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The role of mutual societies in the 21st century

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DIRECTORATE GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY

EMPLOYMENT AND SOCIAL AFFAIRS

The role of mutual societies in the 21st century

STUDY

Abstract

Mutuals play an important role in the European economy and society, providing social coverage and other types of insurance to a significant proportion of European citizens. This study presents an overview of the specific features and roles of mutual societies in the different EU Member States, analyses relevant EU law applicable to mutuals and looks at the performance of mutual undertakings in the financial and economic crisis. The report also discusses the potential mutuals have to contribute to the inclusive and sustainable growth of the European Union.

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LIST OF 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

AIM	Association Internationale de la Mutualité
AMICE	Association of Mutual Insurers and Insurance Cooperatives in Europe
CEA	Comité Européen des Assurances
EEA	European Economic Area
EMS/ME	European Mutual Society
EP	European Parliament
EU	European Union
GDP	Gross Domestic Product
ICMIF	International Cooperative and Mutual Insurance Federation
OECD	Organisation for Economic Co-operation and Development
SCE	European Cooperative Society
SE	European Company
TFEU	Treaty on the Functioning of the European Union
WHO	World Health Organization

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EXECUTIVE SUMMARY

Mutuals in the EU and their role in social protection

Mutual societies 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. They operate according to the principles of solidarity between members, who participate in the governance of the business. Together with cooperatives, foundations and associations, mutual enterprises are one of the main components of the social economy, or third sector, in the European Union.

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 major reforms leading to the creation of statutory social protection systems after the Second World War diversified the role played by mutuals in European society. In most cases mutuals took on an alternative role by developing voluntary health insurance schemes and maintaining or increasing their activities in other types of risk-coverage (for instance, car and motor insurance). In many EU Member States mutuals still play a significant role. In the newer EU Member States formerly governed by communist regimes, mutual societies that existed before the Second World War were suppressed, and in most of these countries they have not returned since the fall of Communism.

Across Europe, two main types of mutual societies are widespread, namely 'mutual benefit' (or 'health providence') societies and 'mutual insurance' societies. While the latter are insurance service providers organised and managed according to the principles of mutuality and can cover all types of property and life risks, the former provide welfare coverage supplementary or complementary, or integrated into, the statutory social protection system, and in some cases they manage their own facilities (such as hospitals and pharmacies). In most Member States, mutuals are legally restricted to certain types of activities. Mutual benefit societies can be mainly found in the Western and Southern European countries, while insurance mutuals exist in nearly all Member States. Mutuals providing services other than these two main categories (including housing and football supporters' trusts, but concentrating mainly in the credit sector) can be found in the UK and IE. Mutuals do not exist in CY, CZ, EE, LT, and SK.

The main features of mutuals as described above are generally common throughout Europe. Nevertheless, there are considerable variations among EU Member States. The characteristics that are considered to set mutuals apart from other types of organisation (i.e. the link between membership and being a policyholder, the one-person-one-vote principle and the absence of shares) are not to be found in all Member States. As a result, there may be a broad interpretation in Europe of what mutuals are, and sometimes organisations defined as mutuals in different countries may show few similarities.

Although legal arrangements for mutuals differ in Europe, in most cases mutual insurance societies are covered by general insurance and financial services' legislation, while mutual benefit societies are regulated by *ad hoc* provisions.

It is calculated that nowadays mutuals provide healthcare and social services to 230 million European citizens and that mutuals together represent more than 180 billion euros in insurance premiums. Mutuals employ 350,000 people in Europe. However, accurate statistical data are lacking.

The role mutuals play in social protection systems varies widely throughout Europe. This is mainly due to historical, cultural and political developments specific to the different Member States. In Greece, mutuals are only active in compulsory health insurance, while in two other countries, Belgium and the Netherlands, mutuals provide services in both the compulsory and the voluntary health insurance sector. Moreover, in several countries mutuals are only active in voluntary health insurance, (AT, DE, DK, ES, FI, FR, HU, IT, LU, MT, PL, PT, SE, SI and the UK), while in another small group of EU Member States mutuals do not seem to be active in this sector (BG, IE, LV, and RO). With regard to other social risks, mutuals are present in the private pension sector, where services are provided by both mutual benefit societies and mutual insurance companies (often linked to life insurance policies).

Mutual societies in the EU internal market

The activities mutuals conduct are to a large extent covered by European rules on the internal market and competition.

Within this context, mutual societies also have to comply with rules on solvency requirements for financial institutions. 'Solvency II' calls for increased solvency margins and risk differentiation for services' providers. Since many mutuals are mainly focussed on a niche market and access to capital is more difficult, they might have difficulty in complying with the more stringent 'Solvency II' requirements whilst still providing services against competitive premiums.

Partially due to European legislation on insurance and financial institutions, which appear predominantly based on the stock holding company model, the insurance market is likely to become more uniform in the future and mutuals may be forced to progressively act like the stock holding companies, or to 'de-mutualise'.

However, depending on the activities performed and the legal/organisational context within which these are carried out, the services some mutual societies provide can fall under the definition of 'social services of general interest' of either 'non-economic' or 'economic' nature according to EU law and, therefore, it is not always easy to determine whether and how internal market and competition rules apply to them, especially as mutuals often provide services in different, complementary areas. A number of cases relating to mutuals have appeared before the European Court of Justice in recent years and a considerable case law already exists.

Since the 90s there have been initiatives to introduce in EU law a legal instrument allowing for the creation of European mutuals, based on a 'statute' comparable to the existing statutes for European Companies and Cooperatives. A draft Council Regulation on the Statute for a European Mutual society, presented by the European Commission in 1992, remained on the EU agenda for several years, before being eventually withdrawn in 2006. Excluded from the scope of the proposed regulation were basic obligatory social security schemes managed by mutuals: Member States would maintain the liberty to decide on the types of organisations to which this kind of responsibility can be entrusted.

In discussions about the need and necessity of a statute for European mutuals, the arguments in favour of the initiative appear to have credibility (such as those highlighting new possibilities for mutuals to operate across borders and an improved recognition of mutuality at European level). The European Parliament and the European Economic and Social Committee, as well as the European Commission, have recently expressed their willingness to re-table the initiative.

Nevertheless, in drafting a new regulation the arguments that are critical towards the statute need to receive attention. Especially the practical usability of the proposed instrument should be carefully examined beforehand, taking into account the experience from the statute for European cooperatives, where the practical implementation of the regulation is hampered by the complexity of referencing to national legislation.

In November 2007 two organisations representing mutual societies at European level (AIM-Association Internationale de la Mutualité and AMICE-Association of Mutual Insurers and Insurance Cooperatives in Europe) published a working document proposing an updated version of the Statute for a European Mutual Society, which presents some advantages in terms of applicability and practical use as compared to the European Commission's withdrawn draft regulation.

Mutuals operating in a changing economic context

Research shows that, since mutuals only acquire capital through their members and not via capital markets, they appear to be more resilient to financial and credit crises and, hence, to demonstrate higher sustainability. With reference to many other indicators, such as cost-effectiveness and client/member-friendliness, it is not possible, however, to give a decisive final judgement on whether mutuals perform better or worse than stock holding companies. Comparative (dis)advantages are often related more to the issue of the size of the company than to its legal status. In general smaller insurance providers, irrespective of the legal form they have, tend to be more client/member friendly and to show more respect for democratic values. The fact that mutuals are generally smaller insurance businesses means that, on top of the distinctive principles that govern them, they tend to operate closer to their policyholders. From the literature studied, it appears that mutuals tend to be better connected to their clients/members than their stock holding peers.

Within a highly competitive market, the disadvantage for mutuals not having easy access to (risk) capital is that they are forced to find other ways to increase their capital levels. In order to do so, mutuals can expand their business either by attracting more members, by entering new markets, or by providing new products to members. In addition, they can organise their activities more cost-effectively and/or create economies of scale, by merging and creating alliances with other mutuals within and between Member States. Nevertheless, legal and administrative barriers often hamper their expansion in these directions. For instance, in many Member States mutuals are restricted to particular forms of business and, therefore, they do not always have the option to provide additional services. Mutuals are also at a disadvantage when it comes to establishing cross-border cooperation with other mutual societies, since they are basically obliged to do this by setting up a holding company with joint-stock company structures. Hence in working across borders, mutuals lose their specific character. Also, in many EU Member States mutuals are not allowed to form groupings.

As regards 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 stock holding 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.

The future role of mutuals in European society

Mutuals are strongly embedded, historically, economically and culturally, in several EU Member States, although with large differentiations within each specific national context, and they provide their services to a large share of European citizens. Nevertheless, mutuals can be expected to face some severe challenges in the near future.

Due to demographic change (ageing society), existing social protection systems run the risk of not being sustainable and affordable in the long term. This causes a shift in the coverage of statutory schemes towards a more limited provision of support measures, so that more socially related services will be provided supplementary to the statutory system. As a result of such developments, insurers providing supplementary healthcare insurance or private pension schemes will increasingly differentiate their premiums on the basis of risk profiles. As a result, maintaining sufficient coverage will become too expensive for those at risk (people with poor health, the unemployed, elderly people). Given the ambition of the European Union to create a smart, sustainable and inclusive economy, this is not a desirable development.

At the same time, mutuals appear increasingly obliged to work in markets where competition is very hard for them to sustain and may be pushed to act more and more like for-profit economic operators in order to survive.

Within the rules set by governments, more and more responsibility will be given to the private sector in providing social security. In this respect, the social economy, and more specifically mutual societies, may play a key role. With their core values of solidarity, democratic governance and no-shareholders, mutuals operate for the benefit of their members and, by their very nature, in a socially responsible way. To be able to play a role in finding solutions to the challenges ahead, mutuals would first of all require to be put in a position to safeguard their founding principles and specific *modus operandi*. The Statute for European Mutuals could be of help, not only because it provides a specific legal framework for mutuals to work across borders, but even more because it facilitates a greater awareness of mutuals in future (European) policy making.
In order to create a level playing field for operators while maintaining affordable costs for all citizens in supplementary social protection, it would be desirable, on a national level, to regulate these markets to such an extent as to guarantee fair conditions for all and to encourage both joint stock companies and mutual insurers, as well as all other players, to maintain healthy risk portfolios. Regulations aimed at limiting risk selection or cream skimming practices and introducing risk equalisation schemes could be taken into consideration.

To conclude, mutuals still have a reason to exist and have an added value for the European economy and for society as a whole. There are sound economic arguments to foster mutuality (differentiation in financial services, resilience in times of crisis) and there is a strong business case for mutuals, since a high number of European citizens still specifically choose them for accessing quality healthcare and social services and insuring themselves against every kind of social and property risk, as well as for finding the most suitable solution to other needs. Moreover, with a view to maintaining sustainable, affordable social protection systems in line with the European Union's strategic objectives, there is a growing need for economic operators with social responsibility deeply rooted in their organisation.

1. INTRODUCTION

This study on "The role of mutual societies in the 21st century" has been requested by the European Parliament's Employment and Social Affairs Committee.

Together with cooperatives, foundations and associations, mutual societies are one of the main components of the social economy, or third sector, in the European Union. For different concurring reasons, the social economy's actual and potential contribution to the implementation of EU's strategic objectives has recently been recalled from several perspectives. The Lisbon Treaty has emphasised the necessity to develop a competitive social market economy[1], in which social economy enterprises can have a major part to play[2]. At the same time, in the EU2020 agenda the European Union expresses its commitment to become a smart, sustainable and inclusive economy, taking into account a changing global context[3], thus incorporating some of the core principles of the social economy into its strategic policy planning.

Initiatives have been taken during the last twenty years to establish a statute for European mutuals, with the aim of helping mutual societies overcome the barriers they face in operating across national borders. These initiatives have, however, not been successful. In recent documents published by the European Commission on a new impetus to the implementation of the single market[4], proposals are included to provide better quality legislation for organisations in the social economy (including mutuals). Also, the Commission stresses that mutuals should be enabled to operate across borders.[5] The European Parliament (EP) has also adopted a written Declaration for the establishment of European statutes for mutual societies, associations and foundations.[6]

In this context, the EP Committee on Employment and Social Affairs plans to prepare a legislative own-initiative report entitled "Towards a European statute for a mutual society" based on Article 225 TFEU. The study commissioned aims to provide background information for future parliamentary work on this subject.

1.1. Objective of the study

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."[7] However, in trying to cover very different realities throughout the European Union, this definition is a very large one and includes bodies which would not necessarily be identified as mutual societies in all the EU Member States.

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[1] Treaty on European Union, Article 2

[2] For a comment on the difference between 'social economy' and 'social market economy', see: Social Economy Europe, Answer to the European Commission's consultation on the future "EU 2020" strategy, 19/01/2010.

[3] European Commission, Communication from the Commission: EUROPE 2020 A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010, COM(2010)2020.

[4] European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: "Towards a Single Market Act - For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another", Brussels, 27.10.2010 - COM(2010)608 final.

[5] European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Single Market Act, Twelve levers to boost growth and strengthen confidence: "Working together to create new growth", Com(2011) 206 final, 2011.

[6] Declaration of the European Parliament of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations.

[7] European Commission, Consultation document: Mutual Societies in an enlarged Europe, 03/10/2003

Organisations based on mutuality have a long history and have played an important role in the creation of the modern welfare State. Even nowadays, they play a major role in the European economy, serving a large proportion of European citizens by providing mainly health, social and insurance services. Yet, despite their importance, not much is known in a comparative way about mutuals in the EU Member States. Therefore the aim of the study is to:

1) Present an overview of the different features of mutuals in the EU Member States and the role they play in the framework of different social protection systems;
2) Analyse relevant EU legislation applicable to mutuals, assess the need/added value of a statute for European mutuals and alternative solutions proposed by European federations of mutuals and discuss other issues at stake;
3) Analyse the extent to which mutuals were affected by and the way they responded to the recession;
4) Discuss the potential mutual enterprises have for adapting to a changing socio-economic context and to emerging social needs, so as to contribute to the implementation of the EU2020 strategy for inclusive and sustainable growth.

The present report consists of the following parts:

1) After defining the objective of the study and its background, the remainder of this chapter provides a brief outline of the methodology;
2) Chapter 2 describes the key characteristics of mutuals in the Member States, including a comparative analysis of definitions used and the legal framework they are embedded in;
3) Chapter 3 analyses the role mutuals play in social protection in EU Member States;
4) Chapter 4 will further explore European policies and regulations affecting mutuals, including a reflection on the proposed Statute for European Mutuals;
5) Chapter 5 discusses the way mutuals operate in the current changing economic context and makes a comparative analysis of mutuals in relation to their main competitors;
6) Chapter 6 presents an analysis of the possible future role of mutuals in European society;
7) Finally, Chapter 7 provides some concluding remarks.

1.2. Methodology of the study

The following research activities were deployed to pursue the above-mentioned research objectives:

- **Desk research EU level**: The desk research included a review of the policy/legal framework in which mutuals operate in different EU Member States, such as legislation on social economy, company law, financial law, solvency legislation. At EU level this included a study on internal market regulations (European insurance directives, 'Solvency II' directive) and competition rules (State aid and social services of general interest). Furthermore, the history of the withdrawn statute for European Mutuals and proposed alternatives were studied. A list of sources used is included in the Annexes.
- **Interviews at EU level:** In order to complete the picture obtained from the literature study, interviews were conducted with stakeholders at EU level (such as the relevant Directorates-General of the European Commission, and representative

organisations of mutuals at European level, as well as experts on mutuality in Europe). The interviews were semi-structured by means of a checklist. Annex 2 contains a list of interviewees.

- **Quick scan of EU Member States:** This quick scan was mainly based on existing literature and databases on mutuals at country level (especially providing quantitative data on mutuals)[8]. In order to collect the information in a structured way, a data collection format was developed. In case blank spots appeared in the data collection format for individual Member States, the existing data were complemented with information from experts consulted at national level.
- **In-depth country/case studies in six countries:** After the quick scan, six countries were selected to be studied in more depth.[9] The objective of this research phase was to obtain a better understanding of the dynamics between different social protection systems and the role mutuals play in these systems. Furthermore, specific national legislation on mutuals was studied. Finally, the way mutuals reacted to the financial and economic crisis was the subject of in-depth study. The in-depth country studies included a further assessment of literature and documents and interviews with key informants at national level (average of three per country).

[8] We have not collected new statistics on the volume and composition of mutuals in Member States. Blank spots in the data collection in each of the Member States are therefore inevitable.
[9] The selected Member States were Belgium, France, Italy, Slovenia, Sweden and the United Kingdom.

2. AN OVERVIEW OF MUTUALS IN THE EUROPEAN UNION

KEY FINDINGS

- 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. Across Europe, two types of mutuals are widespread: mutual benefit societies and mutual insurance companies.
- The 2003 European Commission's definition of mutuals 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, which operate according to the principles of solidarity between members, and where members participate in the governance of the business' takes into account the wide variation in national legislation and practice and is generally applicable throughout the EU. In fact, the features that are considered to set mutuals apart from other organisational forms (including within the social economy, e.g. cooperatives), such as the link between membership and being a policyholder, the one-person-one-vote principle and the absence of shares, are not strictly applied in all Member States.
- In most Member States, mutuals are legally restricted to certain types of activities. Usually these restrictions limit mutual benefit societies to providing services integrated into, or supplementary/complementary to, the social protection system, and the mutual insurance companies to offering different kinds of life and non-life insurance. Although legal arrangements for mutuals differ in Europe, in most cases mutual insurance societies are covered by general insurance and financial services' legislation, while mutual benefit societies are regulated by ad hoc provisions.

In this chapter we focus on how mutuals are embedded in the social economy (Section 2.2) and look at the definition of mutuals more closely (Section 2.3). In Section 2.4 we look at national legislation applicable to mutuals. We will elaborate on the volume and composition of the sector in the EU in Section 2.5 and in Section 2.6 some concluding remarks are presented. As an introduction, the historical background of mutuality is briefly described in Section 2.1.

2.1. Mutuality in Europe: a historical introduction

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 ages[10] (e.g. insurance mutual for mills in the Netherlands in 1663 and the "British Amicable

[10] 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.

Society for Perpetual Insurance Office" in the United Kingdom in 1706). These forms were based on the idea to cover each others' risks by contributing to a fund, which was owned by the people contributing to it.[11]

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, 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 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).

After the Second World War, in most European countries major reforms took place establishing public social insurance schemes or national health services to provide a safety net for all citizens. They were based on the idea of offering protection against "social risks" (such as in France), "combating inequality and redistributing wealth" (such as in the Scandinavian countries) or on "fighting need, poverty, and unemployment" (such as in the United Kingdom).[12]

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 countries[13]: 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,[14] leading to different developments depending on the specific characteristics of the established welfare systems:

- In the UK, for example, reforms inspired by William Henry Beveridge[15] 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.

[11] 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.

[12] 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.

[13] MISSOC, Comparative tables, 2010. This section is mainly based on MISSOC, Cross-cutting introductions to MISSOC Tables 2010.

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

[15] Beveridge, William Henry, Social Insurance and Allied Services, 1942.

- 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 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.

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).

A distinction therefore appeared between two main types of mutuals on the basis of the activities they performed, namely insurance mutuals and mutual benefit societies:[16]

- **Insurance mutuals** are a special business form for insurance services' providers. Insurance mutuals can cover all types of property and life risks and can be active on health insurance markets or provide private pension schemes (mainly through life insurance policies). Insurance mutual societies are widely spread over most European countries and compete with other kinds of private, commercial economic operators.
- **Mutual benefit societies**, or health (providence) mutuals, exist in several European countries. They typically provide health, social and insurance services and benefits to cover social risks such as illness, disability and old age.[17] Most often, however, they carry out a wide range of activities, such as promoting quality of life and organising social work and cultural activities. In some cases, mutual benefit societies run their own hospitals, nursing homes and rehabilitation centres. In Belgium, mutual benefit societies manage the whole compulsory health insurance system.

However, although the distinction between these two groups of mutuals is mentioned often, clear demarcations between the two types of organisations are sometimes difficult to make, since their fields of activity may overlap to some extent. For this reason, in this report we mainly refer to 'mutuals' as an activity-neutral definition.

A number of mutuals in a restricted group of Member States cannot be ascribed to any of the two groups. Examples are mutuals called 'friendly societies' and 'building societies' which are allowed to provide a broader range of services (such as in the UK and IE).[18]

Building societies, for instance, have mortgage lending as their main activity (those who open a savings or mortgage account at a building society automatically become members and may take part in general meetings which operate according to the one-person-one-vote principle).[19]

In the European countries governed by communist regimes, after the Second World War mutual benefit societies that had previously existed were suppressed, and in some of these they have not returned since the fall of Communism.

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[16] See for instance: Commission of the European Communities, COM(93)252 final, Brussels, 6 July 1993, and http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals.

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

[18] See for an elaborated discussion on different forms of mutual societies in the UK: Mutuo, Britain: Made Mutual Mutuals Yearbook 2010, 2010. In Section 2.3 some words are said on building societies.

[19] The Building Societies Association, Mutual societies in an enlarged Europe. Response by The Building Societies Association to the Consultation Document issued by Enterprise Directorate General in October 2003.

It is calculated that nowadays mutuals provide healthcare and social services to 230 million European citizens[20] and that mutuals together represent more than 180 billion euros in insurance premiums.[21] Mutuals are reported to employ 350,000 people in Europe.[22] However, accurate statistical data are lacking.

