: "one member, one vote" For <i>mutual health societies</i> , the general meeting is composed of representatives which have been elected by the members for a period of 6 years. The King determines the minimum and maximum number of members of the general meeting of a mutual health society, the conditions for candidates and the way in which the	In the case of mutual health societies, no shares are possible.	Concerning compulsory health insurance (social security): Since 1995, the mutual health societies have the obligation to keep reserves (Law of 1994 on the obligatory health insurance, art. 199 (Wet betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen gecoördineerd op 14 juli 1994/ Loi relative à l'assurance obligatoire soins de santé et indemnités coordonnée le 14 juillet 1994). The mutual health societies receive budgets from the federal Institute for Health and Disability Insurance (RIZIV/INAMI) in accordance to the number and nature of	For <i>mutual health societies</i> , non-members investors is not a possibility. Mutual health societies as well as may also not provide services to non-members.	The list of managers of the <i>mutual health societies</i> as well as their statutes must be sent to the Supervisor (Controledienst voor Ziekenfondsen). Mutual health funds must include information about the remuneration of the managers of the fund in their statutes. Any changes to the statutes	NO	Statutory health insurance and social protection	

¹ AISAM (2006). Governance of Mutual Insurance Companies: the current state of legislation. Report by the Governance & Company Law Taskforce, led by Jeanne-Marie CAMBOLY, of the European Legislation Working Group, chaired by Edoardo GREPPI. Edited by Lieve Lowet. Liege, october 2006.

² Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen* of 6 August 1990 (Law on mutual health societies and national unions of mutual health societies) Art. 14

³ Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen* of 6 August 1990 (Law on mutual health societies and national unions of mutual health societies) Art. 18

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		contributions from the RSZ (which collects and divides Social Security contributions). RIZIV/INAMI then divides these over the national unions.				<p>representing members must be elected². Members who are elected into the official bodies, represent the other members and participate in the voting of the official bodies of the mutuality.</p> <p>A decision by the general meeting of a mutual health society will be valid if at least 50 percent of the members has been present or represented and simple majority of the votes, unless the statutes provide otherwise³.</p> <p>The statutes of a mutual health society may only be changed after resolution by the general meeting. In order for a resolution to alter the statutes to be valid, at least 50 percent of the members must be represented at the meeting and the decision must be supported by at least a two-third majority of the votes. In case the 50 percent attendance quorum has not been reached, a second meeting may validly decide about the same agenda, regardless of the number of members present¹ or represented¹. The statutes may impose stricter conditions for special meetings, for example concerning liquidation.</p> <p>A general meeting of a mutual health society may be called for by the directors, and must be called for in any cases as deter-</p>		<p>their members. These budgets are used to reimburse the clients, to pay the hospitals and doctors and pharmacists. With regard to compulsory health insurance, mutual health societies are supposed to hold as little cash as possible.</p> <p>Concerning mandatory supplementary schemes: for this scheme, based on solidarity, the mutual health societies have to foresee reserves. These are not of the same size as the one that classic insurance products have to respect.</p>		<p>of a mutual health society must also be ratified by the Supervisor³. The statutes and any amendments must be published in the annexes of the Belgian Official Gazette.</p> <p>The mutual health societies have to deliver their financial and other data to the federal Institute for Health and Disability Insurance (RIZIV/INAMI) for the compulsory health insurance part, and to the Supervisor for the complementary insurance part. The mutual health societies are submitted to a yearly and independent financial control (audit), as foreseen by art. 32 of the 1990 Law.</p> <p>Every year, each mutual health society publishes an annual report concerning their activities in compulsory and complementary insurance.</p>			

¹ "Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen" of 6 August 1990 (Law on mutual mutual health societies and national unions of mutual mutual health societies) Art. 10

² "Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen" of 6 August 1990 (Law on mutual health -funds and national unions of mutual health- funds) Art. 16

³ "Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen" of 6 August 1990 (Law on mutual health societies and national unions of mutual health - funds) Art. 11

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
						mined by the law (art. 15), and when at least a fifth of the members requests a meeting ² . The general meeting meets at least once a year, regarding the annual accounts, financial results and the budget.							
	Societe mutualiste/maatschappij van onderlinge bijstand (Society of mutual assistance / Mutual benefit company)	The mutual benefit companies are societies of people who have agreed to mutually insure themselves and share the burden of damages suffered. To this end, they create a fund that is accumulated by their contributions. Everyone is both insurer and insured; there is no share capital and no shareholders ¹ . These mutual benefit companies were established in order to cover the complementary health insurance services, which the mutual health societies are no longer allowed to provide without subsidiarizing this business ² . De minimis for MOB/SM Also, by law the MOB/SM can be exempted from some of the regulations of the Law of July 9, 1975 on the control of insurance companies (see Art 30, 1°, last paragraph).	One or more mutual health societies belonging to the same national union can create a separate structure (maatschappijen van onderlinge bijstand (MOB)/société mutuelle (SM))) to offer facultative health insurance products. These products can only be offered to the persons who are member for the compulsory insurance payor services of the mutual health societies offering these products. For the creation of MOB/SM: see law of 26/04/2010. The mutual benefit companies, just like the mutual insurance associations, have a civil law nature. The statute will be enacted by notarial deed.	In general, the bodies of the mutual society are 1) the general meeting, 2) the board of directors (raad van bestuur/conseil d'administration) and 3) Managing director. (Belgium has a monistic system, the managing director is appointed by the Board of Directors or the General meeting).	Only persons members of one of the associated mutual health societies can become member of the mutual benefit company. The members do not have a direct right of electing representatives. This will be done by the representatives of the general meeting of the associated mutual health societies.	For the mutual benefit companies, representatives are elected by the general meetings of the associated mutual health societies for a period of 6 years. This (the representation) is in accordance with the number of members associated with the mutual health societies.	No shares are possible	Mutual benefit companies are subject to general insurance legislation ("Law regarding the supervision of insurance undertakings"), hence the same rules apply as to mutual insurance societies.	Non-members investors is not a possibility. Mutual benefit companies may also not provide services to non-members. This is different for private health insurers who may provide (complementary) health insurance to any person.	see above for mutual health societies Concerning the mutual benefit companies, being active in insurance the same rules apply as for other insurance undertakings. It is up to the general meeting to decide what will happen in case of liquidation. There is no procedural protection in the case of insolvency and the law of 31 January 2009 on Business Continuity (Wet betreffende de continuïteit van de ondernemingen van 31 januari 2009/ Loi relative à la continuité des entreprises 31 Janvier 2009) applies to all authorized insurers, the insurance creditors have broad privileges regarding the assets.	YES	Non-life insurance: complementary health insurance	
Bulgaria	взаимозастрахователна кооперация (mutual insurance)	A mutual insurance co-operative society is a co-operative society that has been granted a licence to perform insurance activities, according to the Bulgarian Insurance Code in art 17 (2). "The mutual insurance co-operative society shall be	According to Annex No. 2 to Art. 82, Para 4 of the Insurance Code, the Minimum amount of guarantee capital of a mutual insurance cooperative society under Art. 80, Para 3, depends on the level of achieved annual premium income (in thou-	Mutual insurance cooperatives have a managing board, a supervisory board, but the surprise authority is the General	According to article 20 of the Insurance Code, the General Meeting may resolve by a simple majority of all member-co-operators to collect additional contributions and special-purpose instalments from its member-co-operators in order to reach the minimum guarantee capital and the solvency margin. All instalments in the cooperative society's capital shall be made in cash. The additional contributions and the special purpose instalments may be repaid to the member-co-operators only where by so doing the mutual insurance co-operative society's own funds will not diminish below the solvency margin amount or the minimum guarantee capital. Any repayment of additional contributions and special-purpose instalments shall occur with a one-month written notification addressed to the Deputy Chairperson. Within the time limit set under the notification, the Deputy Chairperson shall ban the repayment in the case where, as a result of it, the mutual insurance co-operative society's						YES	Life insurance	

¹ Bijzondere commissie belast met het onderzoek naar de financiële en bankcrisis: Rapport préliminaire du collège d'experts)

² Ziekenfondsbijdrage is nu verplicht. Article in Plus Magazine. Author: Baekelandt, L. Published on 19-01-2012

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
	cooperative)	<p>incorporated, shall perform its activities, shall be transformed and dissolved under the procedure established by the Cooperatives Act (CA) insofar as the present Code does not envisage otherwise.¹</p> <p>Membership with a mutual insurance co-operative society shall arise or be terminated simultaneously with the conclusion or termination of the insurance contract in compliance with the general terms.² Upon the mutual insurance co-operative society's termination, the participating contributions, the additional contributions and the special-purpose instalments shall be subject to repayment only after all other liabilities have been redeemed.</p> <p>The legal entity of mutual insurance cooperatives is a cooperative. There are no particular characteristics of the mutual insurance cooperatives identified in the insurance legislation, which refers to the law on cooperatives.³</p> <p>Strictly speaking, mutual insurance companies are not allowed on the Bulgarian market.</p>	<p>and BGN).</p> <ul style="list-style-type: none"> ■ For a premium income up to 500,000 BGN, an amount is needed of 100,000 BGN. ■ For a premium income between 500,000 BGN and 1,000,000 BGN, an amount is needed of 200,000 BGN. ■ For a premium income between 1,000,000 BGN and 1,500,000 BGN, an amount is needed of 300,000 BGN. ■ For a premium income over 1,500,000 BGN, an amount is needed of 400,000 BGN. 	meeting.	own funds will diminish below the solvency margin amount or the minimum guarantee capital. Upon the mutual insurance co-operative society's termination, the participating contributions, the additional contributions and the special-purpose instalments shall be subject to repayment only after all other liabilities have been redeemed.								
Cyprus	εταιρεία περιορισμένης ευθύνης με εγγύηση (company limited by guarantee)	<p>According to Article 15 of the Law on Insurance Services and Other Related Issues 2002-2011, a mutual organisation (αλληλοσφραλιστικός οργανισμός) is a company limited by guarantee (εταιρεία περιορισμένης ευθύνης με εγγύηση), without a share capital, which is established by virtue of the provisions of this Law and of the Companies Law, has as exclusive purpose the mutual insurance of its members, and holds a licence to carry on this business granted in accordance with the provisions provided in the Law.⁴</p>	<p>Within the Cyprus insurance legislation there is no specific legal framework concerning the methods of creation of mutual insurance organisations, apart from the legal form described in article 15. Where in the Law, the term Cyprus insurance company is mentioned, unless from the text it is differently inferred, this term will also include the mutual organisation.</p> <p>The management and corporate governance of the mutual insurance organisations is not stipulated in the insurance code and are also not covered by company law. The way mutual insurance organisations are governed is laid down in the Bylaws of the organisation.</p>	<p>With respect to the management and corporate governance of mutual insurance organisations, there are no specific references in Cyprus legislation for this type of insurers. The statutes of insurance companies, as a general rule, are not made publicly available by the Insurance Companies Control Service.</p> <p>The management and corporate governance of the mutual insurance organisations is not stipulated in the insurance code and are also not covered by company law. The way mutual insurance organisations are governed is laid down in the Bylaws of the organisation.</p>	<p>With respect to the management and corporate governance of mutual insurance organisations, there are no specific references in Cyprus legislation for this type of insurers. The statutes of insurance companies, as a general rule, are not made publicly available by the Insurance Companies Control Service.</p> <p>The management and corporate governance of the mutual insurance organisations is not stipulated in the insurance code and are also not covered by company law. The way mutual insurance organisations are governed is laid down in the Bylaws of the organisation.</p>	<p>Rights of members No specific information in the law concerning mutual insurance organisations</p> <p>Voting and representation of members in general meetings No specific information in the law concerning mutual insurance organisations</p> <p>Type of shares if any? No specific information in the law concerning mutual insurance organisations</p> <p>Reserves No specific information in the law concerning mutual insurance organisations</p> <p>Possibility for non members investors No specific information in the law concerning mutual insurance organisations</p> <p>Transparency and publicity requirements/ related auditing issue No specific information in the law concerning mutual insurance organisations</p> <p>Protection of assets No specific information in the law concerning mutual insurance organisations</p>					YES	Life insurance	

¹ Cooperative Act: http://www.microfinancegateway.org/gm/document-1.9.25199/24817_file_law_Bulgaria_02.pdf

² Insurance Code, see: http://www.nbbaz.bg/Libraries/Norms-En/INSURANCE_CODE.sflb

³ Cooperative Act: http://www.microfinancegateway.org/gm/document-1.9.25199/24817_file_law_Bulgaria_02.pdf

⁴ See: ΟΙ ΠΕΡΙ ΤΗΣ ΑΣΚΗΣΕΩΣ ΑΣΦΑΛΙΣΤΙΚΩΝ ΕΡΓΑΣΙΩΝ ΚΑΙ ΑΛΛΩΝ ΣΥΝΑΦΩΝ ΘΕΜΑΤΩΝ ΝΟΜΟΙ ΤΟΥ 2002 ΕΩΣ 2009: [http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/\\$file/N%2035%281%29%202002-%20105%281%29%2009%20%28%CE%95%CE%BD%CE%BF%CF%80%CE%BF%CE%AF%CE%B7%CF%83%CE%B7%20%CF%83%CF%84%CE%B7%CE%BD%20%CE%95%CE%BB%CE%BB%CE%B7%CE%BD%CE%B9%CE%BA%CE%AE%29.pdf](http://www.mof.gov.cy/mof/mof.nsf/All/A5112DA93FC81BA4C225799C0039A12B/$file/N%2035%281%29%202002-%20105%281%29%2009%20%28%CE%95%CE%BD%CE%BF%CF%80%CE%BF%CE%AF%CE%B7%CF%83%CE%B7%20%CF%83%CF%84%CE%B7%CE%BD%20%CE%95%CE%BB%CE%BB%CE%B7%CE%BD%CE%B9%CE%BA%CE%AE%29.pdf)

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Czech Republic	N/A	<p>In general, Czech legislation prohibits the creation of societies in mutual form, apart from the health insurance funds which are not-for-profit and which provide compulsory health insurance (not subject to insurance legislation).</p> <p>The term of "mutual", as well as mutuals, are not defined by Law in the Czech Republic. Source? ¹</p> <p>In the Czech health care sector, there are Health Care Funds (Zdravotní pojišťovna), and all 9 Health Care Funds ² are under control of the state though they are founded as "sectoral" ones. The General Health Care Foundation which is held by the state is not included. Clients ("members") of each of Health Care Fund are obliged to pay a fee (a part of their salary or income) for the Fund according the Health Insurance Law. Employers also pay a fee. The state provides for some redistribution of resources among the Health Care Funds system. Spending on concrete health care is regulated by quota system for treatment and medicaments. The quota are negotiated each quarter between the state administration and the professional chamber of medical doctors. Payment is provided through the Health Care Fund for each patient as applicable. These Czech Health Care Funds are not mutuals, but are similar to the German Krankenkassen.</p> <p>In the Czech Republic, some mutual-type associations exist:</p> <ul style="list-style-type: none"> ■ Funeral societies (pohřební společnost; "Friends of cremation" association dating from the 19th century, and similar funeral societies within Jewish communities) which are originally mutual associations. The basis is support and risk spreading amongst members within communities. ■ The Solidarity Fund of Policemen and Firemen (as a kind of mutual life-insurance), and Firemen Mutual Insurance Co. was created by the Voluntary Firemen Crews Association to produce profit, as an additional financial source for financing equipment for Voluntary Firemen Crews. ■ Social funds which resemble Mutuals in some respects have been created and are held by Employers for their Employees in many of enterprises in cooperation with labour unions. 	<p>The law prohibits the creation of societies in mutual form, apart from the Health Care Funds. Mutuals are not covered by national legal- and policy-frameworks in the Czech Republic, but Foundations and Credit-cooperatives are.</p> <p>The above-mentioned mutual type organisations are organised under the Law of "associations of citizens", the Law of "Foundations", and the Law of "Social Funds" (created and held by Employers for social affairs of their Employees).</p> <p>Solidarity funds (social endowment, pensions, health care etc.) are mostly still held by the state as a part of Public Finance (Budget and State Funds). Since recently, they may also be pushed to the market, due to social reform initiatives.</p> <p>The Insurance Act implies that some type of mutuals do exist, although the Act does not apply to them. Other sources state that Czech law prohibits the establishment of mutuals. Yet, the health insurance funds that run the compulsory health insurance systems are described as mutual societies. Legally, these funds fall under Health Insurance Law ("o nemoconském pojištění").</p> <p>The lack of legal frameworks for establishing mutuals creates a very significant barrier for mutuals to operate on the Czech market.</p>	N/A	N.A.							NO	N/A

¹ Please note that Česká pojišťovna ,the oldest insurance institution in the Czech lands, is the legal successor to First Czech Mutual Insurance Company (První česká vzájemná pojišťovna), which was founded in 1827. It was part of the original State Insurance Company (Státní pojišťovna) until 1969 when, on the basis of the territorial principle, Státní pojišťovna was broken up into Česká státní pojišťovna and Slovenská státní pojišťovna

² See: <http://www.vzp.cz/en/public-health-insurance.php>

De nm ark	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
	Gensidige selskaber (Mutual companies)	<p>The Insurance Statistic 1997 (Forsikringsstatistik 1997) states that "mutual companies ("gensidige selskaber") are insurance companies owned by their policyholders. Policyholders are also known as members. In a mutual insurance company its policyholders (members) are liable for the company."¹</p> <p>In Danish legislation, special regulations related to the mutual business legal form are stated only in the Consolidated Financial Business Act (Bekendtgørelse af lov om finansiel virksomhed, no 705 of 25/06/2012). Thus the mutual form can only be used for insurance companies and no other business activities in Denmark can be established in the mutual form.²</p> <p>Mutual insurance companies fall under the Financial Business Act (Lov om finansiel virksomhed), which includes some special regulations for mutual insurance companies regarding organisation and financing.³ This act has 3 regimes for mutual insurance companies:</p> <ul style="list-style-type: none"> ■ The mutual insurance companies regime (i.e. the ordinary regime) ■ A special regime for non-life mutual insurance companies with limited objects on condition (de minimis regime I) ■ An exempted regime for mutual non-life assurance company (de minimis regime II) <p>Note that the Danish FSA has the discretionary potential to apply the de minimis II regime to other mutual insurance companies not falling under art 294 (2) on condition that no liability insurance, industrial injuries insurance, motor vehicle insurance, credit or suretyship insurance are underwritten.</p>	<p>Ordinary mutual insurance companies:</p> <p>According to article 126 (2), the capital base of insurance companies and multi-employer occupational pension funds shall constitute no less than:⁴</p> <ul style="list-style-type: none"> ■ 1) 4 percent of the risk-weighted items for life-assurance provisions plus 0.3 percent of the risk-weighted items for the risk sum for life-assurance business in insurance classes I-IV and VI where the company has an investment risk, ■ 2) 1 percent of the risk-weighted items for life-assurance provisions plus 0.3 percent of the risk-weighted items for the risk sum for life-assurance business in insurance class V, and in insurance class III where the company does not have an investment risk, and where the amount intended to cover the operating costs set in the insurance contract shall be determined for a period of more than 5 years, ■ 3) 25 percent of the previous year's insurance-related administration costs plus 0.3 percent of the risk-weighted items for the risk premium for life-assurance business in insurance class III, where the company does not have an investment risk, and where the amount intended to cover the operating costs set in the insurance contract shall not be determined for a period of more than 5 years, ■ 4) 25 percent of the previous financial year's insurance-related administration costs for separate SP (Special Pension Savings Scheme) accounts, ■ 5) the largest amount in a non-life assurance company of <ul style="list-style-type: none"> ■ a) 18 percent of the risk-weighted items for the maximum of gross premiums and gross premium income up to EUR 57.5 million plus 16 percent of amounts exceeding this figure, and ■ a) the annual average of 26 percent of the risk-weighted items for the gross costs of claims for amounts up to EUR 40.3 million and 23 percent of amounts exceed- 	<p>All financial undertakings including the mutual insurance companies shall have a board of directors and board of management. The right of members and guarantors to make decisions in a mutual insurance company shall be exercised at the general meeting.</p> <p>De minimis regime I: There are special regulations for mutual non-life insurance companies with limited object whose articles of association state (Financial Business Act, Section 294-1): these mutual insurance companies may function without a board of management (art 295 (2)). If the company has no board of management, the duties imposed on the board of management by this Act shall be performed by the board of directors (art 299).</p>	<p>Ordinary mutual insurance companies/de minimis regime I: Financial Business Act, Section 112. The articles of association of mutual insurance companies shall [...] contain provisions regarding: the liability of members and guarantors to the obligations of the company, and regarding the mutual liability of members and guarantors, cf. section 284(2). Financial Business Act, Section 111. The right of members and guarantors to make decisions in a mutual insurance company shall be exercised at the general meeting.</p> <p>According to Financial Business Act, Section 284 (1) Members of a mutual insurance company shall only be the policyholders of said company. (2) If the members are to be liable for the liabilities of the company, the extent of such liability shall be stipulated in the articles of association</p> <p>Additionally for the De minimis regime I mutual insurance companies, art 296 stipulates that no members or guarantors may be enrolled before draft articles of association have been drawn up. The draft articles of association shall be available on such enrolment.</p>	<p>Ordinary mutual insurance companies/de minimis regime I: Financial Business Act, Section 111: Each member and guarantor shall have at least 1 vote. (2) [...] the articles of association may stipulate that the general meeting shall consist of representatives elected by the members and guarantors, or their proxies.</p> <p>According to Financial Business Act, Section 284 (1) Members of a mutual insurance company shall only be the policyholders of said company. (2) If the members are to be liable for the liabilities of the company, the extent of such liability shall be stipulated in the articles of association</p>	<p>Ordinary mutual insurance companies/de minimis regime I: There are no shares in a mutual insurance company.</p> <p>In general, the same rules apply for mutual insurance companies as for other types of insurance companies with that respect that 'share capital' should be replaced by 'guarantee capital' and 'shareholders' by 'members'. Related to these changes, there is some relaxations with regard to supervisory rules.</p>	<p>Ordinary mutual insurance companies/de minimis regime I: According to Financial Business Act, section 290 (1), only the profit for the year in accordance with the audited annual report for the most recent financial year, retained earnings from previous years, and other reserves that are not non-distributable in pursuance of legislation or the articles of association of the company after deduction of both uncovered losses and amounts that must be allocated to a contingency fund or other purposes in pursuance of legislation or the articles of association of the company may be used as dividends to shareholders, or payments to members of mutual companies. (2) Funds covered by subsection (1) and the profit for the current financial year up to the date of the interim balance sheet, cf. section 183(2) of the Companies Act, may be utilised for extraordinary dividends, if the amount has not been distributed, used or tied. Distributable reserves arising or released in the current financial year may also be utilised for extraordinary dividends.</p>	<p>Ordinary mutual insurance companies/de minimis regime I: The same rules apply to mutual insurance companies as to other insurance operators.</p>	<p>Ordinary mutual insurance companies/de minimis regime I: There is no asset protection regulation. Any payment to members is subject to the articles of association.</p>	YES	Life and non-life insurance	

¹ http://www.finanstilsynet.dk/upload/Finanstilsynet/publik/publikationer/forsikring97/dn28_ord.html

² Association of Mutual Insurance Companies in Denmark - The EU Commission's "Consultation Document" of 03/10/2003 on "Mutual Societies in an enlarged Europe"

³ Consolidating Act no. 885 of 8 December 2011, Financial Business Act: http://www.finanstilsynet.dk/Regler-og-praksis/Translated-regulations/-/media/Regler-og-praksis/2011/CAct_885_2011new_ashx

⁴ Insurance classes refer to: Insurance activities - **non-life**: Classification of risks by means of classes of insurance. 1) Accidents (including industrial injuries and occupational illness): fixed pecuniary benefits, benefits in the nature of indemnity, combinations of the two, and passenger transport. 2) Sickness: fixed pecuniary benefits, benefits in the nature of indemnity and combinations of the two. 3) Fully comprehensive insurance for land vehicles (other than railway rolling stock): all damage to or loss of land motor vehicles and land vehicles other than motor vehicles. 4) Fully comprehensive insurance for railway rolling stock: all damage to or loss of railway rolling stock. 5) Hull insurance for aircraft: all damage to or loss of aircraft. 6) Hull insurance for ships (sea, lake and river and canal vessels): all damage to or loss of sea, lake and river and canal vessels. 7) Goods in transit (including merchandise, baggage, and all other goods): all damage to or loss of goods in transit or baggage, irrespective of the form of transport. 8) Fire and natural forces: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to fire, explosion, storm, nuclear energy or land subsidence. 9) Other damage to property: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8. 10) Third-party liability insurance for motor land vehicles: all liability arising out of the use of motor land vehicles (including carrier's liability). 11) Third-party aircraft liability: all liability arising out of the use of aircraft (including carrier's liability). 12) Third-party liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability). 13) General liability: all liability other than those forms mentioned under 10), 11) and 12). 14) Credit: insolvency (general), export credit, instalment credit, mortgages and agricultural credit. 15) Suretyship: direct suretyship and indirect suretyship. 16) Miscellaneous financial loss: employment risks, insufficiency of income (general), bad weather, loss of benefits, continuing general expenses, unforeseen trading expenses, loss of market value, loss of rent or revenue, indirect trading losses other than those mentioned above, other financial loss (non-trading) and other forms of financial loss. 17) Legal expenses: legal expenses and costs of litigation. 18) Assistance: assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence. Insurance activities - **life**: Classification of risks by means of classes of insurance. I. General life assurance: a) Life assurance (that is to say, the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death and life assurance with return of premiums), b) annuities, c) supplementary insurance contracts underwritten in connection with life assurance (in particular, insurance against personal injury including incapacity for employment and insurance against death resulting from an accident or sickness). II. Marriage assurance and birth insurance: a) Marriage assurance: b) birth insurance. III. Insurance attached to collective investment funds: a) Life assurance (that is to say, the class of insurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance and birth insurance), b) annuities. IV. Permanent health insurance (long-term sickness insurance): sickness insurance which is written for a long period and is interminable for the insurance company in the entire period. V. Tontine: system entailing establishment of member associations with a view to joint capitalisation of contributions and payment of the resulting funds to either the survivors or to the heirs or beneficiaries of deceased members. VI. Capitalisation: activities based on actuarial calculation which include liabilities with a fixed term and amount against payment of a lump sum or predetermined regular payments.

