



European Commission



Enterprise Directorate-General

CONSULTATION DOCUMENT

Mutual Societies in an enlarged Europe

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CONSULTATION DOCUMENT

MUTUAL SOCIETIES IN AN ENLARGED EUROPE

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1. INTRODUCTION

In Europe around 120 million people are covered by a health mutual, in many Member States mutual societies hold a very significant share of the insurance market¹, and in the banking sector 30% of the UK mortgage loan market is held by mutual banks (“building societies” – see point 2.1.2).

The economic weight of mutual societies and their strong roots in the community make them a part of the European economy that cannot be ignored.

They are in every sense businesses and operate in the same markets as public limited companies, which are oriented towards investors' needs. Like other forms of business, mutuals must be competitive and meet the challenges posed by the globalisation of the economy, the internationalisation of trade, concentrations and technological change.

Stimulating entrepreneurship is one of the European Union's priorities. As the Green Paper on Entrepreneurship states:² “Europe needs to foster entrepreneurial drive more effectively. It needs more new and thriving firms willing to reap the benefits of market opening and to embark on creative or innovative ventures for commercial exploitation on a larger scale”.

A consensus has developed that sustainable development depends not only on economic performance, but also on responsible social and environmental behaviour. Mutual enterprises, based on the values of solidarity and active participation in management, combine various interests in their aims. These values make them important in the provision of general interest services.

The diversity of forms that entrepreneurship takes is a valuable resource for Europe and its economy. It is in Europe's interest to guarantee the right to do business in alternative ways in order to allow them to develop their activities and potential. This can be achieved by providing a level playing field for all types of undertaking in the shape of a legal framework suited to the specific features of each of them.

The right to do business in a variety of alternative forms of enterprise must be recognised and encouraged at all levels.

This document describes the main features of mutual societies and their operating methods; it explores their sectors of activity, their achievements and the added value of this type of enterprise.

Chapter 3 deals with regulatory frameworks and demonstrates that there is a lack of legal instruments for mutuals (particularly instruments for grouping). It also draws attention to the need to adopt a Statute for a European Mutual Society, which would enable mutuals to benefit from the opportunities offered by the Europe-wide market,

¹ In France for instance, 50 % of the car insurance market is held by insurance mutuals. In Germany, insurance mutuals account for 22 % of the entire insurance market.

² COM(2003) 27 final, 21/01/2003
http://europa.eu.int/comm/enterprise/entrepreneurship/green_paper/index.htm

while retaining their specific characteristics. This instrument has been awaited by the mutual sector for over twenty years.

Recognition of the nature of mutuals throughout the European Union (including the new Member States) must involve:

- offering European citizens the possibility of engaging in alternative types of business, and also of obtaining goods and services in different ways;
- providing mutuals with a legal framework suited to their specific needs, allowing them to operate in the market under conditions of fair competition with other types of company;
- ensuring that mutuals are taken into consideration in all policies concerning them, through better understanding of their potential contribution;
- allowing mutuals to develop new activities and explore new sectors;
- establishing instruments for transnational collaboration to enable mutuals to meet the challenge of ever stronger competition, whilst retaining their specific characteristics.

This consultation document should help the Commission gain a comprehensive understanding of the legal difficulties encountered by mutuals, their need for legislation adapted to their specific characteristics, and their interest in the establishment of their own legal statute at European level.

This document poses a number of questions on which the Commission would particularly like to know the opinions of all relevant stakeholders. These questions are repeated separately in an annex. Of course, the Commission welcomes any other comments or suggestions.

2. MUTUAL SOCIETIES IN EUROPE

2.1. What is a mutual society?

Mutualist traditions vary widely between the Member States and the question of definition has always been very difficult.

Mutuals abide by the same principles as other parts of the social economy (co-operative societies and associations): they are 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.

The profits and surpluses of a mutual are not used to pay a return on investment; they are used to improve the services offered to members, to finance and develop the business and to increase its own reserves. Within certain limits, they may be redistributed to members in any form.

Unlike co-operatives, whose capital is represented by shares, the funds of mutuals are owned and managed jointly and indivisibly.

To join a mutual, the future member must pay for the services provided by the mutual, rather than buy a share in the capital. The new member is not, therefore, subject to high initial membership costs.

On the other hand, members do not have any property rights over the capital. Consequently, departure from the mutual has no effect on the capital, which will continue to serve the remaining members.

2.1.1. General principles

- Absence of Shares:

Mutual society funds do not consist of shares which would produce (even low) returns for the shareholders. Mutual societies operate on the basis of an initial capital - or their own fund - financed by the members or by borrowing. This fund is the collective and indivisible property of the mutual society.

- Freedom of membership:

Mutuals are accessible to anyone who fulfils the conditions laid down in the memorandum of association and abides by mutualist principles.

In general, a distinction is made between mutual societies which are "open" (where members are accepted without being subject to any particular conditions, e.g. the health mutuals in Belgium) or "closed" (where membership is subject to observance of geographical or socio-professional conditions laid down in the memorandum of association, e.g. teachers' and retailers' mutuals). In the latter case, provided applicants meet the objective conditions of membership, the mutual society accepts them as members without any form of discrimination.

- Non- profit-making objectives:

The main objective of mutual societies is not to make a profit but to satisfy members' interests - or even, in some cases, the interests of the wider community. The person, and not the capital, is therefore the focus of a mutual society's activities.

The lack of a pure profit motive does not mean that mutuals are not economically active or that they do not endeavour to be economically viable or even to produce a surplus. To be viable and to ensure their continuity, mutuals have to be competitive and are obliged to balance their accounts.

It is in the allocation of the profit that mutual societies differ from public limited companies: surpluses are not used to pay a return on capital. They are reinvested in order to improve the services proposed to members, to finance the development of the business, to increase their own funds or, within certain limits, they are redistributed among members in any form.

- Solidarity:

The members of a mutual society endeavour to meet individual expectations through collective action: they pool resources and/or activities to meet everyone's needs.