2.2. Mutuals in the social economy

The 'associative impulse' from which mutual societies had originated and flourished as part of the 'response of the most vulnerable and defenceless social groups [...] to the new conditions of life [...] in the 18th and 19th centuries'[23] also gave birth to other types of organisations, mainly belonging to the large families of cooperatives and associations. These three groups of organisations still constitute today, with the more recent addition of foundations, the main components of what is known as the 'social economy' in Europe.[24]

Although references and considerations around the idea of a social approach to economics and economic activities are to be found in literature since the 18th century[25], the concept of 'social economy' as presently understood dates back to the 1970s. In 1980 the French *National Liaison Committee for Mutual, Cooperative and Associative Activities* (CNLAMCA[26]) published a document, the *Charte de l´économie sociale* or Social Economy Charter, which defines the social economy as the set of organisations that do not belong to the public sector, operate democratically with the members having equal rights and duties and practise a particular regime of ownership and distribution of profits, employing the surpluses to expand the organisation and improve its services to its members and to society.[27]

A more recent self-definition of 'social economy' dates back to 2002[28]: 'The organisations of the social economy are economic and social actors active in all sectors. They are characterised principally by their aims and by their distinctive form of entrepreneurship. The social economy includes organisations such as cooperatives, mutual societies, associations and foundations. These enterprises are particularly active in certain fields, such as social protection, social services, health, banking, insurance, agricultural production, consumer affairs, associative work, craft trades, housing, supply, neighbourhood services, education and training, and the area of culture, sport and leisure activities [...] The legal form an entity in the social economy may take varies from one Member State to the next. However, these enterprises are distinguished from capital-based companies by specific features linked to shared characteristics, in particular: the primacy of the individual and the social objective over capital; voluntary and open membership; democratic control by the membership; the combination of the interests of members/users

[20] Association Internationale de la Mutualité (AIM), see: AIM´s Memorandum to the new European Parliament.
[21] AIM/AMICE, A European Statute for Mutual Societies, 2007.
[22] Centre international de recherches et d'information sur l'économie publique, sociale et coopérative (CIRIEC), The Social Economy in the European Union, 2007.
[23] Ibidem.
[24] CIRIEC, The Social Economy in the European Union, 2007, see: Lópes Castellano, F., Una sociedad 'de cambio y no de beneficencia'. El asociacionismo en la España Liberal (1808-1936), CIRIEC-España, nº 44, 2003, p. 199-228.
[25] Ibidem.
[26] Comité national de liaison des activités mutualistes, coopératives et associatives (CNLAMCA) was set up in 1970. In 2001 it became the present-day CEGES (Conseil des entreprises, employeurs et groupements de l'économie sociale or Council of Social Economy Companies and Institutions). CIRIEC, The Social Economy in the European Union, 2007, see; Davant J.P., Las organizaciones intersectoriales de la Economía Social: Francia, CEGES, en: VV.AA., La Economía Social y el Tercer Sector, Escuela Libre Editorial, Madrid, 2003.
[27] CIRIEC, The Social Economy in the European Union, 2007, see: Lópes Castellano, F., Una sociedad 'de cambio y no de beneficencia'. El asociacionismo en la España Liberal (1808-1936), CIRIEC-España, nº 44, 2003, p. 199-228.
[28] Charter of Principles of the Social Economy promoted by the European Standing Conference on Co-operatives, Mutual Societies, Associations and Foundations (CEP-CMAF), 2002; CEP-CMAF was the predecessor of Social Economy Europe.

and/or the general interest; the defence and application of the principle of solidarity and responsibility; autonomous management and independence from public authorities; the essential surplus is used to carry out sustainable development objectives, services of interest to members or of general interest'.

However, there is no EU-wide consensus on a common definition of social economy and on the range of organisational forms that should be considered to be included in it[29]; in particular, debate exists as to whether organisations not performing any economic activity should be comprised in the sector.

Within the social economy, social enterprises (including mutual societies) can be positioned towards the middle of a hybrid spectrum of organisational forms ranging from traditional non-profit organisations to traditional for-profit organisations.[30] Towards the non-profit end of the spectrum, social enterprises are flanked by non-profit organisations with income generating activities and towards the for-profit end, they are close to socially responsible businesses.[31] This distinction between non-profit and profit organisations, and between business and third sector, is nonetheless blurred.[32] Also, within the social economy, the main organisational forms identified at European level (co-operatives, mutuals, associations and foundations) partially overlap at national level and a clear distinction between them is not always possible to maintain in the Member States.

The social economy is estimated to account for 10 per cent of all European undertakings, and 6 per cent of total employment.[33] Mutuals are the smallest part of it, due to their concentration in specific sectors, and they represent between 3-3.5 per cent of the total employment in social economy organisations.[34]

One of the main claims of the sector is, however, that 'the success of enterprises in the social economy cannot be measured solely in terms of economic performance, which is nonetheless necessary to the achievement of their goals'.[35] Also, the real economic impact of the social economy is not measured or made visible within the national accounts systems in the EU Member States and relevant work has been accomplished on elaborating satellite accounts for the sector.[36]

Over the last 30 years the social economy has gained public recognition within the EU and EU Institutions.[37] The European Economic and Social Committee has been a key actor in promoting the formation of a common identity within the sector and its recognition at European level. The European Commission has a specific department in charge of the social economy within its services and a European Parliament's intergroup on the social economy has existed since 1990; the European Parliament has adopted several resolutions on the social economy[38] and has often mentioned issues relevant to the sector in its documents.

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[29] See: DIESIS, Map of European and national social economy institutions and organisations, 2008
[30] See: Kernot, Cheryl, Social Enterprise: A Powerful Path to Social Inclusion, 2009. See as well: Alter, K., Social enterprise typology, 2007.
[31] Alter, Sutia Kim, et al, Generating and Sustaining Nonprofit Income, 2004. See as well: Seanor, Bull, Rory Ridly-Duff, Mapping social enterprise: do social enterprise actors draw straight lines or circles?, 2007.
[32] See: Westall, Andrea, Business or third sector? What are the dimensions and implications of researching and conceptualising the overlap between business and third sector? Third Sector Research Centre Working Paper 26, 2009
[33] Social Economy Europe, Answer to the European Commission's consultation on the future "EU 2020" strategy, 19/01/2010
[34] CIRIEC, The Social Economy in the European Union, 2007, and Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009.
[35] Charter of Principles of the Social Economy promoted by the European Standing Conference on Co-operatives, Mutual Societies, Associations and Foundations (CEP-CMAF), 2002
[36] See, for instance: CIRIEC, Manual for drawing up the satellite accounts of companies in the social economy: cooperatives and mutual societies, 2006
[37] DIESIS, Map of European and national social economy institutions and organisations, 2008
[38] European Parliament resolution of 19 February 2009 on Social Economy (2008/2250(INI))

2.3. Defining mutual societies in a EU-wide perspective

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."[39] The European Commission further specifies that mutual societies "are governed by private law", which narrows the area of analysis considerably.

This definition can be used as a starting point in our overview of the main features of mutual societies as a specific business form in EU Member States. Summarising, the following principles are common to *most* mutuals:

- Absence of shares: mutuals are a grouping of persons (physical or legal), called members, and not a pooling of funds as in the case of corporations;
- Free membership: that means free entry (and free exit) for everyone who fulfils the conditions laid down in the by-laws and abides by the principles of mutuality;
- Solidarity among members: a historical principle rooted in the 19th century workers' movement and the ideology of the solidarity movement.

  Today, that means joint liability and a cross subsidisation between good risks and bad risks and no discrimination among members;
- Democratic governance: conveyed by the principle "one person, one vote" in contrast to the rule "one share, one vote" which is symbolic of corporate governance. The board's members are volunteers, in contrast to the corporations' practice paying their directors a fee;
- Independence: mutuals are private and independent organisations, neither controlled by government representatives nor funded by public subsidies;
- Limited profit sharing: the profit of a mutual can be shared among the owners/ members, usually as discounted premiums or rebates, but the main part of the company's proceeds is re-invested in it to improve services, finance the development of the business or to increase its own funds.[40]

However, deviations from the EU-wide definition and common principles described above appear *per* Member State, boosting the debate what can be considered a mutual or not.

Although, as a general rule, there is an inseparable relationship between membership and being a policyholder, there are some Member States to which this principle is not applicable. In some countries, mutual insurance companies are allowed to provide insurance to non-members as well as to member policyholders (for instance in AT, DE, NL, PL and SI).

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[39] Commission of the European Communities, 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,...'

[40] Summarised from: Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009. This list of principles is also presented in: CIRIEC, Manual for drawing up the satellite accounts of companies in the social economy: Co-operatives and mutual societies, 2006, p. 44.

Also, other exceptions to the common characteristics can be noticed. In several Member States, the general assembly of some mutuals is composed of member representatives, rather than the members themselves (such as in AT, BE, DE, FI, FR, NL, and SE). In Germany and Finland the one-member-one-vote principle is not always applicable. Finally, in the Netherlands, the capital of mutual insurance companies may be divided into shares.[41]

Some organisations, despite being sometimes identified as mutuals, only share *some* of the characteristics of this legal form, such as the *Krankenkassen* in Germany. When compulsory health insurance was introduced in Germany, existing mutuals were incorporated into the social protection system. Nowadays, '*Krankenkassen*' (sickness funds) are public bodies, and their boards consist of representatives of insured persons as well as employers. '*Ersatzkassen*' (substitute funds) form an exception to this, since their boards are composed of representatives of insured persons only.[42] Other examples of organisations resembling mutuals are the health insurance funds in the Czech Republic.

Although Czech health insurance funds are sometimes described as mutuals[43], they are in fact not funded by membership fees, but by mandatory contributions from employers and employees, as well as self-employed people. In addition, they are governed by boards consisting of members nominated by the Ministry of Health and (in the case of the General Health Insurance Fund, VZP) the Chamber of Deputies or (in the case of the other, smaller funds) organisations of employers and employees.[44] Their status as quasi-public, self-governing bodies makes them quite similar to the German *'Krankenkassen'*.[45]

As we have seen, mutuals also share some characteristics with other organisational forms within the social economy and, in particular, they are closely related to cooperatives. However, in contrast with cooperatives, for mutuals it is generally true that "there is an indissoluble and inseparable relationship between being a mutualist (member) and being a policy-holder (intended recipient of the mutual's activity)".[46] As opposed to the funds of cooperatives, the funds of a mutual remain the property of all its members and are, therefore, truly collective and indivisible. Another typical difference between both forms is that members pay fees instead of purchasing shares.

Nevertheless, these differences are not so clear in all Member States. There are Member States (such as BG, EL, and PT) where mutual insurance companies are described as a type of cooperative.

Distinctions between mutuals and co-operatives can be activity-based. In most countries, mutuals are by definition insurance companies while cooperatives are by definition *not* insurance companies. Nevertheless, there are still a high number of Member States which have both mutual insurance companies and cooperative insurers (BE, ES, HU, IT, LU, LV and UK).

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[41] See: Dutch Civil Code, Book 2 (legal persons), Part 3, Article 53 – 63 j. Part 3 as it is today has been in effect since 1 January 1989: in: Commission of the European Communities, Législation relative aux mutuelles dans les Etats Members / Legislation regarding mutuals in Member States (draft of 03/10/03): "Mutual insurance companies may in principle issue shares, but in practice this seldom happens." http://ec.europa.eu/enterprise/policies/sme/files/mutuals/mutuals-legis-in-ms.pdf.

[42] Busse, R, Riesberg A. Health care systems in transition: Germany. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004

[43] For example in Report 2008 of the AIM working group on health system reform "Healthcare protection today: Structures and trends in 13 countries"

[44] Bryndová L, Pavloková K, Roubal T, Rokosová M, Gaskins M and van Ginneken E. Czech Republic: Health system review. Health Systems in Transition. 2009; 11(1).

[45] Hlavačka S, Wágner R, Riesberg A. Health care systems in transition: Slovakia. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.

[46] CIRIEC, The Social Economy in the European Union, 2007.

As a result, there can be a broad interpretation throughout Europe of what mutuals are, and sometimes organisations are called mutuals although they do not share all the characteristics most commonly attributed to mutuals. What is considered to be a mutual society in one country might not be considered a mutual in another country. In addition, although organisations from different countries share a number of similar characteristics, they can differ on essentialities so that they do not in fact appear to have the same legal form.

Hence, providing a general European definition of mutuals that is acceptable for all stakeholders is currently impossible. In discussing mutuals in this report, we include organisational types that are called 'mutuals', despite the fact that they may show some differences to the main common principles, but we exclude those organisations that simply *act* similarly to mutuals, but in fact are not organisations based on mutuality.

Based on this choice, for the conduct of the present study we consider that mutual societies do not exist in Cyprus, the Czech Republic, Estonia, Lithuania and the Slovak Republic.

2.4. An overview of national legislation on mutual societies

In this section, we will look at the national legal regimes applicable to mutuals. Legislation in relation to mutuals can either focus on mutuals as a peculiar legal entity (organisation, functioning, etc.) or it can focus on the activities mutuals are allowed to perform (in many countries the law restricts mutuals to conduct certain activities), or on both. Since deviations between Member States on what is considered to be a mutual society are large, also as regards the way mutuals are regulated the variation in national situations is quite extensive.

As a rule, mutual insurance societies normally fall under general insurance legislation, while mutual benefit societies, where they exist, fall under special codes.

Insurance legislation includes rules regarding establishment, membership, finances (liabilities, profit-sharing), organisation and leadership, dissolution, and mergers; in some cases special provisions for mutuals exist.

Special codes also cover the establishment and functioning of organisations based on mutuality. A good example can be found in France. The French 'Code de la mutualité' describes the principles of mutualism, and regulates all aspects of the organisation of mutuals, including establishment, mergers and dissolution, democratic structures, finances and the activities mutuals may pursue. Mutual benefit societies have to specialise in either insurance or social services, and accordingly the code has separate sections for mutuals that are active in insurance and those that are active in prevention, social action and other health/social/cultural activities. In addition, in providing insurance, mutuals can also adopt the insurance code (Code des assurances).

Sometimes rules are applied to mutuals by reference to legislation on cooperatives (such as in BG, DE, EL, IT, NL, PT, and SE), as in these countries mutuals are legally seen as closely related to cooperatives or as a specific form of cooperatives. In other cases, mutuals are defined as related to associations at large or as a type of association, therefore legislation for associations will apply for them.

In many Member States mutuals are **by definition insurance companies** (such as in AT, BG, DE, DK, FI, LV, MT, NL, PL, RO, SE, and SI). In these countries often no general, overarching term for mutuals exists. For instance, in Austria, a mutual insurance society

("Versicherungsverein auf Gegenseitigkeit") is defined as an association that provides insurance to its members under the principle of reciprocity.[47]

In other countries there is **a distinction between mutual insurance companies and mutual benefit societies**/mutual health funds, such as in BE, EL, ES, FR, HU, IT, LU, and PT). For instance in Portugal, *a mutual insurance society* (*mútua de seguros*) is defined as an insurance company formed by the association of individuals who are both insurers and insured. The mutual does not accumulate profits.

In Portugal, a mutual takes the form of a cooperative society with limited liability, comprised of people with the same profession, with the intent to insure against risks arising from their professional activity. Only members can enter into contracts with a mutual insurance society.[48] *Mutual associations* (*Associações Mutualistas*) are non-profit associations that develop complementary actions of social security, health, social work and promoting quality of life, preferably for their members and their families.[49] According to the Mutual Associations Code, the main purpose must be to provide social security and health benefits, but they may also pursue other objectives related to social protection and quality of life (i.e. social support services, social work, cultural activities).

In two Member States (the UK and IE) legally mutuals **may pursue a wide variety of activities**. In these Member States there is not one only legal form for organisations based on mutuality but several, such as friendly societies, building societies, credit unions, industrial and provident societies, etc. In Ireland and the United Kingdom there is a tradition of building societies, which have mortgage lending as their main activity. It is not always clear which of these should be classified as mutual and which as cooperative, because the distinction between the two is not clearly defined in these Member States, and the term mutual may be used to include cooperatives as well.[50]

In some Member States (such as BE, DE, DK, FR, IE, IT, NL, and the UK) mutuals, mainly the mutual benefit societies, are subject to **special rules regarding taxation**. In cases where mutuals meet certain conditions, special tax treatment is provided, such as in Belgium, where mutual benefit societies have the sole, statutory responsibility to provide compulsory health insurance. In Hungary, the purchase of health insurance from mutuals is subsidised through a 30 per cent tax rebate on premiums. In France, mutual and provident associations were exempted from health insurance premium tax from 1945 until 2002, but this was changed after the European Commission decided that this was not in line with EU rules on state aid. In Luxembourg, on the other hand, mutuals are still exempt from insurance premium tax, because a gentlemen's agreement between mutuals and commercial insurers prevents the latter from filing a complaint with the European Commission. In turn, mutuals do not encroach on commercial insurers' dominance of the market for pensions and other types of insurance.[51]

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[47] See: Finanzmarktaufsicht glossary: "Versicherungsverein auf Gegenseitigkeit (VVaG): Unter einem Versicherungsverein auf Gegenseitigkeit versteht man einen Verein, der die Versicherung seiner Mitglieder nach dem Grundsatz der Gegenseitigkeit betreibt. Ein VVaG bedarf zur Aufnahme des Geschäftsbetriebs in Österreich einer Konzession gemäß § 4 Abs. 1 Versicherungsaufsichtsgesetz (VAG)."
http://www.fma.gv.at/de/footer/glossar.html.

[48] See: Insurance Act of 1998 (Decreto-Lei n.o 94-B/98 de 17 de Abril, Diário da rebública — I Série-A No. 90 — 17-4-1998).

[49] See : Mutualismo/ União das mutualidades Portuguesas, see:
http://www.3sector.net/equalificacao/src_cdroms/novos_conceitos_praticas/recursos_complementares/Mutualismo.pdf).

[50] For example in the report: Michie, Jonathan, Promoting Corporate Diversity in the Financial Services Sector, 2010; or Stewart, Jim, Mutuals and Alternative Banking: A Solution to the Financial and Credit Crisis in Ireland?, 2010.

[51] Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009;

Legislation on mutuals, whether incorporated in a separate code or in general insurance law, usually includes regulations on dissolution. In most Member States, net assets may be distributed among member policyholders in the event of dissolution or demutualisation. French legislation, on the other hand, prevents this, since net assets must be transferred either to another mutual insurance company or to a foundation. This is intended to discourage policyholders from opting for the dissolution of a mutual.[52]

An overview of the legal provisions applicable to mutuals in EU Member States can be found in the Annexes to this report: Annex 1A (Definition of mutuals in EU Member States) and Annex 1B (Main legislative sources). Although there are major differences in the legal frameworks applicable to mutuals, some clustering of countries is possible:

- In the largest group of countries, mutuals fall under general insurance/financial business legislation, which may include special institutional and financial provisions for mutuals (such as in AT, BG, DE, DK, EL, LV, MT, NL, PL, RO, SE (new legislation), and SI).
- In this second largest group of countries, mutual insurance companies fall under general insurance/financial business legislation, while mutual benefit societies/mutual health funds fall under special legislation (such as in BE, ES, FR, IT, HU, LU. PT, and SE (old legislation)).
- In a small group of countries (IE, UK) mutuals fall under both general insurance/financial business legislation and special legislation.
- In one country, Finland, there is a distinction between small mutuals (operating in no more than 40 municipalities), which are called insurance associations ("vakuutusyhdistys/ försäkringsförening"), and larger mutuals, which are called mutual insurance companies ("keskinäinen vakuutusyhtiö/ ömsesidigt försäkringsbolag"). The purpose of a mutual insurance company is to provide profit or other economic benefit to members, unless otherwise prescribed by the statutes.[53] Large mutuals fall under general insurance/financial business legislation, while small mutuals fall under special legislation.
- In some countries, there are no legal provisions for mutuals (CY, CZ, EE, LT, and SK).

2.5. Dimensions of the sector in the EU

The historical background, the way mutuals are defined, the kind of activity they may carry out and the legal framework within which they operate, all influence the volume and composition of the sector at national level.

Mutuals can be very large organisations, having millions of members.[54] They are often rooted in ideological, political groups. In some countries they still constitute a major (political) force. However, there are also small-scale mutuals operating in a very local niche-market.

According to data gathered in a study on social economy, in the reference period 2002-2003 in the EU-25 (excluding Romania and Bulgaria), in total 351,000 people were employed by a mutual. The data contain serious gaps, mainly in the new Member States, and data are integrated in those for cooperatives in Italy and in those of associations for Portugal. A large

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Mossialos, Elias and Sarah Thomson, Voluntary Health Insurance in the European Union, European Observatory on Health Systems and Policies, Copenhagen: WHO, 2004.

[52] Iannello, Francesco, Edoardo Greppi & Patrick Peugeot, The European Mutual Society: The challenge of a renaissance of mutuality, Mutuality Review 55, 2003.

[53] See Försäkringsbolagslag 18.7.2008/521: http://www.finlex.fi/sv/laki/ajantasa/2008/20080521

[54] For examples, see: CIRIEC, The Social Economy in the European Union, 2007, p. 93

proportion of workers is reported to concentrate in two Member States, Germany (with 150,000 jobs) and France (with 110,000 jobs).[55]

A different source, the International Cooperative and Mutual Insurance Federation (ICMIF), reports that, in total, the mutual and cooperative insurance sector employs 282,110 people in the EU, with the German and French mutual and cooperative sector each employing over 80,000 people.[56] However, mutuals not involved in insurance are not included in these numbers.

Data on population coverage is collected by the *Association Internationale de la Mutualité* (AIM)[57] through calculating the total on the basis of the reported number of policy-holder members of the association. These data, however, relate to mutual benefit societies and do not take into account the mutual insurers. The data show that coverage of these mutual societies is highest in Belgium, followed by the Netherlands and Germany. In each of these countries, over 80 per cent of the population is covered by a mutual benefit society. The group of countries with highest coverage is followed by France, the Czech Republic and Luxembourg, with 60 to 80 per cent, and then Slovenia, Ireland and the Slovak Republic (40 to 60 per cent of the population covered). However, this seems to include organisations which do not have the legal form of a mutual but are rather public or quasi-public bodies (such as the German *Krankenkassen*, acting under public law, and the Czech and Slovak 'mutuals' participating in the management of statutory health insurance, also acting under public law) or even joint-stock companies (as in the form of subsidiaries/companies within a mutual holding company), which are not considered as mutuals for this report. The low levels of coverage in Italy, Greece and Spain (all under 10 per cent)[58] are noteworthy. Portugal and the United Kingdom are estimated to range in the group with between 10-20 per cent and, finally, Hungary and Denmark both have between 20-40 per cent estimated coverage.