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
			<p>ing this figure in the last 3 financial years,</p> <ul style="list-style-type: none"> ▪ 6) EUR 3.5 million for insurance companies and multi-employer occupational pension funds carrying out life-assurance business, ▪ 7) EUR 2.3 million for insurance companies and multi-employer occupational pension funds carrying out activities within insurance classes 1-9 and 16-18, ▪ 8) EUR 3.5 million for insurance companies carrying out activities within insurance classes 10-15, ▪ 9) EUR 3.2 million for insurance companies carrying out reinsurance activities, and ▪ 10) EUR 1.1 million for captive reinsurance companies. <p>(5) The minimum capital requirement may be reduced for mutual insurance companies covered by subsection (2), no. 7 or 8 on more detailed conditions.</p> <p>(6) For mutual insurance companies covered by subsection (2), no. 7 or 8, which fulfil the conditions in subsections (5) and (7), the minimum capital requirement shall be reduced to the largest amount of</p> <ul style="list-style-type: none"> ▪ 1) EUR 0.225 million for a licence within insurance classes 1-8, 16 and 18, and ▪ 2) EUR 0.15 million for a licence within insurance classes 9 and 17. <p>(7) In order to be covered by the reduced capital requirement mentioned in subsection (6), a mutual insurance company shall, apart from the conditions mentioned in subsection (5), fulfil the following conditions:</p> <ul style="list-style-type: none"> ▪ 1) The articles of association shall provide the possibility for charging extra or reducing the benefits, ▪ 2) the previous financial year's gross premium income may not exceed EUR 5 million, ▪ 3) the company may not hold a licence within insurance classes 10-15, and ▪ 4) no less than half of the previous financial year's gross premium income shall originate from insurance contracts where the policyholders are natural persons who are members of the company. <p>Mutual insurance companies of the de minimis I regime type must not comply with article 126 (2) about the minimum capital base.</p> <p>Mutual insurance companies of the de minimis regime II : no requirements</p>										

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Estonia	N/A	In the area of insurance, Mutual and cooperative insurance undertakings are not allowed to be established in Estonia ¹ . According to the Insurance Activities Act, unless otherwise provided by law, an insurance undertaking shall only be founded as a public limited company or a European company ² . Thus there is also no insurance mutual definition in Estonia.	There is no legal framework available for mutual-type organisations. Imposing insurmountable internal barriers for establishing mutuals.	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO	N/A
Finland	Keiskäinän vakuutus- ja ömsesidigt försäkringsbolag (mutual insurance companies)	Mutual insurance companies fall under the Insurance Companies Act (Vakuutusyhtiölaki/ Försäkringsbolslag 18.7.2008/521), which includes special regulations for mutual insurance companies regarding establishment, organisation, financing, mergers, demutualization and winding up. According to the Insurance Companies Act (521/2008), the purpose of mutual insurance companies is to provide profit or other economic benefit to members, unless otherwise prescribed by the statutes. These mutual insurance companies can be active in life insurance, non-life insurance and reinsurance. Policyholders of mutual insurance companies are also members ³ .	To establish a new insurance undertaking (including a mutual insurance company) in Finland generally the Company law (Osakeyhtiölaki/ Aktiebolagslag 21.7.2006/624) applies. To obtain a licence from the Financial Supervisory Authority, the application must, according to the Insurance Companies Act (Vakuutusyhtiölaki/ Försäkringsbolslag 18.7.2008/521), article 3: ⁴ <ul style="list-style-type: none"> ■ Refer to the particular insurance classes to be provided. ■ Be accompanied with documentation, including: <ul style="list-style-type: none"> ■ an action plan, with details on the: <ul style="list-style-type: none"> ■ intended business; ■ estimated premium income; ■ administrative structure and its costs; ■ reinsurance strategy; and ■ other aspects possibly requested by the Financial Supervisory Authority (its guidelines and prerogatives may contain more details). ■ documents providing information about the management of the company and its shareholders; ■ evidence about payment of the initial (foundation) fund; ■ an account of potential conflicts of interest. <p>The licence applies within the EEA or, on the request of the applicant, beyond the EEA depending on agreements entered into by the Finnish authorities with other states.</p> <p>The sum of required capital/assets is the same for mutual insurance companies and for incorporated insurance companies, being 1,000,000 Euros for reinsurance captives, 2,000,000 Euros for standard non-life insurers, 3,000,000 Euros for life insurers, non-captive reinsurers and certain non-life insurers (including transport and unspecified liability insurers, credit</p>	Most, if not all mutual companies in Finland apply a two-tier governance structure, where the Board consists of knowledgeable persons from the company and where the supervisory board is composed of members or representatives of members. The requirements for board members are strict (and will under pressure of Solvency II even become stricter).	All Policyholders of mutual insurance companies are members. But not all members are policyholders. There are also member investors (see hereunder). The Statute determine what right non-member investors have.	The starting point is that all members of the mutual insurance company are equal. Company rules (laid down in the Statutes) may, however, alter the voting rights to be contribution based , so that the each member receives an amount of votes in general meetings related to the size of his contribution to the mutual. For instance in Tapiola, every policyholder has at least one vote, with additional votes being conferred on the basis of insurance premiums (Tapiola General and Tapiola Pension) or life insurance savings (Tapiola Life). ⁵	Only guarantee shares are possible in mutual insurance companies.	Same as for other insurance providers.	Through the use of guarantee capital, non-member investors are possible in mutual insurance companies. Guarantee capital is constituted by policyholders/owners who invest funds. (only at foundation or throughout the life of the mutual insurance). They receive an interest of 5-6 per cent (set by the statutes) on the invested funds. If the funds are returned to the investors, you only receive back your own investments (book value) and not the share of the capital. Guarantee capital is therefore different from share capital as the owner will not receive the return on investment. Just like the policyholders/ members, the owners of the guarantee capital, have voting rights on how the capital will be invested. ⁶	Concerning disclosure, life assurance and non-life insurance companies must submit, four times a year, results of specific insurance mathematical tests required by law to the Financial Supervisory Authority. Insurance companies must be specifically audited in relation to certain insurance mathematical aspects ten times a year. In certain forms of insurance with a specific regulatory framework (such as motor or third party liability insurance), there are annual reporting obligations for statistical purposes. In addition, insurance undertakings must contribute to the costs of the Financial Supervisory	In case of demutualisation of a mutual insurance company, the assets will be distributed amongst the shareholders (i.e. the policyholders). The same rules apply for mutual insurance companies as for incorporated company models.	YES	Life and non-life insurance

¹ AMICE The market share of Mutual and Cooperative Insurance in Europe 2008.

² See Estonian Insurance Activities Act: <http://www.legaltext.ee/text/en/X90004.htm>

³ See: <http://www.finlex.fi/sv/laki/ajantasa/2008/20080521>

⁴ <http://crossborder.practicallaw.com/7-504-6240?source=relatedcontent>

⁵ See: <http://www.tapiola.fi/wwweng/Briefly/The+Tapiola+Group/Business+Idea+and+values/Policyholders%E2%80%99+influence.htm>

⁶ This is similar to rules that apply to cooperatives.

Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		and surety insurers, unemployment and entrepreneurial risk insurers). For incorporated insurance companies these sums are for share capital, for mutual insurance companies they refer to the minimum initial (foundation) fund or guarantee capital (article 18, chapter 1 of the Insurance company Act). At least half of the amount specified above has to be paid in cash. The law does not specify a minimum or maximum number of legal/natural persons needed to create a mutual insurance company.						panies (i.e. Tapiola, life, non-life and pension insurance) can have financial ties as they can cross-own each others guarantee fund. The guarantee capital is supervised by the Financial Supervisory Authority.	Authority by paying an annual fee whose amount is stipulated by law. ¹			
Vakuutusyhdistys/försäkringsförening (insurance association)	Insurance associations are covered by the Law on Insurance Associations (Vakuutusyhdistyslaki /Lag om försäkringsföreningar 31.12.1987/1250), which includes regulations on establishment, financing, organisation, mergers, winding up and inspection of this type of mutuals. According to the Law on Insurance Associations, an insurance association is an insurance company based on the members' mutual liability, which operates in no more than 40 municipalities within a single area or is exclusively engaged in insurance of fishing equipment. These insurance associations may only underwrite voluntary non-life insurance.	The insurance association may be established by one or more natural or legal person (Vakuutusyhdistyslaki/ Lag om försäkringsföreningar 31.12.1987/1250). The Memorandum of Association shall contain the statute of the association, specifications on the founding members and specifications concerning the guarantee capital. An insurance association guarantee capital and foundation capital (authorized capital) must total at least EUR 42,000. If the association's activities include personal insurance, or its business scope covers more than 25 municipalities, the foundation capital must be at least 84,000 euro (see: Vakuutusyhdistyslaki/ Lag om försäkringsföreningar 31.12.1987/1250, article 5).	The administrative structure of insurance associations resembles the administrative structure of mutual insurance companies.	The rights of the owners are essentially those of owners of mutual insurance companies, where applicable. According to article 1, chapter 7 of the Insurance Associations Act, the shareholders exercise their power of decision at the meeting. According to article 17, decisions are taken by simple majority of votes cast, unless otherwise provided in the Act or the statute.	According to article 4, chapter 7 of the Insurance Associations Act, all members of the insurance association has one vote, unless otherwise provided in the statute. According article 3, the member exercises his right at the meeting personally or through the advocate.	Only guarantee shares are possible.	Almost same as for other insurance providers.	Through the use of guarantee funds, non-member investors are possible.	Concerning disclosure, the insurance associations must submit annual accounts, key figures and analysis of insurance business to the Financial Supervisory Authority annually.	In case of demutualisation, the assets will be distributed amongst the policyholders (i. e. the members).	YES	Life and non-life insurance
Työeläkevakuutusyhtiöistä / arbetspensionsförsäkringsbolag (Pension Insurance Companies)	A pension insurance company is a strictly regulated company form (regulated by the Act on Pension Insurance Companies (Laki työeläkevakuutusyhtiöistä/ Lag om arbetspensionsförsäkringsbolag 354/1997) ² . A pension insurance company may be a limited liability insurance company (incl. a public one) or a mutual insurance company. The owners of a mutual insurance company are the policyholders, i.e. the employers and the insured, i.e. the employees, as well as any holders of guarantee shares. ³ The business of statutory pension is not classified as life insurance and hence is not regulated by the EU life Directive. The business is regulated by different laws. The private sector laws have been bundled into the TYEL-law starting January 1, 2007 ⁴ . Nevertheless, all	Provisions on the nominal capital of insurance companies engaged in statutory pension insurance can be found in the Law on Pension Insurance Companies (Laki työeläkevakuutusyhtiöistä/ Lag om arbetspensionsförsäkringsbolag 354/1997). The minimum basic capital (for joint stock companies share capital and for mutual insurance companies guarantee capital and initial (foundation) fund) required for a pension insurance company is EUR 5 million. In addition, a pension insurance company handling statutory earnings-related pension insurance is required to have a concession granted by the Council of State (cabinet). The Council of State may include conditions in its concession, necessary to safeguard the interests of the policyholders and the insured, to ensure the stable functioning of the company and to promote the healthy development of the earnings-related	The administrative structure of the companies involved in statutory earnings related pension schemes follows the normal model for companies (whether they are limited companies or mutual insurance companies).	The administrative structure of the companies involved in statutory earnings related pension schemes follows the normal model for companies (whether they are limited companies or mutual insurance companies).	At the annual general meeting, power of decision is exercised by the company's shareholders in accordance with the Insurance Companies Act. The Supervisory Board is elected at the general meeting, and the obligations of the Supervisory Board are determined according to the legislation on limited companies. The Supervisory Board nominates the members of the Board of Directors. The Supervisory Board and the Board of Directors have to be representatives for the policyholders and the insured chosen from the persons suggested by the central labour market organisations representing the employers and the employees. There must be an equal number of such representatives for the employees and for the employers, and their total number has to be at least half of the total number of members in the Supervisory Board and Board of Directors, respectively. The pension insurance company must have a separate nominating committee, half of which consists of persons suggested by representatives of the policyholders and half of which by representatives of the insured. The nominating committee makes proposals concerning the remuneration and nomination of the members of the Supervisory Board to the general meeting, and proposals concerning the remuneration and nomination of the members of the Board of Directors to the Supervisory Board. Following normal practices in limited companies, the Board of Directors elects the managing director and supervises the managing director's activities. The managing director of a pension insurance company may not function as the managing director of a credit institution or investment service company in the same company group or financial and insurance conglomerate as the insurance company. Nor may the managing director be a member of the Supervisory Board or of the Board of Directors of the company. ³						YES	Statutory pensions

¹ <http://crossborder.practicallaw.com/7-504-6240?source=relatedcontent>

² http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

³ http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

⁴ See: http://tyoelakelakipalvelu.etk.fi/fi/saadokset/20060395/7_navi=haku

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		<p>these laws follow the same basic principles for private and public sector employment and self-employed persons. The main law for private sector pensions is the Employees' Pension Act (known as TyEL), which covers three fourths of the insured in the private sector. In practice, almost all employed persons, irrespective of nationality, are covered by Finnish employment pension legislation.¹</p> <p>Foreign pension insurance companies may not directly engage in statutory pension insurance in Finland, but a foreign corporation or natural person may establish a pension insurance company in Finland. The company shall be subject to the same restrictions regarding line of industry and concessions as a pension insurance company established by Finns. So far, no foreign insurance company is engaging in the earnings-related pension insurance business in Finland.</p>	<p>pension insurance business. Moreover, a pension insurance company's articles of association and any changes to them must be confirmed by the Insurance Supervisory Authority.²</p>										
France	Société d'assurance mutuelle (mutual insurance companies)	<p>According to article L 322-26-1 of the Insurance code, "the mutual insurance companies have a non-commercial purpose. They are established to insure the risks of their members, against payment of a fixed or variable fee. The mutual insurance companies engaged in the operations of life insurance or capitalization, however can not receive variable contributions. These companies function without shareholder capital, with fixed premiums."</p> <p>The activities of the SAM mutual insurance companies may vary from all classes of non-life and life insurance, etc. SAM are covered by the insurance code (Code des assurances).</p> <p>The Insurance code contains special provisions for mutual insurance, regarding establishment, organisation and financing. There are 4 subgroups of mutual insurance companies in France (See legal types, here below).</p>	<p>Concerning mutual insurance companies, the constitution is governed by the Insurance code⁴, articles R322-1 et seq. and by articles R322-42 et seq. of the same Code applicable specifically to mutual insurance companies.</p> <p>As explained in the AISAM/AMICE study, various constitutive stages are required for the formation of a mutual insurance company. Firstly, the draft articles of association are in the form of a notarial deed or private deed in two original copies (article R322-46 of the Insurance Code). Then, a notarial declaration by the founders is necessary (article R322-51 of the Insurance Code) as well as the meeting of the constituent assembly (article R322-52 of the Insurance Code). Lastly, publication in an official journal and inscription in public registers are required. In order to do so, the founding members deposit the constituent deeds of their company with the office of the Clerk to the Court of First Instance of the registered office (articles R322-85 and R322-86 of the Insurance Code).⁵</p>	<p>there are two type of management methods in France. The change of governance from one system to another can be decided along the life course of the company. According to the Insurance code² Art. L322-26-2, the mutual insurance company is managed by a board of directors and a Director General. In the board of directors, one or two directors represent the wage-earning staff and are elected by the staff. the directors are chosen from members which have paid their contributions/premiums (R322-55-2 of the Insurance code).</p>	<p>Concerning the rights of members, nothing is mentioned explicitly in the Insurance code. The concept of members or 'sociétaire' (= member policyholder) is defined by the articles of association. But it is mandatory to be insured to become a sociétaire, the insured becomes member upon acceptance by the Board of Directors. Article R322-58 deals with the organisation of the General Assembly and states that each member has one vote. In France, there are no different type of members.</p>	<p>Concerning voting and representation, article R322-58, the statutes shall determine the composition of the General Assembly. It consists either of all members, or of delegates elected by the members. All members have one vote, and one vote only, without it being possible to make exceptions to this rule in the statutes of the company.</p>	<p>Concerning types of shares, this is not possible according to law.</p>	<p>Concerning reserves, profits of one year can be used either to give rise to rebates (reimbursement of a premium/contributions), but only in mutual insurance companies with variable contributions, and if it becomes clear that the premium collected was excessive; but it can also be used to lower the level of contributions, to extend, at constant rates, guarantees; or be set aside, once the regulatory or contractual commitments are satisfied. Rebates are very much in use in France. This is not the same as a profit distribution, which is a share in the results, which is optional for non-life mutual insurance companies, whereas in life insurance it is governed by the Insurance code and the general and special conditions of the policies con-</p>	<p>Concerning non-member investors: there are no possibilities for non-member investors and also not of non-member clients.</p>	<p>Concerning transparency and publicity requirements: Article R322-59 prescribes that the articles of association (statutes) must set out the conditions under which the notice of the general meeting is made. The meeting must be advertised in a newspaper authorized to publish legal notices in the headquarters' department and is preceded by at least fifteen</p>	<p>Concerning the protection of assets, in case of winding-up, for mutual insurance companies (Art L322-26-5 of the Insurance code), the net assets will be transferred to "other mutual insurance companies, or to associations of public benefit".</p>	YES	Life and non-life insurance

¹ IGP (2011), Summary of Social Security and Private Employee Benefits FINLAND 2011: http://www.igpinfo.com/igpinfo/public_documents/ss_summaries/Finland.pdf

² http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

³ See: http://www.etk.fi/en/service/pension_insurance_companies/1492/pension_insurance_companies

⁴ Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEX0000000743984>

⁵ AISAM/AMICE (2007). Mutual Insurance Companies in France: The regulatory, financial and social arrangements

⁶ That is: 10) Third-party liability insurance for motor land vehicles: all liability arising out of the use of motor land vehicles (including carrier's liability). 11) Third-party aircraft liability: all liability arising out of the use of aircraft (including carrier's liability). 12) Third-party liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability). 13) General liability: all liability other than those forms mentioned under 10), 11) and 12). 14) Credit: insolvency (general), export credit, instalment credit, mortgages and agricultural credit. 15) Suretyship: 20) General life Assurance: 21) Marriage assurance and birth insurance: 22) Insurance attached to collective investment funds: 24) Capitalisation: 25) Management of collective funds: <http://www.legifrance.gouv.fr/affichCode.do?jessionid=DB52A775916526D1CCC2EBAD8E0B445F.tpdjn05v.17!dSectionTA=LEGISCTA000019749388&cidTexte=LEGITEX000006073984&dateTexte=20120420>

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			<p>Article R322-47 §2 states that the minimal number of members needed for in a mutual insurance company (SAM) is 500.</p> <p>In France, as explained in the AISAM/AMICE study, upon formation of a mutual insurance company, and before the subscription of any policy or the receipt of the first contribution/premium, a minimum amount of own funds/equity is required, including the initial fund (article R322-44 of the Insurance Code).</p> <p>The minimum amount for the initial fund is €400,000 for the following operations:</p> <ul style="list-style-type: none"> ▪ - 400,000 Euros in case of activities in insurance classes 10 to 15, 20, 21, 22, 24, 25 of section A. 321-1 and reinsurance operations ; ▪ - 240,000 Euros for the activities in any other insurance class <p>No minimum initial fund exists for insurance mutual companies (R322-99 of the Insurance Code) by law; the level must be laid down in their articles of association. For tontines, the initial fund is €160,000. The role of the initial fund is to meet the expenses of the first five years and to guarantee the commitments of the company (article R322-47 of the Insurance Code).¹</p> <p>The guarantee fund (Fond de garantie), is according to Article R334-7 of the Insurance code for those operating in one or more non-life classes (classes 1 to 18, mentioned in article R321-1 of the Insurance code), equal to one third of the minimum solvency margin as defined in Article R. 334-5. The guarantee fund can not be less than 2.3 million Euro. For insurers active in classes 10-15, the fund can not be less than 3.5 million Euro. These amounts of the guarantee fund apply to all insurance companies. The mutual insurance companies have a diverging size of the guarantee fund. Mutual insurance companies, and their unions should have a guarantee fund of respectively 1.8 and 2.6 million Euro. When a company is licensed to practice operations falling into several classes, to calculate the guarantee fund, the class is considered having the highest amount.</p>	<p>The Director General is nominated by the Board of Directors (R322-53-2). In mutual insurance companies whose statutes subject the quality of member to the exercise of a specific professional activity, the statutes may envisage the election of non-member directors, max 1/3 of the Board. However, it may be stipulated by the statutes of any mutual insurance company that it is may be managed by an Executive Board and a Supervisory Board. Members of the Executive Board are nominated by the Supervisory Board. Members of the Supervisory Board are members which have paid their contributions/premiums and which are elected by the General Assembly (R322-55-2 of the Insurance code).</p>				cerned. ³		<p>days of the date fixed for the general meeting . The announcement shall state the agenda. The meeting can not change the issues that are on the agenda. The agenda may only contain the proposals of the board of directors, management or supervisory board and those which shall have been notified at least twenty days before the General Assembly, signed by a tenth of the members, or at least one hundred members if a tenth is more than one hundred. Concerning related auditing issues: the mutual insurance companies report to the ACP-Banque de France and are supervised by the ACP-Banque de France.</p>			

¹ See: AISAM/AMICE (2007), Mutual Insurance Companies in France: The regulatory, nancial and scal arrangements

² Code des assurances: <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006073984>

³ See: AISAM/AMICE (2007), Mutual Insurance Companies in France: The regulatory, nancial and scal arrangements

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	Mutuelles (mutuals)	<p>Mutuals (also called "mutuelles 45", because they were dedicated in 1945 to the complementary health insurance system when the statutory health insurance system was established), according to article L 111-1 of the Code de la Mutualité, "are not-for-profit legal entities under private law. They carry out provident, solidarity and mutual aid-based work, by means including contributions paid by their members, and in the interests of these latter and their beneficiaries, in order to contribute to the cultural, moral, intellectual and physical development of their members and to improving their living conditions." Under article L112-1: mutuals can not collect medical information from their members; or their potential members; or establishing the premiums according the state of health of the person.</p> <p>The Mutuals, follow the French Mutuality code ("Code de la mutualité") which consists of five Livres, or books:</p> <ul style="list-style-type: none"> ■ Livre (Book) I contains general provisions (e.g. definitions). ■ Livre (Book) II details and specifies insurance activities. ■ Livre (Book) III specifies in-kind services like prevention, social action and social and health care. ■ Livre (Book) IV concerns governance and ■ Livre (Book) V dealing with supervision, completes this specific legislation. <p>The code has separate sections for mutuals active in insurance (Livre II) and those active in prevention, social action and other health/social/cultural activities (Livre III).</p>	<p>According to article R212-1 of the Code de la mutualité, the initial fund (Fond d'établissement for Livre 2 Mutuals is:</p> <ul style="list-style-type: none"> ■ 381,000 Euro for activities related to life insurance ■ 228,000 Euro for activities related to non-life insurance <p>The fund must be fully paid in cash and the Law allows that the fund consists of loans, under the condition that the repayment period is agreed upon by the responsible Minister. Only upon payment of the initial fund, the Mutual are ask the Supervisory Authority for authorization.</p>	<p>Concerning management and corporate governance: The functioning of the General Meeting (GM) is explained in the Mutuality Code¹ L114-6: <u>The general assembly</u> of a mutual consists of honorary members and participating members of the mutual. However, the statutes may provide that it consists of delegates elected by local sections or organized by the mutual. Delegates can be divided into several sections defined by the statutes. In case the mutual, whose general assembly is composed of delegates, performs collective operations referred to in Article L. 221-2, the articles may provide for the appointment of delegates representing legal persons underwriting group contracts as honorary members and delegates representing their employees participating members. The GM elects Board members (article L114.9) and can proceed directly to the President's election. The GM can delegate for one year to the Board of directors all or part of its powers concerning the amounts and rates of premiums and benefits. Mutuals are run by a Board of directors (article L114.16) composed by a minimum of 10 members (elected among participating members and honorary members) and for a 6 years mandate.</p>	<p>Concerning the rights of members, (article L114.1): the internal rules define the content of the existing contractual engagements between each member and the mutual (or union) concerning the benefits and premiums. The internal rules are adopted by the General Meeting under the Board's proposal. Everyone can become "member" after signing the membership bulletin. Thus, the member accepts the statutes and the obligations defined into the internal rules further on. Any modifications shall be notified to the member.</p>	<p>Concerning voting and representation, each member of a mutual has one vote at the general meeting. For general meetings consisting of delegates of the sections, the articles may provide that each delegate elected by the section has one vote at the General Assembly, or the single delegate elected by the section has, in voting to general meeting, a number of votes equal to the number of members of the section.</p>	<p>Concerning types of shares, this is not possible.</p>	<p>Concerning reserves: Reserves are foreseen in the Code as any other insurance company because of the solvency rules. Article L212.1 specifies that mutuals must cover the capital requirement. R212.11 and R 212.12 specify the modalities of calculations of the capital requirement and the minimum capital requirement.</p>	<p>Concerning possibilities for non-members to invest, there is the possibility of subordinated liabilities (Articles L 114.44 and L114.45): mutuals can issue 'titres participatifs', 'obligations' and 'dettes subordonnées'.</p>	<p>Concerning transparency and publicity requirements, according to Article L114-14, the procedures to make available documents to the members attending the general meeting should be fixed before the meeting. Concerning related auditing issues, according to article 114-15, the annual accounts are provided by the mutuals, unions and federations to anyone who requests it, under conditions set by order of the Minister responsible for mutual affairs.</p>	<p>Concerning the protection of assets, the winding-up of a mutual, union or federation is decided by the general assembly (Art L113-4). The net assets will be transferred to other mutuals, unions or federations, as will be decided by the general assembly, or to a mutual solidarity fund (see art. L421-1) or to a guarantee fund (see art L431-1); the latter solution will be retained in case the GM took no decision (art L114-12).</p>	YES	<p>Life and non-life insurance (complementary health insurance) They can also manage facilities dealing with health, culture and society. Some of them are also active in the compulsory statutory insurance domain.</p>

¹ Code de la mutualité : <http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006074067&dateTexte=20080505>