- Democracy:

Mutual societies are run democratically, with members actively participating in the governance of the business in accordance with representation systems that vary from

country to country. Under the principle of one person one vote, each member has equal power within the decision-making process. In practice this principle is often adapted to allow a certain amount of weighted voting. However, in such cases the democratic principle is generally preserved by limiting in the internal statutes the number of votes that a member can hold.

- *Independence:*

Mutual benefit businesses are independent businesses, which do not depend on state subsidies to exist.

2.1.2. Background to the creation and development of mutual societies

The origins of the mutual society can be traced back to very ancient times. As far back as the 6th Century BC they appear in Lower Egypt in the form of a fund for mutual assistance between stone cutters.

In the Middle Ages mutual assistance groups developed to provide a financial contribution for people injured in an accident or the victims of a fire. Other groups, operating according to the principles of mutual assistance, appeared some time later with the creation of an insurance mutual for mills in the Netherlands in 1663 and the "British Amicable Society for Perpetual Insurance Office" in the United Kingdom in 1706.

In France, "caisses de secours", genuine regional mutuals to protect against fire and hail damage, appeared in the 18th Century.

Mutual societies began to play an important role in the world of agriculture at the beginning of the 20th Century. For example the Localinsurance Mutual Company in Finland was established in 1917 by the Farmers Union, as its members wanted to protect themselves against the risks related to their work (hail, cattle mortality, fire, etc.).

The mutual movement then moved to other socio-professional groups, such as retailers teachers and doctors, who used this type of insurance not only to protect themselves against professional risks but also against risks affecting all aspects of their private lives. In France for example the MAIF (Mutuelle d'assurance des Instituteurs de France - primary school teachers' insurance) was set up in 1934 by 301 primary school teachers. Today it has over 2 million members. Similarly, teachers set up the LB group in Denmark in 1880. In Belgium, the SMAP Société Mutuelle des Administrations Publiques - Public Administration Mutual Society) was established in 1919 by representatives of the municipalities.

As regards health, it was during the industrial revolution in the 19th Century that the concept of the mutual society really took off. This social transformation gave birth to new forms of solidarity and various provident society initiatives emerged. Workers grouped together to create welfare funds to finance the payment of daily allowances to sick or disabled workers, to pay for the care necessary for their recovery, to buy a house or to refund funeral expenses. These funds were for some time merged with strike funds.

It was at the same time that the first credit co-operatives (Raiffeisen funds)³ were founded in Germany.

Welfare funds mushroomed in the 19th and early 20th Centuries. Members' contributions were determined on the basis of the pooling of risks. At that time a large number of mutual societies were also involved in providing treatment in institutions which they had set up themselves, or through providers with whom they had contracts. They thus had better control over the prices and quality of the medical care provided. This practice still continues today.

In most European countries, these mutual societies were the cornerstones of the public social security systems based on social distribution⁴ and structured around non-profit organisations. They allowed workers who were at risk in terms of social welfare to be protected under a social security insurance scheme.

It was after 1945 that the major social protection systems were set up. The functions of mutual societies then differed according to the options chosen by the state concerned. In Germany and Belgium they were responsible for managing the compulsory Social Security system. Others (for example Spain) chose to have social protection (sickness and pensions) managed by a public service managed either by the state itself or by regional authorities. In these countries mutual societies took on an alternative role and developed complementary health insurance schemes. In France, management of the basic system is shared between the mutual societies and the State (the latter running the major part).

Finally, in most of the formerly planned economies of the future Member States, the State was responsible for social and medical services, which were freely provided to the whole population.

The first building societies were set up in the United Kingdom in 1770. They consisted of mutual aid groups which collected and pooled the savings of their members. When there were sufficient funds, a building was bought or constructed and lots were drawn to see which member it would be allocated to. The group was dissolved when all the members had somewhere to live. The modern building society dates back to 1850, when they began accepting investments from people who did not necessarily want to buy a house. People who want to buy a house are also not obliged to save in the building society beforehand. Nowadays building societies have about 18 million members in the United Kingdom.

Mutual societies therefore arose from the desire of individuals to group together, pool resources and carry out joint activities to meet the needs of the community. By responding to a demand not satisfied by other forms of company, they not only laid the foundations for their own development but also opened the way for the development of forms of business in these sectors (I don't understand this sentence).

³ See "Co-operatives in Enterprise Europe" on the development of co-operatives

<http://europa.eu.int/comm/enterprise/entrepreneurship/coop/consultation/index.htm>

⁴ A distinction should be made between social distribution, which is based on the pooling of part of the income (social security contributions) and public distribution, which is based on the levying of a tax.

The French motor cyclists' mutual society, set up in 1983, clearly illustrates how the establishment of a mutual society can meet the common needs of a group of people who would otherwise find it difficult to satisfy those needs (in this case, the premiums demanded by non-specialised insurers were very high).

2.1.3. Present-day sectors of activity and size of mutual societies

The development of activities in the form of a mutual, rather than a co-operative (or association) essentially depends on the culture and traditions peculiar to each Member State.

Mutual societies have grown considerably in the sectors where they were historically created: insurance, providence, health and banking. However, national legislation provides very few legal means for their development to any significant extent in other sectors of activity.

In health matters, mutual societies exist in all Member States. Some directly manage the compulsory welfare system, others offer complementary coverage or carry out provident activities, provide mutual help, medical care or social assistance, etc.

Mutual societies in the sectors of loss insurance (fire, accident and miscellaneous risks) and life insurance exist in almost all the Member States.

Their economic weight in these sectors varies considerably between the states.

Although well represented on the French and German markets (see introduction), there are relatively few on the Italian market and they are totally absent on the Greek market, where this sector is reserved for public limited companies and co-operatives.

In the United Kingdom, building societies - banking mutuals - hold 18% of the UK market in mortgage loans and bank deposits (2003 figures).