ICMIF, the federation of mutual and cooperative insurers, calculates the market share of mutual and cooperative insurers in total (both life and non-life insurance) to be equal to around one quarter of the global insurance industry in the European Union, with premiums worth about 400 billion US Dollar (about 300 billion Euros).[59] However, just as the data from AIM focus on mutual benefit societies and lack information on mutual insurers, conversely, data gathered by ICMIF on the market share of mutual and cooperative insurers do not take into account mutual benefit societies and include cooperatives.

Mutuals also operate outside the domestic borders. Generally, there is a lack of data on the cross border activities of mutuals in Europe. There are mutuals that operate in other countries by setting up branches and others that sell insurance policies by means of some hybrid mutual-stock holding company form.

However, this is a very significant issue. Throughout Europe, mutuals are hampered in working across borders and cooperating at a transnational level while preserving their characteristics.

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[55] CIRIEC, The Social Economy in the European Union, 2007

[56] ICMIF, Annual Mutual Market Share & Global 500 for 2007–2008, 2010.

[57] The Association Internationale de la Mutualité (AIM) is a grouping of autonomous health insurance and social protection bodies operating according to the principles of solidarity and non-profit-making orientation.

[58] http://www.aim-mutual.org/uploads/fmanager/about_mutuality/en_pop_couverte_par_mut_en_europe.pdf

[59] There is considerable discrepancy between the data on premiums calculated by AIM/AMICE and ICMIF, however it can be useful to take both into consideration. Although the ICMIF data appears to provide a more validated and completed account on premiums, it includes in its calculations insurance companies that are not mutual (e.g. cooperative insureres). The data from AIM/AMICE is based on the reported premiums of their member organisations and cannot easily be validated. They, however, focus on organisations operating according to the principles of mutualism only (although organisations are included that do not have the mutual legal entity).

Although in some Member States, such as in France, legal instruments exist (such as the SGAM model, see box below), during several interviews conducted in the course of this study mention was made of the legal and administrative difficulties mutuals face in establishing cooperation at a European cross-border level, including the following: mutuals need to comply with very different national regulations, they are not allowed in all national markets and democratic and joint ownership principles cannot be exercised across borders.

French groupings of mutuals (SGAMs)

Since 2001 French mutual societies have had the option of forming "mutual insurance group companies" (Société de Groupe d'Assurance Mutuelle: SGAM). The purpose of an SGAM is to organise cooperation between a group of mutuals, but the degree of integration is decided by the founders. This includes the scope and conditions of financial solidarity between members. Other characteristics are also optional, such as SGAMs may or may not have capital and the members may be mutual insurance companies, mutual reinsurance companies, health-insurance mutuals or employee-benefits unions and institutions, either national or European.[60]

Recently, two mutuals (a French mutual, Harmonie Mutualité and the Italian mutual, Cesare Pozzo) have organised their cross border activities by means of a European Co-operative.

2.6. Concluding remarks

Until the 20th century, mutuals provided the first forms of social protection for those at risk in Europe. Before most governments started to establish statutory social protection systems after the end of the Second World War, mutuals fulfilled a crucial function in European societies.

The major reforms leading to the creation of welfare States diversified the role played by mutuals. Historical and cultural developments determined the way mutuals have adapted to the new socio-economic context. In most cases mutuals took on an alternative role by developing voluntary health insurance schemes and maintaining or increasing their activities in other types of risk-coverage (for instance, car and motor insurance). In many EU Member States mutuals still play a significant role.

However, this has led to great diversity among EU Member States as to the activities mutual societies perform and the position they have in national legislation and markets. That also makes the search for an EU-wide definition especially difficult and the options proposed, such as the 2003 European Commission's definition, leave some room for debate as to what types of organisations can be ascribed to the family of European mutuals.

[60] Groups of mutual insurance companies: the lessons of initial experiments. Jean-Claude SEYS, MMA, France. French experience with the "mutual insurance group company" (Société de Groupe d'Assurance Mutuelle: SGAM), pp. 47-48. See as well: Lowet, Lieve, Wat is een SGAM? (What is a SGAM?), in: Larcier, Financieel Forum-Bank en Financiewezen, 2008/8, pp 497-503, 2008.

3. THE ROLE OF MUTUALS IN SOCIAL PROTECTION

KEY FINDINGS

- The way social protection systems are organised determines to a large extent the role mutuals play within, or in relation to, these systems.
- In many EU Member States, mutuals are involved in complementary and supplementary health insurance schemes. National differences range from mutuals providing statutory services, and therefore playing an essential role in the social protection system, to mutuals that do not play a role whatsoever.
- Also, in relation to social protection schemes other than health insurance, mutuals are mainly active in the field of pensions, where they provide private policies complementary to the statutory system.

As already indicated, mutuals play an important role within, and complementary/supplementary to, the social protection system. This section further explores in more detail how mutuals provide health insurance and pension entitlements in the EU Member States.

3.1. Mutuals active in health insurance

When it comes to health insurance within national welfare systems, we must distinguish between compulsory and voluntary schemes. Compulsory health insurance provides basic coverage, either through a national health service or through health insurance funds. Voluntary health insurance may be classified as follows[61]:

- **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.

The different roles mutuals play in relation to health insurance in EU Member States can be summarised in the table below.

[61] 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 European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009).

Table 1: Role of mutuals in health insurance

Role of mutuals in health insurance	Countries
A) Mutuals are only active in compulsory health insurance	EL
B) Mutuals are active in both compulsory and voluntary health insurance	BE, NL
C) Mutuals are only active in voluntary/supplementary health insurance, not in compulsory health insurance[62]	AT, DE, DK, ES, FI, FR, HU, IT, LU, MT, PL, PT, SE, SI, UK
D) Mutuals do not seem to be active in health insurance	BG, IE, LV, RO

Source: Drawn up by the authors

As indicated in the table above, Greece can be characterised as a country in which mutuals are only active in **compulsory health insurance**. Although most health insurance funds in Greece are public entities, there are also mutual benefit societies offering compulsory health insurance, covering about 110,000 people. These funds, which do not offer voluntary health insurance, are restricted to certain professional groups and are related to trade unions.[63] Some of these mutual benefit societies have been in existence since the 1930s (such as the National Bank of Greece Personnel Health Fund (T.Y.P.E.T.)). In general, Greece exhibits a very specific situation in Europe, resulting from a fragmented social protection system laid down in hundreds of legislative texts.[64]

In Belgium and the Netherlands mutuals play a role in **compulsory** as well as **supplementary health insurance.** In the Netherlands, compulsory health insurance is provided by private insurers (mutual insurance companies as well as joint-stock insurers), which also offer voluntary health insurance. For the compulsory part, private insurers are not allowed to refuse individual applications and to practice risk selection. In Belgium, mutual benefit societies play a unique role, as further detailed in the box below.

Belgium: Important role in compulsory health insurance

The way the healthcare system in Belgium is organised dates back to the 19th century. In this age, workers united themselves in small-scale mutuals that protected their members against the risk of sickness, unemployment and disability. These mutual benefit societies were recognised a specific legal form in 1851 and more legislation was passed in 1894.

At the beginning of the 20th century the small mutuals were grouped into national associations, based on ideological, political preferences:

- the National Alliance of Christian Mutualities (1906);
- the National Union of Neutral Mutualities (1908);
- the National Union of Socialist Mutualities (1913);
- the National Union of Liberal Mutualities (1914); and
- the Union of the Free and Professional Mutualities (1920).

[62] France and Germany both have a special position since, in both countries public entities that are regarded as being mutual provide services in compulsory health insurance (France: MSA (Mutualité sociale agricole) and Germany: Krankenkassen), but according to the 2003 definition of the European Commission, which this study takes as a basis for its analysis, public entities cannot be considered as 'mutual societies'.

[63] Report 2008 of the AIM working group on health system reform "Healthcare protection today: Structures and trends in 13 countries".

[64] Amitsis, Gabriel, Current Policies and Reform Plans for the Greek Benefits Framework, Benefits & Compensation International, Volume 31, Number 7, March 2002.

In addition to these five unions, there is one fund for the railways personnel and one for sickness and disability insurance (public institution).

Unlike in many other European countries, no major reforms took place after WWII. The role played by the mutual benefit societies (Mutualiteiten (ziekenfonds)/Mutualité)[65], with their roots in ideological and political ground, remained unchanged through the entire 20th century. In 1990, the 1894 law was revised. The revised 'Law on mutual benefit societies and unions of mutual benefit societies'[66] contains new rules regarding the establishment, organisation, and services mutual benefit societies must provide, as well as financial arrangements (including government contributions), mergers[67], winding up and supervision of the health insurance funds.

The mutual benefit societies are today the sole providers of compulsory health insurance. All individuals must join or register with one of the mutual benefit societies providing compulsory health insurance. The choice for one of the mutual benefit societies is free, except for the railway workers who are automatically covered by the insurance fund of the Belgian railway company. Almost 99 per cent of the population is covered by the compulsory health insurance.[68]

Mutual benefit societies are in charge of implementing health insurance provisions. Compulsory health insurance is regulated by the law and various royal decrees, and mutual benefit societies have no decision-making power in this area. The coverage by the compulsory health insurance is wide and includes more than 8,000 types of services. The mutual benefit societies negotiate with the healthcare providers on a yearly or biennial basis the fees for each of the listed services.

On 31st December 2009 the mutual benefit societies included in total 54 mutual societies with more than 15,000 members and 3 with less than 15,000 members.

Although traditionally Belgian mutual benefit societies have also offered voluntary (complementary) insurance, as well as compulsory insurance, the European Commission considered that the situation was not in line with EU law and requested changes, so that the mutual benefit societies needed to create separate legal entities for accessing the voluntary health insurance market, namely: societies of mutual assistance (maatschappijen van onderlinge bijstand/sociétés mutualistes).[69]

A society of mutual assistance may only offer insurance to members of the health funds that have joined the society – individuals cannot become members of the society of mutual assistance directly. Societies of mutual health assistance that offer health insurance fall under general insurance law[70] (and can therefore be classified as a type of mutual insurance companies).

[65] We use the term 'mutual benefit societies' for mutualiteiten/mutualité, instead of 'Health Insurance funds', because the term 'fund' can be confused with public sickness funds existing for instance in Germany (Krankenkassen) and Slovenia (Health Insurance Institute of Slovenia).
[66] Loi du 6 Aout 1990 relative aux mutualites et aux unions nationales de mutualites / Wet van 6 augustus 1990 betreffende de ziekenfondsen en de landsbonden van ziekenfondsen.
[67] The health insurance mutuals that fall under the same union can opt for merging. In addition, also unions can merge. In order to merge, the mutuals or unions need to have approval from their members and from the general meeting of the union. While merging, the governmental organisations of the societies will be jointly organised, the statutes need to be amended. Also the societies of mutual assistance can merge if their mother health insurance mutuals are part of the same union. See: Loi du 6 Aout 1990 relative aux mutualites et aux unions nationales de mutualites / Wet van 6 augustus 1990 betreffende de ziekenfondsen en de landsbonden van ziekenfondsen.
[68] Gerkens S, Merkur S. Belgium: Health system review. Health Systems in Transition, 2010, 12(5):1–266.
[69] 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).
[70] 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); Controledienst voor de ziekenfondsen en de landsbonden van ziekenfondsen/ Office de contrôle des mutualités et des unions nationales de mutualités: Yearly report 2009.

The reasons why in Belgium and the Netherlands mutuals are both involved in compulsory and supplementary insurance are very different. In Belgium, the mutual benefit societies historically provided both types of services (and only due to recent reforms they had to separate the two fields of activity into different legal entities). In the Netherlands, as from 2006 the government set out strict rules for offering compulsory health insurance, but left the legal status of the providers of statutory services free. The regulatory framework on compulsory health insurance provides for minimum requirements with which all insurers must comply. In addition, mutuals and companies with different legal forms can also offer voluntary health insurance.

In most Member States mutuals (both mutual benefit societies and mutual insurance companies) are only active in **supplementary/complementary health insurance**. In Hungary the supplementary health insurance market is in fact restricted to mutuals, and in Slovenia, the mutual insurer, 'Vzajemna', has a special position in Slovenian legislation, as illustrated in the box below.

Slovenia: Complementary insurance to cover co-payments

In Slovenia, there is only one mutual and this organisation is solely active in the complementary health insurance market.

Since 1992, Slovenia has a healthcare insurance system based on Bismarkian principles. There is one single insurer for statutory health insurance. This sickness fund is administered by the Health Insurance Institute of Slovenia (English abbreviation: HIIS, in Slovenian language: Zavod za zdravstveno zavarovanje Slovenije: ZZZS). To lower utilisation of healthcare, financial disincentives were introduced such as co-payments, but this never led to effective reductions; in fact, most of the population subscribed into out complementary insurance schemes offered by the HIIS to cover such co-payments and the utilisation of healthcare services maintained therefore high.

Since the introduction of the HIIS, a mixed model developed in which public money (compulsory health insurance) and private money (premiums for complementary schemes) were gathered by the same organisation. This led to unclarity about what funds were used for the compulsory and what funds for the complementary health insurance. In 1998, as a result of amendments to the Healthcare and Health Insurance Act, the HIIS was obliged to completely separate its compulsory insurance and complementary schemes. For managing the complementary part, the mutual insurance company "Vzajemna", meaning 'mutuality', was created, and it immediately became the largest provider of voluntary health insurance in Slovenia.

With regard to the compulsory health insurance, virtually the entire population is covered. One problematic element within the Slovene healthcare system is the issue of waiting lists, especially for dental services and some specialised services and surgeries. Regarding the complementary insurance for covering co-payments, the coverage is again almost 100 per cent.

Since 2004-2005 the mutual has not been the only insurer on the market: two private companies have entered the market of complementary health insurance policies.

The entering of the commercial insurers created an uneven situation: the commercial insurers started cream-skimming campaigns for selling policies only to younger and healthier individuals by offering risk-related premiums. The Vzajemna was on the other hand left with the older and less healthy individuals and therefore held a portfolio based on a less favourable risk structure.

When in 2003-2006 plans were negotiated for restructuring Vzajemna into a stockholding company, the Ministry of Health submitted a proposal for an act on "Reorganization of the Status of Vzajemna health insurance", which was adopted by the Parliament in April 2007. The aim of the proposal by the Government was to preserve the only mutual health insurance company and assure solidarity in the complementary health insurance system.[71] To avoid cream-skimming by voluntary health insurers and to equalize the variations in risk structure between private health insurance companies, a risk equalization scheme was introduced in 2005[72] that ensured equal premiums for all insured individuals, irrespective of age.

In 2010, an amendment to the Insurance Act was adopted, stipulating that the General Assembly of a mutual that carries out supplementary health insurance or life insurance must reflect the age structure of the members.[73] This act was initiated due to irregularities in the management and doubts about the democratic structure of the governance of the mutual.

In Sweden, mutuals provide health insurance supplementary to the compulsory system, however there is some hesitation from their side to operate in this market, since supplementary health insurance is not considered to fit very well with the prevailing values of solidarity and equality (see box below).

Sweden: limited presence in health insurance

In Sweden, mutuals are by definition insurers. Social protection in Sweden is considered to be both of very high quality and accessible to all. The three basic principles underpinning the provision of health care by the statutory system are the following: the principle of human dignity, the principle of need and solidarity, the principle of cost-effectiveness.

The health status of the Swedish population is amongst the highest in the world. The Swedish healthcare system is closely linked to social insurance, which means that everyone who lives or works in Sweden has access to heavily subsidized healthcare.[74] The Swedish healthcare system is primarily paid through taxes, which are collected both at local and national level.

The social insurance in Sweden is administered by the Swedish Social Insurance Agency (Försäkringskassan).

Social insurance includes sickness insurance, parental insurance (leave), a basic retirement pension, a supplementary pension, child allowance, income support and housing allowance. Along sides the insurance business, the Agency is also involved in prevention and the reduction of ill health through positive proactive action with the eventual goal of returning the person to the workforce. The Swedish Social Insurance Agency has a regional branch

[71] Albreht, T, Turk E, Toth M, Ceglar J, Marn S, Pribaković Brinovec R, Schäfer M, Avdeeva O and van Ginneken E. Slovenia: Health system review. Health Systems in Transition. 2009; volume 11(3): 56, 142; Corporate governance in a mutual insurance company. Case of Vzajemna mutual insurance company, Slovenia. Dušan Kidrič, Chairmen of the management Board.

[72] Law on Changes and Amendments to the Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia 100/2005; 2005, see: Albreht, T, Turk E, Toth M, Ceglar J, Marn S, Pribaković Brinovec R, Schäfer M, Avdeeva O and van Ginneken E. Slovenia: Health system review. Health Systems in Transition. 2009; volume 11(3): 56, 142.

[73] Corporate governance in a mutual insurance company/amendment to the Insurance Act - Official Gazette of the Republic of Slovenia No. 79/10 of 8 October 2010

[74] http://www.sweden.se/eng/Home/Society/Health-care/Reading/Swedish-health-care-and-social-security

office in each county council, which processes individual cases at the regional and local levels. There are also 240 local offices serving local residents.[75]

The social security system does not leave much for voluntary (supplementary) healthcare insurers to cover. For this reason private health insurance is small in Sweden. In 2003, about 200,000 inhabitants (2.3 per cent of the population) had voluntary health insurance.[76] At the same time though, the private healthcare insurance market is growing, due to waiting lists for elective treatment. People choose to have a voluntary insurance to have quick access to specialised care.

The voluntary health insurance is provided by private insurers, and only to a limited extent by mutual insurers. The reason for this seems to be that the rationale behind the voluntary insurance does not fit very well with the mutualistic ideas, namely, solidarity and equality. The voluntary insurance is intended to provide preferential treatment to its members and herewith not to act with the general good in mind.

Though mutuals are limitedly involved in voluntary health insurance, they are very active in other markets. Within the non-life insurance market, the mutual insurers have 52.6 per cent market share in 2008. Within the life assurance market, their share is 11.1 per cent.[77] One of the largest mutuals, Folksam, has around 4 million costumers and serves every second family in Sweden.

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 are repealed. In the New Act, the general Companies Act is (by reference) 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.[78]

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. A reason for this 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. 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.[79] The new Act and the harmonisation of mutual and cooperative legal frameworks do not affect the way mutuals operate on insurance markets in Sweden.

[75] See: Glenngård A.H, Hjalte F, Svensson M, Anell A, Bankauskaite V. Health Systems in Transition: Sweden. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2005.
[76] Glenngård A.H, Hjalte F, Svensson M, Anell A, Bankauskaite V. Health Systems in Transition: Sweden. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2005.
[77] ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010
[78] http://www.sweden.gov.se/sb/d/12677/a/152256, http://www.sweden.gov.se/sb/d/13416/a/152060.
[79] Eckerberg, Per Johan, Peter Morawetz and Per Brandt, A possible modernization of the Swedish Insurance Business Act. In: Nordisk Försäkringstidskrift, 2009: www.nft.nu

An important factor that has determined the evolution in the role mutuals play in health insurance was in many European countries the establishment of national health services after the Second World War or later on. In France, despite the introduction of statutory health insurance, mutuals have maintained great importance.

France: Statutory health insurance and mutuals

In France, mutuals are mainly involved in complementary health insurance. In the 19th century, social protection was mainly delivered by organisations within the mutual benefit movement. By 1900, the number of mutual benefit organisations had reached 13,000 and covered 2.5 million citizens. Mutuals continued to play an important role in French political life and by the 1940s these associations had nearly 10 million members.[80] In order to create a system with universal coverage and uniform rights for all, the present system of social security, including statutory health insurance, was established in 1945. This reform was inspired by the British 'Beveridge report' from 1942.

Today, three main health insurance schemes exist, covering 95 per cent of the population: 1) the general health insurance scheme (*régime général*), covering employees in commerce and industry and their families, 2) the agricultural scheme covering citizens working in agriculture (MSA, *Mutualité Sociale Agricole*), and 3) the national insurance fund for self-employed non-agricultural workers (CANAM: *Caisse Nationale d'Assurance Maladie des Professions Indépendantes*). Although these health insurance funds rely on sectoral agreements, the State takes responsibility for the financial and operational management of the funds by setting, for example premium levels and prices for services.[81]

The implementation of the Universal Health Coverage Act (*Couverture maladie universelle:* CMU) in 2000 (Act passed in June 1999), opened up the right to statutory health insurance coverage on the basis of residence in France. In addition, citizens with a very low income (1.8 per cent of the population) are entitled to free coverage.

Despite the introduction of the national social protection system and the statutory health insurance, the mutual benefit associations remained a political force and still cover a large part of the population offering voluntary health insurance. More than 92 per cent of the population has a supplementary coverage, including 7.4 per cent covered by the complementary Universal Health Coverage (*Couverture maladie universelle complémentaire*: CMU-C), which entails a free coverage of complementary health insurance for people with a very low income.

The main sources of finance of the healthcare provision are the public health insurance, accounting for 76.6 per cent of the expenditure in 2007, the private health insurance (13.6 per cent) and individuals themselves (out-of-pocket), contributing 8.5 per cent of the total expenditure. Within the category of private health insurance, mutuals account for 7.9 per cent of the total health expenditure.[82]

In comparison to the commercial insurers, operating on the market as well, the clientele of mutual societies is older and to a larger extent female. In addition, the emphasis is on office employees and intermediate professionals. Other professional groups, such as farmers and independent professionals, tend to opt for commercial insurance companies.