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				The Board of directors appoints one or several executive managers who can assist to the Board's meeting (art L114.19).									
Germany	Versicherungsverein auf Gegenseitigkeit (insurance mutual)	As a general characteristic, a insurance mutual (Versicherungsverein auf Gegenseitigkeit) is a private insurance company on the basis of an association with legal personality (wird dadurch rechtsfähig, daß ihm die Aufsichtsbehörde erlaubt, als "Versicherungsverein auf Gegenseitigkeit" Geschäfte zu betreiben, art 15) whose members are the policyholders ¹ .	<p>Formation of a insurance mutual is possible by at least two natural persons who agree on the statutes/articles of association and the appointment of the executive board and the supervisory board. The statutes need to be notarized (VAG § 17).</p> <p>Formation is also possible by way of merger of at least two existing insurance mutuals². It is not possible to convert another legal form (i.e. joint-stock company) into a insurance mutual.</p> <p>Due to the licensing system a insurance mutual additionally needs the permission of the German Insurance Supervisory Authority, BAFIN to become effective in law.</p> <p>Once the insurance license is received, the insurance mutual will be registered in the commercial register.</p> <p>A mutual, before becoming a mutual insurance association, does not have authorised capital. Costs for formation and operating costs for the first years are covered by an effective initial fund (is that called eingezahlte Gründungss-tock). Creation, interest calculation and repayment of the initial fund are subject to the approval of BaFin and are laid down in the statutes of the insurance mutual. The initial fund has to be paid in cash and has to be repaid by using the annual surplus in the first years. There is no minimum threshold determined as initial fund. The insurance mutual has to provide evidence that it is able to fulfil the obligations of the insurance contracts on a sustained basis.</p> <p>As the mutual is an insurance company it also has to fulfil the capital requirement for insurance companies as laid down in § 5 para. 4 and § 53c para.2 of the German Insurance Supervision Act (Mindestbetrages des Garantie-</p>	<p>The corporate governance bodies of a German insurance mutual are:</p> <ul style="list-style-type: none"> the general assembly (of members or of members' representatives): highest authority in the organisation (VAG § 29) the supervisory board and the management board (two-tier system). <p>The management board has to consist of at least two natural persons (VAG § 34). The management board manages the insurance mutual. The member or members of the management board shall have the power to represent the insurance mutual in dealings with third parties and in legal proceedings.</p> <p>The supervisory board has to consist of at least three natural persons (VAG § 35). The supervisory board shall supervise the duties of the management board. It may not itself exercise the power to manage the insurance mutual and can not represent the insurance mutual in dealings with third parties. It shall represent the in-</p>	<p>Rights of members are usually laid down in the statutes of the insurance mutual. Only a few minority rights are stipulated in VAG § 36b. The following is stipulated concerning rights of members:</p> <ul style="list-style-type: none"> generally inseparable relationship between membership and being a policyholder: exceptionally non-member business is permitted. Generally the membership in a mutual insurance association is acquired at the same time as signing an insurance contract, no special membership fee is required. Only exceptionally non-member business is also permitted by law (VAG § 21 para.2). jointly owned by the members-policyholders: The members of a German mutual insurance association are owners of the company and hold ownership rights. The own funds of a mutual insurance association remain the property of all its current members and are therefore truly collective and indivisible. democratically controlled by the member-policyholders: The democratic control of the mutual in- 	<p>For both the large and the small insurance mutuals, the way members are represented is subject to the statutes of the organisation.</p>	<p>German insurance mutuals do not have shares. According to VAG § 20, it is allowed for insurance mutuals to sell insurance to persons which are not member of the (ordinary) insurance mutual only if this is explicitly stipulated in the statutes of the organisation.</p>	<p>As other insurance providers</p>	<p>According to Article 1 para. 3 (a) Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings which has been transposed into German national law under VAG § 53c, insurance mutuals are allowed to issue profit-participation certificates and subordinated loans also to non-member investors.</p>	<p>Neither German Insurance Contract law nor German Insurance Supervision law makes a difference between insurance mutuals or insurance joint-stock companies in terms of transparency and publicity requirements. The general provisions are applicable insurance mutuals.</p>	<p>Special protective regulations against demutualisation like the "French lock" (i.e. in case of demutualisation, the assets need to be transferred to a similar organisation, and not to the members) do not exist in Germany. In addition, it appears not to be necessary to have such asset protection system. As the insurance mutuals have a comprehensive legal framework and are widely recognised legally and politically and have shown their advantages over centuries, this legal form is well established enough that there is no fear of demutualisation and no demutualisations have taken place in the last 50 years.</p>	YES	Life and non-life insurance

¹ See: <http://www.versicherungsnetz.de/onlinelexikon/VersicherungsvereinAufGegenseitigkeit.html>

² See: Umwandlungsgesetz (UmwG): http://www.gesetze-im-internet.de/umwg_1995/index.html

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		<p>fonds). Ordinary European rules apply to the minimum guarantee fund. A third of the solvency margin is considered the guarantee fund. It is not explicitly mentioned that mutual-type organisations are allowed to have a lower minimum guarantee fund.</p> <p>In principle, for small insurance mutuals, the same rules apply as to the ordinary insurance mutuals concerning capital requirements. However, as they are non-Directive insurers, they do not have to comply with the requirements concerning the minimum guarantee fund.</p>	<p>urance mutual in dealings with members of the management board, or one of them, in case of litigation.</p> <p>The general assembly can be organised as assembly of all members, which occurs in nearly all small insurance mutuals and to a lesser extent of the medium-sized and big insurance mutuals or the assembly of delegates of the members. The latter occurs in a significant number of the medium-sized and big insurance mutuals.</p> <p>There is a wide legal framework for the corporate governance of insurance mutuals. With the exception of a few binding regulations, the German law allows insurance mutuals to define their own corporate governance in their statutes.</p>	<p>urance association in Germany can be granted by way of an assembly of all members or an assembly of delegates of the members, both are co-equal under German law.</p> <ul style="list-style-type: none"> ▪ solidarity among members: The equality principle (Gleichbehandlung) among members is stipulated in VAG § 21. 								
Kleine Versicherungsvereine (small insurance mutual)	<p>Small mutual insurance associations are according to article 53(1) associations which have a limited geographical activity field, or limited insurance focus (Für Vereine, die bestimmungsgemäß einen sachlich, örtlich oder dem Personenkreis nach eng begrenzten Wirkungskreis haben (kleinere Vereine). They are called kIVaG although this is not a legal term. The difference between the small and large insurance mutuals is not only a matter of size, as the small ones are not considered trading entities according to the Handelsgesetzbuch.¹ result there are different regimes for these small insurance mutuals (Kleine Versicherungsvereine):²</p> <ul style="list-style-type: none"> ▪ The first is an easing of requirements at the discretion of the supervisor. ▪ The second one is exemption on the basis of the size of a small mutual. If a mutual is too small according to certain 	<p>For the smaller insurance associations that insure only a specific group of people or very specific risks and which are organised locally, simplified statutory provisions are stipulated (§ 53 VAG). These small insurance mutuals can in contrast to the larger insurance mutuals not assure non-members.</p>	<p>Small insurance mutuals can never have non-members, so also not non-member investors.</p>	<p>As other insurance providers.</p>	<p>For small insurance mutuals non-member investors is not possible.</p>	<p>The small insurance mutuals are supervised by the Länder and lower requirements are set concerning transparency and publicity requirements.</p>	<p>Also with regard the small insurance mutuals, there is no specific protective legislation. Again, this specific legislation is not felt necessary.</p>	YES	<p>Non-life: specific group of people or very specific risks and which are organised locally</p>			

¹ <http://www.versicherungsnz.de/onlinelexikon/VersicherungsvereinaufGegenseitigkeit.html>

² See: AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

³ In German, the regimes are called "Sonderregelungen" (special arrangements), distinguishing between "kleine VVaG", "kleine VVaG mit Erleichterungen kraft Ermessensentscheidung", "kleinste VVaG mit Freistellung", "kleine VVaG mit grossenmassig begrenzter Geschäftsfähigkeit in bestimmten Sparten" and "kleine VVaGPensionskassen mit erheblicher wirtschaftlicher Bedeutung und Erfüllung der Solvabilitätsregeln" (small mutuals/small mutuals with reduced requirements due to individual decision/very small, exempt mutuals/ small mutuals with restricted business in terms of size and lines of business/small pension mutuals with significant economic importance and fulfilling solvency requirements). Martin Proiss, the author of "Versicherungsaufsichtsgesetz", the source of this part on regimes for small mutual insurers, deplors in his commentary the complexity and fragmentation of the regulatory regime. For him the value of such detailed regulations for tiny operators is doubtful and he suggests streamlined standards for all lines of business.

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		<p>standards, it is eligible for exemption.</p> <ul style="list-style-type: none"> The third regime applies to small mutual insurers with limited operations in certain lines of business. Additionally, these small non-life mutual insurers may not write any liability, credit and suretyship insurance and life insurers may not write pension or funeral insurance. Furthermore, they should include in their bylaws the possibility for supplementary calls or proportional claims settlement. The fourth regime is related to pension funds of considerable economic importance which fulfil the solvency rules. They are subject to rules applicable to small mutual insurers but with additional requirements as long as they fulfil solvency rules. If a pension fund has total assets (Bilanzsumme) of more than €250 million, or if a sectoral pension fund has total assets of more than €50 million and a yearly premium income of €2.5 million, it no longer qualifies for this regime.³ 											
Greece	αλληλασφαλιστικός συνεταιρισμός (mutual insurance cooperatives)	<p>According to the insurance legislation: "Mutual insurance cooperatives" provide mutual insurance exclusively to their member policy-holders¹. Their operation is governed by Articles 35, 36 and 37 of Legislative Decree 400/1970 («Περί Ιδιωτικής Επιχειρήσεως Ασφαλίσεως»). Their activity is restricted to the area of non-life insurance.² According to the Law Regarding Private Insurance Undertakings (Legislative Decree 400/1970), providing mutual insurance to their members must be the exclusive object of mutual insurance cooperatives. These organisations are essentially cooperatives. Articles 35-37 of decree 400/1970 only apply to those mutual insurance companies provided they fulfill cumulatively the following conditions under a-c:</p> <ul style="list-style-type: none"> (a) Their articles of association provide for the possibility of calling up additional contributions or reducing the foreseen benefits. (b) Their business does not cover civil liability risks, unless the latter constitute ancillary cover within the meaning and under the conditions of article 3 para. 1 hereof, of credit and suretyship risks. *(c) The amount of the annual 	Concerning mutual insurance cooperatives article 36 of Decree 400/1970 states: For the granting of license the cooperatives shall submit to the Ministry for Commerce an application accompanied by the following documents: <ul style="list-style-type: none"> (a) Certified copy of the Articles of association, approved according to the provisions of Law 602/1915 (substituted by Law 1667/1986) "as regards Cooperatives" along with a list of their active members. The Articles of association shall include in detail provisions on the risks insured, the contributions payable, the way of coverage of risks and of the settlement of indemnities, the keeping of the technical reserves provided under the present Decree Law and in general the way of organization and operation of mutual insurance of members. (b) Written declaration of the Cooperative on the establishment of a Mutual Insurance Fund, stating that it undertakes the full cover of the insurance risk from the rest of its assets in case of non cover of the risk by the income of the Fund and. (c) Proof of deposit of a guarantee to an approved Bank operating in Greece of an amount of Drs. 3.000.000 by the Mutual Insurance 	The governance, the decision-making process etc. of mutual insurance cooperatives is subject to the Law that governs cooperatives in general.	The governance, the decision-making process etc. of mutual insurance cooperatives is subject to the Law that governs cooperatives in general.						YES	Non-life insurance	

¹ <http://www.bankofgreece.gr/Pages/en/deia/PrivateInsuranceFirms.aspx#mutual>

² <http://www.bankofgreece.gr/Pages/en/deia/PrivateInsuranceFirms.aspx#mutual>

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	<p>contribution must not exceed the sum of 5.000.000 euros." Also, only the provisions of article 35 to 37 incl. are applied to mutual insurance cooperatives which have made an agreement with another cooperative of this nature which provides either for the full reinsur-ance of all the insurance policies issued by them or under which the concessionary undertaking is sub-rogated to the liabilities arising under such insurance in the place of the ceding cooperative regard- less of the fact that the ceding cooperative fulfils all the above conditions a-c. The reinsuring or the ceding mutual insurance coop- erative is at all events subject to the provisions of the following paragraph.</p> <p>To mutual insurance cooperatives not falling within the provisions of the preceding paragraph shall also apply mutatis mutandis, further to the provisions of articles 35 to 37, the other provisions hereof, in particular the provisions relating to solvency margin, guarantee fund, technical reserves and scheme of operations. These cooperatives are dispensed from the obligation un- der article 36 para. 1 to deposit guarantee.</p>	Cooperative, which is placed ac- cording to the provisions of art 8 para. 15 second case of the pre- sent Decree Law. The license is granted by decision of the Minister for Commerce, pub- lished in the Government Gazette (Bulletin of Societes Anonymes and Limited Liability Companies). The lawful operation of the Mutual In- surance Cooperative and of the Mutual Insurance Fund begins as of the publication of this license.										
Allilo-voithitika Tamia/ Αλληλοβοηθητικά Ταμεία (Mutual health funds)	<p>There are also mutual benefit societies called mutual health funds ('Allilovoithitika Tamia' / 'Αλληλοβοηθητικά Ταμεία'), which are organizations set up by profes- sional unions. Their legal identity is 'Legal Persons Governed by Private Law' / 'Private Law Entities' (pro- fessional associations). They were established according to the provisions of the Royal Decree 15/20.05.1920:</p> <p>Licensed/Recognized Professional Associations and Unions may es- tablish and sustain Mutual health or pension Funds for their mem- bers. These Funds, constituting Legal Entities, have separate man- agement, but their administration can as well be assigned to the persons running the professional Association or their Union.</p> <p>Art. 34. -1. The Mutual health funds, governed by own Statute which defines clearly their aims and their resources, are more or less in- tended to the following objectives: a) to provide members or their families with medical and/or me- dicinal care, in case of illness and treatment, b) provide cash benefits in case of illness, accident, tempo-</p>	<p>Regarding the three (3) Mutual Health Funds of Banks (T.Y.P.E.T., A.T.P.S.Y.T.E., T.Y.P.A.T.E.), these organisations were established by the employees' unions of the re- spective banks, following General Assembly resolutions. There is no need for notarial act or license. The supervision or controlling authority is the Auditing Committee.</p> <p>Establishing an association in Greece, does not require a specific capital. The aims of the association are implemented through their resources, which are mainly the contributions of its members.</p> <p>Regarding the Mutual Health Fund of Journalists (E.D.O.E.A.P.), this organisation was established by its member' associations (ESIEA, EPIEA, ESIEMTH, EPIEMTH). There was a one-off proportionate contri- bution to the capital of the mutual health fund. The contribution from members-in-active-employment are withheld.</p>	Generally, the management is regulated by the activity the mutual health fund carries out (health and care regulations), the statutes of the organisation, deci- sions of the Board of Directors and the General meet- ing.	Previewed by the Stat- utes and Regulations of the Mutual Health Funds. The members of the Mutual health funds are considered as their owners.	Following elections every two (2) or three (3) years. The first, formal required rate of participants (<i>regu- lar members with voting right</i>) for the quorum is (ac- cording to the Funds' Statutes) : for a) T.Y.P.E.T. → at least 1/20 of the nationwide total of regular members with voting right, b) A.T.P.S.Y.T.E. → at least 1/3 of the total of regular members within Attica basin with voting right, c) T.Y.P.A.T.E. → at least 1/30 of the nationwide total of regular members with voting right, d) E.D.O.E.A.P. → at least 1/3 of the total of regular members within Attica and Thessa- loniki region with voting right. (In	N/A	The decisions to reserve or to distribute are taken by the Association's bod- ies acquiring a decisive responsibility, based on the Statutes of each As- sociation (e.g. General Assembly, Board of Direc- tors etc) and according to the existing legislation. The Mutual health funds A.T.P.S.Y.T.E. and E.D.O.E.A.P. are obliged by Law 1611/1950 to deposit the major amount of their reserves in the Bank of Greece, in a common -between each carrier and the Bank-, account. T.Y.P.E.T. and T.Y.P.A.T.E. are not linked to this Law. All funds do also keep assets in bank accounts.	N/A	Annual Re- ports and Balance Sheets, under approval by the General Assembly. Auditing by: a) Audit Commit- tee, b) internal control, c) auditors	In case of demutualisa- tion for: a) the Mutual health funds T.Y.P.E.T. – A.T.P.S.Y.T.E . – E.D.O.E.A.P., it is pre- viewed that property will be allocated for purposes similar to those indi- cated in the Funds' Stat- utes and in benefit of their mem- bers, follow- ing relevant resolutions of the Gen- eral Assem- bly. Regard- ing b) the Mutual health fund T.Y.P.A.T.E., the property goes either to the Em-	YES	Compul- sory/du plicatory health care/insur- ance (not part of the social protec- tion system as such)

¹ <http://www.oatye.gr/index-en.php>

² <http://www.isi.org.gr/GR/files/Greek%20Benefits.pdf>

³ <http://www.isi.org.gr/GR/files/Greek%20Benefits.pdf>, see also: <http://www.mzes.uni-mannheim.de/eurodata/newsletter/no7/feature.html>

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		<p>rary incapacity for work, child birth, unemployment, pay the funeral expenses of deceased members, provide an allowance or lump sum (when retired) to members incapable for work due to ageing, accident or illness, or the families of deceased members, provide loans, according to social criteria. The capital and the resources of a Mutual fund can not be disposed for purposes other than what is previewed, except for administrative and management expenses.'...)</p> <p>They are subject to the provisions applicable to "Mutual Health Funds" (Law 281/1914, Law 2151/1920, and the general provisions of the Civil Code regarding Associations). They operate under compliance to their Statutes.</p> <p>The main features of the mutual health funds are insurance solidarity, mutual democratic management, and their non-profit and self-governed character according to OATYE¹. They are not treated as social security institutions, since the Greek legal order excludes private bodies from the scope of social insurance, and they form part of the second pillar² (they mainly duplicate the compulsory health care offer for their members). Affiliation is voluntary.</p> <p>Benefits (medico-pharmaceutical care and primary healthcare) are financed through members' contributions, but employers may also choose to contribute.³</p>				case of no quorum gathered in the first assembly or in case of extraordinary general meetings, for purposes such as, e.g. Statutes' amendments, then other conditions are presupposed). Each regular member holds one vote.					ployees' Association of the Agricultural Bank or the Welfare Fund of the Agricultural Bank.		
Hungary	Biztosító egyesület (Mutual Insurance Association)	<p>Insurance Act¹ 19. § (1) defines a 'biztosító egyesület' or mutual insurance association as an association which operates the insurance on the basis of the principle of mutuality, exclusively based on the contracts of its members, provides its benefits for insurance fee, in case of the insurance events established in the insurance conditions occur.² These mutual insurance associations include agricultural mutual insurance funds. Hungarian mutual insurance funds work according to the same main principles (not profit oriented, mutual and voluntary) as in the other Member States of the European Union. Foundation and operation of such funds are regulated by the "Act LX of 2003 on Insurers and insurance activity" and the "Act II of 1989 on Association" and the "Act C of 2000 on Accounting" which was later amended several times but mainly by</p>	The mutual insurance associations are established by at least 10 members (Insurance associations may be established and operated by natural persons and legal persons as well as the organizations of such persons without legal personality). An initial fund of 1 Million HUF is needed and at least 70% of the initial fund shall be paid in cash. An insurance association shall receive authorization to commence operations only if all of the cash contributions of the initial capital are paid up in full [IA § 20].	A mutual insurance association (with more than 100 members) shall at least have a board of directors, consisting of a minimum of five and a maximum of eleven members and a supervisory board, consisting of a minimum of three and a maximum of fifteen members. The General Meeting will elect the members of the board of directors and the supervisory board.	Entering into the association is only on condition having an insurance contract, by the expiration of the contract, the membership doesn't cease unless the member stops paying membership fee or if she/he is not obliged paying a fee, comply with other obligations and enter into a new contract within one year [IA § 19 (2)-(3)]; refers to the CC ³ § 62 (3) voting right and right of eligibility on General Assembly, right to take part on the events of the association. The members of the management board and supervisory	Maximum fifty Delegates are elected from the GA if membership is above 1000 persons over one year, the decisions of the GA require a majority of the votes cast (simple majority of votes) unless the articles of association stipulate a larger majority [IA § 22 (7)]	shares are in principle not possible.	Gains can be returned to the members (if statutes allow this) only if the reserves exceeds the solvency margin requirement, or the guarantee fund twice (IA § 23) ⁴	There is no possibility for members investors but by the expiration of the insurance contract, the membership does not immediately cease unless the member stops paying membership fee or, if she/he is not obliged paying a fee, comply with other obligations and enter into a new contract within one year [IA § 19 (2)-(3)]	General insurance regulation apply, linked to conditions of entering into contract and issuing of the insurance policy and complaints handling (IA § 166 – § 167) Concerning related auditing issues: General insurance regulation apply, except associations are not required to appoint external auditor (IA Chapter IV, § 143- § 152)	In case of liquidation, the sequence of payment of the remaining insurance contracts are mentioned in the law: firstly health- and third-party insurance allowance liabilities, secondly life-insurance liabilities, thirdly liabilities of insurance events that occurred before the declaration	YES	non-life and life insurance

¹ Act No. LX of 2003 on Insurance Institutions and the Insurance Business: see: http://net Jogtar_hu/r/gen/getdoc.cgi?docid=a030060_tv&dbnum=62

² Act No. LX of 2003 on Insurance Institutions and the Insurance Business: see: http://net Jogtar_hu/r/gen/getdoc.cgi?docid=a030060_tv&dbnum=62

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	the "Act XCIX of 2004 on the Amendment of the Act C of 2000 on Accounting" in order to comply with relevant regulations of the European Union ¹ . In order to begin operation after the constituent assembly and the preparation of different official documents (Application, Statutes, Rules of Operation, General and Extraordinary Conditions, Premium Calculation, Pricing Policy, Business Plan) the Hungarian Financial Supervisory Authority permits functioning and the local county court registers the given fund. The activities of these funds are reinsured and re-insurers make them interested in the proper risk management. Such funds focus on the hard-to-insure losses. Participation of at least ten natural persons and/or legal entities is required for establishment. ²			board shall be elected by the GA.						of liquidation and originated from third-party insurance, fourthly the liabilities of insurance events occurred before the declaration of liquidation, fifthly the premiums paid in advance, and finally, the other liabilities. Hence, there is no mentioning that the assets will have to be transferred to another similar type organisation.		
Önkéntes kölcsönös biztosító pénztár (voluntary mutual insurance fund)	In The Act XCVI of 1993 on Voluntary Mutual Insurance , Section 2. (2), a 'voluntary mutual insurance fund' (önkéntes kölcsönös biztosító pénztár) is defined as follows: "voluntary mutual insurance fund" (hereinafter referred to as 'fund') shall mean an association created by natural persons (hereinafter referred to as 'fund members') under the principle of independence, mutuality, solidarity and voluntary participation for funding services to supplement, supersede or replace social security benefits and benefits for health protection (hereinafter referred to as 'services'). The fund shall record the membership payments it receives from members in individual accounts and shall organize, finance and provide its services accordingly. Regulations concerning financial management and liability and entitlements related to fund activities are governed by this Act. ⁵ According to the Act (Section 3) ⁵ : <ul style="list-style-type: none"> ▪ 'Mutuality' shall mean that fund members jointly accumulate the reserves required to provide benefits. The persons eligible to receive services shall have equal rights in respect of access. Each fund member has an ownership stake in the fund. 	The mutual benefit provident funds according to Act XCVI of 1993, section 5, may only be established by natural persons. At least 15 founding members are required for establishment. The fund may commence the activities after obtaining the operating license from the Commission. The procedural rules for licensing these activities are contained in Sections 60-64 concerning the application, financial management plan (there is no explicit capital requirement), facilities, equipment and personnel. They receive a license from the Financial Supervisory Authority (HFSA) to carry out the following activities: the pension plan benefits in connection with social risks, supplementary provisions provided on the basis of the social obligations prescribed by legal regulation, financial support for the purchase of medicines and medical aids (mutual aid fund): organization and funding of programs serving the protection of health and the purchase of health care services (health fund).	The bodies of the fund are (section 19): a) general meeting and, in the cases defined in the bylaws, the delegates' meeting or partial general meeting; b) the board of directors; c) the supervisory board.	Section 16 of the act on Voluntary Mutual Insurance Funds states that <ul style="list-style-type: none"> ▪ (1) Fund members shall have the right to vote and, unless this Act or the bylaws provide otherwise, to be elected to the bodies of the fund. ▪ (2) Fund members are entitled to have access, in the manner defined in the bylaws, to the documents and books of the fund (other than the minutes taken of closed meetings and the draft resolutions discussed there): they are also entitled to request information on the operation of the fund. Fund members may not use the information so obtained in a manner that violates the fund's interests, nor may they use the personal data of fund members in a manner that violates their personality rights. ▪ (3) Fund members 	One person one vote: General Assembly of Delegates is regulated in details. Powers and Duties of the General Meeting Section 21 – 23/3.	N/A	Detailed regulations define three types of reserve funds: operational, liquidity and other risks, and benefit funding reserves. ⁶	N/A	Detailed reporting and disclosure rules to the Authority, to the public, and to the members. Privacy and complaints regulations also in place. Advertising is also regulated ⁷ . Concerning auditing, they are supervised according to the regulations included in the Act XCVI of 1993 on Voluntary Mutual Insurance Funds. According to Section 8 judicial supervision of the funds shall be carried out	YES	services for members that supplement or replace social security services, as well as services that promote healthy lives.	

¹ Gábor Erent (2002): "Tíz éve sikeresen működő kockázatkezelési rendszer: a biztosító egyesületi hálózat", Pénzügyi Szemle, vol. 3/2002, pp. 295-302.

² Maria Bieleza, Costanza Conte, Christoph Dittmann, Javier Gallego, Josef Stroblmair (2006), Agricultural Insurance Schemes: http://ec.europa.eu/agriculture/analysis/external/insurance/annex11_en.pdf

³ The Civil Code has been updated 22th December, 2011.