In terms of employment, a 2001 Eurostat pilot study showed that in France mutuals accounted for 16.04% of jobs in the financial intermediation sector in 1998. In Finland and Sweden the rate was 13 % for the same sector.

The average annual growth rate of mutuals in the financial intermediation sector in terms of jobs was 1.46 % in France from 1995 to 1998. In the Spanish “other community, social and personal service activities” sector job growth was 80.01% in the same period and in the Spanish “real estate renting and business activities” sector it reached 35.72%.

Q. 1 In the present and future Member States, are types of activity other than insurance and health care exercised in the form of mutual societies?

2.2. Main differences from investor-driven firms

- Since they do not issue quoted shares, mutuals are not subject to take-over bids or the purchase of capital. In a period of crisis on the stock exchanges, the destabilising effect of a fall in rates only moderately affects mutual societies, which in this way act as a “shock absorber”.
- This independence as regards the day-to-day price of shares allows directors of mutual societies to develop a long-term management strategy.

- Mutuals do not pay returns to shareholders. This allows them to devote all or part of their results to the continuity of the business.
- Mutuals may be real training grounds in responsible participation and citizenship: in small mutuals, or in those which have kept a strong local or socio-professional link, members are actively involved in the life of the mutual through their participation in annual general meetings or in the election of their representatives. Mutuals also promote the enterprise spirit among groups which, in other circumstances, would have only limited access to management functions.
- The purpose of mutual societies is to satisfy the interests of their members, who are generally the users. Mutuals therefore have first-hand information on consumer needs and on changes in behaviour, customs and expectations. By practising their policy of accessible tariffs, mutual societies influence the entire market, increasing levels of competition.
- As a result of their historical background and their commitment, mutuals have often maintained very strong local links, irrespective of whether the members' feeling of belonging is the result of a geographical or a professional link. Furthermore, the fact that their management is based on members' participation allows mutuals to keep a human dimension. In an economy which is globalising, these two elements work together to create a link between the local and the global.

Q 2 Are these differences enough to justify the use of the mutual form? What is the added value of the mutual form compared with other types of enterprise based on the same values of solidarity – such as co-operatives and associations?

2.3. Achievements of mutual societies

2.3.1. Added value of mutual societies: the values of solidarity

In the fields of activity in which they operate, mutual societies have proved that they are viable, productive, competitive businesses, capable of adapting to changes in the population's expectations and needs.

Mutualistic principles make access easier to such essential services as health or credit for the whole population, in particular those whose incomes do not allow them to find answers to their needs elsewhere.

The mutual society is finding new applications in many fields. A few examples are set out below.

2.3.2. Access to care

From the very outset, mutual associations have always played a dominant role in complementary health insurance. As a result of the increased cost of care and a reduction in the share paid by the compulsory social security schemes - not to mention the sometimes very long waiting lists for treatment under national health services (e.g. the United Kingdom) - this sector has developed considerably and is becoming very competitive. Mutual associations have been able to maintain a dominant position and made their mark by developing original products at the right price, accessible to the majority and suited to the needs of the beneficiaries.

The Benenden Healthcare Society (UK) is an example of this. It has developed a type of “subsidiary” insurance whose members use its services only if they cannot find help elsewhere (for example due to excessive waiting lists or for financial reasons, etc.). This system can operate with modest contributions.

Mutuals have also found solutions to problems related to the ageing of the population. The involvement of mutuals in the field of retirement ensures not only the payment of satisfactory pensions to the retired, but also gives them additional advantages:

- organisation of social support;
- monitoring of physical and psychological needs;
- possibility of participation in the mutual society's voluntary activities;
- specially designed services for the elderly, such as nursing homes, retirement homes, organisation of home helps and health visitors.

2.3.3. *Social inclusion*

Many mutual societies put the principle of solidarity between members into action by actively participating in combating social exclusion. They set up care facilities and work schemes for the handicapped, sheltered homes for the elderly and for those suffering from certain illnesses or drug addiction and meeting places for the isolated, etc.

2.3.4. *Corporate social responsibility and sustainable development*

The Commission defines corporate social responsibility (CSR) as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis”⁵.

Since mutual societies place their member-users at the centre of their preoccupations, they have, from the very outset, incorporated this issue in their management and operating methods. Mutual businesses must combine principles of democratic participation, the fair distribution of surpluses, solidarity and long-term management with the necessary economic efficiency. Freed from the need to produce a return on capital, mutual societies can dedicate their profits to the development of other services for members.

There is no shortage of examples of the achievements of mutual societies in this respect. They range from risk prevention (e.g. car driving lessons, information campaigns on risks in the home, information on the correct use of medicines, etc.), to ethical investment and respect for the environment. Mutual insurance companies were also among the first businesses to introduce social accounting, a voluntary tool providing an overall view of the business, its effects on the environment and its social impact⁶.

⁵ Communication from the Commission concerning Corporate Social Responsibility:

A business contribution to sustainable development, 2 July 2002, COM(2002) 347 final.

⁶ Social accounts consist of an information-gathering stage via a questionnaire covering 450 points and an analytical and diagnostic phase with an external auditor, which should lead the business to set

Action by mutual societies in this field is not always widely known about. Exchanges of best practices and experience might help remedy this. Good practices could be spread more generally both via the European Multi-Stakeholder Forum set up by the Commission⁷ and through co-operation consolidated by more regular, more structured contact between mutual societies working in different sectors of activity in the Member States and the accession countries.

2.4. Limitations and dilemmas of the mutual form

Mutual societies may face difficulties relating to their financing and operating methods (legal aspects are dealt with in the following chapter).

- Limited access to external capital from the financial markets can restrict the flexibility of mutual societies and make them dependent on loan capital. Restricted voting rights may also discourage external investors who normally expect to have voting rights proportionate to their contributions.
- The size of some of the big mutual societies is likely to dilute the feeling of attachment, distancing members from the decision-making centre. Furthermore, the application of democratic principles in the governance of a mutual business may lead to delays in the decision-making process.
- Both in the traditional business support and advice services and in training programmes, the particular nature of mutual management is poorly understood.