[80] Sandier S, Paris V, Polton D. Health care systems in transition: France. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
[81] Sandier S, Paris V, Polton D. Health care systems in transition: France. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
[82] National Health Account (Ministry of Health), taken from Monique Kerleau, Anne Fretel, Isabelle Hirtzlin, Regulating Private Health Insurance in France: New Challenges for Employer-Based Complementary Health Insurance, Documents de Travail du Centre d'Economie de la Sorbonne, 2009.

In the UK, the National Health Service was created in 1948, and mutuals are currently active in voluntary health insurance markets together with commercial insurers.

United Kingdom: National Health Service and private health insurance

In the UK, the contours of the modern welfare state were built on 19th century mutualistic regimes, erected by citizens to reduce risks linked to health, old age, and the labour market. The mutuals or the so-called 'friendly societies' further developed throughout the 19th century and in 1913 the mutualist movement had around 6.78 million members.[83]

In 1942 William Henry Beveridge took the poor health of the nation as subject for his groundbreaking report. This resulted in the setting up of a national health service to provide medical care for all, regardless of income, age and background. The National Health Service Act was passed in 1946 and the National Health Service (NHS) began operating two years later. It is a tax-based system and falls under managerial responsibility of the Department of Health. The establishment of the National Health Service abolished the involvement of mutual organisations and friendly societies in (social) risk management.

What is excluded from the coverage by the NHS is care that is not clinically essential, for example, stays in private rooms, sanatoria, health clinics, dentures and hearing aids.[84] As is the case in most countries with similar 'Beveridgian' structures, waiting lists are an issue. Patients usually have to wait for treatment for most, non-urgent treatments.

Of the total budget of the NHS, 90 per cent is financed through general taxation. A part of this budget is derived from employers' contributions through the National Insurance Funds. The remaining part is financed through out-of-pocket payments, receipts of land and property sales, tobacco duty and income generation.

Along side the NHS, voluntary insurance schemes exist, mainly with the purpose to provide additional medical services, cover out-of-pocket payments and to avoid waiting lists. People with a private insurance continue to pay for the NHS through their income taxes.

One cannot opt out of the NHS system and therefore private insurance partly duplicates the NHS services. The total number of people covered is about 7.3 million, including subscribers' dependents, about 12.2 per cent of the population.[85]

The private health insurance is partly provided by mutuals. In 2007 there were 8 mutual and 10 commercial private medical insurers in the UK. The main characteristics of the typical mutual health fund are that it is:

1) locally based, and often with a strong and at times venerable local tradition;
2) usually supported by local dignitaries; and
3) linked with a charitable trust to which the fund makes payments under covenant or by gift-aid supporting mainly local health and welfare charities.[86]

[83] Southall, H. R., "Ni Etat ni marché: Les premières prestations sociales en Grande-Bretagne", in MiRe, Comparer les systèmes de protection sociale en Europe, Volume 1: Rencontres d'Oxford, Paris, MiRe, 65–103, 1995.
[84] AIM, Health system protection today: structures and trends in 13 countries, 2008
[85] Laing and Buisson's Healthcare Market Review 2007-8, www.laingbuisson.co.uk
[86] See : http://www.hmrc.gov.uk/manuals/gimanual/GIM9120.htm

A different example is Italy, where the role of mutuals declined after reforms in the 1970s, when a national health system was created. The national health system established universal coverage for all Italians and took over services provided previously by mutuals (see box below).

Italy: Declining role in health insurance

In the 19th century and the beginning of the 20th century, social protection was very fragmented in Italy. Partially the national welfare State provided services, but on the other hand also the Catholic Church, municipalities and employers provided social protection schemes to some extent.

In 1878 around 2,000 mutuals existed, with approximately 330,000 members. In the 20th century the mutual health insurance funds further developed into large institutions, having their own facilities and reimbursing patients for costs for healthcare.

During the Fascist period, mutual health funds were progressively integrated into the statutory health system. Different categories of workers were automatically registered with separate mutuals that reimbursed their health costs. In the 1970s mutuals covered almost the entire population. Amongst the 7 per cent of the population not covered by any form of insurance were the unemployed.

However, it became clear with time that the healthcare system was affected by serious structural problems, such as organizational fragmentation, compartmentalization across levels of care, unnecessary duplication of services, bureaucratization and rapid growth of expenditure, as well as large inequalities. In addition, the insurance funds' large deficits led to a financial crisis, which prompted the government to intervene. In 1974 and 1975, Laws Nos. 386/1974 and 382/1975 transferred the responsibility for managing hospitals to the regions. Soon after, health insurance funds were abolished and the National Health Service (Servizio Sanitario Nazionale: SSN) was established.[87]

The SSN established universal coverage for all Italian citizens and was based on the principles of human dignity, healthcare needs and solidarity.

The aim was to guarantee equal access for everyone to uniform levels of healthcare, irrespective of income or geographical location, to develop disease prevention schemes, to reduce inequality in the geographical distribution of healthcare, to control health expenditure growth and to guarantee public democratic control over the management of the whole system.[88]

In the 1990s, competence for the management of the SSN was transferred to the regional level. The fiscal decentralisation, which started in 1997 with the introduction of a regionally collected system of tax financing, caused imbalances between the regions with regard to coverage. To equalise regional differences, a National Health Fund was created. This fund was used by the central government to disperse healthcare financing to the regions, and was abolished in 2000 and replaced by various regional taxes.[89]

[87] See: Lo Scalzo A, Donatini A, Orzella L, Cicchetti A, Profili S, Maresso A. Italy: Health system review. Health Systems in Transition, 2009; 11(6)1-216
[88] See: Lo Scalzo A, Donatini A, Orzella L, Cicchetti A, Profili S, Maresso A. Italy: Health system review. Health Systems in Transition, 2009; 11(6)1-216
[89] Legislative Decree No. 56/2000

The coverage of the SSN is generally high-quality and accessible to all Italian citizens; coverage is free for some groups of the population with low income. There are, on the other hand, regional differences and a recurrent issue is the waiting time for healthcare services.

Complementary health insurance offers the possibility to avoid waiting list and to cover out-of-pocket costs. In total, 76 per cent of the health expenditure is provided through taxes, 19 per cent is covered by out-of-pocket payments and only 2 per cent is accounted for by voluntary health insurance (2006 data).[90] This has been changing in recent years since more and more co-payments are introduced, for instance for pharmaceuticals. Currently, less than 20 per cent of the Italian population is covered by complementary health insurance.[91]

The complementary health insurance market is divided in two groups[92]:

- corporate insurance (companies offer coverage to their employees and often also to their families with a collective insurance scheme), supplied by for-profit organisations, companies and professional groups (Casse di Categoria) and
- non-corporate insurance (individuals buy insurance for themselves and for their family), which can be supplied by for-profit companies and not-for-profit mutual organisations (Società di Mutuo Soccorso), whose role is, however, quite limited.

In general, premiums of individual policies sold by for-profit insurers are higher than those provided by mutual associations and members of mutual associations tend to have lower incomes than policyholders related to commercial insurers.[93] The corporate insurance, or the so-called 'supplementary health insurance funds', can only be managed by for-profit companies. The funds are based on employer contributions and include some tax benefits.[94]

In nine Member States (mainly new Member States), mutuals are not involved in health insurance, either because they do not exist or because they focus on other insurance markets. In these countries voluntary health insurance is mainly offered by commercial providers. For instance in Slovakia, according to the 2008 Act on Insurance, Slovak insurance companies must be joint-stock companies or European companies. If people are members of a mutual, they are members of large foreign mutuals or 'hybrid' organisations operating on the Slovak market.[95]

3.2. Mutuals active in private pension schemes

Mutuals are typically active in the private pension sector, either in the form of mutual benefit societies or mutual insurance companies:

- In relation to mutual benefit societies, Hungary serves as an example. In this country, the voluntary pension funds are founded by – a minimum of – 15 persons

[90] Data from OECD, 2008, taken from: Lo Scalzo A, Donatini A, Orzella L, Cicchetti A, Profili S, Maresso A. Italy: Health system review. Health Systems in Transition, 2009; 11(6)1-216
[91] Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009.
[92] See: Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.
[93] Lo Scalzo A, Donatini A, Orzella L, Cicchetti A, Profili S, Maresso A. Italy: Health system review. Health Systems in Transition, 2009; 11(6)1-216
[94] See: ANIA (Associazione Nazionale Imprese Assicuratrici), Italian Insurance 2009-2010, 2010
[95] AMICE, The market share of Mutual and Cooperative Insurance in Europe 2008, 2009.

and operate as mutual foundations. Also, the funds are owned by the fund members.[96] Another example can be found in Greece, where mutual aid societies created by trade unions provide retirement benefits (as well as sickness benefits) financed through members' contributions and (if agreed in a collective labour agreement) employers' contributions. Affiliation with these associations is voluntary.[97] In Spain, mutual benefit societies concentrate on the provision of private pensions and they hold a considerable share of the market.[98] In some cases, mutual benefit societies can offer additional services together with the payment of pensions to the retired, including specially designed services for the elderly.

- Mutual insurance companies are also active in the pension sector, and in this context they play roles of varying importance in the different Member States. Danish and German pension funds, for example, have a mutual structure, and in Finland there is a large privately run pension insurance sector, which is dominated by insurers with a mutual structure. In the new Member States, where mutual insurance is less common, hardly any mutual can be found in this branch. In Poland, for example, legislation allows mutuals to run employee pension programmes, but since 2005 no employee pension programmes have been registered as a mutual insurance company. In most Member States, private pensions are provided in combination with life insurance policies.

3.3. Concluding remarks

In general terms there is a clear link between the characteristics of social protection systems in the Member States and the activities mutuals perform in these countries.

If we look at factors that have contributed to an extensive role for mutuals in social protection in different Member States by comparing findings from this and the previous chapter in our report, the following conditions can be identified:

1. **The lack of public/ governmental provision of needed services:** a limited statutory social protection system, which leaves room for private providers to offer supplementary services;
2. **A long and uninterrupted tradition of mutuality**: mutuals are well-established in culture/society; people are familiar with the mutualist idea and can differentiate mutual companies/societies from other organisations;
3. **Special position for mutuals in legislation**: it is not enough to solely establish legislation allowing for the creation of mutuals, other provisions also need to be introduced, such as on financial issues or consumer protection, that take into account the specific features of this form of enterprise. In addition, legislation can also be too restrictive in relation to the activities mutuals are allowed to carry out;
4. **Preferential treatment for organisations providing services on a mutualist basis**: when mutuals carry out social services or other services for the general interest, they can work under certain favourable conditions, such as preferential tax regimes or less rigorous solvency requirements' legislation.

[96] OECD, Insurance and private pensions compendium for emerging economies; private pensions: selected country profiles, 2001.
[97] Amitsis, Gabriel, Current Policies and Reform Plans for the Greek Benefits Framework, Benefits & Compensation International, Volume 31, Number 7, March 2002.
[98] In taking part to the 2003 consultation on a Statute for European mutuals launched by the European Commission, CNEPS (Confederación Española de Mutualidades) specified that Spanish mutual benefit societies held a 30 per cent share of the market for private pensions.

4. MUTUALS IN THE EU INTERNAL MARKET

KEY FINDINGS

- In general, EU internal market rules apply to mutuals as to all economic operators. The insurance sector is regulated by directives establishing an integrated market at European level.
- The so-called 'Solvency II' directive calls for increased solvency margins and risk differentiation for financial service providers. Because smaller and medium-sized mutuals are often focussed on one particular risk, cover one homogeneous group and have more difficulties in acquiring (risk) capital, compliance with the Solvency II rules can be more difficult for them and could have significant consequences, also finally resulting in their dissolution.
- In some cases, the activities performed by mutual societies are defined as social services of general interest; to this respect, an important distinction needs to be made between activities that are of an economic nature and activities that can be considered not to be economic. Where a service of general interest is classified as economic, it is regulated by EU internal market and competition rules, although with some possible exceptions. On the other hand, if it is non-economic, it falls outside the scope of the Treaty. Several cases have been decided by the European Court of Justice. Mutuals provide social services in both fields, which sometimes makes it difficult to determine whether those are regulated by EU rules or not.
- Opinions on a Statute for European Mutuals vary. There are many arguments in favour of the Statute, but there are also some doubts. If initiatives are taken to establish a Statute for European Mutuals, the issue of practical usability needs to be firmly on the agenda.

Mutual societies are considered as 'companies' under the definition of the TFEU. As such, they enjoy the rights associated to freedom of establishment and freedom to provide services throughout the European Union and European legislation applies to them as to all economic operators. In addition, mutual societies are active in markets which are highly regulated through sector-specific legal provisions (insurance in particular). Mutual societies also play an important role in the social and health sectors and some of the activities they perform fall under the definition of "social services of general interest" of either economic or non-economic nature and, hence, may be partially or totally excluded from the scope of EU internal market and competition rules.

This chapter will discuss European legislation specifically applicable to mutual enterprises, governing the markets in which they operate and affecting how they function. Section 4.1 will describe in more detail internal market directives on insurance in relation to mutuals. European law on "social services of general interest" will be subsequently discussed in Section 4.2. Then, the initiative to establish a Statute for European Mutuals is assessed in more details (Section 4.3), finishing with some concluding remarks (Section 4.4).

4.1. EU legislation on insurance services and mutuals

In this section, three types of directives will be discussed, namely the so-called 'life' directives, 'non-life' directives and the recently adopted directive concerning the solvency requirements for insurance institutions, known as 'Solvency II'.

The general aim of the first two series of insurance directives is to set out the rules under which insurance services can be provided within the European Union as one integrated market.[99] The 'Solvency II' directive, which is not yet in force, is expected to introduce very important changes in the EU insurance market, with a considerable impact on mutual societies.

4.1.1. Life insurance

A series of directives have set the rules under which services can be provided in the field of life assurance. There have been three directives on life insurance in the past[100], before all were consolidated in one coherent legal text with Directive 2002/83/EC.[101]

Directive 2002/83/EC covers 'the taking-up and pursuit of the self-employed activity of direct insurance[102] carried on by undertakings which are established in a Member State or wish to become established there'.

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[99] Bikker, Jacob A., Janko Gorter, Restructuring of the Dutch nonlife insurance industry: consolidation, organizational form, and focus, in: The Journal of Risk and Insurance, 2011, Vol. 78, No. 1, 163-184.

[100] 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.

[101] 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).

[102] The following activities are comprised within the scope of the directive (Article 2):
1) the following kinds of assurance where they are on a contractual basis:
(a) life assurance, that is to say, the class of assurance 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, birth assurance;
(b) annuities;
(c) supplementary insurance carried on by life assurance undertakings, that is to say, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness, where these various kinds of insurance are underwritten in addition to life assurance;
(d) the type of insurance existing in Ireland and the United Kingdom known as permanent health insurance not subject to cancellation;
2) the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the administrative authorities responsible for the supervision of private insurance:
(a) tontines whereby associations of subscribers are set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased;
(b) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
(c) management of group pension funds, i.e. operations consisting, for the undertaking concerned, in managing the investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
(d) the operations referred to in (c) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;
(e) the operations carried out by assurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French 'Code des assurances'.
3) Operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of a Member State.

The provision of life insurance services is subject to the grant of a single official authorisation issued by the competent authorities of the Member State in which an assurance undertaking has its head office. Such authorisation is valid throughout the European Union and shall permit an assurance 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 of supervision by the home Member State applies.

For an operator to be authorised to provide life insurance services, certain criteria need to be met. Firstly, the provider must adopt one of the legal forms required in the home Member State[103]; secondly, it must possess a minimum guarantee fund[104]; and thirdly, it should provide the information required by the competent authorities.

The directive also provides for the necessary cooperation between the competent authority in the home Member State and the competent authorities in the other Member States in which an undertaking carries on business.

The activities carried out by some mutuals are explicitly excluded from the scope of the directive[105], i.e.:

1) 'operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate' (single fixed fee for a service);
2) 'mutual associations, where:

[103] The adopted forms in the Member States are presented in this footnote. The terms for mutual societies are underlined. - in the case of the Kingdom of Belgium: "société anonyme/naamloze vennootschap", "société en commandite par actions/commanditaire vennootschap op aandelen", "association d'assurance mutuelle/onderlinge verzekeringsvereniging", "société coopérative/coöperatieve vennootschap", - in the case of the Czech Republic: "akciová společnost", "družstvo",' - in the case of the Kingdom of Denmark: "aktieselskaber", "gensidige selskaber", "pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)", - in the case of the Federal Republic of Germany: "Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", "öffentlich-rechtliches Wettbewerbsversicherungsunternehmen", - in the case of the Republic of Estonia: "aktsiaselts",' - in the case of the French Republic: "société anonyme", "société d'assurance mutuelle", "institution de prévoyance régie par le code de la sécurité sociale", "institution de prévoyance régie par le code rural" and "mutuelles régies par le code de la mutualité", - in the case of Ireland: "incorporated companies limited by shares or by guarantee or unlimited", "societies registered under the Industrial and Provident Societies Acts" and "societies registered under the Friendly Societies Acts," - in the case of the Italian Republic: "società per azioni", "società cooperativa", "mutua di assicurazione", in the case of the Republic of Cyprus: "Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης με εγγύηση", in the case of the Republic of the Latvia: "apdrošināšanas akciju sabiedrība", "savstarpējās apdrošināšanas kooperatīvā biedrība", in the case of the Republic of Lithuania: "akcinės bendrovės", "uždarosios akcinės bendrovės",' - in the case of the Grand Duchy of Luxembourg: "société anonyme", "société en commandite par actions", "association d'assurances mutuelles", "société coopérative", - in the case of the Republic of Hungary: "biztosító részvénytársaság", "biztosító szövetkezet", "biztosító egyesület", "külföldi székhelyű biztosító magyarországi fióktelepe", - in the case of the Republic of Malta: "kumpanija pubblika", "kumpanija privata", "fergħa", "Korp ta' l- Assikurazzjoni Rikonnoxxut",' - in the case of the Kingdom of the Netherlands: "naamloze vennootschap", "onderlinge waarborgmaatschappij", - in the case of the United Kingdom: "incorporated companies limited by shares or by guarantee or unlimited", "societies registered under the Industrial and Provident Societies Acts", "societies registered or incorporated under the Friendly Societies Acts", "the association of underwriters known as Lloyd's", - in the case of the Hellenic Republic: "ανώνυμη εταιρία", - in the case of the Kingdom of Spain: "sociedad anónima", "sociedad mutua", "sociedad cooperativa", - in the case of the Portuguese Republic: "sociedade anónima", "mútua de seguros", - in the case of the Republic of Poland: "spółka akcyjna", "towarzystwo ubezpieczeń wzajemnych",' - in the case of the Republic of Austria: "Aktiengesellschaft", "Versicherungsverein auf Gegenseitigkeit", - in the case of the Republic of Finland: "keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag", "vakuutusosakeyhtiö/försäkringsaktiebolag", "vakuutusyhdistys/försäkringsförening", - in the case of Kingdom of Sweden: "försäkringsaktiebolag", "ömsesidiga försäkringsbolag", "understödsföreningar", - in the case of the Republic of Slovenia: "delniška družba", "družba za vzajemno zavarovanje", - in the case of the Slovak Republic: "akciová spoločnost", - in the case of Romania: 'societăți pe acțiuni', 'societăți mutuale', - in the case of Bulgaria: 'акционерно дружество', 'взаимозастрахователна кооперация'.
An assurance undertaking may also adopt the form of a European company when that has been established.

[104] Article 29 specifies that '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'.

— the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and

— the annual contribution income for the activities covered by this Directive does not exceed EUR 5 million for three consecutive years'.

Mutuals are excluded from offering life insurance in Greece.[106] In other countries, for instance, in Bulgaria, mutuals are restricted to providing life insurance: according to the Bulgarian insurance code, 'mutual insurance cooperatives' may only provide life insurance, including pension insurance.[107]

4.1.2. Non-life insurance

Similarly to what happens in the life assurance sector, the aim of EU directives on non-life insurance is to introduce a single authorisation system, whereby an insurance company based in one Member State and allowed to provide non-life insurance services under national law may at the same time open branches or carry out business activities in EU countries other than that in which its head office is based.

Whereas the first and second generation of insurance directives only opened the European market for insurance services covering large risks, such as those associated with insurance in the field of aviation and marine insurance, the third generation[108] established a single market for insuring all types of risks falling within the scope of direct insurance other than life assurance[109], including health-related risks.[110]

The legal forms which undertakings must adopt in order to be authorised to provide non-life insurance services are in most Member States the same as those foreseen by life assurance directives.[111]

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[105] See: 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, Article 3.

[106] See: Law Decree 400/1970 (Government Gazette 10/A/17.1.1970) "Regarding Private Insurance Undertakings"

[107] See: Republic of Bulgaria, Insurance code, State Gazette, No. 103/23.12.2005, latest amendment: State Gazette No.109/20.12.2007.

[108] 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.

[109] The classes of insurance covered by the non-life directives are: Accident (including industrial injury and occupational diseases); Sickness; Land vehicles; Railway rolling stock; Aircraft; Ships; Goods in transit; Fire and natural forces; Other damage to property; Motor vehicle liability; Aircraft liability; Liability for ships; General liability; Credit; Suretyship; Miscellaneous financial loss; Legal expenses; Tourist assistance.

[110] Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.