⁴ The extent of the share of profits in a year and the mode by which this share is distributed among the insured persons shall be defined in the charter (IA Section 23).

⁵ Act No. XCVI of 1993 on Voluntary Mutual Insurance Funds: see: http://www.euro.who.int/_data/assets/pdf_file/0006/80826/E68317.pdf

⁶ See: Section 3. (2) 'Principle of closed financial management' Management and Reporting Rules of Funds Section 36. and subsequent sections

⁷ See: Sections 29/A, 40 and subsequent

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		<ul style="list-style-type: none"> ▪ 'Voluntary participation' shall mean that natural persons may, of their own free will, set up funds and may join and leave such funds in accordance with the provisions of the fund's bylaws. ▪ 'Independence' shall mean that funds are free to devise their scope of services and business policies within the framework of legal regulations. ▪ 'Solidarity' shall mean that the contributions payable by the fund members are established on the basis of standard principles, independent of the degree of individual risks and any settlement. The application for admission of a natural person who meets the criteria for membership can not be rejected. ▪ 'Principle of association' shall mean that no discrimination is permitted on the grounds of religion, race, ethnic background, political affiliation, age or sex. ▪ 'Non-profit operation' shall mean that the fund may not disburse the profits of its operations as either dividends or profit-sharing and that it must use such profits in the interest of its basic activity. 			may use the services of the fund on the basis of the provisions of the bylaws.					by the public prosecutor's office in compliance with the relevant governing rules, and government supervision shall be carried out by the State Financial Institutions Commission			
Ireland	Friendly societies	Friendly societies (Cara-Chumannn) are societies registered under the Friendly Societies Acts 1896 to 1977. They are established for various purposes, mostly to provide small life assurance benefits, sick benefits and death benefits to members, to provide benefits to non-members or to promote particular activities or interests. The Friendly societies Acts create also other societies for other purposes which are not called friendly societies although they are established under those Acts.	In order to register a friendly society, the grouping involved, which must consist of at least seven people, must draw up a set of rules governing the operation of the society. A society may be registered as a friendly society, benevolent society, a working-men's club or a specially authorised society. The rules must, according to the class in which the society is to be registered, as a minimum contain the matters required to be provided for by the First Schedule of the Friendly Societies Act 1896. The rules, together with the prescribed application form and fee are submitted to the Registrar for examination and, once the rules are found to be in accordance with statute, the society is registered. Concerning the fee paid for registration, the amount is approximately 200 Euro. ¹ To obtain an insurance licence the following amounts are needed: <ul style="list-style-type: none"> ▪ it is required to possess a minimum guarantee fund (equal to one third of the solvency margin, subject to a minimum of €3.5 million); ▪ it must have a paid-up share capital of at least €635,000.² 	Most of the issues concerning management and corporate governance are explained in the statutes of the friendly society. The Friendly Society Act refers to the Statutes at this point. Publication/ auditing: The Registrar of Friendly Societies is responsible for the assessment and registration of applications and any subsequent amendment of rules which societies are obliged to render to the Registrar, and to ensure that registered societies meet their statutory obligations with regard to filing returns, which once registered are made available for inspection by the public. In this regard the following three classes of body come under the remit of the Registrar of Friendly Societies: <ul style="list-style-type: none"> ▪ Industrial and Provident Societies ▪ Friendly Societies ▪ Trade Unions The Friendly Societies have an obligation to file annual returns to the Registry, failure of which results in cancellation or suspending. ³							In the case of termination of the society, after all payments have been made the funds and property will be divided, unless it is decided otherwise. According to article 15 of the friendly Society Act: "A society (other than a benevolent society or working men's club) shall not be disentitled to registry by reason of any rule for or practice of dividing any part of the funds thereof if the rules of the society contain distinct provision for	YES	Life insurance

¹ See: <http://www.cro.ie/ena/rfs--friendly-society-fees.aspx>

² Dillon Eustace (2010), Insurance Regulation in Ireland July 2010

³ For its importance see for example: <http://debates.oireachtas.ie/dail/2011/11/30/00091.asp>

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			<p>De minimis regime Under certain conditions, friendly societies will not be registered under the insurance act. No society shall be registered under the insurance Act unless the registrar of friendly societies is satisfied that:</p> <ul style="list-style-type: none"> ▪ the society is a society to which Article 2.2 (b), Article 2.2 (c) or Article 3 of Council Directive 73/239/EEC (non-life) refers (concerning supplementary calls); ▪ the society is a society to which Article 2.2, Article 2.3 or Article 3 of Council Directive 79/267/EEC (life) refers (supplementary calls), or is a society in respect of which the Minister for Industry and Commerce has indicated that he will issue an authorisation under the European Communities (Life Assurance) Regulations, 1984. <p>Furthermore, no society registered under this Act shall be authorised to carry on any insurance business falling under the description of insurance of Class III, IV or VII of Schedule 1 to the European Communities (Life Assurance) Regulations, 1984, unless it has obtained an authorisation under those Regulations for that purpose".</p>								meeting all claims upon the society existing at the time of division before any such division takes place."		

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Italy	Società di mutuo soccorso (benefit mutual societies)	mutual benefit societies (società di mutuo soccorso): Mutual benefit societies are still covered by Law 3818/1886 ¹ . This law sets precise limits on the specific fields within which they may operate, especially with regard to the total value of reimbursements paid to members. The mutual benefit societies (società di Mutuo Soccorso) operate in the areas of health, social, recreational and cultural activities benefiting their members, based on the principles of mutuality (membership is free and voluntary; the mutual benefit society can not select its members; mutual benefit societies carry out their activities exclusively for and among members), democratic participation (those belonging to mutual benefit societies are members and not clients; the member is an active part of an association and participates in all of the mutual's decisions through participation in the society assemblies) and solidarity (solidarity is consolidated in meeting changing social and health needs; mutuality is an alternative to state and private sectors) ² . As mentioned before, this special law does not define what a mutual must be: it simply states the fact that a mutual which covers its members against disease, inability to work and death (and also culture activity), can apply for legal recognition. In this regard, more recently, other laws – Law 502 of 1992 (on complementary health funds) ³ and Law 460 of 1997 (not-for-profit) ⁴ have given mutual benefit societies competences especially for complementary health care and social assistance. These activities are not considered insurance, but by being member, all kind of health care facilities and services become available. In addition, it is possible for a mutual benefit society to exist even if it is not legally recognized by Law 3818/1886. In the latter case its members can not profit from state advantages.	The Law 3818/1886 indicates that an Italian mutual benefit society is set up based on notary statutory constitution of a legal entity. The statute must indicate (article 3) ⁵ : <ul style="list-style-type: none"> ▪ The registered office; ▪ Mutual objectives (purpose); ▪ Conditions for members: admission and withdrawal or exclusion and corresponding rights and duties; ▪ Regulation concerning the mutual equity; ▪ Governance; ▪ Statute amendments, winding up, etc. <p>The application for the registration of the Company will be submitted to the Civil Court along with certified copies of the memorandum and articles of association (article 4).⁶</p> <p>There is no indication of the required capital or assets.</p>	Corporate governance is monistic. There is the general assembly and the board.	Participate in elections (the board can only be composed of members) (Obviously, relations between members and the mutual imply the possibility for the members to enjoy the services the mutual offers).	Members have the right to vote under the principle: one person-one vote.	Italian mutual benefit societies have no company capital but, instead, each member has the duty to give a contribution in relation to the quality and quantity of services offered.	The mutual reserves increase in relation to how much the members use the services offered. Obviously, these reserves are indivisible and must be devoted to the mutual's institutional aims.	Non-member investors are not permitted.	At the moment, the updating of the rules governing these items is being carried out. Concerning related auditing, Mutual benefit societies must have an internal auditing body.	the reserves are indivisible during the mutual's life and also when it is wound up. For mutual benefit societies, if the Company is liquidated, as well as if it lost its legal personality, the existing rules on charitable organizations will apply to those bequests and donations (Law of 1886, article 8) ⁷ .	YES	The mutual aid societies (società di Mutuo Soccorso) operate in the areas of health, social, recreational and cultural activities

¹ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

² www.fimiv.it/default.asp?modulo=pages&idpage=26

³ Decreto Legislativo 30 dicembre 1992, n. 502, "Riordino della disciplina in materia sanitaria, a norma dell'articolo 1 della legge 23 ottobre 1992, n. 421": <http://www.handylex.org/stato/d301292.shtml>

⁴ Decreto Legislativo 4 dicembre 1997, n. 460, "Riordino della disciplina tributaria degli enti non commerciali e delle organizzazioni non lucrative di utilità sociale": <http://www.parlamento.it/parlam/leggi/degleg/97460di.htm>

⁵ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

⁶ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

⁷ Legge 15 Aprile 1886 n° 3818, Costituzione legale delle Società di mutuo soccorso: <http://www.fimiv.it/default.asp?modulo=pages&idpage=15>

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
	Società di mutua assicurazione (mutual insurance companies)	mutual insurance companies (società di mutua assicurazione): Mutual insurance companies are covered by articles 2546-2548 of the Civil Code (Codice Civile) ¹ , which states that certain rules established for cooperatives (in that same Code) also apply to them. In addition, they are subject to authorization, supervision and other controls established by special laws concerning insurance. According to the Civil Code (Codice Civile), members of a mutual insurance society (società di mutua assicurazione) are also policy holders, and vice versa. Specifically with regard to the mutual insurance companies, two currently existing mutual insurance companies, Reale Mutua ² and ITAS Mutua ³ have been founded in the 19 th century. Reale Mutua was established by Royal decree in 1828, ITAS Mutua was established in 1821 by the Austrian Emperor. In the insurance legislation there are 2 types of mutuals: the very small ones and the normal ones).	subject to authorization, supervision and other controls established by special laws concerning insurance, and are governed by rules established for cooperative societies (article 2547) ⁴ . Furthermore, the bylaws may provide for the establishment of guarantee funds for the payment of allowances, through special contributions from policyholders or third parties, which then also become members (article 2548) ⁵ . These policyholders or third parties are called socio sovventore. The Private Insurance law: LEGISLATIVE DECREE n. 209 of 7 September 2005 – Code of Private Insurance ⁶ (hereafter referred to as Decree 209/2005) introduces two regimes: a de minimis regime, called in article 55, 2 altre mutue assicuratrici , and an 'ordinary' regime. Whereas in many countries the ordinary regime is the norm and the de minimis regime the 'exception', in Italy, the Decree 209/2005 inverts the order. Based on art 52,4, ordinary mutual insurance companies active in other lines of business and/or with premium income above 0.5 million Eur (life) and 1 million euro (non-life) during 3 years in a row and/or wanting to do business outside Italy, are not subject to the provisions of title IV. In such case they have to ask for a licence under article 13, which requires them to meet the criteria for all insurance companies. The mutuals falling under the de minimis regime are exempted from this.	The corporate governance is dealt with in company law and is hence similar to other company models. The corporate governance is monistic. Mutual specific provisions are specified in the individual bylaws of the mutual insurance companies (which date back a long time).	There are 2 types of members according to the Codice Civile: member policyholders and member-investors (socio sovventore). Investor-members may be appointed as directors however, the majority of directors must consist of insured members (article 2548)	In principle, each policyholder/owner has one vote. The Codice Civile, however, does mention the issue of voting rights: it states that the bylaws may allocate to each of the investor-members more votes than one, but not more than five, in relation to the amount of the contribution. The votes allocated to investor-members, must in any case be less than the number of voting rights of the insured members.	Concerning mutual insurance companies, general provision concerning the management and corporate governance is dealt with in company law and is hence similar to other company models. Mutual specific provision is specified in the individual bylaws of the companies (which date back a long time). Hence, whether shares are possible, depends on the Bylaws.	As other insurance providers and dealt with in the Bylaws of the mutual insurance company.	See art 2548 in the Codice Civile: the bylaws may provide for the establishment of guarantee funds for the payment of allowances, through special contributions from policyholders or third parties, which then also become members ⁷ . These policyholders or third parties are called socio sovventore. The votes allocated to investor-members, must in any case be less than the number of voting rights of the insured members	The mutual insurance companies are supervised by the Vigilanza sulle Assicurazioni Private e di Interesse Collettivo) and need to report to the ISVAP.	There is no legal system for assets protection in case of demutualisation.	YES	Life and non-life insurance
Lat via	Savstarpejās apdrošināšanas kooperatīvā biedrība (mutual insurance cooperative society)	There is no general definition of a mutual in Latvian law. There is no definition in the insurance legislation either but the insurance legislation, the Law On Insurance Companies and Supervision, refers to mutual cooperative insurance societies ⁸ . Mutual insurance cooperative societies have members, whereas insurance companies have shareholders. Several articles in the insurance legislation refer to the rights/duties of members but the legislation falls short of providing a definition. The mutual insurance cooperative seem to be cooperatives and falls, as legal entity, ⁹ under the cooperative society law ¹⁰	According to the Article 32 Paragraph 1. ¹ , Clause 2 of the Law On Insurance Companies and Supervision Thereof, the minimum size of a guarantee fund shall be EUR 2.7 million equivalent in lats, recalculated according to the exchange rate set by the Bank of Latvia, for mutual insurance cooperative societies which provide insurance for the classes referred to in Article 12, Paragraph one, Clauses 10, 11, 12, 13, 14, 15 and 19 of this Law while for other mutual insurance cooperative societies, EUR 1.8 million equivalent in lats, recalculated according to the exchange rate set by the Bank of Latvia.	There is no specific information in the Law on mutual insurance cooperative societies. In general, mutual insurance cooperative societies are for the Law similar organisations as a joint stock company. Specific information on management and corporate governance can be found in the Cooperative Societies law ¹ and more specifically in the Bylaws of the cooperative.						the Law similar or-	YES	Life and non-life insurance	

¹ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

² <http://www.realemutua.it/RMA/rmaweb/reale-mutua.html>

³ <http://www.gruppooitas.it/>

⁴ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

⁵ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

⁶ CODICE DELLE ASSICURAZIONI PRIVATE (DECRETO LEGISLATIVO 7 settembre 2005, n. 209): http://www.isvap.it/Isvap_cms/docs/F9461/CAP_annotato.pdf

⁷ Codice Civile: <http://www.altalex.com/index.php?idnot=36502>

⁸ see http://www.fktk.lv/texts_files/Apdrosin_sab_un_to_uzraudz_lik_ar_groz_A.pdf

⁹ See: http://www.vvc.gov.lv/advantagecms/LV/meklot/meklot_dokumentus.html?query=Co-operative%20Societies%20Law&resultsPerPage=10

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		<p>According to article 2 of the Law, the Law shall not apply to:</p> <p>1) mutual insurance cooperative societies that provide non-life insurance (the classes of insurance referred to in Article 12, Paragraph one, Clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 16, 17 and 18 of this Law) if their operation fully complies with the following conditions:</p> <ul style="list-style-type: none"> ▪ a) the articles of association contain provisions for requesting members of the mutual insurance cooperative society to make additional contributions or for reducing insurance indemnities payable to them under insurance contracts, ▪ b) the amount of insurance premiums and additional contributions made by members of the mutual insurance cooperative society per year shall not exceed EUR five million equivalent in lats, recalculated according to the exchange rate set by the Bank of Latvia, ▪ c) civil liability insurance risk is not subject to the additional risk referred to in Article 12 1 of this Law; <p>2) mutual insurance cooperative societies that provide life insurance (the class of insurance referred to in Article 12, Paragraph one, Clause 19 of this Law) if their operation fully complies with the following conditions:</p> <ul style="list-style-type: none"> ▪ a) the articles of association contain provisions for requesting members of the mutual insurance cooperative society to make additional contributions or for reducing benefits provided to them or assistance from other persons who undertake commitments on behalf of members of this mutual insurance cooperative society, ▪ b) the amount of insurance premiums and additional contributions made by members of the mutual insurance cooperative society for three successive financial years shall not exceed EUR five million equivalent in lats per year, recalculated according to the exchange rate set by the Bank of Latvia. <p>For these small mutual insurance cooperative societies there is no insurance supervision (non-directive insurers).</p>											

¹ http://www.vvc.gov.lv/advantagecms/LV/meklet/meklet_dokumentus.html?query=Co-operative%20Societies%20Law&resultsPerPage=10

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Lithuania	No mutuals	In the Lithuanian Civil Code, article 6.1017, on Mutual insurance states that "Natural and legal persons may insure the property interests on a mutual basis, joining the funds necessary for such insurance in self-insurance societies. The activities of self-insurance societies shall be regulated by laws. The rules of this Chapter [Chapter LIII Insurance] shall apply to mutual insurance unless other laws provide otherwise." ¹ The Lithuanian Civil Code has extensive insurance provisions (Chapter LIII, articles 6.987 till 6.1018) The insurance legislation does not explicitly recognise mutual insurance companies (see LAW ON INSURANCE, 18 September 2003, No.IX-1737), art 2: "... which a public company, a private company or a European company (Societas Europaea) engaged in insurance or independent insurance mediation activity must conform to."	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO	N/A
Luxembourg	Association d'assurances mutuelles (mutual insurance association)	A mutual insurance association (association d'assurances mutuelles): Mutual insurance societies are covered by the law on the insurance sector of 6 December 1991 (Loi modifiée du 6 décembre 1991 sur le secteur des assurances) (hereafter called Law 1991), which includes special provisions for mutual insurance associations, regarding establishment and organisation. There is no de minimis regime for very small mutual insurance associations in Luxembourg, however, smaller companies in general are exempted from complying with the regulations concerning minimum guarantee capital.	There are no explicit legal requirements regarding the minimum subscribed initial (foundation) fund of a mutual insurance association at creation. However, from a prudential supervisory perspective, the Commissariat aux Assurances requires a minimum capital of EUR 5.500.000. Afterwards, a mutual insurance association is required to have, on a permanent basis, a minimum guarantee fund ranging from EUR 2,300,000 to EUR 3,500,000, the exact amount depending on the business plan and the classes of insurance it covers. If appropriate, the Commissariat aux Assurances has the power to grant the mutual insurance association a 25% discharge of that amount. Those companies are exempt from the requirement to have a minimum guarantee fund ranging 2.3 to 3.5 million Euro, whose income from premiums or contributions for the credit class is less than 4% of their total premiums or total contributions are below 2.5 million Euro (article 81).	One-tier model: The Association of Mutual Insurance is administered by a board consisting of at least three directors. The Board has the authority to perform all necessary or appropriate actions to achieve the corporate purpose, except those that as stipulated in the memorandum of association are reserved for the General Assembly of the members of the association (article 89).	to be determined by the memorandum of association.	to be determined by the memorandum of association.	to be determined by the memorandum of association	depending on the business plan and the classes of insurance it covers, a mutual insurance association is required to have a permanent minimum guarantee fund (EUR 2,300,000 - EUR 3,500,000). Those companies are exempt from the requirement to have a minimum guarantee fund ranging 2.3 to 3.5 million Euro, whose income from premiums or contributions for the credit class is less than 4% of their total premiums or total contributions are below 2.5 million Euro (article 81).	To be determined by the memorandum of association.	According to article 87 point 3 of the Law, the memorandum of association has to be filed at the Luxembourg Trade and Companies Register and is then published in the Official Journal of the Grand Duchy of Luxembourg. Being under the prudential supervision of Commissariat aux Assurances, the annual accounts of mutual insurance associations have to be audited by an external auditor accepted by Commissariat aux Assurances.	The same requirements as for any other insurance undertaking are applicable. There are set out by the Law. Mutual insurance associations have to establish sufficient technical provisions to cover their entire business. The technical provisions must be covered at all times by equivalent and matching assets ("the matching assets of underlying technical provisions"). Movable matching assets must be deposited with a financial institution approved by Commissariat aux Assur-	YES	Life and non-life insurance

¹ Civil Code 2000: http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=245495

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar- ket
											ances. All the matching assets of underlying technical provisions constitute a segregated group of assets allocated preferentially to guaranteeing payment of the insurance claims. The way the organisation handles assets in case of liquidation is included in the memorandum of association (Statutes).		
	Société de secours mutuel (mutual aid society)	A mutual benefit society (société de secours mutuel): Mutual benefit societies are covered by the law of 7 July 1961 concerning the mutual benefit societies (loi du 7 juillet 1961 concernant les sociétés de secours mutuels) (hereafter called Law 1961) and its implementing regulation, the Grand Ducal Regulation of 31 July 1961 governing the operation of mutual benefit societies (règlement grand-ducal du 31 juillet 1961 déterminant le fonctionnement des sociétés de secours mutuels) (hereafter called Regulation 1961). They have no capital. These societies are placed under the guardianship of the Minister of Social Security and work together with social security institutions in providing social protection.	In practice, the text of the statutes adopted by the society is sent to the Supreme Council for Mutuals (Conseil Supérieur de la Mutualité, or CSM) within the Ministry of Social Security for review and advice. Hearing the opinion of the Supreme Council, the Minister shall then, if necessary, approve the statutes in the form of ministerial decree, which states "the conformity of statutes with the laws and regulations" and that "the receipts provided are sufficient to meet the statutory expenditure of the society." The amount of the social and reserve funds is not specified in the law. The ministerial decree of approval and the statutes of the mutual benefit association attached to the order by part are published in the Memorial (Memorial B).	see statutes	all major decisions (elections, fixing contribution rates and benefits) are taken by the members at the general meeting	every member may assist and vote at the general meeting	N/A	As non profit making entity, excess of income over expenditures remains within the society. Although not legally defined, but annually monitored by the "Conseil Supérieur de la Mutualité"	N/A	Mutuals are required to present the financial report to the "Conseil supérieur de la Mutualité"	In case of dissolution, the reserves are not distributed to members, but they are spread to other mutual aid societies.	YES	Mutual assistance in the social domain. The main benefit offered by these latter category of mutuals consists in the payment of funeral grants, which is why they are commonly defined as "funeral funds"

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Malta	Mutual association	<p>According to the Insurance Business (Assets and Liabilities) Regulations¹ "mutual" means an insurance company which is a body corporate having no share capital (except a wholly owned subsidiary with no share capital but limited by guarantee)". The Malta Financial Services Authority defines a mutual company on its website as "a company owned by its policyholders"². A number of different types of mutuals are mentioned in the Insurance Business Act:</p> <p>De minimis regime: Malta introduced in its insurance legislation a de minimis regime: The Insurance Business Act and Insurance Business Regulations include special provisions for mutual associations. According to the Insurance Business Regulation, art 2, mutual associations are excluded from supervision as being a "non-directive insurer".</p> <p>Ordinary mutual regime: That there is an ordinary mutual regime can be deduced from regulation 16 which refers explicitly to the minimum own funds of a mutual for life business and to a 25% reduction of minimum guarantee fund for non-life business. These regulatory requirements are different from the non-directive mutual minimum guarantee fund requirements.</p> <p>Marine mutuals: Marine mutuals are mentioned also in the Insurance Business regulations as being subject to some specific requirements: e.g. "relevant insurer" means an insurer whose business is restricted to reinsurance of the marine mutual on terms that provide that the marine mutual can cancel the reinsurance arrangements at any time and can require the insurer immediately to transfer its assets and liabilities to the marine mutual (art 2)</p> <p>Foreign (non-EEA) mutual associations and P&I clubs: According to the Insurance Rule 5 of 2008³, under certain conditions, mutual associations which have their head office in a non-EEA country are allowed to carry on business of insurance.⁴ According to article 2 (2), the Insurance Rule 5 applies also to P&I clubs "issued with a permit in terms of Insurance Directive 5 of 1999 pursuant to article 6 of the Act to carry on business as a Protection and Indemnity Club"</p>	<p>Ordinary mutuals The minimum guarantee fund for a mutual active in a long term business is 2,250,000 Euro. For general business it is 2,300,000 Euro, however, for mutuals this is decreased by 25 per cent.</p> <p>De minimis regime For non-directive insurers (mutual and other), the guarantee fund depends for non-life insurance on the class of risk covered (ranges from 400,000 to 200,000 euro). For non-directive mutuals this is reduced by 25 per cent. For non-directive mutuals in long term (=life) business the guarantee fund is 600,000 euro.</p> <p>Foreign non-EEA mutual associations and P&I clubs Granting of permits to Mutual Associations to carry on business of insurance Article 5 of the Insurance Rule 5, 2008⁵:</p> <ul style="list-style-type: none"> ▪ (1) Notwithstanding that a Mutual Association may fulfil the requirements of article 4 of this Rule, the Authority shall not grant permit to the Mutual Association to carry on business of insurance, nor shall the Authority allow the Association to hold permit granted, unless it is satisfied that the Association - <ul style="list-style-type: none"> ▪ (a) is permitted in the country where its head office is situated to carry on the business which formed the object of the application; ▪ (b) is a Mutual Association of good repute; and ▪ (c) has complied with the provisions of article 12 of the Act with respect to the appointment of a general representative. ▪ (2) In its application for permit to carry on business of insurance, a Mutual Association shall notify the Authority in writing of its financial year; and where the Association alters its financial year it shall forthwith notify the Authority in writing of such change. ▪ (3) A Mutual Association may submit an application for permit to carry on business of insurance under the Act through a person enrolled in the Managers List or Brokers List under the Insurance Intermediaries Act, 2006; and, during the continuance of the permit, the person enrolled in the Managers List or Brokers List shall ensure that the Mutual Association 	This is for the larger part not subject to the insurance business act and hence left to be arranged in the bylaws of the mutual.	De minimis regime As these mutual associations are not subject to supervision, this is for the larger part not subject to the Insurance Business Act and hence left to be arranged in the bylaws of the mutual.				Although mutual associations are non-directive insurers, the Insurance Rule 5 from 2008 states that every Mutual Association holding permit under the Act to carry on business of insurance shall forward to the Authority audited financial statements and pay the Authority the permit fee.	This is for the larger part not subject to the insurance business act and hence left to be arranged in the bylaws of the mutual.	YES	life and non-life insurance (non-directive insurers: annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million euro)	

¹ SUBSIDIARY LEGISLATION 403.16 INSURANCE BUSINESS (ASSETS AND LIABILITIES) REGULATIONS Legal notice 286 of 2007, as amended by Legal Notices 426 of 2007 and 260 of 2009.