Q. 3 Are there other obstacles or problems which would hinder entrepreneurs wishing to adopt the form of the mutual society when launching new initiatives?

3. REGULATORY AND LEGISLATIVE FRAMEWORK

3.1. Legislation

3.1.1. National legislation

No Member State has a single, general law on mutual societies. In all states the law defines precisely what activities can be carried out by mutuals. The activities relate to one or more of the following areas: insurance, health (including healthcare and provident schemes) and credit.

Although all Member States have detailed legislation on mutual societies in the health sector, the provisions governing mutual insurance companies are generally included in the general laws on insurance companies.

In the United Kingdom, special laws on building societies and friendly societies only partially regulate the sector and refer back to the general law on financial services.

objectives for its development. Both the diagnostic phase and the setting of objectives must be carried out in partnership with the stakeholders.

⁷ This Forum, set up in October 2002, is chaired by the Commission and comprises representatives of the European employers' organisations, workers, NGOs and other trade associations. Its aim is to promote innovation, convergence and the transparency of existing CSR practices and instruments.

All Member States allow the creation of a mutual society in order to carry out activities in the fields of "non-life"⁸ and/or life insurance, with the exception of Greece, where mutual societies therefore only exist in the health sector.

Some national legislation imposes constraints in terms of membership. This is the case in Portugal, where mutual insurance companies have to be set up on a corporative basis and may not offer products/services outside that corporation.

As regards taxation, the differences between mutual societies and other forms of business are becoming less significant.

With a few exceptions (in particular in Belgium, Denmark and Spain), all Member States make available to mutual societies instruments for financing their own funds, such as bonus share certificates, shares or various other means.

A few countries such as France, Austria and Germany have recently introduced provisions allowing mutual societies to group together or to set up holding mutuals. Generally speaking, however, there is a lack of national instruments for groupings which observe mutualistic principles, since most of these instruments are based on financial links between the members of the group. A European Statute specific to mutuals could make up for this (see point 3.4).

All Member States allow the distribution of net assets to the members if the mutual society winds up, except for France and Luxembourg, where net assets have to be passed on either to other mutual insurance companies or to associations recognised to be of public interest, and Ireland, where net assets are paid to the Ministry of Finance.

Some international standards have a direct impact on the operating system of mutuals. One example is the IAS (International Accounting Standards) which will apply to European enterprises in 2005. These were designed for companies listed on the stock exchange.

The Commission will take a close interest in the experiences of mutual societies as the IAS are implemented at national level, in order to ensure that they do not experience significant problems.

Q.4 Do you believe that national legislation provides a legal framework suited to the specific needs of mutual societies? Does it allow optimum development of their activities? If not, what changes could be made?

3.1.2. European legislation and European case law

3.1.2.1. Mutual societies and the Treaties

Mutuals are considered as companies under the definition of Article 48 of the Treaty establishing the European Community. As such they enjoy all the advantages of freedom of establishment and freedom to provide services throughout the European Union, and may also benefit fully from all relevant European financing programmes.

⁸ In this document, this term refers to activities carried out by mutuals other than health mutuals governed by specific provisions.

3.1.2.2. Mutual societies and European case law

European legislation (directives, regulations, etc...) applies to mutuals as it does to all forms of company, without discrimination - either positive or negative.

However, in practice, some texts may exclude mutuals from the advantages offered to other forms of company because they do not take mutuals' specific characteristics into account.

This is notably the case for the Directive on the common system of taxation, applicable in the case of parent companies and subsidiaries in different Member States⁹. Under this Directive, where a parent company receives profits distributed by its subsidiary established in another Member State, the State of the parent company shall either refrain from taxing such profits or tax such profits while authorising the parent company to deduct from the amount of tax due that fraction of the corporation tax paid by the subsidiary which relates to those profits. In many Member States, the mutual form is not a form listed in the Annex to the Directive, which specifies what legal forms are included in the "company of a Member State" and in practice they do not enjoy the advantages offered by the Directive.

However, a proposal for a directive submitted in July 2003 aims to extend the scope of the Directive to include other legal forms¹⁰.

The situation is identical to the Directive on the system of taxation applicable to cross-border restructuring operations¹¹. The scope is the same as that of the Directive on the taxation system for parent companies and subsidiaries, and it therefore excludes the mutuals of many Member States from the benefits of its implementation.

3.2. Structural changes and competition

3.2.1. Competition

Mutual societies are active in markets which are often highly regulated at European level (insurance and credit in particular) and where competition is strong.

They are effectively integrated in these markets and occupy an important position. For instance, the Mutuelle Assurance des Commerçants et Industriels de France (MACIF) holds 15% of the car insurance market, with almost 5 million members, and the Société Mutuelle des Administrations Publiques (SMAP) holds 10.6% of the insurance market in Belgium. Some 14.3% of the life insurance market in Sweden is held by FOLKSAM. Standard Life holds 13% of the insurance market in the United Kingdom. In the health sector, the Mutuelle générale de l'Education nationale ranks number two among insurance companies working in complementary healthcare in France¹².

⁹ Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 225, 20/08/1990 p. 6.

¹⁰ COM(2003) 462(01) of 29 July 2003.

¹¹ Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, O J L 225 , 20/08/1990 p. 1.

¹² Argus de l'Assurance, 20 June 2003, No 6839, p.48.

3.2.1.1. Services of general interest

Mutual societies, like other enterprises that do not have profit-making as their main objective, play an important role in the social and health sectors. They perform the necessary economic activities but these remain subordinate to their social functions.

Businesses responsible for the management of services of general economic interest are, regardless of their form, subject to European competition rules, provided that application of these rules does not prevent the accomplishment of their particular mission.

The bodies providing such services, particularly in the sectors of health, social action and social protection - sectors where mutual societies dominate - have often stressed the difficulty they experience in applying the concept of a service of general economic interest to their activities.