[111] The adopted forms in the Member States are presented in this footnote. The terms for mutual societies are underlined. — in the case of the Kingdom of Belgium: 'société anonyme — naamloze vennootschap' — , 'société en commandite par actions —commanditaire vennootschap op aandelen' — 'association d'assurance mutuelle — onderlinge verzekeringsvereniging' — ,'société coopérative —coöperatieve vennootschap'; — in the case of the Kingdom of Denmark: 'aktieselskaber', 'gensidige selskaber'; — in the case of the Federal Republic of Germany: 'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit', 'Öffentlichrechtliches Wettbewerbsversicherungs-

In general, very small companies operating in niche-markets are not covered by the non-life directives. Under certain conditions, mutual associations are also excluded from the scope of application of the directives: these conditions have to do with the way additional contributions are gathered, the size of the mutuals, types of activities and arrangements concerning reinsurance.[112]

As with life assurance, operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis are excluded from the scope of the non-life insurance directives.[113] Also, provisions concerning the minimum fund and the related special treatment allowed for mutuals are similar to those in Directive 2008/83/EC.[114]

It must be additionally noted that undertakings cannot be authorised to perform life assurance and non-life insurance activities simultaneously. Where this had been the case before the entry into force of the relevant provisions, Member States could allow this to continue provided that separate management was adopted by the providers concerned.

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unternehmen'; — in the case of the French Republic: 'société anonyme', 'société d'assurance mutuelle', 'institution de prévoyance régie par le code de la sécurité sociale', 'institution de prévoyance régie par le code rural' and 'mutuelles régies par le code de la mutualité'; — in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited; — in the case of the Italian Republic: 'società per azioni', 'società cooperativa', 'mutua di assicurazione'; — in the case of the Grand Duchy of Luxembourg: 'société anonyme', 'société en commandite par actions', 'association d'assurances mutuelles', 'société coopérative'; — in the case of the Kingdom of the Netherlands: 'naamloze vennootschap', 'onderlinge waarborgmaatschappij'; — in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's; — in the case of the Hellenic Republic: 'ανώνυμη εταιρία', 'αλληλασφαλιστικός συνεταιρισμός'; — in the case of the Kingdom of Spain: 'sociedad anónima', 'sociedad mutua', 'sociedad cooperativa'; — in the case of the Portuguese Republic: 'sociedade anónima', 'mútua de seguros'; — in the case of the Republic of Austria: 'Aktiengesellschaft', 'Versicherungsverein auf Gegenseitigkeit'; — in the case of the Republic of Finland: 'keskinäinen vakuutusyhtiö —ömsesidigt försäkringsbolag' — ,'vakuutusosakeyhtiö — försäkringsaktiebolag' — 'vakuutusyhdistys — örsäkringsförening'; — in the case of the Kingdom of Sweden: 'försäkringsaktiebolag', 'ömsesidiga försäkringsbolag', 'understödsföreningar'; — in the case of the Czech Republic: 'akciová společnost', 'družstvo'; — in the case of the Republic of Estonia: 'aktsiaselts'; in the case of the Republic of Cyprus: 'Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης χωρίς μετοχικό κεφάλαιο'; — in the case of the Republic of Latvia: 'apdrošināšanas akciju sabiedrība', 'savstarpējās apdrošināšanas kooperatīvā biedrība'; — in the case of the Republic of Lithuania: 'akcinės bendrovės', 'uždarosios akcinės bendrovės'; — in the case of the Republic of Hungary: 'biztosító részvénytársaság', 'biztosító szövetkezet', 'biztosító egyesület', 'külföldi székhelyű biztosító magyarországi fióktelepe'; — in the case of the Republic of Malta: 'kumpanija pubblika', 'kumpanija privata', 'fergħa', 'Korp ta' l- Assikurazzjoni Rikonnoxxut'; — in the case of the Republic of Poland: 'spółka akcyjna', 'towarzystwo ubezpieczeń wzajemnych'; — in the case of the Republic of Slovenia: 'delniška družba', 'družba za vzajemno zavarovanje'; — in the case of the Slovak Republic: 'akciová spoločnosť'; — in the case of Bulgaria: 'акционерно дружество'; — in the case of Romania: 'societăți pe acțiuni', 'societăți mutuale'. An insurance undertaking may also adopt the form of a European Company (SE) when that has been established.

[112] 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. Article 3: 1. This Directive does not apply to mutual associations in so far as they fulfil all the following conditions: - the articles of association must contain provisions for calling up additional contributions or reducing their benefits, - their business does not cover liability risks - unless the latter constitute ancillary cover within the meaning of subparagraph (c) of the Annex - or credit and suretyship risks, - the annual contribution income for the activities covered by this Directive must not exceed one million units of account, - and at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association. 2. This Directive shall not, moreover, apply to mutual associations which have concluded with other associations of this nature an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the concessionary undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the concessionary undertaking shall be subject to the rules of this Directive.

[113] Article 2 of Council Directive 73/239/EEC.

[114] Directive 2002/13/EC, Article 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'.

4.1.3. Solvency II

The basic principles behind the so-called 'Solvency II' directive[115], which was adopted in 2009 and will enter into force on 1st January 2013, 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:

1) the taking-up and pursuit, within the European Union, of the self-employed activities of direct insurance and reinsurance;
2) the supervision of insurance and reinsurance groups;
3) 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.[116] Also for small undertakings with an annual gross written premium income not exceeding 5 million euros, the Solvency II Directive does not apply. The national supervisory authorities check whether undertakings are excluded from the directive.

For 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 partially reject their mutualistic values by becoming a stock holding company in order to obtain additional funds or to merge with other companies (leading to de-mutualisation, i.e. the process of a mutual transforming into a different legal form).

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 contributions.[117]

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[115] 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.
[116] Ibidem
[117] Ibidem, Article 89.

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.

4.2. Mutuals as providers of social services of general interest

4.2.1. Social services of general interest (SSGIs)

Although no binding legal text exists defining social services of general interest (SSGIs), they can be described as "activities supplied by the public authorities or entrusted by them to private entities, to which missions of general interest are entrusted for the purpose of social protection, social and territorial cohesion, national solidarity and the implementation of fundamental rights."[118]

Beyond healthcare services, SSGIs include two other major groups of services[119]:

- statutory and complementary social security schemes, covering the main risks of life, such as those linked to health, ageing, occupational accidents, unemployment, retirement and disability;
- other essential services provided directly to the person. These might include services with a preventive and social cohesive role, such as personal assistance of people in danger of social exclusion, job loss, debt, etc.

4.2.2. Providers of SSGIs

In the modern welfare States, social security and healthcare were reserved exclusively for the public authorities. In order to keep systems affordable, there has been a noticeable shift in more recent times from public programming regulation to market-based regulation. The latter usually requires the use of corrective mechanisms to tackle market failures.[120] Given this shift in governance models, SSGIs are not solely provided by public organisations anymore, but by private organisations as well.

The following 'organisational conditions' have been identified by the European Commission as distinguishing features of privately run SSGIs in the EU[121]:

- they operate on the basis of the solidarity principle, which is required, in particular, in the form of the non-selection of risks or the absence, on an individual basis, of equivalence between contributions and benefits;
- they are comprehensive and personalised, integrating the response to differing needs, in order to guarantee fundamental human rights and protect the most vulnerable;
- they are not for profit and in particular to address the most difficult situations and are often part of a historical legacy;
- they include the participation of voluntary workers, expression of citizenship capacity;
- they are strongly rooted in (local) cultural traditions. This often finds its expression in the proximity between the provider of the service and the beneficiary;

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[118] See: 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.
[119] Commission of the European Communities, Communication from the Commission - Implementing the Community Lisbon programme: Social services of general interest in the European Union, COM (2006)177 final
[120] Commission of the European Communities, Biennial report on social services of general interest, 2008.
[121] See: Commission of the European Communities, Communication from the Commission - Implementing the Community Lisbon programme: Social services of general interest in the European Union, COM (2006)177 final.

- an asymmetric relationship between providers and beneficiaries, that cannot be assimilated with a 'normal' supplier/consumer relationship and requires the participation of a financing third party.

4.2.3. Debate on SSGIs and the application of EU rules

Discussions on SSGIs in European law concern not only the interpretation of existing rules, but also the need for a specific intervention of the EU legislator aimed to set out a clearer legal framework for SSGIs, which several stakeholders have repeatedly asked for.[122]

In order to clarify the issues at stake, first the concepts of Services of General Economic Interest (SGEI) and Non Economic Services of General Interest (NESGI) need to be explained. The criterion of economic activity is in fact a fundamental one to determine whether the EU rules on competition and the internal market apply.

Following the entry into force of the Lisbon Treaty, the Treaties now explicitly refer to SGEI in Article 14 TFEU, and to NESGI in Protocol No 26 on services of general interest. The protocol, in particular, acknowledges the essential role national, regional and local governments play in providing services to citizens, respecting principles of universality, accessibility, affordability, proximity and quality and specifies that NESGI are not affected by the Treaties.[123]

If, on the contrary, a service of general interest is regarded as economic, it is subject to EU law, notably internal market and competition rules. However, 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".

"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."[124] 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.

Therefore, 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".[125] 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.[126] This distinction

[122] European Commission, Second biennial report on social services of general interest, October 2010.
[123] Protocol No 26, Article 2: 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.
[124] 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.
[125] See, for example, cases C-180/98 to C-184/98, Pavlov and others. See: Commission of the European Communities, Communication from the Commission, Implementing the Community Lisbon programme: Social services of general interest in the European Union COM(2006)177 final.
[126] See : 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.

between economic and non-economic services, however, provides a source of uncertainty for public authorities and providers of social services.

The European Commission's Guide on the application of European Rules on State Aid[127], explicitly refers to compulsory health insurance as an 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 independently of contributions" can be added.[128] 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).

The issue of State aid is an especially relevant aspect for mutual societies. Member States are allowed to subsidise the provision of certain social services if those are not economic in nature, as these kind of activities fall under the sole jurisdiction of the Member States themselves. However, EU rules allow for other cases where compensation for public service obligations does not constitute State aid and is compatible with EU rules or cases where, although being considered as State aid, compensation is not forbidden.[129]

However, this poses problems on a number of grounds, namely, setting the right level of compensation for public service obligations[130], organising public procurement procedures, applying internal market rules appropriately.

In a number of countries, mutuals have historically developed to carry out a variety of services, some of which are strictly social in nature and others that are provided in economic markets. State aid for the social services can therefore lead to a disturbance of the level playing field with other commercial companies in markets open to competition.

Examples of controversies involving mutuals can be mainly found in relatively heavily regulated markets for voluntary health insurance coverage, such as Belgium, France, Ireland and Slovenia.[131]

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[127] 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.

[128] 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.

[129] 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.

[130] 1) The recipient undertaking must actually have public service obligations to discharge and those obligations must be clearly defined ; 2) The parameters on the basis of which the compensation is calculated must be established both in advance and in an objective and transparent manner ; 3) The compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit ; 4) Where the undertaking is not chosen in a public procurement procedure, the level of compensation must be determined by a comparison with an analysis of the costs that a well run company would incur (taking into account the receipts and a reasonable profit from discharging the obligations). See: Case C-280/00 Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH, judgment of 24 July 2003, and: 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.

[131] Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.

4.2.4. Infringement procedures and case law

These controversies manifest themselves specifically in relation to issues on solvency requirements and preferential (tax) treatment for mutuals. As to solvency requirements, national law often distinguishes between non-profit and for-profit organisations, granting preferential treatment to the former, whereas under EU rules there should be a level playing field within the insurance business, regardless of the organisational type of insurer.

For France this meant eventually adopting a revision of the special 'Code de la Mutualité', tightening the solvency requirements for mutuals to live up to the legal requirements of the Non-life Directive.[132]

Another country facing problems implementing the directive was Belgium, where mutual benefit societies provided both the compulsory healthcare insurance and complementary healthcare insurance (see box below).

Belgium

The European Commission has recently requested Belgium to modify its rules on the provision of complementary insurance by the mutual benefit societies managing the compulsory health system, so as to guarantee that all providers (both mutual benefit societies and other insurers) fall under the same regime.[133]

On 20 September 2009, the European Commission decided to refer Belgium to the European Court of Justice over its national rules on complementary health insurance provided by mutual benefit societies.

In the Commission's view, the Belgian legislation applicable to these societies (the Act of 6 August 1990) had not correctly and completely implemented the provisions of the First and Third Non-Life Insurance Directives, as far as the mutual benefit societies' complementary health insurance activities were concerned, specifically as to prudential rules and control.[134]

The Commission did not intend to prevent mutual benefit societies from providing complementary insurance, but took the view that such activities had to be conducted in line with the non-life directives.

This finally resulted in restrictions on mutual benefit societies to providing complementary insurance alongside compulsory health insurance. Therefore the mutual benefit societies needed to create a separate legal entity for accessing the complementary health insurance market, namely: societies of mutual assistance (maatschappijen van onderlinge bijstand/sociétés mutualistes).[135]

A society of mutual assistance may only offer insurance to members of the mutual benefit society they are linked to – individuals cannot become members of the society of mutual assistance directly.

[132] For further reading on the European Court of Justice Case C-239/98, Commission of the European Communities, versus the French Republic: Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.
[133] See: IP/09/1756, Internal Market: Commission refers Belgium to Court of Justice over law on supplementary health insurance provided by private sickness funds, 20 November 2009.
[134] Corens, Dirk, Health Systems in Transition, Belgium Health system review, Vol. 9 No. 2 (2007).
[135] 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).

Slovenia also faces difficulties in applying European rules to its health insurance schemes. The government heavily regulates the complementary healthcare insurance market, which leads to some difficulties in relation to EU rules (see box below).

Slovenia

On 30 September 2010, the European Commission decided to request Slovenia to ensure that its rules on complementary health insurance comply fully with the EU Non-life Insurance Directives and with EU rules on the free movement of capital and the freedom to provide services. In the Commission's view, three aspects of the Slovenian system were not in line with EU legislation, namely 1) the requirement for foreign health insurers to appoint a representative to deal with the Slovenian authorities, 2) the fact that health insurers are restricted to using their profits for distribution to their shareholders, and 3) the provision that insurers must notify their insurance terms to the Slovenian supervisory authority, which may appoint an independent certified actuary to investigate further and, based on the actuary's findings, take further actions against the insurer.

As a consequence of the infringement procedure by the European Commission, currently, there are debates in Slovenia about incorporating the complementary scheme into the HIIS[136] and funding it through taxes. This would mean that the only existing mutual society, Vzajemna, would be abolished and its functions integrated into the HIIS. This would result in extensive fiscal reforms, with major financial consequences for the State budget.

Another recent case concerning France focused on the issue of services of general economic interest and State aid.

France

Since 1945 preferential tax treatment was granted to mutual insurers in France. As both organisations covered by the Insurance Code and those regulated by the 'Code de la Mutualité' operate on the same markets, issues arose on the matter of compliance of such preferential treatment with EU rules on State aid.

For this reason in 1992 the French Federation of Insurance Companies (Fédération Française des Sociétés d'Assurances (FFSA)) lodged two complaints against the French government for this allegedly discriminatory tax policy, arguing that it contravened EU rules on state aid. In 2001 the European Commission asked the French government to either abolish the tax exemption, or to ensure that the benefit would not exceed the costs for the constraint of providing services of general economic interest. In addition, the Commission noted that the provision of private insurance by mutual societies could not be regarded as a service of general economic interest explicitly provided for in their articles.

In order to comply with the European Commissions requests, the French government removed the tax benefit and planned to introduce new types of private health insurance contracts, named '*contrats solidaires*' and *'contrats responsables'*, which are concluded without a prior medical examination or other reference to an individual's risk of ill health and private health insurers agree not to cover new co-payments intended to encourage patients to obtain a referral for specialist care and to adhere to protocols for the treatment of chronic illnesses.

Health insurance providers – whether they are mutuals or private insurers – would consequently receive tax benefits related to the number and proportion of *contrats solidaires* and *contrats responsables* concluded. Initially it appeared that the introduction of this type of contract satisfied the European Commission. In 2007 however, it started formal investigations into the question of whether this practice could be indeed regarded as non-discriminatory and how much consumers would really benefit from the advantages granted to insurers.[137] On 26 January 2011, the Commission decided that the proposed measures constituted State aid incompatible with EU rules.

The Commission held that it was not possible to demonstrate that the benefits of the tax reduction would be transferred to consumers. In addition, it considered the scheme as discriminatory, as it favours certain operators, such as mutual societies, which have an obligation to conclude this type of contracts.

The recent decision from the European Commission on the c*ontrats solidaires* and c*ontracts responsables* in relation to EU law on state aid will have an effect on the future organisation of voluntary health insurance in France. At this moment, it is still unclear what direction this will take.

4.3. A Statute for European Mutuals

4.3.1. Aim and content of the Statute

The content of EU internal market rules generally applicable to operators in the insurance sector is predominantly attuned to for-profit companies and it is widely acknowledged that these rules do not always recognise the specific position of other company forms.[138]

Within the framework of completing the internal market and with a view to allowing for the free movement of people, goods, services and capital with equal terms of competition between different actors and legal forms on the same markets, in 1992 a Regulation for the European Statute for Mutuals was proposed by the European Commission[139] together with Statutes for Cooperatives[140] and for Associations[141], in order to improve the legal embedding of the social economy in the European Community. Each draft regulation was supplemented by a directive on the involvement of employees.[142]

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[136] Health Insurance Institute of Slovenia (English abbreviation: HIIS, in Slovenian language: Zavod za zdravstveno zavarovanje Slovenije: ZZZS).
[137] Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.
[138] AIM/AMICE, European Mutual Society, AMICE / AIM Draft Regulation 2007, Explanatory Memorandum, 2008.
[139] Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 390 Proposal for a Council Regulation (EEC) on the Statute for a European mutual society. . The legal basis for the proposal of the statutes was originally article 100a, then 95 TEC and now Art. 114 TFUE. This article provides the Council the possibility to adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.
[140] Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 388, Proposal for a Council Regulation (EEC) on the Statute for a European cooperative society.
[141] Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 386, Proposal for a Council Regulation (EEC) on the Statute for a European association.
[142] Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 - SYN 387, Proposal for a Council Directive (EEC) supplementing the Statute for a European association with regard to the involvement of employees; SYN 391, Proposal for a Council Directive (EEC) supplementing the Statute for a European mutual society with regard to the involvement of employees; SYN 389, Proposal for a Council Directive (EEC) supplementing the Statute for a European cooperative society with regard to the involvement of employees.

In the opinion of the European Commission, mutuals, like all other organisations within the social economy, should be able to take advantage of the single market in the same way as other companies can and without having to discard their specific characteristics. It was assessed, therefore, that a European Statute would help mutuals overcome the legal and administrative difficulties hampering their cross-border and transnational activities and cooperation in the internal market.

The 1992 draft Regulation, subsequently revised in 1993, aimed to provide the regulatory framework allowing for the creation of European mutuals and enabling existing mutuals to organise themselves on a European level.

Content of the proposed Statute for European Mutuals (amended version 1993)[143]

The regulation provides the basis for establishing a European mutual and sets out the rules under which it may conduct its business. The proposed statute for European mutuals contains six chapters concerning:

1. The formation of a European mutual (formation funds, number of Member States involved, statutes of the European mutual, registered office (and transfer of the registered office), application of (national) law, publication of documents).
2. Organisation of the General Meeting (competence of the General Meeting, frequency of meetings, noticing of meetings, agenda and attendance, voting rights);
3. Management, supervisory and administrative bodies (Structure of management (one-tier system/two-tier system));
4. Financing, annual accounts, consolidated accounts, auditing and disclosure;
5. Winding up and liquidation; and
6. Insolvency and suspension of payments.

To mention a few provisions, according to the proposed statute, the European mutual (ME) can be created by either two legal entities (eligible legal forms are included in the annex to the statute) or by 500 natural persons from at least two Member States. The formation fund should amount to at least 100,000 ECU. Only members are entitled to speak and vote during general meetings and each member has one vote. However, under certain restrictions, members can have more than one vote. Decisions are made by majority vote. Furthermore, a managing board and a supervisory board need to be established (in a two-tier system) or an administrative board needs to be selected (in a one-tier system). On matters not covered by the statute, Member State law or EU rules are applicable (for instance, this includes rules on employee involvement in the decision-making process, employment law, taxation law, competition law, intellectual and industrial property law, and rules on insolvency and suspension of payments.) A particular issue is what happens with the funds in case of dissolution of the mutual. The statute leaves this open to national legislation (in France the funds need to be transposed to a similar type of organisation (i.e. a mutual); in the UK, the funds are distributed amongst the members).

The draft text distinguishes between provident MEs and MEs carrying out other activities.

Excluded from the scope of the draft regulation were basic obligatory social security schemes managed in the Member States by mutuals. The Member States maintain the liberty to decide whether or not these schemes are managed by mutuals or other types of organisations.

As of 1996 and for several years, the legislative process on the Statute blocked in Council, especially due to diverging views on the directive concerning the involvement of employees.

In 2003 the European Commission launched a consultation on "Mutuals in an enlarged Europe"[144] with a view to resume work on the Statute. In its consultation document, the Commission observed the special difficulties mutuals face in order to operate across borders. Mutuals based in two Member States fall under different national legislation and cannot in most cases organise their cooperation in a way that does justice to all their key principles, such as democratic governance and one-person-one-vote. In addition, as we have seen in previous chapters, mutuals hardly exist in some Member States (either due to the lack of legal provision for this legal form or to poor awareness of the possibilities of establishing a mutual).

The statute might provide a basis to organise mutuals legally in these Member States and it could enhance the awareness of the option of setting up a mutual. Also, due to the fact that legislation on mutuals varies widely throughout Europe, the statute could be used as a starting point for initiatives leading to some approximation of national legislation. Lastly, it would ensure recognition of the specific characteristics of mutuals by EU legislators and regulators. In the document, the Commission also reports on some developments in the decision-making process since the submission of the proposal and recalls aspects on which consensus had been built between the Member States, such as abolishing the distinction between provident mutuals and mutuals performing other activities or foreseeing additional ways for setting up a European mutual.