² See: <http://mymoneybox.mfsa.com.mt/pages/glossary.aspx?l=ML>

³ See: Insurance Rule 5 of 2008: Mutual Associations: <http://www.mfsa.com.mt/files/LegislationRegulation/regulation/insurance/insurers/Insurance%20Rule%205%20of%202008.pdf>

⁴ These conditions are: (a) the articles of association of the Association contain provisions for calling up additional contributions or reducing their benefits or, in the case of long term business, claiming assistance from other persons who have undertaken to provide it; (b) the business of the Association does not cover liability risks, unless such risks constitute ancillary cover within the meaning of subparagraphs (2), (4) and (5) of article 5 of the Act, or credit and suretyship risks; (c) the annual contribution income for business carried on by the Association in or from Malta does not exceed Euro 5 million or an equivalent amount in any other currency; and (d) at least half of the contribution income from business carried on by the Association comes from persons who are members of the Mutual Association.

⁵ Insurance Rule 5 of 2008: Mutual Associations: <http://www.mfsa.com.mt/files/LegislationRegulation/regulation/insurance/insurers/Insurance%20Rule%205%20of%202008.pdf>

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		Although being mentioned, whether mutual insurers are allowed in Malta is unclear.	satisfies at all times the provisions of the Act required to be satisfied by such Associations, the requirements of this Rule and the conditions (if any) of the permit. According to the Subsidiary Legislation 403.04, Insurance business (fee) regulation, Legal notice 139 of 1999, article 6, any Mutual Association applying for a permit to carry on business of insurance in Malta shall pay to the Authority - (a) upon submission of the application, irrespective of whether the application is eventually accepted or not, the sum of three hundred and seventy-five euro (€375) as application for permit fee; (b) upon acceptance of the application, the sum of five hundred euro (€500) as granting of permit fee; and (c) thereafter, during the month of January of each year, the sum of one thousand euro (€1,000) as continuance of permit fee due on the first day of that month.										
Net her lands	Onderlinge Verzekering-maatschappijen/vereniging (insurance mutual)	The mutual insurance society (onderlinge waarborgmaatschappij) is a specific variety of the legal entity "society" ("vereniging"). The mutual insurance society is established by notarial deed as an "as mutual insurance society established society" ¹ . The mutual insurance society concludes insurance policies with its members, who together bear the risks. The economic benefit for the members is risk-sharing. The laws and regulations applicable to this legal form are fairly similar to those applicable to cooperatives ² . According to the legal definition, however, a cooperative has to benefit the economic interests of its members by engaging in transactions with them other than insurance contracts. For insurance purposes, the mutual society or joint-stock company is the mandatory legal business form ³ . The cooperative form is not allowed for insurance. There is also a de minimis regime in the Netherlands, applicable to all	The once-off costs involved with the DNB-license application are ⁶ : <ul style="list-style-type: none"> Life, non-life, or reinsurer: € 26,000 Life or non-life branch: €0 – 22,400 Reinsurer branch: €22,400 In-kind funeral: €1,600 In-kind funeral branch: €1,500 Change of license: € 9,600 To compensate DNB and AFM for the costs of continuous supervision, all licensed insurers pay an annual amount to each supervisor, determined as follows: For DNB: <ul style="list-style-type: none"> DNB - Health insurers: €0.224 per policy holder DNB - Other insurers: 0.0451 % of the gross premium income The minimum annual contribution to DNB was established at €681 for 2010⁷. One of the requirements is the maintenance of a guarantee fund. The guarantee fund must be a third of the solvability margin, with an absolute set minimum. The minimum net asset amounts for the	The general meeting : The general meeting or the council of members is the highest decision-making body of the mutual society. Hybrid forms are possible, with BOTH a council of members as well as general meetings for critical decisions. a Supervisory Board (Raad van Commissarissen / Raad van Toezicht). For smaller mutual insurance societies, a Supervisory Board (Raad van Commissarissen / Raad van Toezicht) is not compulsory. The Board of Directors : For larger joint-stock companies and mutual insurance societies with equity/share capital	<ul style="list-style-type: none"> A mutual insurance society must provide in its articles of association that its purpose is to conclude insurance policies, in an insurance company which it manages on behalf of its members. The council of members (or the general meeting) is the highest decision-making body of the mutual insurance society. Restrictions apply regarding the entrance and withdrawal of members from mutual insurance societies. Unless the statutes provide differently, membership can only be ended at 	<ul style="list-style-type: none"> The general meeting may be composed of all member-policyholders or of delegates representing the member-policyholders⁸. The regulations thus offer a choice between direct and indirect democracy. Hybrid forms are possible, with a council of members as well as general meetings for critical decisions. There are no regulations concerning voting rights. This is up to the mutual insurance societies to provide in their 	Legally, the mutual capital may be divided into shares. Shares may be issued to members and in the case of the "Joint-stock mutual" (Onderlinge op aandelen), also to non-members ¹¹ . For solvency reasons, the joint-stock mutual is sometimes used when capital is needed ¹² . In such case both the members and shareholders may access and vote in the general meeting. The ratio between votes of the two groups must be	As stated above, mutual insurance societies must opt for either full, limited or excluded liability, which affects liability. With regard to any surpluses, each mutual insurance society can determine the division in its statutes. Commonly, however, statutes prescribe the following: Members are entitled to a proportion of the surplus within a specific accounting year, which is related to their share in the premium over that accounting year. The board or general meeting may, however, also decide to add the surplus to the general reserves. The surpluses to which the members are entitled are to be paid into the members' account which the mutual insurance society holds on behalf of its members, unless the directors decide on another settlement. The general meeting decides	There are no specific restrictions regarding the attraction of external capital. However, different from a joint-stock company, mutual insurance societies have a members' account. This is a subordinated debt to the members, which under specific conditions is fed by premium restitutions, and over which the mutual insurance society pays an interest. The members' account is also included in the solvency margin calculations and therefore often	The annual report (with financial results) must be accessible for the members before the annual report is approved in the general meeting. Within six months after the end of the accounting year, the annual report and accounts must be deposited with DNB, as well as the Chamber of Commerce. Annual reports deposited with the Chamber of Commerce	Protection of assets, for example in the case of demutualisation is not specifically provided for by law.	YES	Life and non-life insurance including compulsory health insurance

¹ Burgerlijk Wetboek, Boek 2, Chapter 3, art. 53

² Kamer van Koophandel (2010). De cooperatie en de onderlinge waarborgmaatschappij.

³ BW, hst. 2, Titel 3 art. 1 and Solvency II directives, Annex I II

⁴ Besluit vrijgestelde onderlinge waarborgmaatschappijen 1994

⁵ See: AISAM/AMICE (2007). Mutual Insurance Companies in the Netherlands. The regulatory, financial and fiscal arrangements.

⁶ Regeling van de Minister van Financiën van 14 Januari 2011, nr. FM/2011/59 M, tot vaststelling voor 2011 van de bedragen voor eenmalige toezichtshandelingen, bedoeld in de artikelen 2 en 3 van het Besluit bekostiging financieel toezicht

⁷ Regeling tot vaststelling voor 2010 van de maatstaven bedragen bandbreedtes verdeelsteulessen en tarieven besluit bekostiging financieel toezicht

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		<p>3 legal types of mutual insurance societies (sometimes called "declaration regime"). Under current Dutch law, certain smaller low risk mutual insurance societies with premium turnover up to €5 million are not falling under the financial supervision regime. These non-directive or exempted mutual insurance societies can not write accident, health, liability, credit and suretyship, and assistance insurance. ⁴ None of these 3 categories of mutual insurers have a licence. Three categories can be identified:</p> <ul style="list-style-type: none"> Category 1 mutual insurers (very small, 200 members and €91,000 in GPW) may only write one non-life class but may not write accident, health, liability, credit, surety and assistance insurance. Category 2 (max 3,000 members or max €455,000 in GPW) and category 3 mutual insurers (more than 3,000 members and max €5 million GPW) may write more than one non-life class of insurance but the excluded classes for category 1 are also excluded for categories 2 and 3. ⁵ 	<p>guarantee fund, which the insurer, so also the mutual insurance society needs to have when applying for an insurance license, are as follows ¹:</p> <ul style="list-style-type: none"> For non-life insurers in all classes except liability and credit and suretyship insurance: €2.3 million For non-life insurers operating in: liability (motor liability, MAT (Marine, Transport and Aviation) liability), and credit and suretyship insurance). For these, the minimum amount is € 3.2 million. For life insurers, the amount is € 3.5 million. For funeral insurers: € 45,378.02 (Bpr ² article 49) For a reinsurer, this is € 3 million For reinsurance captives: € 1.1 million <p>The guarantee fund is primarily composed of ³:</p> <ol style="list-style-type: none"> 1) The share capital in the case of joint-stock companies and in the case of mutual insurance societies, the insurance contributions supplied by any member accounts (conditions apply). 2) Free legal, statutory and other reserves 3) Unshared profits (minus dividends) or loss 4) Subordinated member accounts and debt instruments 5) Other capital as permitted by DNB <p>Regarding the de minimis regime, these mutual insurance societies currently do not need to apply for a license and are not licensed by the DNB; a "declaration" is sufficient. Similar to a license, the declaration involves a check of legal requirements, but the regime and regulations are lighter. When the requirements are met, DNB provides the declaration to the insurer. The costs involved are €1,800. Depending on the type of declaration (which varies in terms of strictness), the insurer either does or does not have to pay for</p>	<p>over € 16 million and over 100 employees, a Board of Directors consisting of at least three directors is compulsory ⁵. Members elect the (compulsory) Board of Directors of the mutual insurance society ⁶, with a maximum of two thirds of board members from among the members. Board members are individually liable. A limited number of external directors, who need not necessarily member-policyholders are allowed.</p>	<p>the end of a accounting year for the year in advance, with four weeks notice. However, when a member is informed of a decision which involves the infringement of his rights or an increase of burdens, he may withdraw instantly within a month's time. The decision does then not apply to the member. This also applies when a decision is taken regarding a merger, conversion or division (split-up) ⁷.</p>	<ul style="list-style-type: none"> statutes as desired. Electronic voting is allowed. There are no limitations regarding the maximum number of representation which can be entrusted to a member-policyholder ⁹. The statutes may provide - (only) for a mutual insurance society with liability excluded (U.A.)- that the mutual provides similar services to non-members, provided that the members' interests never become subordinate ¹⁰. 	<p>recorded in the statutes. For example: one vote per insurance policy and one vote per share to the amount of € x. Also, the member votes must be in majority compared to the shareholder votes, for example 51% to 49%. In practice, mutual insurance societies with shareholders are not common. Mostly, it concerns a mutual insurance society where other mutual insurance societies are the shareholders. For example, when a "central" mutual insurance society insures the miscellaneous products of the shareholding mutual insurance societies.</p>	<p>on the interest rate which the mutual insurance society pays the members on the amount in the members' account. Unless the general meeting decides differently, any premium shortages in a accounting year may also be settled with the members' account. Within a year after withdrawal, the mutual insurance society should pay out the share in the members' account to the participant. In the case of liquidation of a mutual insurance society, all other debts to third parties must be settled before any remaining amount in the members' account can be divided amongst members ¹³.</p>	<p>can not be drawn upon as expansion capital ¹⁴.</p>	<p>can be publicly accessed against a fee. ¹⁵</p>			

¹ Besluit Prudentiele regels Wft. Hfst. 9, art.

² Besluit Prudentiele regels Wft

³ Besluit financiële markten BES, Art. 4:27

⁴ Interview DNB -Markttoegang

⁵ BW 2, Structuurregeling, source: FNV (<http://www.fnvformaat.nl>). Artikel 2:158 en 2:268 BW.

⁶ BW 2, Title 3

⁷ BW 2, Title 3, art.36

⁸ AISAM (2006). The governance of mutual insurance companies: the current state of legislation.

⁹ AISAM (2006). The governance of mutual insurance companies: the current state of legislation.

¹⁰ BW 2, Title 3, art. 53

¹¹ BW 2 Title 3, art. 62

¹² AISAM (2006). The governance of mutual insurance companies: the current state of legislation.

¹³ Modelstatuten onderlinge verzekeringsmaatschappijen gewijzigd zonder wijziging aftrekbaarheid van het recht op winstaandelen welke aan verzekerden toekomen

¹⁴ Banking Review 01-01-1996. Als het onderlinge jasje gaat knellen.

¹⁵ BW 2, art 101

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
			continuous supervision ⁴ . This regime will be replaced as it is about to change with the intended implementation of "Solvency II Basic". At present it is envisaged that all mutual insurance societies in the Netherlands will then need to apply for a license.										
Poland	Towarzystwo ubezpieczeń wzajemnych (mutual insurance company)	The Towarzystwo ubezpieczeń wzajemnych (TUW) by definition always concern mutual insurance companies. A TUW can be active in life insurance, in non-life insurance and in reinsurance. An insurance undertaking is not allowed to perform any other activity apart from insurance activity and operations directly related thereto. Yet insurance undertakings may also, directly or through separate insurance intermediaries, act as intermediary for entities performing banking activities (in Article 5 paragraph 1 and 2 of the Banking Law of 29 August 1997) as well as selling and repurchasing units of investment funds and opening investment funds also with registered offices in EU member states ¹ . The main laws applicable to Polish mutual insurance societies are: - Act of Insurance and Pension Funds Supervision 2003 ² ; and - Act of Insurance Activity 2003 ³ Art 43 of the 2003 Act on insurance activity, describes a de minimis regime : A mutual undertaking which possesses a limited scope of activity because of the small number of members and the small number or low amount of insurance contracts concluded or an inconsiderable territorial range of activity may be recognised by the supervision authority as a small mutual insurance undertaking. The supervision authority may recognise a mutual undertaking as a small mutual insurance undertaking if the mutual undertaking fulfils the following conditions: ■ 1) the mutual undertaking only insures its own members; ■ 2) the mutual undertaking's members belong to the circle of	According to art. 46 of the 2003 on insurance activity Act, 2. The share capital shall be entirely covered by a cash contribution within 30 days following the day of a mutual insurance company's registration. Required capital or assets is not specified in the law. For Directive insurers (not falling under the de minimis regime, the European solvency rules apply. While the management board of a domestic insurance undertaking must consist of at least two members, this requirement does not apply to mutual insurance companies ⁵ . Art 46, 2003 Act on insurance activity: 5. Persons who contributed the share [i.e. initial] capital may be members of the mutual insurance company's management board or the mutual insurance company's supervisory board, to the extent specified in the articles of association, until the time of capital repayment. The mutual insurance company's supreme body is the general meeting.	Mutual insurance undertakings in Poland follow a two tier governance structure. The bodies of a mutual insurance company are: 1) the management board; 2) the supervisory board; and 3) the general meeting ⁴ . Mutual insurance undertakings may also cover persons who are not members, provided that they pay a fixed premium and the total size of their premiums does not exceed 10 percent of the total insurance premiums ⁶ . The benefits due to membership of the mutual insurance company do not exempt him/her from the obligation to pay premiums. The articles of association of a mutual insurance company may provide for a decrease in insurance benefits of the mutual insurance company to members, unless they provide for an unlimited members' participation in covering the loss in the technical insurance account. Members of a mutual insurance company shall not be liable for the obligations of that mutual insurance company ⁷ .	Art 46 of the 2003 Act on Insurance activity: Persons who contributed the share [initial] capital may be members of the mutual insurance company's management board or the mutual insurance company's supervisory board, to the extent specified in the articles of association, until the time of capital repayment. Mutual insurance undertakings may also cover persons who are not members, provided that they pay a fixed premium and the total size of their premiums does not exceed 10 percent of the total insurance premiums ⁶ . The benefits due to membership of the mutual insurance company do not exempt him/her from the obligation to pay premiums. The articles of association of a mutual insurance company may provide for a decrease in insurance benefits of the mutual insurance company to members, unless they provide for an unlimited members' participation in covering the loss in the technical insurance account. Members of a mutual insurance company shall not be liable for the obligations of that mutual insurance company ⁷ .	The members entitled to participate in the general meeting may exercise the right to vote in person or by proxies ⁸ . The mutual insurance company's members who are entitled to participate in the general meeting and who represent at least one tenth of the shares or votes at the general meeting may demand that an extraordinary general meeting be convened, and may place specific items on the agenda of the next general meeting ⁹ .	Shares are possible and the rules should be stated in the articles of association. According to Article 46 of the Insurance Activity Act, the articles of association of a mutual undertaking may provide for the repayment of share capital only out of annual surpluses, and within the period of creating supplementary capital, to persons who contributed the share capital, or may provide for not repaying share capital to specific persons.	Article 45 of the 2003 Act on insurance activity states that the articles of association of mutual insurance companies shall provide for the establishment of reserve capital, provided that the decrease of reserve capital may occur solely through covering the balance sheet loss.	Article 46 of the 2003 Act on insurance activity provides rules regarding share capital. The persons who contribute share capital can be members of the management board or supervisory board.	Insurance undertakings must submit to the supervisory authority the annual financial statements, prepared according to the provisions on accounting, within 6 months following the last day of the financial year. Financial statements of insurance undertakings pursuing activity with respect to insurance referred to Section I and Section II class 10 of the Annex to the Act shall also be signed by actuaries, apart from the persons specified in separate Acts ¹⁰ . Insurance undertakings should also present quarterly and additional annual financial and statistical statements to the super-	In the case of demutualization following a transformation, there is no specific asset protection in the case of demutualization. The assets of the mutual insurance company converted shall become the assets of the joint-stock company established. The provisions of the Code of Commercial Partnerships and Companies concerning contributions in kind and the shares delivered to shareholders against those contributions shall apply to the assets of the joint-stock company established and to the shares taken up by its shareholders ² .	YES	life, non-life and re-insurance

¹ Act of 22 May 2003 on Insurance Activity, art. 3: http://www.knf.gov.pl/en/Images/Insurance_Activity_2011_a_tcm81-27882.pdf

² Act of 22 May 2003 on Insurance and Pension Funds Supervision and on Insurance Ombudsman: http://www.knf.gov.pl/en/Images/o_nadzorze_ubezpieczeniowym_l_emerytalnym_2011_tcm81-27179.pdf

³ Act of 22 May 2003 on Insurance Activity: http://www.knf.gov.pl/en/Images/Insurance_Activity_2011_a_tcm81-27882.pdf

⁴ Act of 22 May 2003 on Insurance Activity, Art. 48

⁵ Act of 22 May 2003 on Insurance Activity

⁶ "Towarzystwo ubezpieczeń wzajemnych (TUW)": <http://www.money.pl>

⁷ Act of 22 May 2003 on Insurance Activity, art. 45

⁸ Act of 22 May 2003 on Insurance Activity, art. 73

⁹ Such a demand must be submitted in writing to the management board, 30 days before the proposed date of the general meeting at the latest. Source: Act of 22 May 2003 on Insurance Activity, art. 68

¹⁰ Act of 22 May 2003 on Insurance Activity, art. 167

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
		<p>entities defined in the articles of association;</p> <ul style="list-style-type: none"> 3) the annual premium written does not exceed the PLN equivalent of EUR 5 million. <p>The decision on recognising a mutual undertaking as a small mutual insurance undertaking by the supervision authority is subject to entry in the National Court Register. Some articles do not apply to small mutual insurance companies whose articles of association provide for supplementary contributions by members or a decrease in the mutual undertaking's benefits to its members</p>								visory authority ¹ .			
Portugal	Associações mutualistas (mutual associations)	<p>Mutual associations are associations of people, regulated by the Mutual Association Code (decreto-lei n° 72/90 of 3 March 1990, código das associações mutualistas). Art 1 of this Code³ states that mutual associations are private entities with an unlimited number of members that are based on social solidarity and aiming activities in the field of complementary social security and health and that operate with undetermined capital focused on the needs of their members and their families. Mutual associations are considered as a specific form of association.</p>	<p>The creation of a mutual association is open to everybody (only natural persons?) and is considered as a private activity. There are no specific rules regarding required assets, other than that there should be a 'guaranteed financial balance', proven before registration. This also counts for the minimum number of members, as it should be 'sufficient' to ensure the functioning and delivery of services.⁴ They are established by notarial deed.</p> <p>Chapter II of the 72/1990 decree concerns the constitution of mutual associations. Article 14: General requirements of constitution states that the mutual associations should have the number of associates and the financial system in place that allow the technical and financial balance necessary to fulfil the obligations the organisation should fulfil. Article 15 mentions that the registration includes submission of bylaws. Also, it states that mutual associations may not levy contributions or benefits when not stated otherwise in the Statutes.</p>	<p>The legislation on mutual association provides some rules regarding governance and the organisation of the internal democracy (chapter 5). The governance bodies are the General Assembly, the Board of Directors and the supervisory board. The law allows the possibility of an assembly of delegates in case the association has a national scope (article 75). A 'Fiscal committee' is required, next to a General Assembly and a Board of Directors.</p>	<p>The law mentions different types of members:</p> <ul style="list-style-type: none"> Effective members: They are active members who subscribe to any of the types of regulatory benefits and pay the corresponding levy. Associate members: Workers covered by supplementary occupational schemes managed by mutual associations, may register as associated members of these associations, and their contributions to those schemes are then treated as shares. The conditions are regulated by the Statutes. Contributing members: The Statutes can allow individuals or entities supporting the association with relevant services or financial contributions. <p>As the law mentions, many mutual associations have to further specify these rules in their by-laws (which can vary a lot and which can't be categorised).</p>	<p>Representation of votes is limited to one vote per member (and there is no possibility to represent fractions and/or groupings of members). There is however the possibility to establish an assembly of delegates in case the association has a national scope (article 75).</p>	<p>There are no shares nor external investors.</p>	<p>Regarding reserves there are no legal restrictions and/or requirements set forth in the Mutual Association Code. It is stressed that against this lack of legal regulation, actuarial principles and accounting procedures (and their strict application) are of utmost importance to sustain mutual associations.</p> <p>Today, many small mutuals are facing major problems, but by lacking regulation and supervision, these (financial) problems are mostly unrecognised.</p>	<p>Non member investors are not possible. There is a possibility of contributing (investing) members</p>	<p>Regarding transparency and publications, the Mutual Association code does not foresee any obligations or requirements, other than handing over the annual accounts to the responsible Ministry (i.e. Ministry of Social Affairs). Some mutual associations, like Montepio, do publish annual accounts and annual records publicly, but as a voluntary act only.</p> <p>Auditing issues are dealt with by Articles 20 and 51 of the Mutual Association Code and state that a 'Fiscal committee' is required, next to a General Assembly and a Board of Directors. A 'technical balance' has to be pre-</p>	<p>Asset protection is barely regulated. Articles 55 and 56 do list assets, but do not set limits, nor requirements. The articles seem to state that assets are in order 'as long liquidity position justifies'. In practice, regulator and supervisor do not control or adjust malpractice, it is said. In case of liquidation the assets will be distributed according to the following priorities (article 108):</p> <ul style="list-style-type: none"> Payment of public debts and debts to the social security system Payment of the employees of the mutual Payment of third party debts Payment of debts to the members Attribution of rest sums to a 	YES	<p>life and non-life insurance. Mutual associations may undertake activities other than insurance – but always within the realm of welfare and health care provision.</p>

¹ Act of 22 May 2003 on Insurance Activity, art. 169

² Act of 22 May 2003 on Insurance Activity, art. Article 89.