3.3. Trends

3.3.1. Growth and concentration

In order to prosper in a climate of economic internationalisation and increased competition, many mutual societies have been obliged to develop solutions which, in the absence of a suitable legal framework, have sometimes compromised their mutualistic principles, thus undermining their special nature.

These solutions have taken different forms:

- Development through internal growth: mutual societies attempt to maximise the products available, to develop new ones better suited to members' needs, or to extend membership.
- Development through external growth, either by buying private limited companies, or by setting up subsidiaries, quoted or not;
- Conclusion of partnerships and alliances, often international in nature. The number of mergers between mutual societies is still fairly small, mainly because of the wide disparities between national laws and the absence of a Statute for a European Mutual Society.

3.3.2. Changes in legal form

Some mutual societies have chosen to abandon their original legal form and become public limited companies. The reasons for such “de-mutualisations” are wide-ranging and include gaining access to capital markets, helping a mutual in difficulties, or allowing members access to a share in the intrinsic value of the society. This phenomenon has occurred essentially in Anglo-Saxon countries: between 1992 and 2001 in the United Kingdom, a total of 29% of the life insurance market and 75% of the “Building Societies” market were demutualised¹³.

(a) National legislation on conversion

¹³ “La mutualité : une valeur sûre”, Association of European Cooperative and Mutual Insurers, 2001.

All Member States have legislation on the legal conversion of mutuals. The rules on quora and majorities are in general quite onerous and some Member States (such as Spain) require conversion to be approved by the competent ministry.

The legislation of three Member States (France, Ireland and Luxembourg) follows the principle of solidarity between generations, according to which, since the assets of the society were built up over time, they do not belong to the present generation of members. This results in the “disinterested” distribution of net assets, whereby they can be passed on only to other mutual insurance companies or to associations recognised as being of public interest. These provisions deprive demutualisation of any interest in terms of windfall payments to current members.

Recently legal solutions and/or regulations have been adopted to limit demutualisation. In the United Kingdom, there is a bill providing for the introduction of the principle of disinterested distribution in the case of the conversion of Industrial and Provident Societies. This states that net assets can no longer be paid to members but must be transferred to a society of the same nature or to a charity.

Solutions are sometimes found at the contractual level. For example, building societies oblige new members to sign a declaration called a charitable assignment agreement, under which they undertake to pay to a charity any gain that they could make from the conversion of the building society into a plc.

(b) Demutualise – for what?

In many cases, conversion has resulted in the disappearance of the new company within a very short time. Of the 13 companies that converted in the United Kingdom, few have made acquisitions and many of them were bought up shortly after demutualisation.

3.4. The Statute for a European Mutual Society

3.4.1. Background

In 1992, the Commission presented three proposals for regulations on statutes for a European Co-operative society (SCE), a European Association (EA) and a European Mutual Society (ME). Each regulation was supplemented by a directive on the involvement of employees. These texts aimed at providing these three types of entity (co-operative, association and mutual) with a legal instrument allowing them to develop their transnational activities throughout the European Union. The statute for a European Company (SE) then under discussion was not suited to their specific characteristics.

These three proposals were amended in 1993, to take into account the opinions of the European Economic and Social Committee and European Parliament.¹⁴ Progress was

¹⁴ For the SCE : OJ C 236, 31/08/1993, p. 17.

For the EA : 8364/93 DRS 14 – COM(93) 252 final SYN 386-39.

For the ME : amended proposal for a Council Regulation on the Statute for a European Mutual Society, 8364/93 DRS 14 – COM(93) 252 final SYN 386-391.

made in the Council's "Company law" Working Group until 1996, when further work was blocked due to irreconcilable differences between Member States concerning the SE Statute, in particular the directive concerning the "involvement of employees". A compromise was reached at the Nice Summit in December 2000.

The Swedish Presidency decided to re-launch work on the other three statutes, starting with the SCE. By tacit agreement among Member State delegations, the EA would follow, and then the ME. The statute for an SCE was adopted in July 2003¹⁵ and significant progress was made on the EA during the Greek Presidency (first half of 2003). As stated in the Commission Communication on the modernisation of company law,¹⁶ "The Commission intends to **actively support the ongoing legislative process engaged** on these statutes [European Co-operative Society and other EU legal forms of enterprise], in response to the explicit desire expressed by the European Parliament for giving significant attention to the development of new European legal forms of enterprises".

3.4.2. Importance of the Statute and field of application

Mutuals are increasingly endeavouring to work together at European level. However, even though the freedom to undertake certain activities in the form of a mutual is recognised in many Member States, and even though mutuals enjoy the freedom of establishment provided for under the Treaty, the diversity of national provisions applicable to them hinders their development at the European level in practice.

In the absence of a suitable legal instrument they are using structures which do not entirely meet their needs, such as the EEIG (European Economic Interest Grouping)¹⁷, or setting up subsidiaries in the form of public limited companies.

A European statute, suited to their specific features, is therefore essential to facilitate – or simply to enable – the development of their cross-border and transnational activities on a European scale, particularly with the prospect of enlargement.

A European Statute could also compensate for the absence of legal instruments for the collaboration or merger of mutuals based in different Member States. It should also enable collaboration between mutuals and other forms of company which operate in a way compatible with mutuals (e.g. co-operatives and associations).

The creation of a grouping of mutual societies or a mutual subsidiary would also be made possible by the Statute.

The "ex nihilo" formation of mutuals, provided for under the draft statute, should also allow the creation of new mutual societies where there is a need for the cross-border

¹⁵ Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Co-operative Society (SCE), OJ L 207, 18/08/2003 p. 1.

¹⁶ Commission Communication on Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward, COM/2003/0284 final, 21.05.2003.

¹⁷ For example EURESA, an EEIG comprising five mutual insurance companies (representing four Member States), an insurance cooperative and a public limited company belonging to different movements in the social economy was set up in 1990. It has two objectives, on the one hand, to share and develop the resources and knowledge of its members with the aim of creating services and common products, and on the other, to act as an instrument allowing members to develop their initiatives and activities throughout Europe.

mutualisation of risk. For instance, authorities of regions or municipalities located in different countries but exposed to the risk of similar natural disasters could agree to mutualise these risks and set up an ME to cover them.