4.3.2. Withdrawal of the draft regulation and re-tabling of the initiative

Despite positive reactions to the consultation, yielding generally support for the initiative[145], the draft regulation on a Statute for European Mutuals was withdrawn by the European Commission in 2006.[146] The European Commission justified the decision by indicating a lack of progress in the legislative procedure for several years, due to which the proposal was largely outdated and had to be reassessed on the basis of new political and economic priorities.[147]

Since 2006, however, the proposed statute has not been forgotten. The European Parliament has, in a number of occasions, expressed regrets about the withdrawal of the draft regulations on both the statute for European mutuals and that for European

[143] Commission of the European Communities, COM(93)252 final, Brussels, 6 July 1993. The proposal was amended to take the European Parliament's view into consideration.
[144] Commission of the European Communities, Consultation document: Mutual Societies in an enlarged Europe 03/10/2003
[145] See: Commission of the European Communities, DG Enterprise, Promotion of entrepreneurship and SMEs Crafts, small businesses, cooperatives and mutuals Overview of the contributions: http://ec.europa.eu/enterprise/policies/sme/files/mutuals/summary-replies_en.pdf
[146] Together with 67 other proposals, see: OJ C 64/3 17.3.2006, Withdrawal of Commission proposals following screening for their general relevance, their impact on competitiveness and other aspects (2006/C 64/03). See for full details on the procedure: European Parliament, the legislative observatory, Procedure file: Statute for a European mutual society, reference number: COD/1991/0390, Extracted from site http://www.europarl.europa.eu/oeil/index.jsp: March 2011.
[147] Commission of the European Communities, MEMO/05/340, Brussels, 27 September 2005.

associations and has asked the European Commission to propose new draft statutes.[148] Recently, the European Parliament has adopted a written Declaration for the establishment of European statutes for mutual societies, associations and foundations.[149] Also, the European Economic and Social Committee requested that the Commission begin working on approving separate European statutes for associations and mutual societies.[150]

In recent documents on the completion of the single market, the European Commission has responded to these requests and committed itself to providing better quality legislation for organisations in the social economy (including mutuals)[151], stressing that mutuals should be enabled to operate across borders as a contribution to EU efforts aimed "to boost growth and strengthen confidence" within the European economic area.[152]

4.3.3. Proposal for a Statute by European representative organisations

After withdrawal of the draft regulation by the European Commission, some stakeholders started initiatives to re-table the European Statute. In November 2007, umbrella organisations representing mutuals and organisations sharing mutualist characteristics at European level published a Joint Proposal for a Regulation on the Statute of the European Mutual Society (EMS): a Working Document from the European mutual sector.[153]

At the time mutual societies were represented at EU level by three main umbrella organisations[154]: AIM (*Association Internationale de la Mutualité*)[155], AISAM (*Association Internationale des Sociétés d'Assurance Mutuelle*) and ACME (Association of European Cooperative and Mutual Insurers).[156] Although in the past the members of the umbrella organisations had not been unanimously in favour of the statute, and, moreover, internal debates continue to take place between members of the European associations

[148] See for an overview: AMICE, List of Parliamentary reports mentioning the need for a European statute for mutual societies, 2010: Report of the Constitutional Affairs Committee on the "Outcome of the screening of legislative proposals pending before the legislator" P6_TA(2006)0206; Report of the JURI Committee on "Recent developments and prospects in company law": P6_TA(2006)0295; Report of the ECON Committee on « Towards further consolidation in the financial services industry »: P6_TA (2006)0294; Report of the Employment and Social Affairs Committee on a "European Social Model for the future" P6_TA(2006)0340; Report of the ECON committee on the Green Paper on retail financial services in the single market P6_TA(2008)0261; Report of the Committee on Employment and Social Affairs on Social Economy P6_TA(2009)0062

[149] European Parliament, Written declaration on establishing European statutes for mutual societies, associations and foundations, WD 84/2010

[150] OJ C 318/22 23.12.2009, Opinion of the European Economic and Social Committee on the 'Diverse forms of enterprise' (Own-initiative opinion) (2009/C 318/05)

[151] European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: "Towards a Single Market Act - For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another", Brussels, 27.10.2010 - COM(2010)608 final.

[152] European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Single Market Act, Twelve levers to boost growth and strengthen confidence: "Working together to create new growth", COM(2011)206 final, 2011.

[153] AIM/AISAM/ACME, Final Proposal for a Regulation on the Statute of the European Mutual Society (EMS) A Working Document from the European mutual sector, November 2007; http://www.amice-eu.org/ems.aspx

[154] To these the CEA, the European (re)insurance federation, must be added; members of the CEA are the national insurance associations in 33 European countries.

[155] AIM is a grouping of autonomous health insurance and social protection bodies operating according to the principles of solidarity and non-profit-making orientation. AIM represents the interests of its members, defends the common values shared by its members and takes care to organise a permanent exchange of information between members' organisations and to inform them on developments in the field of social protection and healthcare at the European and international level. AIM groups 38 national federations or associations of autonomous health and social mutual societies from 23 different countries. See: http://www.aim-mutual.org/index.php

[156] AISAM and ACME in 2008 merged into AMICE (Association of Mutual Insurers and Insurance Cooperatives in Europe). AMICE is an umbrella organisation for mutual and cooperative insurers. The main objective of AMICE is to ensure that the voice of the members is heard and that the interests of the members are taken into account in securing a level playing field for all insurers regardless of their legal form. AMICE has more than 100 direct members, representing indirectly more than 1,600 mutual and cooperative insurance companies in Europe.

on both the need for a statute and the necessity, it is now generally agreed that the statute would benefit the mutual societies' sector as a whole.

The statute proposed by the European organisations was inspired by the Statute for a European Company (SE) and the Statute for a Cooperative society (SCE), but it has been tailored to the specific characteristics of mutuals. The statute is 'activity-neutral', allowing any types of activities to be carried out. In general, the proposal by the European representative organisations contains basically the same elements as the withdrawn Commission's proposal and presents an updated version of the twenty-year old proposal. In addition, it emphasises the possibility of mergers between mutuals.

The statute allows for European mutuals to be formed in various ways, such as:

- by creation, decided by at least two mutual societies, including or not their subsidiaries, which fall within the law of at least two different Member States, or by five or more natural persons resident in at least two Member States;
- by conversion of a mutual society, including or not its subsidiaries;
- by merger of mutual societies, including or not their subsidiaries which have their registered office and head office within the European Union, if at least two of them fall within the law of two different Member States;
- by merger of at least one mutual society with another legal entity provided that the absorbing legal entity is the mutual society which has its registered office and head office within the European Union, and that at least two of the entities fall within the law of two different Member States.

A noticeable difference between the Commission's draft regulation and the proposal by the European associations is the way the funds are distributed when the European mutual is liquidated. The Commission's text stated that "the assets of the ME shall, except where otherwise stated in the statutes, be distributed by decision of the general meeting either to other MEs or mutual societies governed by the law of a Member State or to one or more bodies having as their object the support and promotion of mutual societies."[157] The proposal by the European associations holds the position that upon liquidation of a European Mutual Society, net assets shall be distributed in accordance with the principle of disinterested distribution (which had been accepted by the Commission at later stages of the legislative process) or, where permitted by the law of the Member State in which the European Mutual Society has its registered office, in accordance with an alternative arrangement set out in the statutes of the European Mutual Society.[158]

One of the main characteristic of the draft EMS statute is the possibility to create a European Mutual Group Society (EMGS). The aim in this case is to coordinate or create financial links between two or more legal entities, based on contract. In this case, the group has to be created by two or more legal entities based in two or more Member States.

As a whole, in comparison to the Commission's draft regulation, the statute as proposed by the European representative organisations of mutual societies is more applicable for existing mutuals, who have the option of merging and grouping with foreign peers, formalising existing agreements between them and truly cooperating on a clear legal basis.

[157] Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992.
[158] AIM/AISAM/ACME, Final Proposal for a Regulation on the Statute of the European Mutual Society (EMS) A Working Document from the European mutual sector, November 2007; http://www.amice-eu.org/ems.aspx

4.3.4. Experience from the Statute for European Co-operatives

Important in the discussions concerning the Statute for European Mutuals can be previous experience with similar European statutes, in particular the Statute for European Co-operatives, adopted in 2003.[159] The Regulation on the Statute for a European Cooperative Society was supplemented with Council Directive 2003/72/EC with regard to the involvement of employees.[160]

Through the Statute for European Cooperatives, the European Union facilitates cooperatives wishing to engage in cross-border business, by making legislative provision which takes account of their specific features. It allows the creation of new cooperative enterprises of natural or legal persons at European level and ensures the rights of information, consultation and participation of employees in a European cooperative society (SCE).[161] The SCE statute contains chapters on general provision, formation, formation by merger, conversion of an existing cooperative into an SCE, the structure of an SCE, how to deal with the financial and administrative issues and finally the winding up of a SCE. On many occasions the SCE Regulation refers to the laws of the Member State in which the SCE is registered.[162]

In 2010, a study financed by the European Commission was carried out to evaluate the working of the SCE regulation. Among others, the study assessed whether and how many European cooperatives had been set up and what legal and administrative barriers exist to forming a SCE.[163] Since the legislation on co-operatives could be a pioneer for European statutes for other organisational forms within the social economy, this study is also of particular interest for the future of the withdrawn proposals for mutuals and associations.[164] This study provides the following conclusions:[165]

1) The SCE Regulation has had only limited success since a small number of SCEs were established.[166]
2) There are several unresolved problems that lead to contradictions and complexities. Firstly, the problem of the relationship between European law and national law on cooperatives must be mentioned: as recalled above, the statute refers on many occasions to national legislation and, as national legislation differs to a large extent between different Member States, this leads to legal variations amongst European Co-operatives, dependent on the national rules to which the statute refers. Secondly, the issue of the real added value of the SCE Regulation (either a European legal form that competes with national forms, or rather a symbolic effect acknowledging the value of cooperatives) needs to be clarified. In the view of many stakeholders, the SCE Regulation is considered more important for the European

[159] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
[160] OJ L 207/25, 18.8.2003, Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, 2003.
[161] OJ L 207/25, 18.8.2003, Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, 2003.
[162] See: Cooperative Europe, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), 2010, p. 36.
[163] Cooperative Europe, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), 2010.
[164] See: Report of the high level group of company law experts on a modern regulatory framework for company law in Europe, Brussels, 4 November 2002, p. 24. This is affirmed by the recent European Commission's Communication "Towards a Single Market Act - For a highly competitive social market economy - 50 proposals for improving our work, business and ex-changes with one another", Brussels, 27.10.2010 - COM(2010)608 final.
[165] Cited from: Cooperative Europe, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), 2010.

image that it gives to cooperatives than for its practical advantages as compared to the legal framework which applies to national cooperatives.

3) The indirect approximation effect on the national legislative framework on cooperatives has been rather limited to present[167] and, if any, it would undoubtedly be a long and complex process.

All in all, however, according to the conclusion of this evaluation, the main value of the statute for the cooperative sector is considered to be essentially symbolic, since it acknowledges the fact that these undertakings play a key role within the European economy.

It must be recalled that mutuals have also used the statute to organise their cross-border activities: the French mutual, 'Harmonie Mutualité' and the Italian mutual 'Cesare Pozzo' have created a cross-border organisation in the form of the an SCE.

4.3.5. Current discussions about the Statute for European Mutuals

Opinions on the need and the necessity for a Statute for a European mutual vary. The consultation in 2003-2004 received many positive responses, but there were also contributions that either did not support the idea of, or that were firmly opposed to the idea of, a European Statute. Without either providing a decisive argument for or against the Statute, or a complete list of all the possible grounds for being either in favour or against the introduction of such legal instrument in EU law, an analysis of the main issues and arguments mentioned during interviews with stakeholders[168] for this study is provided below.

a) Practical use

Arguments concerning practical use that are in favour of the statute focus on the possibility of enabling mutuals to operate across borders like their joint-stock competitors:

- Just as other company types, mutual societies should have the possibility to work and organise themselves at European level, without losing their specific characteristics. Mutuals have a disadvantage in establishing cross-border cooperation with other mutual societies, since they are in many cases forced to do so by setting up a holding company with joint-stock company structures. Hence, in working across borders, they lose their mutualist character. Also, in many EU Member States mutuals are not allowed to form groupings of mutuals within their country. A European statute could provide the legal instrument for overcoming this problem.
- Operating across borders has turned from a desire into a necessity for some mutuals to upscale their businesses while maintaining their mutualist values. The increasing solvency margins and requirements force mutuals to create economies of scale. While this can be done in various ways, mutual societies should also have the possibility to do this in a cross-border manner within the single market.
- In addition, risks are similar in different countries and there is no reason why individuals from different Member States, facing the same risks, should not have the possibility to cover these risks in a mutualistic way. Hence, mutual structures need to be easily established.

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[166] The study has found 17 existing SCEs as of 8 May 2010.
[167] This is supported by the observation that "although Italy did not implement the SCE regulation, it has the highest number of SCEs." Cooperative Europe, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), 2010.
[168] See list of interviewees in Annex 2.

The arguments focussing on practical barriers to using the statute in the Member States point to the relation between the statute and national legislation:

- Experience from the implementation of the statute for European cooperatives shows that the many references to national legislation lead to complicated processes of applying the statute and in large variations in the application of the statute for European cooperatives in the different Member States. Like national legislation on cooperatives, legislation on mutuals differs to a large extent throughout Europe. A European Statute would therefore need references to national legislation, which would in practice lead to 27 different statutes for European mutuals. Therefore, establishing a statute for European mutuals would be practically useless if it is not accompanied by some approximation of national law concerning mutuals, so that differences between European mutuals would be limited.
- One of the strengths of mutuals is that they operate on local markets close to their members. Organising themselves at European level would create a distance between the mutual insurer and the member and would not do justice to the key strength of a mutual society.
- Some Member States already have good national legislation for mutuals to merge, group and cooperate at national level, such as France and Germany.

b) Recognition of mutuality

Frequently recurring arguments also focus on the need to better respect/ acknowledge the specific characteristics of mutuals in policy making at the European level:

- Mutuals play a key role in European society. This role should be recognised and fostered on European level.
- The Statute guarantees that mutuality will not be overlooked in future (European) policy making.

The main argument that questions the need for the statute focusses on the idea that, as long as there is a business case for mutuals, they will exist: mutuals have existed for more than a century, have been able to compete with joint-stock companies and have provided an alternative choice for individuals to cover social and other risks, even without a European statute. Mutuals can communicate their mission and values to future members even without a European statute.

c) Other legal/political arguments

The legal/political arguments in favour of the statute highlight that the development of mutual societies in Europe is prevented by a legislative gap in some Member States. The statute could offer a legal basis for insurers to provide services on a mutualistic basis, or it could favour national legislative initiatives:

- In some countries the absence of legal provision for mutuals limits the free choice of citizens to have the kind of provider they prefer. European mutuals would fill this gap.
- The Statute could stimulate policy making at national level so as to spread mutuals across Europe. It could provide a European reference point and enhance awareness of the possibility of setting up mutual structures.
- Mutualism fits the current socio-economic agenda of the European Union for 'smart, inclusive and sustainable economic growth'.

- Mutuals do things differently. Given the credit crunch, caused by irresponsible business practices, there is clearly a case to promote mutualism and the diversification of financial institutions.

The argument against the statute looks at different traditions concerning mutuals. The attitude towards mutualism is culturally embedded in the Member States and, therefore, the way mutualism is shaped, if existing, is intrinsically dependent on the Member States' preferences. For this reason, a one-size-fits-all approach, and hence a European statute, would not work.

4.4. Concluding remarks

The activities mutuals conduct are to a large extent covered by European rules on the internal market and competition.

Within this context, mutual societies also have to comply with rules on solvency requirements. 'Solvency II' calls for increased solvency margins and risk differentiation for insurance services' providers. Many mutuals might have difficulty in complying with the more stringent 'Solvency II' requirements whilst still providing services against competitive premiums.

Partially due to European legislation on insurance and financial institutions, which appear predominantly based on the stock holding company models, the insurance market is likely to become more uniform in the future and mutuals may be forced to progressively act like the stock holding companies, or to 'de-mutualise'.

However, depending on the activities performed and the legal/organisational context within which these are carried out, the services some mutual societies provide can fall under the definitions of 'social services of general interest' of either 'non-economic' or 'economic' nature according to EU law and, therefore, it is not always easy to determine whether and how internal market and competition rules apply to them, especially as mutuals often provide services in different, complementary areas. A number of cases relating to mutuals have appeared before the European Court of Justice in recent years and a considerable case law already exists.

The arguments in favour of a statute for a European mutual appear to have credibility. The statute could provide opportunities for mutuals to create economies of scale in order to maintain competitiveness in the future. Furthermore, it would increase recognition of the value of mutuals within European policy making. The European Parliament, European Economic and Social Committee and the European Commission have recently expressed their willingness to re-table the statute for European mutuals.

However, in drafting a new statute the arguments that are critical towards the statute need to receive attention. Especially the practical usability should be examined beforehand, also taking into account the experience with regard to the statute for European cooperatives. For instance the question of which matters are governed by the rules of the statute and which are governed by national rules. The use of the statute for European cooperatives, based on a similar approach, is hampered by the complexity of referencing to national legislation. If initiatives are taken to establish a Statute for European Mutuals, these issues need to be firmly on the agenda.

5. MUTUALS IN A CHANGING ECONOMIC CONTEXT

KEY FINDINGS

- There is some evidence that mutual undertakings are more resilient to the current crisis than their stock holding peers. Nonetheless, it must be emphasised that empirical evidence, based on solid, longitudinal studies, is lacking.
- Although comparative studies on the effectiveness, efficiency and client/member friendliness of the business operations of mutuals and stock holding companies do not come to uniform conclusions, they do show that both forms are comparable and that generally mutuals are not out-performed by stock holding companies. Within the same market, both mutuals and joint-stock companies have their raison d'être. Their particular competitive (dis)advantages are determined by the respective organisational structures, the way they obtain capital, the risks they cover and the populations they serve.
- The advantage of having a strong presence of mutual societies in the insurance sector is not only that mutuals are more likely to do their business on a less risky basis, but also that mixed sectors containing both mutuals and stock holding companies create a systemic advantage for a sustainable, stable and inclusive economy. In providing different products and serving different clients, there is no one-size-fits-all, and the same applies when it comes to company models and ownership structures. From the perspective of diversity in financial markets, mutualist company forms are highly valued.

As we have noted in previous chapters, mutual societies are strongly affected by the way national social protection systems are organised and by national and EU legislation applying to them. In addition, from an economic point of view, mutual societies operate in open markets and their developments are conditioned by the structure and dynamics prevailing in the environment in which they perform their business.

In this chapter we analyse the position of mutuals in the insurance market in the EU and compare them to their main competitors. We will also try to find out how mutuals coped with the financial and economic crisis and what evidence exists about their being more or less resilient to it. Before going deeper into such questions, it is important to have a broader look at the economic crisis in general and its specific effects on the relevant markets.

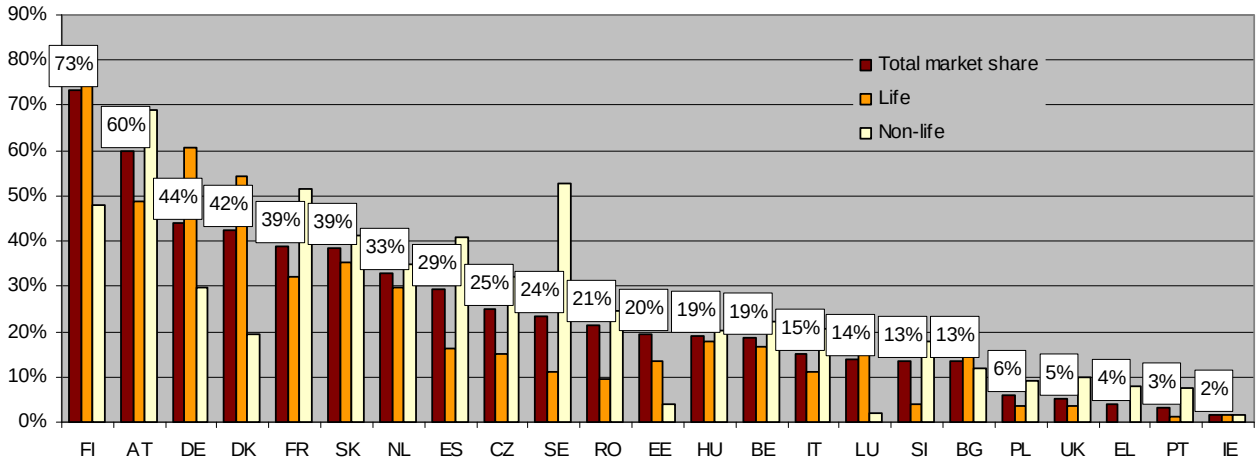
5.1. The insurance sector and the crisis

5.1.1. Mutuals in insurance markets

The International Cooperative and Mutual Insurance Federation (ICMIF) calculated that mutual and cooperative insurers represent 23.9 per cent of the total insurance market in Europe in 2008.[169] They are responsible for 22 per cent of the 'life', and almost 30 per cent of the 'non-life' market. Figure 1 below provides an overview of the market share of mutuals and cooperatives in insurance businesses (both life and non-life) across Europe.

[169] ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010.

Figure 1: Mutual and cooperative market share in the insurance market (total market share and life and non-life market share) in the different EU Member States (2008)[170]



Source: ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010, calculated by the authors.[171] The values represent the total market share.

The data from ICMIF (presented in Figure 1) show that the market share of mutuals and cooperatives ranges from non-existing (such as in CY, MT, LT, and LV) to almost three quarters of the market such as in Finland (73 per cent). Besides Finland, also Austria, Germany, Denmark, France and Slovakia report a large market share. In addition to the Member States with no market share (which are not included in the figure), low market shares can be found in Ireland, Portugal, Greece, the United Kingdom and Poland.