³ Decreto-lei n° 72/90 of 3 March 1990, código das associações mutualistas

⁴ <http://www.dre.pt/pdf1s/1990/03/05200/09030915.pdf> (this is the legislation on the website of the ministry of social affairs)

Decreto-Lei 72/90: Código Mutualista: <http://www.pedromartinho.com/portal/codigo.htm>

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
										sent to the members once every three years in order to examine the financial position of the mutual association.	mutual solidarity fund (fundo de solidariedade mutualista)		
	Mútua de seguros (Mutual Insurance company)	According to Law 94-B/98 of april 17 (Decreto-Lei n.o 94-B/98 de 17 de Abril), Section 3, article 22 describes the mutual insurance company (mútuas de seguros) as a form of cooperative society with limited liability, established by notarial deed, governed by the provisions of the Act 94-B/98 and, alternatively, by the provisions of Cooperative Code and other complementary legislation in all matters not contrary to this Act or other specific provisions concerning insurance activity. Mutual Insurance companies are composed of natural or legal persons who, acting in the same business or professional production, seeking insurance to cover risks arising directly out of that activity. There is a de minimus regime for specific livestock insurers	For establishing a mútuas de seguros, in general the same rules apply as for joint stock companies. The authorisation from the Ministry of Finance is required. Also, the Instituto de Seguros de Portugal (ISP, Insurance and Pension Funds Supervisory Authority) ¹ is involved. To obtain authorisation (see article 14), the same information needs to be provided to the Ministry or the Insurance institute (Articles of association, aim of the organisation, identification of founding members, statements on criminal records, notification absence of bankruptcy). The mutual insurance companies may, in case of insolvency call upon their members for variable contributions. They are established by notarial deed. On the date of creation, the half of the capital required is provided. The remaining (if any) will have to be provided within six months. The minimum capital, fully paid, for the formation of mutual insurance is 3,750,000 Euro (See article 40, Law 94-B/98 of April 17 (Decreto-Lei n.o 94-B/98 de 17 de Abril and amendment Decreto-Lei 8-C/2002 de 11 de Janeiro).	The mutual insurance companies are governed similar to the joint stock insurance companies. In the Law (Decreto-Lei n.o 94-B/98 de 17 de Abril) no specific restrictions/regulations are included.	Is being dealt with in the Statutes	Is being dealt with in the Statutes	Is being dealt with in the Statutes	In principle as other insurance companies.	There is a possibility to take subordinated loans, like other insurance companies.	In principle as other insurance companies.	In principle as other insurance companies.	YES	Mutua de seguros are allowed in life insurance, in non-life insurance and in reinsurance.
Ro ma nia	Societăți mutuale' (mutual companies)	The Law no. 32/2000 on insurance undertakings and insurance supervision (hereafter called Insurance Law) provides in article 2 (definitions) the following definition of an insurance mutual insurance undertakings ('societăți mutuale'): civil legal entity whose associates are both policyholders and insurers.	For insurance mutual companies , article 16 of the Insurance Law states that for each insurance undertaking the share capital or the effective initial fund shall not be lower than (Old currency): a) 7 billion lei for non-life insurance business, with the exception of compulsory insurance; b) 14 billion lei for non-life insurance business; c) 10 billion lei for life insurance business; The effective initial fund is the total of sums contributed by members of mutual insurance undertakings.	The law does not provide any indication of rules on management and corporate governance specific for mutual companies.	For insurance mutual companies , the law does not provide any indication of rules on management and corporate governance specific for mutual companies. Only concerning the minimum guarantee fund a specific rule is mentioned: According to article 16 of Law 32/2000, one third of the minimum solvency margin set out in paragraph (1) letter b) shall account for the guarantee fund. The items which account for the guarantee fund shall be set out in the norms issued for the implementation of this law. The amount of the guarantee fund can not be lower than the amount set out in the European legislation concerning insurance business and shall be updated in norms issued in compliance with the provisions of the said legislation. Depending on the risk classes written, the minimum amount of the guarantee fund shall be set out in the norms issued for the implementation of this law. For mutual insurance undertakings, the guarantee fund shall account for at least three quarters of the minimum amount of the safety fund established for insurance undertakings.							YES	life and non-life insurance

¹ <http://www.isp.pt/isp>

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
	Casa de Ajutor Reciproc a Salariatilor – Mutual Associations of Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Associations of Pensioners – CARP	According to the Framework Law on associations and foundations Governmental Ordinance 26/2000, mutual organizations/societies are registered as associations hereafter called GO 26/2000). ¹ Art 1, (2) Associations and foundations established according to the present ordinance are legal persons of private law without patrimonial aim. Two further types of mutual aid associations are identified: Casa de Ajutor Reciproc a Salariatilor – Mutual Aid Associations for Employees CAR; Casa de Ajutor Reciproc a Pensionarilor – Mutual Aid Associations for Pensioners – CARP. Each type of mutual associations CAR and CARP has a specific law (secondary legislation): CAR – L 122 from 1996 - The Law regarding the juridical regime for Mutuals of Employees and their Unions; the mutuals are defined as non-profit associations aiming to provide support and mutual financial help to their members. CARP – L 540 from 2002 – The Law regarding the juridical regime for Mutuals of Pensioners, the mutuals are defined as "association with civic character, non-profit and apolitical, having as objectives charity, mutual help and social assistance to their members".	For mutual aid associations, CAR and CARP , the same rules apply as for other associations (GO 26 from 2000). According to Article 4 of the GO 26/2000, the legal entity of an association is set up by three or more people, according to an agreement, in which it is stated that the members have no right to return the material contribution, knowledge and their contribution. They obtain their legal status on the basis of a motivated decision of the civil court in the district of which they were created. A minimum guarantee fund is required of at least one gross salary and the association has to draw up a statute containing amongst others the purpose and objectives of the association; rights and obligations of members; the powers of the management, administration and control of the association; destination of goods, the dissolution of the association, in compliance with art. 60 (assets will not be distributed to individuals). The mutual aid associations (CAR and CARP) are registered with the Central Bank of Romania as Non-Banking financial Institution (IFN). Only with IFN status they can engage in financial operations.	Association bodies are: a) general meeting; b) the board; c) the auditor or, where appropriate, the audit commission. The General Assembly is the governing body, composed of all shareholders.	the rights of members are stipulated in the statute.	As stipulated in the statute	No shares are allowed	According to the law GO 26/2000 they can have reserves.	This is not permitted by the law GO 26/2000	Annual reports are mandatory. There is no obligation for an external audit, only internal audit is required	Because they are first registered as NGOs (associations), these mutuals are defined as non-patrimonial organization. They have protected assets, as established by GO 26/2000. According to the GO 26/2000, Article 60 1-2, in case of dissolution of the association or foundation, the assets remaining after liquidation can not be transferred to individuals. These assets may be transferred to legal persons similar to the dissolved entity.	YES	Social services, no insurance
Slovakia	N/A	Mutuals do not seem to exist in Slovakia. They are not allowed to conduct the business of insurance. Slovakian insurance undertakings have to be in the form of joint-stock companies ² . According to the Slovak Insurance Law, article 5, (1) 'Insurance company' shall mean a legal entity being a joint stock company with its registered office in the territory of the Slovak Republic that pursues insurance activities upon the authorisation to pursue insurance activities granted by the National Bank of Slovakia within the proceedings under a special regulation; ³ the insurance company may also have the legal form of a European Company. ⁴	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO	N/A

¹ http://legislatie.resursa-pentru-democratie.org/26_2000.php

² AMICE The market share of Mutual and Cooperative Insurance in Europe 2008

³ Act No. 747/2004 Coll. on supervision over financial market and on amendments and supplements to certain laws as amended by subsequent legislation.

⁴ Act No. 562/2004 Coll. on a European Company and on amendments and supplements to certain laws.

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Slovenia	Družba za vzajemno zavarovanje (mutual insurance company)	<p>According to the Insurance act (Official Gazette of Republic of Slovenia no. 13 on 17 February 2000 and corrigendum published in no. 91 on 6 October 2000), a mutual insurance company is a legal entity which, in accordance with the principle of mutuality, performs insurance business for its members.</p> <p>In Slovenia, there is no specific act for mutual insurance companies.</p> <p>The new Social Entrepreneurship Act for example does not specifically mention mutuals¹, it includes a so-called open model of social entrepreneurship, which means that associations, institutes and companies can all be considered as entities dealing with social entrepreneurship.² The following characteristics are mentioned for social entrepreneurship (which are closely related to mutual values and principles):</p> <ul style="list-style-type: none"> ■ market based private initiative, ■ private ownership, ■ governance based on one member one vote (not dependant on capital share), ■ social and/or environmental objectives, ■ profits are reinvested for development of enterprise, ■ combination of employees and voluntary workforce, ■ solidarity between members and employees and with community 	<p>A mutual insurance company shall be founded by the founders by adopting and signing the bylaws, and paying the initial capital (Insurance Act, Article 39). According to Article 44:</p> <p>(1) Upon the founding of a mutual insurance company, the initial capital must be formed to cover start-up costs, organisational costs and other costs relating to the start-up of operations. Unless otherwise stipulated in the bylaws, the initial capital may also be used to form contingency reserves.</p> <p>(2) The minimum initial capital of a mutual insurance company shall be equal to the guarantee fund referred to in the second paragraph of Article 112 of this Act (2.3 million EUR).</p> <p>(3) The bylaws must lay down the terms and conditions and the method of repaying the funds paid to form the initial capital. Should it be stipulated in the bylaws that the funds paid to form the initial capital shall not be repaid, the method of using the said funds must be laid down.</p> <p>(4) When, following its foundation, a mutual insurance company applies for the authorisation to perform insurance business with regard to additional classes of insurance, the Insurance Supervision Agency shall be obliged to require, as a condition for granting the authorisation, an appropriate increase in the initial capital, if the expenses relating to the start-up of operations with regard to the new classes of insurance can not be covered otherwise.</p> <p>Concerning paying and repaying the initial capital (Article 45):</p> <p>(1) A mutual insurance company may only start its operations when the initial capital has been paid in cash.</p>	<p>The bodies of a mutual insurance company shall be the board of directors, the supervisory board and the general meeting (article 50). The Corporate governance is arranged by means of a two tier model.</p> <ul style="list-style-type: none"> ■ The board of directors of a mutual insurance company shall be appointed by the supervisory board (article 51). ■ A mutual insurance company must have a supervisory board consisting of at least three members. ■ The bylaws may stipulate that the supervisory board has more than three members but not more than twenty members (article 52). ■ The members of a mutual insurance company shall exercise their rights in the mutual insurance company by means of a general meeting, unless otherwise stipulated by law (article 53). <p>Concerning the general meeting (article 53), the general meeting of shareholders may be organised as a general meeting of all the members (meeting of members) or as a meeting of representatives, who themselves must be members (representatives' meeting). Should the bylaws stipulate that the general meeting of a mutual insurance company be organised as a representatives' meeting, they must also lay</p>	<p>Membership of a mutual insurance company shall be related to the existence of an insurance contract entered into by the company. A mutual insurance company may, if this is explicitly stipulated in its bylaws, also enter into insurance contracts in such a way that by making the contract the policy holder does not acquire the status of a member of the mutual insurance company.</p> <p>Concerning Rights, obligations and responsibilities of members (Article 43):</p> <p>(1) Members shall not be responsible for the mutual insurance company's obligations.</p> <p>(2) A member may not offset his/her obligations to the mutual insurance company as regards the payment of contributions and subsequent payments with his/her claim on the mutual insurance company.</p> <p>(3) Contributions and subsequent payments of the members, as well as the obligations of the mutual insurance company in relation to its members, may only be determined upon equal assumptions and by applying the same criteria.</p>	<p>Concerning the general meeting (article 53), the general meeting of shareholders may be organised as a general meeting of all the members (meeting of members) or as a meeting of representatives, who themselves must be members (representatives' meeting). Should the bylaws stipulate that the general meeting of a mutual insurance company be organised as a representatives' meeting, they must also lay</p> <p>Concerning the general meeting (article 53), the general meeting of shareholders may be organised as a general meeting of all the members (meeting of members) or as a meeting of representatives, who themselves must be members (representatives' meeting). Should the bylaws stipulate that the general meeting of a mutual insurance company be organised as a representatives' meeting, they must also lay</p>	<p>No shares are allowed, but, on the basis of an approval from the general meeting, a mutual insurance company may raise additional capital by issuing subordinate debt instruments, such as securities and other financial instruments which, in the event of the bankruptcy or liquidation of the issuer, are repayable only after other debts of the issuer have been satisfied, or which, with regard to their maturity and other characteristics, are appropriate for covering possible losses due to risks to which the insurance undertaking is exposed (Article 107, par. 3). There are no voting rights attached to these debt instruments.</p>	<p>The bylaws must lay down the method of forming the reserves intended to cover operating losses (contingency reserves), and stipulate which contributions (premiums) shall annually be set aside to form contingency reserves and the minimum amount of the said contingency reserves.</p> <p>The profits disclosed in the annual report may be distributed to the members or brought forward to the next business year.</p>	<p>On the basis of an approval from the general meeting, a mutual insurance company may raise additional capital by issuing subordinate debt instruments, such as securities and other financial instruments which, in the event of the bankruptcy or liquidation of the issuer, are repayable only after other debts of the issuer have been satisfied, or which, with regard to their maturity and other characteristics, are appropriate for covering possible losses due to risks to which the insurance undertaking is exposed (Article 107, par. 3). There are no voting rights attached to these debt instruments.</p> <p>Concerning the annual report: The annual report of an undertaking and the consolidated annual report of a group must be reviewed by a certified auditor. The tasks of auditing annual reports referred to in the preceding Paragraph may be performed within an auditing company by</p>	<p>With regard to extraordinary and special audits of a mutual insurance company, provisions of the law governing takeovers, specifically the provisions concerning special audit and compensation claims shall be reasonably applied. When the abovementioned provisions refer to shareholders, these shall, when reference is made to extraordinary or special audits of a mutual insurance company, be deemed to be members of the general meeting⁵.</p> <p>Concerning the annual report: The annual report of an undertaking and the consolidated annual report of a group must be reviewed by a certified auditor. The tasks of auditing annual reports referred to in the preceding Paragraph may be performed within an auditing company by</p>	<p>The assets left after the obligations have been met or adequate security have been provided shall be distributed to persons having the status of members of the mutual insurance company at the moment the resolution to dissolve the company was adopted. The distribution shall be subject to the criteria laid down by the bylaws with regard to the distribution of profits to members.</p>	YES	non-life and life insurance (complementary health insurance)

¹ Published on March 18, 2011, in the Slovene Official Gazette, n. 20/2011, to be used from January 1, 2012

² [http://www.ukom.gov.si/en/media_room/newsletter_slovenia_news/news/article/391/2435/4d144e9d0ad0d76b6559387d242260d6/?tt_news\[newsletter\]=97](http://www.ukom.gov.si/en/media_room/newsletter_slovenia_news/news/article/391/2435/4d144e9d0ad0d76b6559387d242260d6/?tt_news[newsletter]=97)

³ Act amending the Insurance Act (ZZavar-C). Official Gazette of the Republic of Slovenia, no: 79/2006, Article 17.

⁴ Act amending the Insurance Act (ZZavar-C). Official Gazette of the Republic of Slovenia, no: 79/2006, Article 17.

⁵ Act amending the Insurance Act (ZZavar-C). Official Gazette of the Republic of Slovenia, no: 79/2006, Article 19.

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
				<p>down the composition of the general meeting and the procedure of appointing representatives. The general meeting shall adopt decisions with regard to the issues for which it is explicitly stipulated by law or the bylaws that decisions relating to them must be adopted by the general meeting. Decisions regarding the management of operations may only be adopted by the general meeting if this is required by the board of directors or, where permitted under the Company Act (CA) provisions regulating the responsibilities of the supervisory board, this is required by the supervisory board³. If the provisions of the CA applying to the general meeting of a mutual insurance company pursuant to this Act stipulate the minority rights of members whose joint holdings reach a certain share in the equity, the bylaws must lay down an appropriate number (minority) of members of the general meeting.</p>		<p>the equity, the bylaws must lay down an appropriate number (minority) of members of the general meeting.</p>				<p>a certified auditor with an authorisation of the Slovenian Audit Institute to perform the tasks of auditing. An insurance undertaking shall be obliged to submit to the Insurance Supervision Agency an audited annual report and the auditor's report within eight days of receiving the auditor's report, or within six months of the end of the calendar year at the latest.</p>			

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
Spain	Mutuas de seguros (Mutual insurers)	<p>Mutual insurance companies (mutuas de seguros) can be defined as private non-profit organisations that are intended to cover their members' (natural or legal persons) risks (see article 9 and 10). They can be of fixed or variable premium type:</p> <ul style="list-style-type: none"> Fixed premiums (article 9): which are private non-profit organisations that are intended to cover their members' (natural or legal persons) risks on the basis of a fixed premium. Policyholders are also members. Variable premiums (article 10): which are private non-profit organisations based on the principle of mutual aid, aimed at covering of risks incurred by the members (socios) and where the members are charged with variable premiums. The mutuals with variable premiums can only be active in non-life insurance businesses. 	<p>Having the capital stock or mutual fund (fondo mutual) as required by Article 13, in general, companies need to have the following - minimum capital:</p> <ul style="list-style-type: none"> 9,015,181.57 Euro in life or suretyship, or credit, or liability or reinsurance classes 2,103,542.37 Euro in the fields of accident, health, legal assistance and death. 3,005,060.52 Euro, for the other classes. <p>Mutual insurance companies with fixed premiums however need to provide three quarter of these amounts as permanent mutual fund or fondo mutual permanente. Mutual insurance companies with variable premiums need to have a permanent mutual fund whose amount shall be at least EUR 30,050.61.</p> <p>Having a guarantee fund (fondo de garantía) as provided for in Article 18. The guarantee fund for mutual insurance companies is three quarters of the regular minimum of 3.2 million Euro for entities operating in some of the classes of life, suretyship, credit and any liability risk and 2.2 million Euro for other entities. When these entities do not operate in the field of civil liability, credit, suretyship nor conduct reinsurance business only, and its annual amount of premiums or contributions are not exceeding five million Euro during three consecutive years, the guarantee fund will be at least 800,000 Euro if they operate in the field of life, at least 200,000 Euro if they operate in other classes of property damage, legal assistance or death, and at least 300,000 Euro if they operate in the remaining insurance classes. According to article 18,2 there is a de minimis regime: exempted from the minimum mutual guarantee fund are those mutuals not operating in the fields of life, liability and credit or bond or reinsurance and where its annual amount of premiums or contributions is not exceeding 750,000 Euro.</p>	<p>The rules and regulations concerning management and corporate governance are the same as for other insurance companies.¹ Specific rules on mutualistic principles and values are described in the Regulation on Private Insurance Organisation and Supervision (Reglamento de Ordenación y Supervisión de los Seguros Privados 1998)². For instance, this regulation mentions in art. 15 that the governing bodies of the mutual insurance companies with fixed premium are the General Assembly and the Board of Directors. The rules of these bodies are subject to the bylaws.</p>	<p>According to article 13, each member is eligible for being elected for positions in the company.</p>	<p>According to article 13, each member has one vote. Everyone can attend the general meeting, submit proposals and take part in discussions and voting.</p>	<p>Shares are not possible for mutual insurance companies</p>	<p>According to the AISAM/AMICE study, profits recorded in the accounts for a given period can be partially or totally distributed to the members. The distribution of profits is statutory: there must be a "loss share regime" provided (non-life mutuals). The General Assembly decides on the distribution of profits. The distribution of profits to members is optional.³</p>	<p>According to AISAM/AMICE study, in Spain, mutual insurance companies can issue subordinated loans (art 59 of the 1998 Regulation. These financial instruments are considered as elements of the solvency ratio in accordance with the 1992 EU Directives in the proportion of 25% for limited duration and 50% for total subordinated debt. Prior authorization for issuance is not needed; only in case of early repayment is approval necessary. The Ministry of Economic Affairs and the Insurance Supervisor supervise the issuing of these loans.⁴</p>	<p>As all insurance companies</p>	<p>According to the AISAM/AMICE study, in case of winding-up, liquidation, all members, current and past (minimum of the last three years) are entitled to the net assets according to the articles of association. In case of "aportaciones al fondo mutual", only the members who have contributed to the "fondo mutual" have preferential rights to the reimbursement of their investment under the terms foreseen at the origin of the "aportación". If no rules were foreseen, other conditions are applicable. For the rest of the "Fondo", all members including the members who have contributed are entitled to those⁵ assets.</p>	YES	Life and non-life insurance

¹ Real Decreto Legislativo 6/2004, de 29 de octubre, por el que se aprueba el texto refundido de la Ley de ordenación y supervisión de los seguros privados: http://noticias.juridicas.com/base_datos/Privado/rdleg6-2004.html#

² Real Decreto 2486/1998, de 20 noviembre, por el que se aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados: http://noticias.juridicas.com/base_datos/Privado/rd2486-1998.html

³ AISAM/AMICE (2007), Mutual Insurance Companies in Spain. The regulatory, financial and fiscal arrangements

⁴ AISAM/AMICE (2007), Mutual Insurance Companies in Spain. The regulatory, financial and fiscal arrangements

⁵ AISAM/AMICE (2007), Mutual Insurance Companies in Spain. The regulatory, financial and fiscal arrangements

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
	Mutualidades de previsión social (mutual provident societies)	Mutual provident societies (mutualidades de previsión social or MPS) ¹ are private non-profit organisations that provide voluntary health insurance, complementary to the compulsory social security system. Again, policyholders are also members (Regulation on Mutual provident societies (Reglamento de mutualidades de previsión social 2002 ² , hereafter referred to as the 2002 Regulation). They can be of fixed or variable premium type: <ul style="list-style-type: none"> Fixed premiums (article 9): which are private non-profit organisations that are intended to cover their members' (natural or legal persons) risks on the basis of a fixed premium. Policyholders are also members. Variable premiums (article 10): which are private non-profit organisations based on the principle of mutual aid, aimed at covering of risks incurred by the members (socios) and where the members are charged with variable premiums. The mutuals with variable premiums can only be active in non-life insurance businesses. 	According to RLD 2004 (article 64 and further) the mutual provident societies have to comply with the same capital requirements as the mutual insurance companies (See article 67, 2). According to article 67,1 and article 66 however, there are mutual provident societies for which other rules apply as they obtained the administrative authorization for extension of benefits under specific conditions.	The management and corporate governance is described in Title IV and V of the Regulation on Mutual provident societies (Reglamento de mutualidades de previsión social 2002 ³). The governing bodies are the General Assembly (Article 36-38) and the Board of Directors (Article 39-42). Also, when these organisations are involved in insurance, the need to comply with the Regulation on Private Insurance Organisation and Supervision (Reglamento de Ordenación y Supervisión de los Seguros Privados 1998) ⁴ in the same way as mutual insurance companies.	Article 31 of the 2002 Regulation states that the status of the policyholder or insured is inseparable from that of membership.	Concerning voting rights the same rules apply as for the mutual insurers (Article 32) ⁵ . This means that each member has one vote.	The same rules apply as for the mutual insurance companies (see above).	The same rules apply as for the mutual insurance companies (see above).	The same rules apply as for the mutual insurance companies (see above).	When a mutual provident society exceeds the territory of a Region, it shall be supervised by the Central Government (Ministry of Economy). Otherwise, it is subject to the competence of the Region. There is a central registrar and an inspection regime	The same rules apply as for the mutual insurance companies (see above).	YES	Life and non-life insurance
Sweden	Ömsesidiga försäkringsbolag (mutual insurance companies)	Mutual insurance companies (ömsesidiga försäkringsbolag) are legally recognised but not legally defined. However according to the Insurance Business Act ⁶ (hereafter called the Act) the policyholders are the owners of the company (but not policyholders which take out reinsurance), with some possibility to extend ownership to the insured. According to the Act the owners have no personal responsibility for the company's liabilities. However there is a possibility to enter into the Articles of Associations a liability for owners to pay supplementary contributions under certain circumstances.	According to Chapter 12. § 8 ⁷ , the founders set the conditions for its formation and establish the articles of association. They must determine that a certain number of insurance to at least a certain total amount be subscribed, before the company is deemed formed. In determining the number and insurance amount they shall take into account the nature of the planned operations and to guarantee the capital. The guarantee capital is predetermined by the founders and is paid back when it is no longer needed any more. There is no de minimis regime in Sweden; all insurance activities in Sweden require a license. There were exemptions but they only relate to reporting requirements and apply only to cattle insurance companies (Kreatursförsäkringar) and insurance associations (understödsförening) that operated under the Benevolent Societies Act of 1972, which has	the mutual insurance company has a board of Directors, which is elected by the general meeting.	According to the Act (chapter 12, article 1) ⁸ , the policyholder is co-owner of the mutual insurance company (the insured can be co-owner only if the articles of association stipulates it). As such they have voting rights in general meetings.	The voting rights, membership etc. is described in the articles of association. In principle in general meetings the one man one vote principle is applied. However, in larger mutual insurance companies it is common that the articles of association stipulate that the voting rights are conferred on representatives appointed by explicitly mentioned organisations or by members. At least half of such representatives should however be appointed by the members or by organisations representing members' interests. In case	There are no shares. However, since April 1st 2011 hybrid capital exists. But this legislation is included in an ongoing revision by the Committee on life insurance. Therefore, the existing rules are fairly new, and are subject to discussion and revision.	General insurance law applies. The life insurance companies have as reserve "Konsolideringsfonden". Reserves are used to maintain capital buffers and to lower premiums.	With regard to transparency and disclosure, there is no difference with non-mutual insurers operating on the Swedish market. Auditing is no different from other companies.	Protection of assets is no different from other companies. Assets will be distributed amongst the policyholders.	YES	life, non-life and re-insurance	

¹ According to art 3,3 of decreto 2002, the abbreviation M.P.S. may be used

² Real Decreto 1430/2002, de 27 de diciembre, por el que se aprueba el Reglamento de mutualidades de previsión social: http://noticias.juridicas.com/base_datos/Admin/rd1430-2002-11.html

³ Real Decreto 1430/2002, de 27 de diciembre, por el que se aprueba el Reglamento de mutualidades de previsión social: http://noticias.juridicas.com/base_datos/Admin/rd1430-2002-11.html

⁴ Real Decreto 2486/1998, de 20 noviembre, por el que se aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados: http://noticias.juridicas.com/base_datos/Privado/rd2486-1998.html

⁵ Real Decreto 2486/1998, de 20 noviembre, por el que se aprueba el Reglamento de Ordenación y Supervisión de los Seguros Privados: http://noticias.juridicas.com/base_datos/Privado/rd2486-1998.html

⁶ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

⁷ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

⁸ Försäkringsrörelselag (2010:2043), Insurance Business Act: <http://62.95.69.3/SFSdoc/10/102043.PDF>

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			been repealed in 2011.			of indirect representation the organisation representing the members may not have been founded for that purpose, organisation within the cooperative movement (labour union, consumer cooperative, etc.) are however accepted. Within the framework of the new legislation, there is currently a governmental committee assigned to look into if and how to enhance policyholders' /owners' influence in mutual insurance companies.							
	Försäkringsföreningar (insurance associations)	Insurance associations (försäkringsföreningar) are legally recognised and defined in the Insurance Business Act chapter 13, 1 as an association with the objective to promote members' interests by conducting insurance business in which members participate by using the association's services as policyholder or insured.	Insurance associations need only start-up capital. According to Chapter 13 concerning insurance associations, § 5, an insurance association may not be formed without working (guarantee) capital. The capital may be contributed also by non-members. The guarantee capital is predetermined by the founders and is paid back when it is no longer needed any more. The amount of the required capital is the same as for other insurance operators.	insurance associations have a one tier governance structure consisting of a board of Directors (including the managing director) and the general assembly, electing the board.	Policyholders are members of the association. The possibility exists to have non member investors. Their rights are described in the Statutes.	As the policyholders are members of the association, they have voting rights in general meetings. There are the same possibilities as for mutual insurance companies to confer voting rights to representatives assigned by organisations or members, with the same restrictions. The Statutes may provide for voting rights for those who put in working capital.	There are no shares	General insurance law applies. The life insurance companies have as reserve "Konsolideringsfonden". Reserves are used to maintain capital buffers and to lower premiums.	Non members investors are possible to a limited extent.	With regard to transparency and disclosure, there is no difference with non-mutual insurers operating on the Swedish market. Auditing is no different from other companies.	Protection of assets is no different from other companies. Assets will be distributed amongst the policyholders.	YES	life, non-life and re-insurance
United Kingdom	in UK mutual-type organisations are defined broader than in other countries and the legal framework largely leaves open which form one chooses for being a mu-	It is important to note that legal structure is not the same as ownership model – mutuals can be based on a variety of different legal structures ¹ . The following structures are considered mutual-type organisations in the UK: (a) a building society ² incorporated under the Building Societies Act 1986 (c. 53); (b) a friendly society within the meaning of the Friendly Societies Act 1992 (c. 40); (c) an industrial and provident society registered under the Industrial and Provident Societies Act 1965 (c. 12); or (d) an EEA mutual society ³ . To complicate matters, many Friendly societies use in their trading name other denominations that 'friendly society', such as insurance	The FSA is the registering authority for all financial mutuals that are also authorised firms. Their details are included in the FSA Register. Besides, there is a specific mutual register for the 2007 Act mutuals ⁸ only. There is no uniform determination of the minimum level of capital for mutual-type organisations. The minimum capital requirement depends on the both the legal form chosen and the activity the mutual-type organisation is wishing to conduct. To obtain an insurance license, in general the guarantee funds requirements set at European level apply. The capital requirements for	Separate corporate governance codes exist for co-operatives, mutual insurers, building societies. AFM provides a Corporate Governance Code, which is a condition of membership and which provides clear principles of good governance, which member societies are expected to work to (or explain why different arrangements are more appropriate for their organisation). In general, in	Mutual insurers in general have their own individual rules, laid down in their Statutes, which will define much of the relationship between the mutual and its members. There is a great deal of variation between individual mutuals. In general, members are legally considered to be jointly and indivisible owners. The provisions of the memorandum of an incorporated friendly society are binding upon its mem-	This depends on the type of mutual. In their statutes, most mutual-type organisation operate on the basis of one-member-one-vote rules, though some retain delegate systems - where a delegate is appointed to represent the interests of a group of members. Voting by proxy is permitted by legislation, and since 2011 electronic voting is permitted - though not always adopted.	Members of mutual-type organisation usually have no specific shares in the mutual, but they can have an interest in the underlying mutual capital of the organisation. The mutual-type organisations, in general are regarded as companies limited by guarantee and interest on the guarantee capital is possible.	The required reserves depend on the type of mutual.	This is not usual but it is possible, for example in some Industrial & Provident Societies.	Separate corporate governance codes exist for co-operatives, mutual insurers, building societies. Authorised mutual-type insurers are authorised and regulated by the Financial Services Authority, and are also subject to the Financial	There is no legislative protection of assets. Usually, mutual-type organisations involved in insurance business do adopt a rule of asset protection in their articles, for example, a charitable assignment on conversion.	YES	life, non-life and re-insurance