Another example could be a group of road hauliers travelling through Europe: they could form a European mutual for legal defence, which would pay defence costs irrespective of the country in which the proceedings took place (Member State of origin of the road haulier or not).

The adoption of the Statute, which is increasingly demanded by mutual societies and by their representative associations, would provide them with a level playing field within the Community as regards other forms of company (public limited company, co-operative or association), which already have a specific European Statute, or soon will.

3.4.3. Main provisions

The reference version of the regulation is the Council working document of 1996 amending the Commission proposal of 1993.

Firstly, the Statute is optional, and national provisions are still applicable to national mutuals.

It is also not of a nature to alter the basic compulsory social security systems in the Member States, which have exclusive competence in this field.

The draft text distinguishes between provident MEs and MEs carrying out other activities. During discussions at the Council, several Member States said they were in favour of abolishing this distinction.

If the European Mutual was defined according to its main objective and general principles rather than its activities, the way would be opened to new fields of activity for mutuals, such as those mentioned in point 4.1 (housing societies, management of water distribution services, etc.).

As with the Statute for a European Co-operative Society, the ME Statute could be used by natural persons wishing to set up their own business with the protection of limited liability. For this provision to be of genuine practical use, adjustments to the existing proposal have to be made, since for example it specifies that a minimum of 500 natural persons are required to set up an ME from scratch. This requirement could act as a significant deterrent.

The text should also be amended to allow the creation of an ME by merger (as is the case for the European Company and the European Co-operative Society).

As regards voting rights, the draft draws on a practice widespread within mutuals whereby the principle of one man one vote can, if the internal statutes of the ME so allow, give way to a system of vote-weighting based on the level of participation of the member in the mutual's activity. This divergence from a strict interpretation of mutualistic principles is restricted by a prohibition for MEs to authorise one member to hold a majority of votes.

Other systems for limiting votes might be considered, for instance a formula such as that used in the Statute for a European Co-operative Society, which limits votes to five per member, or 30% of total voting rights (whichever is lower).

Finally, the text establishes the principle of the disinterested distribution of net assets, which lays down that in the case of liquidation assets are to be passed on either to MEs or to mutuals governed by the law of one of the Member States, or to one or more bodies whose purpose is to support or promote mutuals.

This provision poses huge difficulties in the discussions within the Council. The traditions of the Member States differ. In the opinion of some States, present members do not have any right of ownership of capital which has been built up over many years and over generations of members. According to others, members should be entitled to decide freely how the assets are distributed.

A compromise has been found in the SCE Statute, Article 75 of which lays down that “Net assets shall be distributed in accordance with the principle of disinterested distribution, or, where permitted by the law of the Member State in which the SCE has its registered office, in accordance with an alternative arrangement set out in the statutes of the SCE.”

Disinterested distribution is the principle, but other solutions are possible if (1) the law of the Member State in which the SCE has its registered office permits other solutions and (2) the statutes of the SCE set out the alternative arrangement.

3.4.4. Effect of the Statute on national legislation

The Statute will be an optional instrument, which is in no way intended to replace the laws of the individual Member States.

Its purpose will not be to standardise laws. However, in the long term harmonisation could occur indirectly, as the Statute becomes a point of reference for lawmakers in Member States. The effect could be even more marked in the future Member States, whose legislation on mutuals has on the whole yet to be developed.

National laws reflect the extremely varied traditions of the Member States regarding mutuals. Since each state wishes to preserve its own specific features, a reduction in the number of references to the legislation of the Member State in which the European Mutual has its headquarters is likely to be very difficult. To produce an attractive, effective and transparent European instrument (which is of great importance in terms of business governance) it would however be preferable to aim towards common rules for all European mutual societies.

An exhaustive list of national legislation on mutuals would be useful.

Q. 5 Do mutuals need a European statute separate from that for the European Company and the European Co-operative Society? What would it add to the instruments currently available to mutuals?

Q. 6 In your opinion, what improvements/amendments could be made to the existing proposal? If assets are wound up, what mechanisms could be provided for in the ME Statute to ensure respect for mutualist principles?

4. DEVELOPMENTS AND OUTLOOK

4.1. Mutuels and Community polices

Based on values of solidarity and as efficient, competitive businesses, mutuels could be useful instruments for achieving the objectives set at the European Summit in Lisbon in March 2000,¹⁸ which aim to combine sustainable economic growth with a quantitative, qualitative improvement in employment and greater social cohesion.

Here we will look at just a few examples, emphasising in particular the role that mutuels could play in the future Member States.

4.1.1. *Social inclusion aspect – access to housing*

Access to housing is an essential element in the fight against social exclusion. This right is recognised in Article 34(3) of the Charter on Fundamental Rights¹⁹. But, even within the European Union, many people on very low incomes are unable to find housing that is acceptable in terms of price or condition. Housing co-operatives have been set up to try to remedy the problem, but waiting lists for suitable housing remain long.

If Member States ensured that mutuels were provided with a legal framework allowing them to pursue this type of activity, housing mutuels based on collective ownership could prove an interesting alternative for addressing this problem.

4.1.2. *Employment policy*

Since 1988, National Action Plans for Employment have called upon the Member States to produce reports on the initiatives taken in the social economy sector under the "entrepreneurship" pillar. The guidelines put forward for 2002 specifically ask them to "promote measures to enhance the competitive development and the capacity of the social economy to create more jobs and to enhance their quality " (guideline 11).

However, mutuels are not properly covered in the Member States' reports. This may be explained at least in part by the fact that some Member States have no tradition regarding the social economy, which results in a lack of understanding of the concept. The guidelines should therefore in future explicitly define the social economy, according to its component elements (mutuels, co-operatives, associations and foundations).