However, these data should be handled with precaution. Although ICMIF reports 73 per cent market share in Finland, for example, other sources report a market share in life and non-life insurance in Finland of one-third.[172] Such large differences are due to either including or excluding statutory pension schemes governed by mutuals in the data.

Comparing the outcomes in relation to life and non life insurance, apart from Finland, we also find relatively high market shares in the 'life' sector in Germany, Denmark and Austria. Relatively low market shares are reported in Ireland, Portugal and Greece.

In the 'non-life' insurance market, the mutual and cooperative market share ranges from non existing (in CY, MT, LT, LV) to 69 per cent in Austria. Relatively large market shares can also be found in Sweden, France and Finland. Estonia, Luxembourg and Ireland have particularly low market shares in this sector.

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[170] It is important to note that besides mutuals and cooperative, the figure includes organisations that do not have the legal status of a mutual, but whose structure and values can nevertheless be considered mutual or cooperative (i.e. they are "owned by, governed and operated in the interests of their member policyholders"). Internationally comparable data on mutuals in the stricter sense are unfortunately not available, and the use of these data is therefore justifiable to provide some insight in the market share of mutual insurance companies and cooperatives. In addition, as already indicated, several Member States do not make a strict distinction between mutuals and similar organisations, making it difficult to gather information on mutuals alone. Equally important to note is that within ICMIF data, business of subsidiaries of foreign mutuals and cooperatives are included in the figures of each country, which partially explains why there is a relatively large mutual market share in Slovakia, despite the fact that Slovakian law does not allow insurers to take the form of a mutual society. Another possible explanation is that the insurers included in the figures are cooperatives.

[171] CY, LV, LT and MT are not included in the figure since the market share of mutuals was 0 per cent.

[172] Tapiola Group, Answers to the questions raised in European Commission's consultation document mutual societies in an enlarged Europe, 2004.

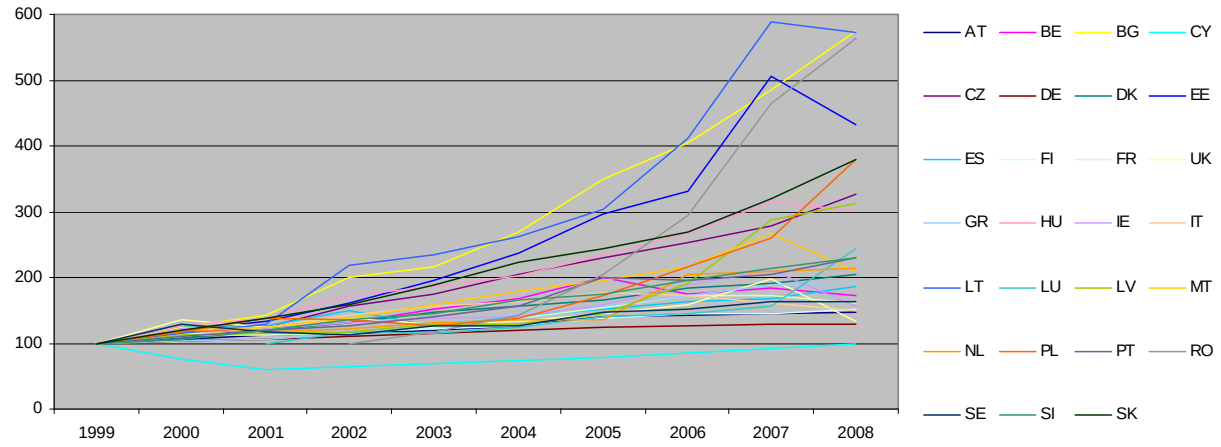
Comparing market shares in 2008 and 2007 reported by ICMIF, one sees increasing shares in the majority of Member States such as the Netherlands (7.1 per cent), Bulgaria (5.8 per cent), Estonia (4.4 per cent) and Finland (2.2 per cent). The only Member State with a marked decrease in this period is Luxembourg (6.4 per cent).[173]

According to the ICMIF statistics, mutual and cooperative insurers increased their insurance premiums by 2.3 per cent as a whole in 2008.[174]

5.1.2. Impact of the financial and economic crisis on insurance markets

The insurance market in Europe has grown from 648 billion Euros of direct premium income in 1999 to more than 1,000 billion Euros in 2008.[175] There are however major differences between national markets. Some Member States exhibit mature markets where limited growth has been realised during the last decade (such as Germany, Sweden and the UK), while in others, the insurance markets note rapid growth (mainly in the new Member States). As illustrated in figure 2 below, in 2008, in some countries a downfall was recorded in the market (for instance in BE, EE, FR, UK, HU, IE, IT, LT, MT and, to a minor extent, SE).

Figure 2: Total direct premium income on the European insurance market (indexed (1999=100))



Source: CEA, European Insurance in Figures, 2009. Calculated by the authors.

With the fall of the Lehman Brothers Bank in autumn 2008, the financial markets entered a severe crisis. One of the reasons for this crisis was the collapse of the housing bubble based on unaffordable mortgages. All major banks were affected and faced difficulties maintaining their position.

This crisis resulted in severe difficulties for financial institutions and, in a significant number of cases national governments had to provide State aid for financial institutions in danger of collapsing. Globally, governments were forced to bail-out dysfunctional banks using State resources since they were often 'too large to collapse'. The difficulties for the real economy would have been even more damaging if these banks had been allowed to collapse.

[173] See Annex 5: overview of ICMIF data on mutual and cooperative market share in 2008.
[174] A.M. Best, Mutuals Under the Microscope As Market Share Grows, 2009; ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010.
[175] CEA, European Insurance in Figures, 2009.

All financial markets, including the insurance market, were and still are severly affected by the financial and economic downturn in 2008 and 2009. The banking and insurance sector are related to each other and, in many cases, such as in '*bancassurance*', they offer joint products, whereby insurance companies use the bank sales channels (for instance a mortgage offered by a bank is often, if not always, accompanied by a life insurance policy).

Within the insurance market, however, there are considerable differences as to which segments are most harshly hit by the recession. The field of non-life insurance is one of the least affected markets. After two difficult years of very sluggish growth, robust growth was recorded again in 2010.[176] At the same time, in the field of life insurance the impact of the financial crisis has been quite significant; however also here, the business returned to positive growth in 2010. The total of European life premiums recorded a drop of 11 per cent in nominal terms and at constant exchange rates (-16 per cent at current exchange rates) in 2008, amounting to €644bn compared with €766bn in 2007.[177] The global premium income grew by 4.4 per cent in 2010 while in the industrialised countries there was a moderate growth of 2.7 per cent.[178]

5.2. Mutuals and stock holding companies compared

As the previous chapters illustrate, mutuals operate mainly in open insurance markets where they face competition by other economic operators, most of them joint-stock companies.

Compared to their joint-stock competitors, mutuals are often small, locally-based organisations which focus on a limited number of business lines.[179] Nevertheless, there are also very large mutual insurance companies such as in France (for instance, MAIF, MACIF, MGEN).[180] In this section, we compare mutuals and joint stock companies with regard to the population they serve, the risks they cover, the different channels they use to access capital and the efficiency and effectiveness of each company form.

5.2.1. Homogeneity and heterogeneity in population insurers serve and risks they cover

One might wonder why such different business forms as mutual insurance companies and ordinary stock holding companies compete with each other on the same market.

As an economic theory explanation for the coexistence of both mutual firms and joint-stock companies on the insurance market, it should be mentioned that each ownership structure has a comparative advantage in preventing different types of agency problems.

Where mutuals, for example, have the advantage of there being no conflict between the shareholders and policy holders (since they are the same), stock holding companies are better equipped to control and steer their managers towards a desired direction.[181]

[176] Swiss Re, Global Insurance review 2010 and outlook 2011/12, 2010.
[177] CEA, European Insurance in Figures, 2009.
[178] Swiss Re, Global Insurance review 2010 and outlook 2011/12, 2010.
[179] Best's Special Report – Global Mutual Insurance. Market Review October 5 2009. Mutuals Under the Microscope As Market Share Grows.
[180] MAIF : Mutuelle d'assurance des instituteurs de France; MACIF: Mutuelle d'Assurance des Commerçants et Industriels de France, MGEN: Mutuelle Générale de l'Éducation Nationale.
[181] Mayers, D. and C. Smith, Ownership Structure across Lines of Property-Casualty Insurance, in: Journal of Law and Economics, 31, 351-78, 1988, cited from: Bourlès, Renaud, On the emergence of private insurance in presence of mutual agreements, 2009.

Others highlight that each company form insures different kinds of individuals or different kinds of risks.[182] Research indicates that there is a diversity of risk-taking policies and the coexistence of different risk-taking policies "is driven by heterogeneity […] in the consuming population."[183] As a general rule, homogeneity of risk is seen more in relation to mutual insurers, heterogeneity more in relation to stock-taking insurers. This means that where there are groups of people with the same level of risk, insurance companies are more likely to organise themselves as mutual insurance companies. This general rule impacts the size of the companies as well. Companies based on homogeneity are in general smaller and those based on heterogeneity are larger.[184]

In addition, as we have seen, the insurance market is a very diverse market, covering many different types of risks and serving many different groups of individuals, all having their own demands, wishes and preferences. This diversity is a legitimisation of the existence of various forms and types of providers. Hence, "heterogeneity in institutions and markets suggests heterogeneity in the populations they serve."[185] There is no one-size-fits-all and both joint-stock companies and mutual insurers have their own specific market position.

5.2.2. Access to capital

An important difference between a stock holding insurance company and a mutual insurer is the way risk capital is obtained. Stock holding companies first raise risk capital from investors (shareholders) and then sell insurance policies. Mutuals on the other hand raise their capital through premiums. In the latter case, the risk capital is immediately tied to selling insurance contracts.

Time series research (taking into account the period 1984-1999) shows that mutual insurers generally face higher costs for raising new capital than stock insurers.[186]

This puts mutuals in a disadvantageous position (also given the newly established solvency requirements). Although stock holding companies have better access to capital, mutuals seem to be compensated for this disadvantage by their affiliation to policy holders/owners that have a common interest and constitute a less diversified group of owners.[187] They can, if needed, call upon their members for additional capital.

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[182] Doherty and Dionne (Doherty, N.A., G. Dionne, Insurance with Undiversifiable Risk: Contract Structure and Organizational Form of Insurance Firms, in: Journal of Risk and Uncertainty, 1993, 6, p. 187—203.) prove that there are different types of risks (risks related to specific characteristics of an individual or group (idiosyncratic) or not related to specific characteristics or an individual or group (non-idiosyncratic)) and that this difference determines the use of either a stock holding insurance firm (non-participatory policy) or a mutual (participatory policy). On the same direction, Smith and Stutzer (Smith, B. and M. Stutzer, Adverse Selection, Aggregate Uncertainty, and the Role of Mutual Insurance Contracts, in: Journal of Business, 63(4), p. 493-510, 1990) show, using a variant of adverse selection model of Rothschild and Stiglitz (Rothschild, Michael, Stiglitz, Joseph E, Equilibrium in Competitive Insurance Markets: An Essay on the Economics of Imperfect Information, in: The Quarterly Journal of Economics, MIT Press, vol. 90(4), p. 630-49, 1976), that because of their participating nature, mutual firms attract low risk individuals who want to signal their type. Cited from: Bourlès, Renaud, On the emergence of private insurance in presence of mutual agreements, 2009.

[183] Ligon, James A., Paul D. Thistle, The Formation of Mutual Insurers in Markets with Adverse Selection, in: The Journal of Business, Vol. 78, No. 2 pp. 529-556 Year: 2005.

[184] On the other hand, research on New Zealand life insurance companies (stock holding and mutual) shows, contrary to expectations, that mutuals are bigger than stock holding companies and that no empirical support could be found for the proposition that mutuals are likely to restrict firm size to control managerial discretion (see: Adams, Mike, Mahmud Hossain, Choice of organizational form in the life insurance industry: New Zealand evidence, in: Asia Pacific Journal of Management Vol 13, No 1:19-35, 2005).

[185] Ligon, James A., Paul D. Thistle, The Formation of Mutual Insurers in Markets with Adverse Selection, in: The Journal of Business, Vol. 78, No. 2 pp. 529-556 Year: 2005.

[186] Harrington, Scott E., Greg Niehaus, Capital Structure Decisions in the Insurance Industry: Stocks versus Mutuals, in: Journal of Financial Services Research 21: 1/2 145-163, 2002.

Also, related to obtaining capital, a problem that stock holding companies may face is the fact that they depend heavily on external capital. This becomes problematic when, in the event of a crisis on the financial market, investors pull out their funds or when the value of the investments is reduced. The actual premiums obtained from the insured are, in that case, insufficient to cover the risks. This problem does not exist for mutual insurers due to the ties between risk capital and insurance contracts, making mutual insurance companies a safer and more sustainable company form in unsecure times. [188]

The disadvantage for mutuals in their not having similar access to (risk) capital as stock holding companies, is the fact that this forces them to find other ways to increase their capital reserves, if needed. In order to raise capital levels, mutuals can expand their business either by selling policies to more people, by selling policies in new markets, or by providing new products to members. Also, they can organise their activities more cost-effectively and/or create economies of scale. In addition, economies of scale can be created by merging and forming alliances with other mutuals as well, even across borders.

However, the expansion of businesses in these directions is often hampered by legal, administrative barriers. For instance, as we have seen in previous chapters, mutuals in many Member States are restricted to particular businesses and, hence, they do not always have the option to provide additional services. Another constraint is that mutuals are prevented from operating across borders while maintaining their mutualist values (concerning ownership structure across borders, democratic governance, etc.).[189] It is therefore argued that mutuals need to adopt stock holding company forms to establish alliances across borders.

5.2.3. Effectiveness compared

Generally it is assumed that mutuals, due to the identity of policyholders and owners, work more efficiently and are more client/member-friendly; however, from the examination of several studies on the (cost) effectiveness of insurance companies, no uniform picture can be drawn:

- Studies, e.g. in the Netherlands, show that there are differences in cost-effectiveness between stock holding companies and mutuals, varying significantly across the different lines of business. The cost advantage for policyholders of mutuals is the largest in accident and health insurance. "This happens to be the most successful line of business for the mutual ownership form—in terms of market share."[190]
- According to the French *Autorité de contrôle des assurances et des mutuelles* (ACAM), the absence of shareholders enables mutual insurance societies to provide more services and benefits to their members than insurance companies. Mutuals generally have lower management costs. However, it should be taken into account that comparisons are difficult to make since the scopes and activities of mutuals and stock holding insurance companies differ.[191]

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[187] Laux, Christian, Alexander Muermann, Financing risk transfer under governance problems: Mutual versus stock insurers, in: Journal of Financial Intermediation 19 (2010) 333–354, 2010.
[188] See: Laux, Christian, Alexander Muermann, Financing risk transfer under governance problems: Mutual versus stock insurers, in: Journal of Financial Intermediation 19 (2010) 333–354, 2010.
[189] As we have seen in Chapter 4, cross-border merger and cooperation for mutuals is one of the arguments in debates concerning the proposed European Statute for Mutuals. As an example of an instrument at Member State level designed to allow the expension of businesses and to create economies of scale for mutuals, we can look at the French SGAM-model (Société de Groupe d'Assurance Mutuelle), shortly described in Chapter 2 of this report.
[190] Bikker, Jacob A., Janko Gorter, Restructuring of the Dutch nonlife insurance industry: consolidation, organizational form, and focus, in: The Journal of Risk and Insurance, 2011, Vol. 78, No. 1, 163-184.
[191] See: Autorité de Contrôle des Assurances et des Mutuelles, Rapport d'activité, 2009.

- In other studies it appears that no significant differences can be found between the mutual or proprietary ownership forms in terms of the performance and product quality. Both forms are equally efficient in managing unit costs and getting high returns.[192]
- Comparative studies on the development and performance of UK building societies and companies demutualised around 1997[193] contradict the idea that mutuals outperform stock holding companies. On the other hand, the same study questions whether 'mutuals' can be considered to be an homogeneous group, so differences in effectiveness can exist between different types of mutuals as well.[194]
- A recent survey on customer satisfaction with British insurers shows not only that mutuals are more likely to provide better services, but also that clients/members of mutual insurers, although not aware that they are mutually insured, have a more positive attitude towards the insurance business in general.[195]

In relation to the latter point, however, it should be indicated that researchers often stress that the issue of client/member-friendliness is regularly not directly related to the legal form, but to the size of the organisation. Smaller insurers tend to have an affinity with their clients and therefore offer better service. Since smaller insurers are often mutuals, indirectly it can be stated that mutuals tend to provide better client/member-targeted services.

It must be highlighted, however, that the studies are heavily grounded in national contexts and that these influence the outcomes. None of the studies have been carried out on an EU-wide scale, or other comparative scale.

5.3. The performance of mutuals in the recent financial crisis

In previous sections, we have identified a number of differences between mutuals and joint stock insurers. In this section, we will discuss whether mutuals are more resilient to the financial crisis than their stock holding peers. For this purpose, some recent analyses on this issue are discussed.

A report recently published by the rating agency Moody's indicates that, compared to their stock holding peers, mutuals active on the life insurance market show better creditworthiness in times of crisis.[196] The mentioned key differences typically existing between stock and mutual life insurers that affect their creditworthiness in this challenging environment are listed below.[197] 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;

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[192] Shinozawa, Yoshikatsu, Mutual versus proprietary ownership: an empirical study from the UK unit trust industry with a company-product measure, Annals of Public and Cooperative Economics Volume 81, Issue 2, p. 247–280, June 2010.
[193] Although the first demutualization took place in 1989, the key episode in this process was in 1997 when four of the very largest building societies converted. See: Shiwakoti, Radha K., Kevin Keasey, Robert Hudson, Comparative performance of UK mutual building societies and stock retail banks: further evidence, in: Accounting & Finance, Volume 48, Issue 2, p. 319–336, June 2008, p. 320.
[194] Shiwakoti, Radha K., Kevin Keasey, Robert Hudson, Comparative performance of UK mutual building societies and stock retail banks: further evidence, in: Accounting & Finance, Volume 48, Issue 2, p. 319–336, June 2008.
[195] See: Association of British Insurers (ABI), Industry report 2007/08 Customer impact survey, 2008. Calculation on the difference between mutuals and stock holding companies: Association of Financial Mutuals: http://www.financialmutuals.org/index.php?option=com_content&view=article&id=93
[196] Cited from: Moody's insurance, Revenge of the Mutuals Policyholder-Owned U.S. Life Insurers Benefit in Harsh Environment Summary Opinion, 2009.

- 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.[198]

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[199] 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."[200]

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

5.4. Concluding remarks

Besides the argument that mutuals are likely to be more resilient than joint stock companies in times of crisis, there is another economic argument to foster mutualism within the financial sector. It is widely agreed that the financial sector - and economies in the broad sense - benefit from diversity of ownership structures and company forms.[201] 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.

As it cannot 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

[197] Cited from: Moody's insurance, Revenge of the Mutuals Policyholder-Owned U.S. Life Insurers Benefit in Harsh Environment Summary Opinion, 2009.
[198] A.M. Best, Mutuals Maintain Momentum, But Challenges Mount, 2010.
[199] Public limited company.
[200] Written evidence submitted by the Building Societies Association, September 2010
[201] 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.

developments.[202] Diversity reduces institutional risks defined as "the dependence on a single view" that "may turn out to have serious weaknesses under unexpected conditions such as the current crisis".[203] 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.[204]

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 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.[205]

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 businesses and products (often with a shorter-term strategy). This movement, which included the dissolution of mutuals, led to a financial mono-culture.[206]

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.[207] 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.

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[202] 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.
[203] 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.
[204] Cuevas C.E., Fischer K.P., Cooperative Financial Institutions, Issues in Governance, Regulation, and Supervision, World Bank Working Paper n°82, 2006.
[205] 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.
[206] "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.
[207] 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. THE CURRENT AND FUTURE ROLE OF MUTUALS IN THE EU

KEY FINDINGS

- Public expenditure on social protection is likely to be put under pressure due to demographic change (ageing society). This might lead to a shift of social coverage from the statutory, compulsory part of social protection, to the voluntary part.
- Due to competition and increased converging pressure from EU internal market rules, mutuals may be forced to progressively take over characteristics and management techniques (such as risk selection and premium differentiation) from their joint-stock competitors to maintain healthy and sustainable businesses.
- If risk selection and premiums differentiation techniques become uniformly applied by insurers to maintain healthy risk portfolios, those at higher risk will have to pay increasingly expensive premiums for voluntary social and health insurance services and, given the likely future developments in social protection systems, the danger exists that maintaining sufficient coverage will become unbearable for the most vulnerable groups.
- The potential outcomes of these developments pose a challenge, given the European strategic objective of inclusive and sustainable growth. Under certain conditions, mutuals could contribute to face this challenge effectively. These conditions would be, firstly, a level playing field with joint-stock insurers and, secondly, the introduction of some market regulation in relation to voluntary social and health insurance services.

In this chapter future changes foreseen in relation to social protection systems are portrayed, analysing likely developments which would affect the fields of activity in which mutuals operate (Section 6.1). In Section 6.2, on the basis of the sketched developments of social protection systems, the possible future role of mutuals is elaborated on. This chapter is finalised by Section 6.3, providing some concluding remarks and thoughts on how mutuals could contribute to overcoming challenges ahead.

6.1. Sustainability and affordability of social protection systems

Spending on social protection represents the largest share of government expenditure in EU-countries. The main sources for funding such expenditure are general taxation (on income, expenditure or assets), contributory payments from employees and employers (social insurance) and private payments (out-of-pocket and co-payments). The way countries find a balance in these resources depends on the historical and cultural developments they have experienced.