¹ <http://www.bis.gov.uk/assets/biscore/business-law/docs/g/11-1401-guide-mutual-ownership-models.pdf>

² A building society is a mutually-owned mortgage-lending institution

³ Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 C.26. http://www.legislation.gov.uk/ukpga/2007/26/pdfs/ukpga_20070026_en.pdf

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	mutual).	society, benevolent society, relief society, benefit society, collecting society, burial society. The Friendly societies have two regimes: the ordinary regime and the de minimis regime or non-directive regime. Besides being mutual societies (as explained here above), mutual insurers can have several legal forms: an unlimited company (e.g. Equitable Life ¹), a private company, either limited by shares or guarantee (e.g. BHSF Ltd, Paycare, Solicitor's Indemnity) or unlimited (e.g. The Scottish Boatowners Mutual Insurance Association) or by private statute (e.g. Cornish Mutual, Standard Life until 2006 ²) or of a Friendly Society. The Industrial and Provident Society can be considered equivalent to the cooperative form ³ . The majority of mutual insurers are, however, constituted as friendly societies ⁴ . Also NFU (National Farmers Union) or Royal London are mutual insurers. Finally, there are also companies providing protection for their members in a mutual form, but not as insurers. ⁵ These are discretionary mutuals (e.g. Dental Protection ⁶) and the claims can only be settled after a decision by the board to pay out the claimed amount. These companies are not supervised by the FSA. Some are hybrids: a discretionary mutual which provides an extra cover for its members by insuring the losses above the retention rate of the mutual. These companies are often referred to as hybrids (as they then fall under the supervision of the FSA as insurance intermediaries). An example of a hybrid is The Benenden Healthcare Society Limited: Benenden is an incorporated friendly society, registered under the Friendly Societies Act 1992. The Society's contractual business (the provision of tuberculosis benefit) is authorised by the FSA. The remainder of the Society's business is undertaken on a discretionary	non-directive, de minimis regimes are lower.	the Anglo-Saxon countries a one-tier corporate structure is applied.	bers ⁹ . The Friendly Societies Act 1992 (art. 94) prescribes that within the range of activities permitted by the friendly Societies Act, if action not permitted by the rules of a registered friendly society or a registered branch is taken by or on behalf of the society or branch, the action is valid (whether or not it would be valid apart from this subsection) if all the members of the society or branch (entitled to vote) — (a) signified their agreement to it in writing before it was taken; or (b) signified their approval of it in writing before the end of the period of 28 days commencing with the day on which it was taken. A policyholder need not be a member: for example, motor insurance policyholders are generally not members in many mutual-type organisations, and legislation includes that minors do not acquire membership rights until the age of 18.	Additionally regarding Friendly Societies: The Friendly Societies Act 1992 (art. 6) specifically states that nothing in the Act may prevent an incorporated friendly society from providing in its rules: "(a) for such system of representation of the members in the making of decisions by the society as the society may think fit; (b) for the division of the society's members into groups under the control of the society and bound to contribute to the funds of the society but, subject to that, having funds and property of their own vested in trustees and administered by themselves or through their own trustees, officers or committees (and in accordance with their own rules); (c) for the delegation of authority to any such group (or to its committee or any of its officers) to act, within such limits as the society may set, on the society's behalf".			Services Compensation Scheme and Financial Ombudsman Service. Once registered, mutual-type insurers pay an annual fee to the FSA, allowing it to register rule changes, record or register other kinds of constitutional changes or to de-register without having to pay an additional fee. The fees are based on the activities that a society or company is permitted to undertake and are calculated in relation to the total assets of the mutual-type insurer ¹⁰ . Concerning Friendly societies, the central office shall prepare and maintain a file relating to the Public file of a each friendly society (to be known as the public file) and the file shall—				

¹ P Gujjarro and DJP Hare, 18.02.2002, Corporate Diversity and the Provision of Financial Services

² Standard Life was incorporated by Act of Parliament in 1832 (Standard Life Assurance Company Act), and was reincorporated as a mutual assurance company in 1925. It changed into a plc in 2006.

³ In the UK, a body wishing to function as a co-operative is free to use any legal form it chooses. That includes registering under the Companies Act 2006 or the Limited Liability Partnerships Act 2000 or operating as a partnership under the Partnership Act 1890, subject to restrictions on the use of the word "co-operative" in the name of a registered company. However, the Industrial and Provident Societies Acts 1965 to 2003 (to be renamed the Co-operative and Community Benefit Societies and Credit Unions Acts 1965 to 2010 when s 2 of the Co-operative and Community Benefit Societies Act 2010 is brought into force) provide a legal structure specifically designed for co-operatives". Source: <http://snalthsco-oplawnews.blogspot.com/>. See also: Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, national Implementation report, United Kingdom, 2009: "As already noted, there is no specific UK legislation on cooperatives. The closest applicable legislation is the Industrial and Provident Societies Act 1965 (IPSA 1965)".

⁴ Derived from AFM Company and financial data 2010: Nearly three quarters of the AFM members is constituted as a Friendly Society. <http://www.financialmutuals.org/files/files/2010%20member%20accounts.xls>

⁵ See: AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

⁶ Dental Protection is a wholly owned subsidiary of the Medical Protection Society designed specifically to serve the needs of the Society's dental members. MPS is not an insurance company: it is a non-profit-making mutual association of doctors, dentists and other healthcare professionals. It does not exist to make profits and has no shareholders, its funds being owned by members. Source: http://www.dentalprotection.org/uk/vdp_yd/aboutdpl/; MPS is not authorised according to the FSA on-line register but is categorized as introducer/appointed representative. Dental Protection is not found in the register.

⁷ AMICE (2012), Facts and Figures: Mutual and cooperative insurance in Europe

⁸ https://mutuals.fsa.gov.uk/euri_axd/2322fcb8083b364f9d20d6cfab711ed1/

⁹ Friendly Societies Act 1992, art. 8

¹⁰ Financial Services Authority, Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2010/11, Including feedback on CP10/5 and 'made rules': http://www.fsa.gov.uk/pubs/policy/ps10_07.pdf

¹¹ Friendly Societies Act 1992, art. 114

¹² Friendly Societies Act 1992, art. 73

¹³ http://www.fsa.gov.uk/doing/small_firms/msr/returns

¹⁴ See requirements in Friendly Societies Act 1992, art. 68-80

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		<p>basis.⁷ These discretionary mutuals acts as quasi-insurers and are not subjected to the rules of the FSA (to be dislike of other larger insurance companies). Before court, the discretionary mutuals successfully argued that they indeed are not insurers.</p>								<p>(a) contain the documents (or copies) and the records of the matters directed by or under any provision of this Act to be kept in the public file of the society; and (b) be available for inspection on reasonable notice by members of the public on payment of a fee (prescribed under section 114)¹¹.</p> <p>The mutual societies' accounts are audited and the auditors report to the members at the annual general meeting¹².</p> <p>Mutual societies must send an annual return and/or accounts to the FSA within the timescale prescribed for the particular type of society¹³.</p> <p>Accounting (non-life insurance) is in principle as for all the other companies¹⁴.</p> <p>The ABI guidance applies.</p> <p>In addition, the Friendly Society Act stipulates that the accounting records must be preserved for 6 years.</p>			

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
Iceland	N/A	<p>There is no specific definition in specific Icelandic law on mutual, such as e.g. insurance. The possibility to create mutual companies in insurance was deleted in 2010 at the occasion of the revision of the law on insurance activities in the run-up to the Icelandic candidature for EU membership. Before deletion, the provisions of the Act on Co-operative Societies shall apply to mutual insurance companies, which are established and operated in co-operative form (article 2).¹</p> <p>There are consequently no licensed Icelandic mutual insurance companies in Iceland. According to the law on insurance activity no. 56/2010 (lög um váttryggingastarfssemi, No. 56/2010) it is not permitted to establish a mutual insurance company in Iceland. All domestic insurance companies are limited liability companies.</p>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO	N/A

¹ Old legislation: http://www.vidraedur.is/media/esb_svor/17_-_Economic_and_Monetary_Policy/Annex_17-13_J_Insurance_Activities.pdf

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	Included	market
Liechtenstein	Versicherungsverein auf Gegenseitigkeit und Hilfskasse (Abolished)	<p>According to the Liechtenstein Companies Act a mutual insurance company (Versicherungsverein auf Gegenseitigkeit) is a legal entity whose purpose is primarily to meet the needs of their members and possibly other persons according to the principles of mutuality (Article 496 of the Liechtenstein Companies Act (Personen- und Gesellschaftsrecht) (hereafter called PGR))¹. It must be licensed by the insurance authority and registered to acquire legal personality.</p> <p>The PGR in its Abschnitt 7 regulates Versicherungsvereine und Hilfskassen extensively in 38 articles (art 496-533) including special prescriptions for non-required to be registered small mutual insurance associations and mutual aid funds (Hilfskassen). However, these provisions of the PGR have been abolished². Private insurance companies can only be organised in the legal form of a company limited by shares, a European Company (SE), a cooperative society, or a European Cooperative Society (SCE) (according to Article 13a Insurance Supervision Act (Versicherungsaufsichtsgesetz; VersAG). A private insurance company can therefore not anymore have the legal form of a mutual insurance company as was foreseen in Article 496 of the Liechtenstein Companies Act (see art 13a of the Insurance Supervision Act (Versicherungsaufsichtsgesetz, hereafter called VersAG)).</p> <p>In addition, according to article 2.2 of the VersAG, the supervisory authority is allowed to exempt organisations from supervision, when the interests of the insured are not harmed by it. This is however not mutual specific.</p> <p>In the current Insurance Supervision Act (Versicherungsaufsichtsgesetz, hereafter called VersAG) there is no reference to mutual insurance associations at all anymore, also not a reference which says they are excluded from supervision.</p>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO	N/A
Norway	Gjensidige forsikringselskaper (mutual insurance company)	There is no general definition of mutual in Norwegian law. According to the Law on insurance companies, pension companies and their business activity (hereafter called Insurance Act; Lov om forsikringselskaper, pensjonsforetak og deres virksomhet mv. (forsikringsvirksomhetsloven)), insurance activity	The Insurance Law provides specific rules for mutual insurance companies (gjensidige forsikringselskaper). Section 4-1 states that a mutual insurance company may be formed by one or more founders. The founders shall establish, date and sign a document containing the draft statutes and	Insurance company should have a board of at least three members. The Directors are elected by the supervisory board, or if not established, by the Gen-	This is subject to the statutes	The rules for membership, the composition of the General Assembly and to vote at a general meeting is subject to the Statutes of the organisation. Holders of	not possible, but the guarantee fund (guarantee capital) may consist of subordinated loan capital. The loan may be granted by a private lim-	Article 4-8 of the Insurance Act states: unless otherwise provided in the articles of association, profits and deficits shall be apportioned on persons who were members in one and the same accounting period, in pro-	Yes, by means of a guarantee fund: The guarantee fund (guarantee capital) may consist of subordinated loan capital. The loan	as other organisations	As other organisations ⁶ , the law does not provide a specific asset protection scheme for	YES	life, non-life and re-insurance

¹ <http://www.gesetze.li/Seite2.jsp?LGBI=1926004.xml&Searchstring=null&showLGBI=true&suchart=lqblaktuell>

² Introduction to transposition proposal of SII in LI insurance law: Weitere Gesellschaftsformen sind für Unternehmen mit Sitz in Liechtenstein nicht zulässig. Dies bedeutet auch, dass die . in der Praxis nicht gelebt. Bestimmungen von Art. 496 ff. PGR (Die Versicherungsvereine auf Gegenseitigkeit und die Hilfskassen) entsprechend aufzuheben sind.

	Legal types	Definitions of mutuals	Methods of creation (required capital or assets)	Corporate governance	rights of members	voting and representation of members in general meetings	types of shares if any	reserves	possibility for non members investors	transparency and publicity requirements / related auditing issues	protection of assets	In-cluded	mar-ket
		<p>may only be engaged in by insurance companies and pension funds.¹ Insurance companies must be organized as limited companies, public limited companies or mutual companies (gjensidige forsikringselskaper).² In the Insurance Act no definition of mutual insurance companies is provided. The only legal type of mutuals in Norway is the mutual insurance company, which is regulated by the Insurance Act. According to § 15-4 of the Insurance Act, with regard to small mutual insurance companies, The King can do full or partial exemption from the Insurance Act for small mutual insurance companies (de minimis regime). There are marine insurers, applying mutualistic principles which exist as P&I clubs or otherwise. They have not been established as mutual insurance companies.³</p>	<p>regulations as stated in § 4-4. At least half of the founders shall be resident in the Kingdom and have lived here in the past two years, if not the King can make exceptions in individual cases.⁴ The company can only collect premiums after being authorised and registered by the Supervisory Authority (§ 4-5). There are no specific rules for required capital for mutual insurance companies to be established. The Regulation in accordance with § 5 of the "Regulations on minimum equity in Norwegian insurance companies" provides an overview of the minimum amount of capital for different operators⁵. To start up a new insurance company (including a mutual one), in 2012 one needs 40 million NOK (5.5 million Euro). Specifically for a mutual life insurance company the start up amount is 16 million NOK (2.2 million Euro).</p>	<p>eral meeting. Insurance companies (including mutuals) can able a monistic or dualistic governance structure.</p>		<p>the loan capital (negotiable primary capital) can have a right of representation at the general meeting.</p>	<p>ited company or a public limited company that is founded for this purpose, by another company or by other parties. Loan capital may also be raised by issuing negotiable primary capital certificates conferring the right of representation at the general meeting.</p>	<p>portion to an estimated prepaid premium.</p>	<p>may be granted by a private limited company or a public limited company that is founded for this purpose, by another company or by other parties. Loan capital may also be raised by issuing negotiable primary capital certificates conferring the right of representation at the general meeting.</p>		<p>mutuals.</p>		

¹ Law on insurance companies, pension companies and their business activity. (Insurance Act): <http://www.lovdata.no/all/nl-20050610-044.html>, section 1-1.

² Law on insurance companies, pension companies and their business activity. (Insurance Act): <http://www.lovdata.no/all/nl-20050610-044.html>, section 3-1.

³ See for instance: <http://www.norclub.no/one-for-all-and-all-for-one/>

⁴ Law on insurance companies, pension companies and their business activity. (Insurance Act): <http://www.lovdata.no/all/nl-20050610-044.html>, section 4-1.

⁵ http://www.finanstilsynet.no/Global/Venstremeny/Rundskriv_vedlegg/2012/1_kvartal/Rundskriv_3_2012.pdf

⁶ See chapter 16 of the Companies Act 13th June 1997: http://www.regjeringen.no/nb/dep/d/dok/lover_regler/reglement/1997/lov-om-aksjeselskaper---informasjonsbros.html?id=106662

Annex B: List of sources used

This list includes the most relevant literature at European level. National reports and legislation is not included in this list. Furthermore, additional literature is mentioned in the previous, European Parliament study: Broek, S.D. et al, (2011), The role of mutual societies in the 21st century.

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Annex C: List of participating experts/ respondents¹

Name	Function/ organisation	Scope
Mr Alain Coheur	Directeur / Director European and International Affairs, Union Nationale des Mutualités Socialistes/ National Federation of Socialist Health Insurance Funds	Belgium
Mr Christian Horemans	Expert Internationale Zaken/Expert International Affairs, Landsbond van Onafhankelijke Ziekenfondsen/ National Federation of Independent Health Insurance Funds	Belgium
Mr Jean-Pierre Descan	Diensthooft Internationale Samenwerking "Landsbond der Christelijke Mutualiteiten" Head of Department International Cooperation "National Federation of Christian Mutual Associations"	Belgium
Mr Patrick Carnotensis	Coördinatie Europese en euregionale projecten/ Coordinator of euregional and European projects, Landsbond van Christelijke Mutualiteiten National Federation of Christian Health Insurance Funds	Belgium
Mr Ronny Van Hee	stafmedewerker studiedienst / staff member study service, Landsbond van Liberale Mutualiteiten/ National Federation of Liberal Health Insurance Funds	Belgium
Mr Serge Jacobs	Bedrijfsjurist, VVOV – UAAM : Verbond der Verenigingen van Onderlinge Verzekering / Union des Associations d'Assurance Mutuelle Company Lawyer, VVOV – UAAM : Verbond der Verenigingen van Onderlinge Verzekering / Union des Associations d'Assurance Mutuelle	Belgium
Κυρία Αντωνία Φιλή/ Ms Antonia Phili	Λειτουργός Ελέγχου Ασφαλιστικών Εταιρειών, Υπηρεσία Ελέγχου Ασφαλιστικών Εταιρειών-Υπουργείο Οικονομικών / Insurance Companies Control Officer, Insurance Companies Control Service- Ministry of Finance	Cyprus
Representative of	Všeobecná zdravotní pojišťovna (VZP)/ General Health Insurance Company	Czech Republic
Representative of	Svaz zdravotních pojišťoven ČR/ Czech Association of Health Insurance Companies	Czech Republic
Mr Gregor Pozniak	Secretary General, AMICE – Association of Mutual Insurers and Insurance Cooperatives	EU/Austria
Mr Karel van Hulle (Dr)	Head of Unit / Insurance and Pensions Unit, Directorate General Internal Market and Services, European Commission	EU
Ms Catherine Hock	Deputy Secretary General, AMICE – Association of Mutual Insurers and Insurance Cooperatives	EU
Ms Lieve Lowet	Partner / ICODA European Affairs	EU
Representatives of	BIPAR (European Federation of Insurance Intermediaries)	EU
Mr Philippe Swennen (Dr)	Project Manager, Association Internationale de la Mutualité AIM	EU/ International

¹ Besides the persons and organisations mentioned in the list below, there are a number of persons that preferred not to be included in the list.

Name	Function/ organisation	Scope
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Mr Markku Paakkanen	Director, Tapiola Group Actuarial and Risk Management Services	Finland
Ms Anu Pykkänen	Director Kansainvälinen edunvalvonta ja yhteiskuntavastuu (International lobbying and CSR), Tapiola/ Local Tapiola	Finland
Ms Teija Kerminen	Director, Lakiasiainpalvelut ja compliance, LähiTapiola-ryhmä, in English Group Legal Services and Compliance, LocalTapiola Group	Finland
Ms Tiina Granlund	Neuvotteleva virkamies; Sosiaali- ja terveysministeriö, Vakuutusosasto. Ministerial Adviser; Ministry of Social Affairs and Health, Insurance Department	Finland
Ms Tiina Mäntyranta	Hallitussihteeri; Sosiaali- ja terveysministeriö, Vakuutusosasto. Senior Officer, Legal Affairs; Ministry of Social Affairs and Health, Insurance Department	Finland
Mr Jean Philippe Diguët	Finance and Audit – Department expertise financière Directeur Adjoint , Deputy director FNMf – Fédération Nationale de la Mutualité Française	France
Mr Jean-Louis Davet	Directeur groupe, general manager, MGEN	France
Mr Jean-Luc de Bois-sieu	Secrétaire Général – GEMA/ Secretary General - GEMA)	France
Mr Paul Coulomb	Directeur, 1ère Direction du Contrôle des Assurances, ACP (Director, 1st Insurance Supervisory)	France
Mr Renaud Huard	Head of International, MAIF Group (Mutuelle Assurance des Instituteurs de France)	France
Mr Romain Rouquette	Directeur des affaires juridiques, legal affairs director, MGEN	France
Ms Arielle Garcia	Directrice adjointe des affaires publiques Responsable du pôle des relations internationales et affaires européennes / Deputy director Head of international and european affairs Public affairs division	France
Ms Cornélia Federkeil	Responsable du Department Europe , Head of European Affairs, Direction des affaires publiques –Public Affairs division – FNMf- Fédération Nationale de la Mutualité Française	France
Ms Julie Savary	Chargée de mission au cabinet de la présidence, adviser to the President's office, MGEN	France
Ms Marie Blanchard	Responsable développement international, international development manager, MGEN	France
Ms Marie-Hélène Kennedy	Délégué Général ROAM (Réunion des Organismes d'assurance mutuelle), Chief executive ROAM (Réunion des Organismes d'assurance mutuelle),	France
Ms Sophie Cremière-Bouxin	Chargée d'études juridiques - GEMA (Research Officer - GEMA)	France
Ms Bethy-Alexandra Galian	Directrice Juridique Groupe MACIF/ Group General Counsel	France
Ms Diane Iannucci	Chargée aux affaires européennes / responsible for european affairs Direction Juridique Groupe MACIF	France
Mr Gérard Andreck	Président du conseil d'administration de la MACIF / Chairman of MACIF' Board of directors	France

Name	Function/ organisation	Scope
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Mr Rainer Langner (Dr.)	Vorstandsvorsitzender (CEO), Vereinigte Hagelversicherung VvaG(Versicherungsverein auf Gegenseitigkeit)	Germany
Mr Werner Görg (Dr.)	Vorstandsvorsitzender Gothaer Versicherungsbank VVaG / CEO Gothaer Mutual Insurance Company and Vorstandsvorsitzender Arbeitsgemeinschaft der Versicherungsvereine auf Gegenseitigkeit e.V.(ARGE-VVaG) / CEO Association of German Mutual Insurance Companies (ARGE-VVaG) and Vice-President AMICE (Association of Mutual Insurers and Cooperatives in Europe)	Germany
Ms Manuela Krütt	Syndikusanwältin Gothaer Versicherungsbank VVaG / Corporate Legal Counsel Gothaer Mutual Insurance Company and Generalsekretariat Arbeitsgemeinschaft der Versicherungsvereine auf Gegenseitigkeit e.V. (ARGE-VVaG) / Secretary General Association of German Mutual Insurance Companies (ARGE-VVaG)	Germany
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Ms Ólóf Aðalsteinsdóttir	Alþjóðafulltrúi, Fjármálaeftirlitið, International co-ordinator, Financial Supervisory Authority	Iceland
Mr Ben Telfer	Manager, Shared Intelligence, ICMIF	International
Mr Shaun Tarbuck	Chief Executive, ICMIF	International
Ms Faye Lageu	Vice-President, Shared Intelligence, ICMIF	International
Ms Bridget Carroll	Researcher, Centre for Co-operative Studies, University College Cork, Cork	Ireland
Mr Antonio Ceretti	Ufficio Partecipazioni e Investimenti (Social Affair Department) - Società Reale Mutua di Assicurazioni	Italy
Mr Edoardo Greppi	Professore di diritto internazionale (Professor of International Law), Università di Torino, Italia; Membro del Consiglio di	Italy

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	Amministrazione (Member of the Board), Società Reale Mutua di Assicurazioni, Torino. Chair of the Legal Affairs Task-Force, AMICE, Brussels.	
Mr Mauro Iengo	Responsabile ufficio legislativo / Lega Cooperative legal office responsible).	Italy
Mr Placido Putzolu	Presidente Fimiv, Federazione Italiana della Mutualità / President Fimiv, Federation Italian Mutuality)	Italy
Ms Loredana Vergasola	Vicepresidente Fimiv, Federazione Italiana della Mutualità / Deputy Fimiv, Federation Italian Mutuality)	Italy
Mr Ivars Lenšs	Vecākais juriskonults, Juridiskais un licencēšanas departaments, Finanšu un kapitāla tirgus komisija/Senior Legal Consultant, Legal and Licencing Departament, Financial and Capital Market Commission	Latvia
Representatives of	the Financial Market Authority Liechtenstein	Liechtenstein
Mr Thierry Ries	Secretary General of the Conseil Supérieur de la Mutualité	Luxembourg
Representatives of	Commissariat aux Assurances	Luxembourg
Mr Grzegorz Komarnicki	Naczelnik Wydziału Ubezpieczeniowego, Departament Analiz i Współpracy z Zagranicą, Urząd Komisji Nadzoru Finansowego (Governor of Insurance Unit, Analyses and International Cooperation Department, Polish Financial Supervisory Authority)	Poland
Representative of	Towarzystwo Ubezpieczeń Wzajemnych (TUW) / Mutual Insurance Company	Poland
Mr José Pitacas	Director at Montepio Geral, Portuguese Mutual	Portugal
Mr Pedro Bleck da Silva	Director at Montepio Geral, Portuguese Mutual	Portugal
Ms Mihaela Lambru (PhD)	Professor, University of Bucharest, Faculty of Sociology and Social Work / Profesor, Universitatea Bucuresti, Facultatea de Sociologie si Asistenta Sociala.	Romania
Representative of	Vzajemna	Slovenia
Mr Göran Ronge	Senior Manager & Actuary KPMG AB, Stockholm Office	Sweden
Mr Jan Andersson (Dr.)	Professor at Stockholm university / adjunct professor at Jönköping International Business School	Sweden
Ms Ann-Kristin Marinica	Intressekonfliktsansvarig Folksam Liv, Vd-stab; Chief Officer, Conflicts of intrerests Folksam Life, CEO's office.	Sweden
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Mr Lars Bergendal	Chief jurist Skandia Liv	Sweden
Mr Marcel Smeets	The European Business and Health Care Forum	The Netherlands
Mr Chris van Toor	Directeur Federatie van Onderlinge Verzekeraars (FOV)/ Director FOV (association of mutual insurers)	The Netherlands
Representatives of	De Nederlandse Bank (DNB)	The Netherlands
Mr Bert-Jan Jager	Policyadvisor Zorgverzekeraars Nederland / healthcare insurers the Netherlands	The Netherlands
Ms Syta Hammink	Nardus officemanager	The Netherlands
Mr Nico Obolonsky	Beleidsadviseur Verbond van Verzekeraars/ Policy advisor Dutch Association of Insurers	The Netherlands