Mutuels are also concerned with workers' quality of life and propose more flexible jobs (e.g. flexible working hours) thus opening up the labour market to a broader range of people.

¹⁸ http://europa.eu.int/comm/lisbon_strategy/index_en.html

¹⁹ Charter of Fundamental Rights of the European Union (2000/C 364/01), Official Journal C 364 of 18/12/2000.

4.1.3. *Services of general interest*

In its Green Paper on Services of General Interest²⁰ the Commission stresses the fundamental role these services play in improving the quality of life of all citizens and emphasises the need to take account of consumers' and users' concerns.

The mutual form, which involves the user-members in the life of the company, thus placing the user at the centre of the system, is an interesting alternative situated between the supply of services of general interest by the public authorities and supply by companies that give priority to investors' interests.

The idea of conferring the organisation of natural monopolies to mutuals, in particular the management of water distribution infrastructures and the treatment of waste water, appeared in the United Kingdom in the 1980s when the main public services, such as electricity, water and telecommunications were being privatised.

Management of the water services by mutuals can be justified on several accounts:

- in the absence of external investors, potential conflicts between them and consumers are avoided. Decisions are taken collectively by the consumers themselves and are therefore in the consumers' own interests. Redistribution to their benefit of surpluses in proportion to the use they make of the service ensures that in the long term this service will be provided at cost price;
- this absence of conflict also allows the regulatory framework of the activity to be reduced;
- potential conflicts between the different categories of consumer may, for their part, be settled through a system of arbitration which is rapid and inexpensive.

Based on these principles, Glas Cymru, a Welsh water distribution company, was set up in April 2000. It is a "company limited by guarantee" under English law which operates according to mutualistic principles: the company does not have any share capital and consequently it has no shareholders to remunerate. The members of the company have the same obligations as shareholders as regards business governance, but they do not receive any dividends and have no financial interest in the company.

Glas Cymru supplies water and water treatment services to over three million people living in Wales and certain border regions in England. Financing is secured by the issue of bonds and from considerable reserves. Any surpluses are used exclusively for the benefit of users by reducing their water bills.

4.1.4. *Information and Communication Society*

The development of the Internet and new technologies in general has accentuated social divisions.

The mutual could be used to remedy this situation. The creation of sites and networking do not initially require a large financial layout, a fact which should encourage citizens to create their own sites and their own communication groups by pooling individual tools (e.g. computers, available premises).

²⁰ Green Paper of 21 May 2003, COM (2003) 270 final.

Communication mutuals allow the development of exchanges of knowledge, know-how and skills.

4.1.5. Financial services

4.1.5.1. Mutual guarantee funds

Mutual guarantee funds are established between retailers, industrialists, manufacturers, craftsmen and commercial companies to guarantee their members for the financing of their professional transactions. A mutual guarantee fund has, therefore, the purpose of providing a guarantee to the exclusive benefit of the lender and it in no way benefits the member guaranteed, who is obliged to refund the borrower, failing which he is excluded from the mutual guarantee fund. In case of failure, the mutual guarantee fund bears the final cost of the loan by drawing on the guarantee fund, which is financed by all the borrowing businesses.

Mutual guarantee funds facilitate access to credit for SMEs that do not have sufficient genuine personal guarantees.

The mutual form appears to be particularly well suited to this type of transaction, which relies on solidarity between the borrowing businesses.

This form of solidarity is still applied by some health mutuals, notably in France. They stand jointly liable as guarantors for their members who want to purchase real estate. Unlike mutual guarantee funds, this service is totally free for the members.

Q.7 Have mutual societies developed alternative solutions or responses that might contribute to the development of the European social model? How have mutual societies contributed or could they contribute to the European objective of full employment?

Q. 8 Are there other sectors in which mutual structures would be advantageous with a view to ensuring greater social cohesion and sustainable economic growth in Europe?

4.2. Enlargement and international co-operation

4.2.1. Enlargement

Apart from a few countries such as Hungary and Poland, it appears that the mutual is still a form of business that is largely absent from the legislation of the future Member States. In practice, it also gives rise to distrust because it is still often likened - wrongly - to state collectives and bureaucratic administrative planning.

Mutuals could be very helpful in the candidate countries as instruments for modernising their economies and making the market economy accessible to as broad a population as possible.

They would also be suited to meeting the needs of the population which are generated during the period of transition.

Finally, mutuals could serve as training grounds in responsible participation and citizenship and help develop a culture of entrepreneurship for many citizens who would otherwise have only limited access to management functions.

Their greatest development potential appears to be in the health sector.

Major reforms to improve their care systems were undertaken by east European countries at the end of the 1990s. In many countries, financing by the national budget has been regionalised and regional sickness funds have been given responsibility for refunding healthcare costs.

It was at this time that the first mutuals (albeit with a different legal form) were established in various central European countries such as Poland and Romania. They were established as a result of the impetus given by trades union representatives, care providers and individuals responsible for social activities in the health sector, and with the help of health mutuals from the Member States (the Mutualité Chrétienne of Belgium took part in 1996 in the creation of the first mutual in Poland - "Flandria").

Their aim is to guarantee members access to high-quality healthcare at an affordable price. They negotiate contracts with practitioners to obtain preferential tariffs for members, develop networks of shops which sell medical and rehabilitation equipment, and set up voluntary movements organising holidays for children or offering home-help services.

Realising the potential for the development of mutuals in the future Member States will require a study of regulations governing mutuals where they exist and, on the basis of this study, assistance in the drafting of further appropriate legislation.

Furthermore, at the Conference on the Social Economy which took place in Prague in October 2002, the different sectors of the social economy discussed the possibility of setting up a support fund for the creation of businesses in the social economy in the candidate countries. The Commission will analyse the possibilities for supporting this initiative in due course.

Q. 9 What networks have already been set up by the EU mutualist movements in the candidate countries and what are the networks' most immediate needs?

4.2.2. International co-operation

Many developing countries have long had a culture based on solidarity and mutual aid between citizens. The work of mutuals may help them rediscover the social economy as an instrument for economic development and social reconstruction.

4.3. Access of mutuals to Community programmes and financing

Since mutuals are companies or firms under the Treaty, they cannot be excluded from Community financing programmes because of their legal form.

Some projects have already benefited from Community financing. This is, for instance, the case of the ORKESTRA project, which was set up by the Mutualité Innovations-Recherches (F). It was developed under the EQUAL initiative financed by the European Social Fund (ESF). The initiative allows experimentation with new ways of combating discrimination and inequalities to which many people, both those with jobs and those seeking jobs, may fall victim.

The project aims to network or consolidate partnerships for action from various Member States (France, Spain, Greece, Italy and Portugal) concerning the social and professional integration of people seriously handicapped following an accident or an illness.

However, mutuals do not always know what programmes exist. Follow-up and information should therefore be improved. Euro-Info-Centres²¹, whose role is to provide information, advice and assistance for businesses, might play a useful role here.

4.4. Representation

4.4.1. Mutuals and national public authorities

No Member State has a ministry with specific responsibility for mutual societies. Insurance mutuals generally fall under the ministries responsible for insurance, which do not differentiate according to legal form. Health mutuals generally fall within the competence of the Ministry of Social Affairs.

Mutual organisations and enterprises frequently lament the lack of knowledge of the mutual sector displayed by national authorities. This may lead to insufficient account being taken of their specific features in general policies which affect them, or a lack of consultation on relevant regulatory initiatives. As a result of this lack of understanding, opportunities for the effective and beneficial application of the mutual model in new sectors and circumstances may be missed and consequently mutuals remain confined to just a few sectors.

So far, six Member States have tried to co-ordinate policies affecting enterprises in the social economy. They have either allocated direct responsibility to one minister or created an office responsible for co-ordinating social economy issues on an inter-ministerial basis.

At European level, structured exchanges should be organised between the different relevant national authorities. The follow-up to the recommendations made in this document will depend on maintaining constant dialogue with those authorities. An ad-hoc monitoring group consisting of representatives of the Member States and the candidate countries could be set up. The group would serve particularly as a place for exchanging good practice and comparative assessment exercises.

4.4.2. Mutuals and European authorities

4.4.2.1. Mainstreaming

Within the Commission, various services deal with questions affecting mutuals. Better knowledge of the specific features of mutuals within these services would enable them to accommodate them better in all the policies affecting them and to better exploit their potential.

²¹ <http://europa.eu.int/comm/enterprise/networks/eic/eic.html>

4.4.3. Mutuals and representative organisations

The European mutual federations have a major role to play in improving the knowledge and perception of mutuals at European level. The Commission is in frequent contact with the four main European mutual organisations.²² The Commission is encouraging these to develop dialogue with each other in order to give greater weight to the mutual sectors on the European stage.

Mutuals are also represented in the European Standing Conference of Co-operatives, Mutual Societies, Associations and Foundations (CMAF), a co-ordination structure for the social economy sectors.

The Commission should continue to intensify its dialogue with such representative structures and to take account of their opinions.

The social economy is also represented at the level of the European Parliament, where the Parliamentary Intergroup on the Social Economy was re-established at the end of 2002, and in the Economic and Social Committee, where a sub-group is responsible specifically for it.

Finally, European conferences on the social economy provide the opportunity for useful exchanges between the various participants. They are held regularly with the help and support of the Commission. Although the Commission will continue to provide logistical support, it strongly encourages the representative organisations and government delegates to take responsibility for running them and urges the representative organisations and representatives of the candidate countries to become more involved.

4.4.4. *The need for reliable statistics*

For a sector to be properly understood, reliable statistics are required. The data currently available derive either from business registers, surveys or non-comprehensive studies. They do not allow useful comparison nor do they give an overall, dynamic (year-on-year) view of the sector in Europe.

The Commission intends to identify and encourage the application of best practices in the Member States in the use of satellite accounting methodologies in the national accounts for the collection, processing and interpretation of data on the social economy. This work should be carried out in conjunction with EUROSTAT and the national statistical institutes.

²² AIM (Association Internationale de la Mutualité), ACME (Association of European Co-operative and Mutual insurers) and AISAM (Association Internationale des Sociétés d'Assurance Mutuelles) and EMIG (European Municipal Insurance Group).

Summary of the questions raised in the document

Current sectors of activity and extent of the presence of mutual societies

Q. 1 In the present and future Member States, are types of activity other than insurance and health care exercised in the form of mutual societies?

Added value of the use of the mutual form for the providing of goods and services

Q. 2 Are these differences enough to justify the use of the mutual form? What is the added value of the mutual form compared with other types of enterprise based on the same values of solidarity – such as co-operatives and associations?

Limitations and dilemmas of the mutual society

Q. 3 Are there other obstacles or problems which would hinder entrepreneurs wishing to adopt the form of the mutual society when launching new initiatives?

National legislation on mutual societies

Q. 4 Do you believe that national legislation provides a legal framework suited to the specific needs of mutual societies? Does it allow optimum development of their activities? If not, what changes could be made?

Statute for a European Mutual Society

Q. 5 Do mutuals need a European statute separate from that for the European Company and the European Co-operative Society? What would it add to the instruments currently available to mutuals?

Q. 6 In your opinion what improvements/amendments could be made to the existing proposal? If assets are wound up, what mechanisms could be provided for in the ME Statute to ensure respect for mutualist principles?

Contributions of mutuals to Community objectives and those of Lisbon

Q. 7 Have mutual societies developed alternative solutions or responses that might contribute to the development of the European social model? How have mutual societies contributed or could they contribute to the European objective of full employment?

Q. 8 Are there other sectors in which mutual structures would be advantageous with a view to ensuring greater social cohesion and sustainable economic growth in Europe?

Q. 9 What networks have already been set up by the EU mutualist movements in the candidate countries and what are the networks' most immediate needs?

Any other suggestions.