Name	Function/ organisation	Scope
Representative of	The Nederlandse Mededingingsautoriteit (NMa) /Netherlands competition Authority	The Netherlands
Representative of	The Nederlandse Zorgautoriteit (NZa)/ Dutch Healthcare Authority	The Netherlands
Representative of	Kamer van Koophandel Nederland / Chamber of Commerce the Netherlands	The Netherlands
Mr Martin Shaw	Chief Executive, Association of Financial Mutuals	United Kingdom
Mr Paul Koronka	CEO Regis Mutual Management Ltd	United Kingdom
Mr Bill McPate	Independent Consultant/Benenden Healthcare Society	United Kingdom
Mr Jonathan Michie (Professor)	Director, Oxford Centre for Mutual & Employee-owned Business, and President of Kellogg College, University of Oxford	United Kingdom
Mr Peter Hunt	Chief Executive Mutuo	United Kingdom

Annex D: Companies included in the ICMIF data

- Vorarlberger Landes-Versicherung (Austria)
- HDI Hannover (Austria)
- Raiffeisen Versicherung (Uniq) (Austria)
- Salzburger Landes-Versicherung (Uniq) (Austria)
- Grawe (Austria)
- Oberösterreichische (Austria)
- Wustenrot (Austria)
- Niederösterreichische Versicherung (Austria)
- Ethias (Belgium)
- FEDERALE Assurance (Belgium)
- MENSURA (Belgium)
- EMANI (Belgium)
- De Integrale (Belgium)
- Groupama (Bulgaria)
- HDI Bulgaria (Bulgaria)
- Aros Forsikring (Denmark)
- Danske civil- og akademiingeniører (DIP) (Denmark)
- Ergo- og fysioterapeuter (pka) (Denmark)
- FunktionærPension (Denmark)
- HF FORSIKRING (Denmark)
- Industriens Pension (Denmark)
- KommuneForsikring A/S (Denmark)
- Kontorpersonale (pka) (Denmark)
- Kost og ernæring (pka) (Denmark)
- Lægeseekretærer (pka) (Denmark)
- Lokal Forsikring (Denmark)
- LB GROUP (Denmark)
- Magistre & Psykologer (Denmark)
- Midtjysk (tidl gl Skanderborg) (Denmark)
- Sønderjysk Forsikring (Denmark)
- Sygeforsikringen "Danmark" (Denmark)
- Sygehjælpere (Denmark)
- Thisted (Denmark)
- Vejle Brand (Denmark)
- Lähivakuutus (Local Insurance) (Finland)
- Pohjantähti (Finland)
- Turva (Finland)
- Redarnas (Shipowners' Mutual) (Finland)
- Valion (Valio Mutual) (Finland)
- Palonvara (Finland)
- Alma (Finland)
- Insurance association (Local Mutuals) (Finland)
- Ilmarinen Mutual Pension Insurance Company (Finland)
- Eläke-Fennia Mutual Insurance Company (Finland)
- Etera Mutual Pension Co (Finland)
- Suomi Mutual (Finland)
- AG2R-ISICA* (France)
- AGPM (France)
- AMDM(ASSURANCE MUTUELLE DES MOTARDS) (France)
- AMF (MATMUT) (France)
- AREAS (France)
- ASSOCIATION MUTUELLES LE CONSERVATEUR, ASSURANCE MUTUELLE LE CONSERVATEUR (France)
- ASSURANCE MUTUELLE D'OUTRE-MER (France)
- ASSURANCE MUTUELLES DE FRANCE (Covea from 2006) (France)
- Caisse Industrielle D'Assurances Mutuelles(CIAM) * part of Monceau (France)
- Caisse Meusienne D'Ass Mutuelles(CMAM) (France)
- Caisse Mutuelle D'Assurances Sur La Vie(CMAV) (France)
- Caisse Mutuelle Marnaise D'Assurance(CMMA) (France)
- CAMEIC (France)
- CAPMA & CAPMI (France)
- CÉRÈS (France)
- CFPD Assurances (France)
- C M Garantie Prof De L'Assurance (CGPA) (France)
- CIA Departments De L'est (CIADE) (France)
- COMTOISE(LA) (France)
- Covéa (France)
- Credit Agricole (France)
- FINISTÈRE(LE) (France)
- GAMEST (France)
- GROUPAMA (France)
- GROUPEMENT UMR(UBD) (France)
- JURASSURANCE (France)
- LA MONDIALE (France)
- AG2R La Mondiale SGAM (France)
- LA SÉCURITÉ FAMILIALE (France)

- L'AUXILIAIRE (France)
- L'ÉTOILE (France)
- Mutuelles des Armees (MAA) (France)
- MACIF (France)
- MACSF, MACSF PREVOYANCE, Le sou Médical (France)
- Mutuelle D'Assurance des Pharmaciens (MADP) (France)
- MAF (France)
- MAIF (France)
- MAPA-MUTUELLE D'ASSURANCE (France)
- MATMUT (France)
- MAVIM(MUTUELLE D'ASSURANCE DE LA VILLE DE MULHOUSE) (France)
- MAVIT(MUTUELLE D'ASSURANCE DE LA VILLE DE THANN) (France)
- Mut Des Iles St Pierre et Miquelon (MISPM) (France)
- Mutuelle Nationale Territoriale (MNT) (France)
- Monceau Générale Assurances (MGA) (France)
- Monceau Retraite & Épargne (MR&E) (France)
- MUDETAF(Mutuelle confederale D'Ass des Buralistes de France) (France)
- MURACEF(MUTUELLE DES RISQUES D'ASSURANCE DES CAISSES D'ÉPARGNE DE FRANCE) disappeared in 2008 (France)
- MUTRAFER(MUTUELLE D'ASSURANCE DES ENTREPRISES DE TRANSPORT) (France)
- MUTUELLE CENTRALE DE RÉASSURANCE(MCR) (France)
- MUTUELLE DE POITIERS ASSURANCES (France)
- MUTUELLE FRATERNELLE D'ASSURANCES(MFA) (France)
- MUTUELLE SAINT-CHRISTOPHE ASSURANCE (France)
- Natixis (France)
- Debeka Versichern (Germany)
- HUK-Coburg (Germany)
- IDUNA Group (Germany)
- Gothaer Versicherungen (Germany)
- Pension Mutuals(2010=103, 2009=112, 2008=107) (Germany)
- Alte Leipziger (Germany)
- LVM Versicherungen (Germany)
- Die Continentale (Germany)
- VHV Versicherung (Germany)
- DEVK Versicherungen (Germany)
- BBV Bayerische Beamten Versicherungen (Germany)
- Barmenia Versicherungen (Germany)
- Deutscher Ring (Germany)
- Volkswohl Bund Versicherungen (Germany)
- WWK Versicherungen (Germany)
- HanseMerkur Versicherungsgruppe (Germany)
- Inter Versicherungen (Germany)
- LKH (Germany)
- VPV Versicherungen (Germany)
- SDK Süddeutsche (Germany)
- Münchener Vereins Versicherungsgruppe (Germany)
- PSVaG Pensions-Sicherungs-Verein (Germany)
- Concordia Versicherungsgruppe (Germany)
- uniVersa Versicherungen (Germany)
- LV 1871 (Germany)
- Stuttgarter Versicherungsgruppe (Germany)
- Mecklenburgische Versicherungsgruppe (Germany)
- Mannheimer Versicherungen (Uniqa) (Germany)
- GVV Versicherungen (Germany)
- WGV Versicherungen (Germany)
- IDEAL Lebensversicherung aG (Germany)
- Vereinigte Hagel (Germany)
- Haftpflichtkasse Darmstadt (Germany)
- Fahrlehrerversicherung VaG (Germany)
- Gartenbau-Versicherung VVaG (Germany)
- Uelzener Versicherungen (Germany)
- FAMK Freie Arzt- und Medizinkasse (Germany)
- Grundeigentümer-Versicherungen VVaG (Germany)
- OKV Ostdeutsche Kommunalversicherung a.G. (Germany)
- Medien-Versicherung Karlsruhe (Germany)
- Schwestern Versicherungsverein (Germany)
- HDNA VVAG (Germany)
- NV Versicherungsgruppe (Germany)
- Gegenseitigkeit Versicherung (Germany)
- Ostangler Versicherungen (Germany)
- Liga Kranken (Germany)
- Neuendorfer Brand-Bau-Gilde Versicherungsverein (Germany)
- Schleswiger Versicherungs Verein (Germany)
- Häger Versicherungsverein AG (Germany)
- VRK (Germany)
- Düsseldorfer Krankenvers a.G. (Germany)
- Ammerländer Versicherungen (Germany)

- Versicherungs Verband Deutscher Eisenbahnen (Germany)
- Bäcker Sachversicherung-U.Haftpfl (Germany)
- Docura Brandkasse Deutscher Lehrer (Germany)
- Vereinigte Schiffs-Versicherung V.a.G. (Germany)
- Isselhorster Versicherung (Germany)
- Opel Aktiv Plus (Germany)
- LBN Versicherungsverein a.G. (Germany)
- Augenoptiker Ausgleichskasse Vvag (Germany)
- Hagelgilde Versicherungs-Verein a.G. (Germany)
- Dolleruper Freie Brandgilde (Germany)
- Schutzverein Deutsche Rheder V.a.G. (Germany)
- ST.Martinus Kranken (Germany)
- Bergische Versicherungen (Germany)
- Nordhemmer Versicherungsverein auf Gegenseitigkeit (Germany)
- Ostbeverner Versicherungsverein a.G. (Germany)
- Thüga Schadenausgleichskasse (Germany)
- Harsewinkeler Versicherungsverein a.G. (Germany)
- Berufsfeuerwehr Hannover (Germany)
- Gebäudeversicherungsgilde Foehr (Germany)
- Schneverdingen Versicherungen (Germany)
- Lohnfortzahlungskasse Leer VVaG (Germany)
- Lehrer-Feuerversicherungsverein Schleswig-Holstein (Germany)
- Lauenburg-Alslebener Schiffsversicherung Verein aG (Germany)
- Constantia Versicherungen (Germany)
- Sono Kranken (Germany)
- Hamburger Lehrer-Feuerk (Germany)
- Badische Beamtenbank (Germany)
- Lohnfortzahlungskasse Aurich VVaG (Germany)
- Hamburger Beamten-Feuer und Einbruchskasse (Germany)
- Interamerican (Eureko) (Greece)
- UNIQA (Hungary) (Hungary)
- Signal, Hungary (Hungary)
- Magyar Posta Eletbiztosito (Hungary)
- Magyar Exporthitel Biztosító (Hungary)
- MAGYAR ÜGYVÉDEK Biztosító (Hungary)
- MAV (Hungary)
- KÖBE (Hungary)
- Friends First (Eureko) (Ireland)
- Irish Public Bodies Mutual Insurances Ltd (Ireland)
- Scottish Mutual (Ireland)
- Liberty Europe (Ireland)
- Groupama Assicurazioni (Italy)
- Grupo ITAS (Italy)
- HDI Assicurazioni (Italy)
- AME LUX (national) (Luxembourg)
- CALI Europe (Credit Agricole) (Luxembourg)
- MASS MUTUAL EUROPE (Luxembourg)
- AgriVer (Netherlands)
- Aquapol (Netherlands)
- Blaricumse Ver. tot Ond. Brandverz. (Netherlands)
- Bovemij Verzekeringen (Netherlands)
- Centramed (Netherlands)
- CRF (Name 2009 NV Centraal Risicofonds) (Netherlands)
- DELA (Netherlands)
- EFM Ond. Schepenverzekering (Netherlands)
- EFO Paardenverzekering (Netherlands)
- Eureko (Netherlands)
- Glasverzekering Samenwerking (Netherlands)
- Intepolis* (Netherlands)
- Juweliers Ond. Schade Mij (JUWON) (Netherlands)
- Klaverblad OVM (Netherlands)
- Leeuwarder Onderlinge (Netherlands)
- Nat. OWM tegen Brandschade (Netherlands)
- NOFF (Netherlands)
- Noord Nederlandsche P & I Club (Netherlands)
- OBM Assendelft (Netherlands)
- OBM De Meije (2007 merge with OVM Zegveld) (Netherlands)
- OBM De Veenhoop (Netherlands)
- OBM Edam (Netherlands)
- OBM Eendracht Maakt Macht (Netherlands)
- OBM Monnickendam & Katwoude (Netherlands)
- OBM Montfoort (Netherlands)
- OBM Ons Belang (Netherlands)
- OBM Purmerend (Netherlands)
- OBM Ransdorp (Netherlands)
- OBM Reeuwijk en Omstreken (Netherlands)
- OBM Utrecht Nabijgelegen Gem. (Netherlands)
- OBM Verzekeringen (Netherlands)
- OBM Westzaan (Netherlands)
- OBM Woerden-Driebruggen (Netherlands)
- OBM Zegveld (2007 merge with De Meije) (Netherlands)
- OBV Giethoorn (Netherlands)
- OBV Jutphaas (Netherlands)
- OBV Schalkwijk, Tull en 't Waal (Netherlands)
- OBV Steenwijkerwold (Netherlands)
- Ond. Bossenverzekering Mij (Netherlands)

- Ond. Fruittelers Hagelverzmij (Netherlands)
- Ond. Gemeentelijke Bosbrand (Netherlands)
- Ond. Paardenfonds De drie gemeenten (Netherlands)
- Ond. Paardenvermij Walcheren (Netherlands)
- Ond. Paardenverz. Fonds Doetchimen (Netherlands)
- Ond. Verzekeringen De Eendracht (Netherlands)
- Onderling Fonds Sliedrecht (Netherlands)
- Onderlinge Assurantie Tenkink (Netherlands)
- Onderlinge Brandverzekering Hoogland (Netherlands)
- Onderlinge Vlist (Netherlands)
- Onderlinge Winterswijk (Netherlands)
- Onderlinge Zeeuwse Waarborgmij (Netherlands)
- Onderlinge Zeevang (Netherlands)
- Ons Belang Coop Ass Vers (Netherlands)
- OOM Holding NV (Netherlands)
- OOM Ond. Molest Verzekeringen (Netherlands)
- Vereniging Oranje (Netherlands)
- OVM Benschop/IJsselstein (Netherlands)
- OVM Cothen (Netherlands)
- KLP (Norway)
- INTERRISK TU S.A. (VIG) (Poland)
- Macif Życie TUW (Poland)
- Pocztove TUW (Poland)
- SIGNAL IDUNA POLSKA TU S.A (Poland)
- SIGNAL IDUNA ŻYCIE POLSKA TU S.A. (Poland)
- TU SKOK Życie S.A (Poland)
- TUW TUW (Poland)
- TUW Bezpieczny Dom (Poland)
- TUW Cuprum (Poland)
- TUW Rejent - Life (Poland)
- TUW SKOK (Poland)
- Credito Agricola Vida SA (Portugal)
- Mapfre Assistência (Portugal)
- Groupama Vida (Portugal)
- Mutua dos Pescadores (Portugal)
- Eureko Asigurari (Romania)
- Omiasig Asigurari (VIG) (Romania)
- Signal Iduna (Romania)
- Groupama Asigurari (Romania)
- Unita (Uniqa) (Romania)
- Poist'ovna Slovenskej sporitel'ne, PSLSP (VIG) (Slovakia)
- Groupama poistovna (Slovakia)
- Union Poistovna (Eureko) (Slovakia)
- Grawe Insurance Company (Slovakia)
- Vzajemna Mutual (Slovenia)
- Agrupación Mutua del Comercio (Spain)
- ASOC .FERROV^a MEDICO FARMAC^a DE PREV.SOC (Spain)
- ASOCIACIÓN MUTUALISTA DE LA ING. CIVIL (Spain)
- ASOCIACION SOCORROS PERSONAL BANESTO (Spain)
- Atlantis Compania de Seguros y Reaseguros (Spain)
- Baskepensiones E.P.S.V (Spain)
- Bg Prevision Ahorro E.P.S.V. (Spain)
- CENTRO DE PROTECCION DE CHOFERES DE LA R (Spain)
- Elkarkidetzta E.P.S.V. (Spain)
- EuroMutua Seguros y Reaseguros A Prima FIJA (Spain)
- Euskadiko Pensioak, E.P.S.V. (Spain)
- FIATC Mutua de Seguros a PF (Spain)
- FONDO ASISTENCIA MUTUA C.I.C.C.Y P. (Spain)
- Fortia Vida MPS (Closed) (Spain)
- Gauzatu, E.P.S.V. (Spain)
- Geroa Pentsioak E.P.S.V. (Spain)
- Geroacaixa E.P.S.V. (Spain)
- GROUPAMA Seguros (Spain)
- Grupo Agrupacion Mutua (1) (Spain)
- Hermandad Nacional de Arquitectos, HNA (Spain)
- Itzarri, E.P.S.V. (Spain)
- Izarpension, E.P.S.V. (Spain)
- Kutxa BI, E.P.S.V (Spain)
- Kutxa E.P.S.V. (Spain)
- La Union Montijana de Seguros Mutuos (Spain)
- M.G.D. MUTULIDAD GENERAL DEPORTIVA (Spain)
- M.P.S. PARA EL PERSONAL DE MICHELIN (Spain)
- MAPFRE AGROPECUARIA, S.A. (Spain)
- MAPFRE ASISTENCIA CIA.INT.SEGUROS Y REAS., S.A. (Spain)
- MAPFRE CAJA SALUD DE SEGUROS Y REASEGUROS S.A. (Spain)
- MAPFRE CAUCION Y CREDITO COMPAÑIA INTERNACIONAL DE (Spain)
- Mapfre Global Risks (Spain)
- MAPFRE GUANARTEME, S.A. (Spain)
- Mapfre Caja Madrid Vida SA de Seguros Y Reaseguro (Spain)
- Mapfre Familiar Compania de Seguros Y Reaseguros SA (Spain)
- Mapfre Re Compania de Reasuguros SA (Spain)

- MAPFRE MUTUALIDAD DE SEGUROS Y REASEGUROS A P FIJA (Spain)
- MAPFRE SEGUROS GENERALES S.A (Spain)
- MAPFRE VIDA, S.A. DE SEGUROS Y REASEGUROS (Spain)
- MONTEPIO DE CONDUCTORES DE VALLADOLID (Spain)
- MONTEPIO DE TELEFONOS (Spain)
- Montepio Loreto, Mutualidad dePrevision Social (Spain)
- MPS DE PERITOS E INGENIEROS TECNICOS IND p1703 (Spain)
- MPS DOCTORES Y LICENCIADOS Fª Y LTR Y CI p0737 (Spain)
- MUSAAT (Spain)
- MUSSAP (Spain)
- MUT GRAL PREV SOCIAL GETORES ADMIVOS (Spain)
- MUT PREV SOC DE FUTBOLISTAS ESP PRI FIJA (Spain)
- MUT. PREV. SOC. DE LA EXTINGUIDA CAT (Spain)
- MUT.PREV.SOC.EMPLEADOS BANCAJA, P.F. (Spain)
- MUT.PREV.SOCIAL, A PRIMA FIJA, DE EMPLEA DE LA CAJA (Spain)
- MUTRAL (Spain)
- Mutua Catalana de Seguros y Reaseguros A Prima FIJA (Spain)
- MUTUA DE P.SOC. PERSONAL RENAULT ESPAÑA (Spain)
- Mutuavenir Mutua de Pamplona S.R.P.F. (Spain)
- Mutua de Propietarios de Seguros y Reaseguros (Spain)
- Mutua de Riesgo Marítimo (Spain)
- Mutua dels Advocats de Cataluna (Spain)
- Mutua General de Catalunya (Spain)
- Mutua General de Seguros (MGS) (Spain)
- Mutua MMT Seguros (Spain)
- Mutua Segorbina de Seguros A Prima FIJA (Spain)
- Mutua Seguros de Armadores de Buques de Pesca de España (Spain)
- Mutua tinerfeña, Mutua Seguros y Reaseguros a PRIM (Spain)
- Mutua Valenciana Automovilista m0323 (Spain)
- MUTUA. ESCOL. DE PREV. SOC. JESUS MARIA (Spain)
- Mutual Flequera de Catalunya (Spain)
- Mutual Madrilená Automovilista SSPF (Spain)
- MUTUAL MEDICA DE CATALUNYA I BALEARS,MPS (Spain)
- Mutualidad Arrocerá de Seguros a P.F. (Spain)
- MUTUALIDAD COMP.PREV.SOC.RENAULT ESPAÑA (Spain)
- MUTUALIDAD DE ASTURIAS (Spain)
- MUTUALIDAD DE DEPORTISTAS PROFESIONALES (Spain)
- MUTUALIDAD DE EMPLEADOS DEL BANCO DE ESPAÑA (Spain)
- Mutualidad General de la Abogacía (Spain)
- Mutualidad de Levante Entidad de Seguros a Prima F (Spain)
- MUTUALIDAD DE P. S. DE LA POLICIA (Spain)
- MUTUALIDAD DE P.S. DE VIAJANTES Y REPRESENTANTES (Spain)
- MUTUALIDAD DE P.S.DE AUTORES Y EDITORES (Spain)
- MUTUALIDAD DE PREVISION SOCIAL DE ARAGONESAS (Spain)
- MUTUALIDAD DE PREVISION SOCIAL DE ASISA (Spain)
- MUTUALIDAD DE PROCURADORES (Spain)
- MUTUALIDAD EL CLERO ESPAÑOL PREV SOCIAL (Spain)
- MUTUALIDAD ESC. Y FAMILIAR DE PREV. SOCIAL (Spain)
- MUTUALIDAD ESCOLAR SEK DE PSG (Spain)
- MUTUALIDAD G.P.S. QUIMICOS ESPAÑOLES (Spain)
- MUTUALIDAD GENERAL DE PREVISION DEL HOGAR (Spain)
- MUTUALIDAD PREV.SOCIAL PERSONAL ADUANAS (Spain)
- MUTUALIDAD PREVISION SOCIAL DEL COLEGIO (Spain)
- Mutualidad Seguros Panadería de Valencia (Spain)
- MUTUALIDD PREV.SOC.PRO PERSONAS CON DISC (Spain)
- Mutuasport (Spain)
- Norpension (Spain)
- Other pension funds (Spain)
- PAKEA-Mutualidad de Seguros (A Prima FIJA) (Spain)
- SDAD. FILANTROPICA MERCANTIL MATRITENSE (Spain)
- Länsförsäkringar (Sweden)

- AFA (Sweden)
- Folksam Group (includes KP from 2008) (Sweden)
- Royal London Insurance Group (United Kingdom)
- BUPA (United Kingdom)
- NFU Mutual Insurance Group (United Kingdom)
- LV= (United Kingdom)
- Groupama UK (United Kingdom)
- Ecclesiastical (United Kingdom)
- Simplyhealth Group(HAS) (United Kingdom)
- Medical Protection Society (United Kingdom)
- La Mutuelle du Mans/MMA UK (United Kingdom)
- Royal Liver (United Kingdom)
- Wesleyan Assurance Society (United Kingdom)
- Police Mutual (United Kingdom)
- Equitable Life (United Kingdom)
- UMAL (United Kingdom)
- Scottish Friendly Assurance Society Ltd (United Kingdom)
- Reliance Mutual (United Kingdom)
- MGM Advantage (United Kingdom)
- Sunderland Marine Mutual Insurance Company (United Kingdom)
- The Children's Mutual (United Kingdom)
- Family Investments (United Kingdom)
- Benenden Healthcare Society Ltd (United Kingdom)
- Teachers Provident Society (United Kingdom)
- Exeter Friendly Society (United Kingdom)
- engage Mutual (United Kingdom)
- UIA (Insurance) Ltd (United Kingdom)
- Health Shield Friendly Society Ltd (United Kingdom)
- CS Healthcare (United Kingdom)
- Cornish Mutual (United Kingdom)
- National Friendly (United Kingdom)
- metfriendly (United Kingdom)
- Communication Workers Friendly Society (merged into Foresters Life Aug 2011) (United Kingdom)
- Foresters Friendly Society (United Kingdom)
- Dentists' Provident Society (United Kingdom)
- Cirencester Friendly Society Ltd (United Kingdom)
- Healthy Investment (United Kingdom)
- Kingston Unity Friendly Society (United Kingdom)
- Holloway Friendly Society (United Kingdom)
- British Friendly Society Ltd (United Kingdom)
- The Shepherds Friendly Society Ltd (United Kingdom)
- DG Mutual (United Kingdom)
- Railway Enginemen's Assurance Society Ltd (United Kingdom)
- Schoolteachers Friendly Society (United Kingdom)
- Nottingham Friendly Society (part of Oddfellows from Jan 2010) (United Kingdom)
- Sheffield Mutual Friendly Society (United Kingdom)
- Pharmaceutical and General Provident Society (United Kingdom)
- Livery Companies Mutual (United Kingdom)
- The NFRN Mutual (United Kingdom)
- Druids Sheffield Friendly Society (United Kingdom)
- Wiltshire Friendly Society Ltd (United Kingdom)
- Transport Friendly Society Ltd (United Kingdom)
- Red Rose Friendly Society Ltd (United Kingdom)
- Coventry Assurance Society (United Kingdom)
- Oddfellows Manchester Unity Friendly Society (United Kingdom)
- Kensington Friendly Collecting Society Ltd (United Kingdom)
- Royal Standard Friendly Society (United Kingdom)
- Housing Association Mutual Insurance Association (United Kingdom)

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