Over the last decade, the expenditure for social protection as a percentage of Gross Domestic Product (GDP) in the Member States has remained the same (around 25 per cent). Nevertheless, the total expenditure on social protection increased by 35 per cent in Europe between 2000 and 2008 (from 2,433 billion Euros to 3,293 billion Euros).[208]

[208] See: Eurostat, Social protection expenditure, main results. Extracted by authors 27-04-2011.

Further analysis of the types of expenditure incurred by individual Member States shows that the most important schemes within social protection in the EU are the provisions for old age and survivors' pensions. In EU27 on average 11.5 per cent of the GDP is reserved for providing pensions for the elderly. In the Southern European countries, in particular, higher percentages can be found: for instance, in Italy more than 16 per cent of yearly GDP is spent on pensions.[209]

Over the last decades there has been increasing awareness that the ageing of the population will have significant implications for social protection schemes in all Member States in Europe and even worldwide.[210] As the baby-boom generation reaches retirement age in the coming decade, the workforce will lose a large proportion of workers and the increasing costs for providing pensions and healthcare facilities to an ageing population will have to be carried by a considerably more restricted share of active members of society.

According to population projections by Eurostat, the European mean old age dependency ratio is expected to increase substantially from its current levels of 25.9 per cent to 53.5 per cent in 2060.[211] This means that by 2060 every two individuals (aged 15-64) need to provide income for one individual older than 65. In some countries, such as Poland and Slovakia, the ratio will be 68 per cent in 2060. Other countries, for instance Denmark and the United Kingdom, show healthier ratios of approximately 42 per cent in 2060.

The ageing society brings with it pressure on public budgets due to increasing expenditure for social protection. It is calculated that public expenditure on healthcare will increase between 0.7 and 3.8 percentage points of GDP in most Member States between 2007 and 2060, and by 1.9 per cent of GDP on average.[212] Regarding public pensions, it is projected that expenditure will increase from 10.3 per cent of GDP in 2010 to 12.8 per cent in 2050 in Europe (EU25).[213] In addition, the decline in annual GDP growth due to retirement is projected to be around 1 per cent by 2050.[214]

Technological and medical developments will affect healthcare expenditures as well. On the one hand, technical innovations can help to make the provision of healthcare more efficient, resulting in a wider range of treatments becoming available for more and more people and impacting the levels of expenditure on healthcare.[215]

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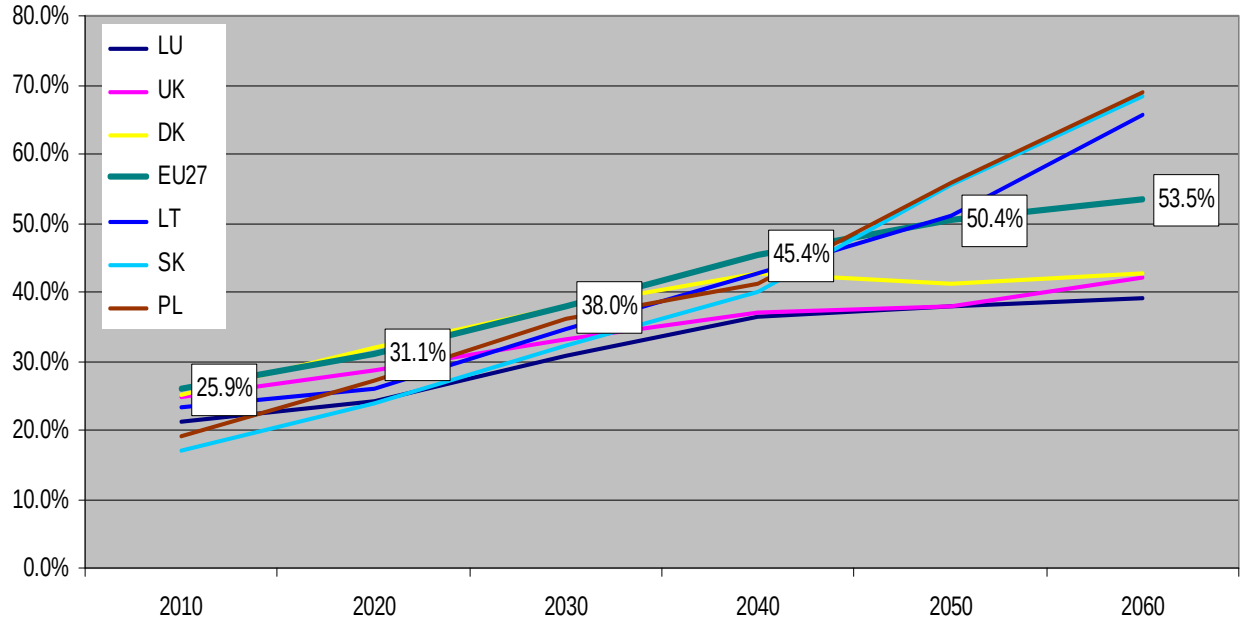
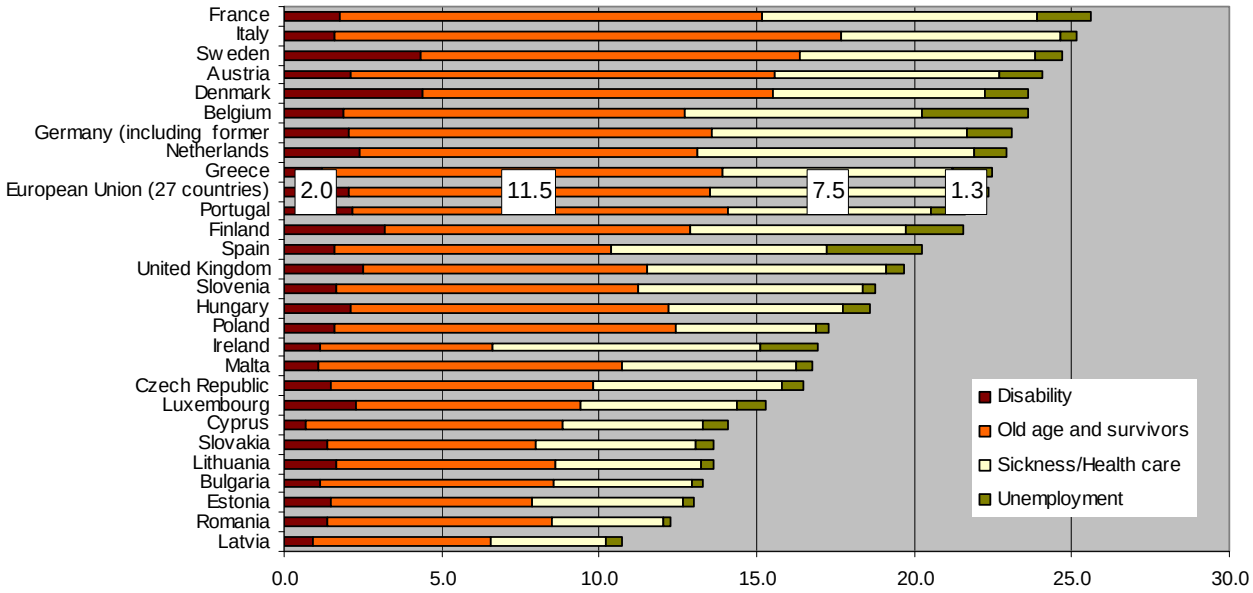
[209] A more detailed overview of expenditures is provided in Annex 2, including an overview of the expenditures (in percentage of GDP) on the most costly social protection provisions.
[210] See: Commission of the European Communities, Commission Communication, The demographic future of Europe – From challenge to opportunity, COM(2006) 571 final, 2006; Commission of the European Communities, Commission staff working document – Demography Report 2008: Meeting Social Needs in an Ageing Society, SEC(2008) 2911, 2008; European Commission, Demography Report 2010, Older, more numerous and diverse Europeans, 2011.
[211] Giannakouris, Konstantinos, Ageing characterises the demographic perspectives of the European societies, Population and social conditions, Eurostat Statistics in focus, 72/2008.
[212] Przywar, Bartosz, Projecting future health care expenditure at European level: drivers, methodology and main results, In: Economic Papers 417, July 2010.
[213] Economic Policy Committee and the European Commission (DG ECFIN), The impact of ageing on public expenditure: projections for the EU25 Member States on pensions, health care, longterm care, education and unemployment transfers (2004-2050), 2006.
[214] Mink, Reimund, General government pension obligations in Europe, in: IFC Bulletin, No 28, 2008.
[215] See: Bodenheimer, Thomas, High and Rising Health Care Costs. Part 2: Technologic Innovation, in: Annuals of Internal Medicine, vol. 142 no. 11, 2005, p. 932-937.

Figure 3: Old age dependency ratio for the EU and selected Member States (65+ year olds related to 15-64 year olds)



Source: Eurostat, EUROPOP2008 "convergence scenario", calculated by the authors.

Figure 4: Main overview expenditure on social protection in EU27 (as percentage of GDP) in 2008, broken down by the four most important schemes (disability, old age and survivors, sickness and healthcare and finally, unemployment)



Source: Eurostat: Expenditure: main results, extracted 17-04-2011, calculated by the authors.

Higher costs for the provision of healthcare and pensions are expected to have severe consequences for the sustainability and affordability of current social protection schemes. For this reason, many countries will, or have already, started to reform their social protection systems to keep them sustainable in the future. Alongside other methods[216], such as adjusting the retirement age, one method to keep the social protection systems affordable consists in transferring more and more services, currently covered by compulsory and statutory systems, to voluntary social and health insurance schemes and private pension schemes.[217]

Doubts can arise on the issue of whether in the future the statutory system will provide sufficient coverage for all and whether or not supplementary/complementary schemes will in fact be necessary to maintain a sufficient coverage against all social risks. These questions are specifically important for people with a low income, the elderly and other especially vulnerable groups, since they are more likely to be affected by these developments.

As a consequence of the above-mentioned developments, the fields of activity in which mutuals operate will most likely experience the following changes:

A) **Statutory social protection**: demands on compulsory social protection schemes will increase. Together with the necessity to limit state expenditure, this will lead to a decreasing degree of coverage of services and benefits provided.

B) **Voluntary schemes (complementary and supplementary health insurance, private pensions)**. As coverage by the statutory social protection system decreases, the demand for supplementary/complementary coverage will increase. Since more services need to be covered, it is likely that in general premiums will increase. Also, as the market expands, more competition will force insurers to reduce costs and maintain healthy risk portfolios. This ultimately leads to more emphasis on risk selection and differentiation of premiums for different risk categories. To avoid citizens having insufficient coverage, mandatory supplementary/complementary schemes could be introduced.

C) **Other types of insurance**. It is assumed that the insurance market for other types of risks than the social ones, as a mature market in many Member States, will not be subject to major expansion or contraction due to demographic developments.

D) **Other services for the public interest:** With public budgets under pressure, initiatives might emerge that are targeted towards having more services delivered by private organisations, instead of the traditional provision by the public sector. If legal frameworks are in place, as is the case in the UK, mutuals could offer an alternative for joint-stock companies in this new, emerging field.

[216] See for different types of public pension reforms, including shifting public provision to private schemes: OECD, Pensions at a Glance, 2007.
[217] Thomson, Sarah, Foubister, Thomas, Mossialos, Elias, Health care financing in the context of social security, European Parliament, 2008

Big Society: Britain made mutual[218]

The policy attention towards the mutuals sector has been increasing in the UK in recent years. In addition, the crisis, which struck the British financial sector heavily, increased faith in the mutual way of providing financial services. For this reason, there is a plea for remutualising former building societies having received State aid to contrast the financial crisis.[219]

The current coalition government in the UK has stated openly its support for mutuals, which they see as part of 'Big Society'[220], a programme that includes initiatives to enable civil society organisations to help shape and deliver public services.[221] In recent years, there have been initiatives to create new mutuals, not only in the financial sector but also in healthcare (NHS trusts), sports (football supporters trusts) housing and local authority leisure services.[222] Many of the new mutuals provide services that were previously organised by public bodies. It has even been suggested that the Post Office should be mutualised.[223]

On the other hand, the policy attention does not lead to improved legal frameworks to protect and stimulate mutualism in the UK. For instance in the insurance business mutuals face problems because the regulator does not completely recognise the concepts of member ownership and intergenerational responsibility. On the other hand, it is mentioned that the lack of legislation create flexibility for the mutual sector to operate in various markets and, hence, this is considered to be an advantage.

All in all, in the future we are likely to see a larger market for supplementary and/or complementary social insurance schemes, both in health insurance as well as in pension schemes. At the same time, there may be a danger that some vulnerable groups cannot afford to pay for sufficient coverage, both for their health insurance and their future pension.

6.2. The future role of mutuals

While the challenges for future social protection systems are relatively clear, expectations concerning the way mutuals will be able to adapt to a changing environment are difficult to form. The difficulties in making reliable hypotheses are related, first of all, to the wide variety of mutual organisations, national legislations and particular situations in the Member States, as described in the previous part of this report.

A second reason is the fact that the EU insurance market is on the verge of major transitions which could have an impact on its main players. Although the likely consequences of the new rules on financial supervision have not yet been studied to a full extent, it is safe to say that pressure towards uniformity in the market and convergence in behaviour between mutuals and joint-stock companies may be enhanced.

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[218] See: Michie, Jonathan, Promoting Corporate Diversity in the Financial Sector, Oxford Centre for Mutual and Employee-owned Business, 2010.
[219] Ibidem
[220] Ibidem
[221] UK Cabinet Office, Building the Big society, 2010
[222] Mutuo, Public services: Made Mutual, 2010; http://www.mutuo.co.uk/wp-content/shared/mutuals-public-service-4.pdf
[223] Mutuo, Post Office: Made Mutual, A publicly owned, co-operative post office, 2010; http://www.mutuo.co.uk/wp-content/shared/Mutuals-post-office-3.pdf

An often heard criticism made by representatives of mutual societies is that EU rules on insurance services take the limited liability company form as starting point, with the result that this company structure provides a blueprint for all insurers. Consequently, mutual insurers have to comply with a strict set of regulations established on the basis of how joint-stock insurers function and hence, more uniformity will emerge in the way insurance business is conducted.[224]

Both mutual insurers and mutual benefit societies will be, and are currently, affected by this development. A likely consequence specifically for the mutual benefit societies is that, if they are not excluded from the scope of EU directives on insurance, they may be forced to progressively convert to insurance mutuals. If they have to comply with these internal market regulations, they have two options: they can either abandon specific services not strictly related to the insurance business, or separate their different activities and establish different legal forms to perform each of them (such as dividing pure insurance activities from management of healthcare institutions, or separating the provision of compulsory from voluntary insurance).

In order to maintain competitiveness, mutuals could also think about expanding their business activities, either by selling policies to more people, by selling policies in new markets, or by providing new products to their members. In addition, they can organise their activities more cost-effectively and/or create economies of scale. This could possibly be done by merging and creating alliances with other mutuals, even across borders, which can help to increase capital levels.

Mutuals can also adopt business principles specific of the commercial insurer's model, such as risk selection. This can help to improve the risk portfolio of the insurer, while allowing the provider to offer cost-efficient policies and to compete with joint-stock companies. The development of mutuals taking over joint-stock principles can already be witnessed in relation to discussions concerning inter- versus intra-generational solidarity. Within voluntary health insurance, age is a dominant variable in the calculation of risk, since older people have increased risk when it comes to requesting health care services. For insurers, it is therefore necessary to include young people in the portfolio as well to maintain low prices. The more young people an insurer has in its portfolio, the lower it can keep its premiums. The same problem exists in some countries with occupational insurance schemes and pensions that are open to employees only, meaning that, with retirement, or in the case of job loss, one needs to subscribe to another (read: more expensive) insurance, or pension scheme.

In markets where both mutuals and joint-stock companies operate, there is a danger of cream-skimming by the joint-stock insurers focussing on a privileged group of younger, less risky clients to be added to their portfolios and leaving mutual societies, on the basis of their refusal to apply risk selection, with unfavourable portfolios entailing a large proportion of elderly and low-income policyholders. Connected to this issue, there are already some moves ongoing from mutuality based on intergenerational solidarity towards mutuality in the form of intra-generational solidarity. This means that risk coverage is increasingly set to apply to members of the same generations, which is likely to lead to decreasing premiums for young people and increasing premiums for older citizens and people at higher risk.

[224] Michie, Jonathan, David T. Llewellyn, Converting Failed Financial Institutions into Mutual Organisations, in:

This leads to the following, foreseeable consequences for the different types of mutuals:

1) **Mutual benefit societies**: in systems where mutuals are involved in the provision of statutory social protection, the field in which mutual benefit societies operate will shift from the compulsory schemes further towards voluntary schemes. In addition, because of the increased regulatory focus on activity instead of legal form, the services other than insurance will increasingly be separated from the insurance business. The mutual benefit societies as they exist today will experience severe difficulties.
2) **Mutual insurers**: Mutual insurers will see increased markets in voluntary health insurance and private pension plans. Due to competition and legislation on insurance, they will be progressively operating more and more as for-profit insurance companies. It is expected that more differentiation of premiums will take place on the basis of risk-groups.
3) **Mutuals providing other services** might see an increase of business if they are given the opportunity to provide services other than insurance in more Member States. Since public expenditure is under pressure, mutual organisations might be able to present a desirable alternative to private commercial companies in different sectors.

6.3. Concluding remarks

The question now arises whether the presented trends are desirable given the EU strategic objective of ensuring inclusive growth with access to basic resources, rights and social services for all, adequate health and long-term care and the guarantee that the need for additional care for the elderly will not lead them to poverty and financial dependency.[225] The answer to this question is clearly 'no', and the trends highlighted above pose serious challenges for current and future European and national policies.

In case the private sector is called upon to contribute in finding solutions to the above-mentioned challenges, the social economy and, more specifically, mutuals, are natural stakeholders. With their core values of solidarity, democratic governance and no-shareholders, mutuals operate for the benefit of their members and hence, by their nature, in a socially responsible way. Given the challenges governments face in relation to social protection, mutuals could, therefore, contribute to providing an affordable safety net for those at risk – just like they did a hundred years ago.

Without saying that mutuals constitute the overall solution to the European challenges ahead, they can contribute to providing a part of this solution. To be able to play this role, mutuals would first of all require a level playing field to be able to compete with other private companies on the same terms. Secondly, it would be desirable, on a national level, to limit risk selection and cream-skimming practices and to introduce risk equalisation schemes on (social) insurance markets to encourage both joint stock companies and mutual insurers, as well as all other players, to maintain healthy risk portfolios.

Journal of Social Entrepreneurship, Volume 1, Issue 1 March 2010, p. 146 – 170, 2010.

[225] See: on Europe 2020, European Commission, Communication from the Commission EUROPE 2020, A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010, COM(2010)2020 final; and on the Social Inclusion OMC, Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union, COM(2005)706 final, 2005. On the basis of this document, the European Council adopted in March 2006 a new framework for the social protection and social inclusion process. See: http://ec.europa.eu/social/main.jsp?catId=755&langId=en.

Regarding the first issue, the Statute for European Mutuals could be of help, not only because it would provide a specific legal framework for mutual societies to work across borders, but even more, because it would facilitate a greater awareness of mutuals in future (European) policy making.

In relation to the second issue, national and/or European rules are required which involve some market regulation of social coverage complementary or supplementary to statutory provisions. Examples of the regulation of complementary services can already be found in some countries: in Slovenia, for instance, where a risk equalisation scheme was introduced in 2005[226] that ensured equal premiums for all insured individuals, irrespective of age.

[226] Law on Changes and Amendments to the Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia 100/05.

7. CONCLUSIONS

In the previous chapters developments are depicted with regard to specific features of mutuals in the EU Member States and the role they play in the framework of each (evolving) social protection system. In addition, we have described the way mutuals responded to the recession, their possible future role in the light of EU policy orientations, but also the challenges they are confronted with.

Based on the previous chapters, one can conclude that mutuals are strongly historically, economically and culturally embedded in several Member States, while at the same time, their form and role differs in the national contexts. We have also clearly observed that mutuals play a major role in Europe, serving a large proportion of European citizens by providing health, social and insurance services.

Yet, despite their importance and the valuable principles incorporated into their organisational form, mutuals feel under severe pressure in some Member States and in the EU in general.

There is a fear amongst stakeholders that, due to increasing competition with joint-stock companies and more stringent conditions for insurance services' providers, mutuals are being "forced" to lose some of the ideological features that make them a distinct and unique organisational form. The developments depicted could have the following consequences:

1) **Uniformity of the market**: mutuals could, to an increasing extent, become look-alikes of their commercial counterparts in order to remain competitive. For instance, they could introduce risk selection or stricter conditions to become a member of a mutual, or even abondon their mutualistic values by issuing shares to increase their solvency margins;
2) **Market concentration**: predominantly medium-sized mutuals are forced to become part of larger organisations, even joint-stock companies (demutualisation), herewith increasing the distance between the organisation and the policyholders;
3) **Move towards niche markets**: mutuals become even more active in niche markets, serving homogeneous groups with particular demands and expectations.

Despite the rich traditions, and the important role mutuals still play in European society, it is safe to say that, due to the developments sketched above, such fears are not to be disregarded, as the role of mutuality is likely to diminish in the European society of the future, if no action is taken.

During this research we found arguments that mutuals have added value compared to their commercially driven counterparts, in cultural, political, but also economic terms:

1) First of all, literature indicates that there are sound economic arguments to foster mutualism. There is a plea for diversification in the insurance sector, emphasising the role of mutuals compared to their stock holding counterparts, in order to make the sector as a whole more competitive, less risky and more resilient to changing financial and economic circumstances. For this reason, stimulating diversification of company forms could be a means to prevent future crises or to diminish the impact of future unforeseen events. Furthermore, fostering diversity lies within the heart of the European society and the progressing establishment of the single market does not necessarily mean that Europe becomes a *uniform* market.[227]

[227] Expert Group on insurance and pensions, Financial services action plan: progress and prospects, 2004.

2) Secondly, there is a strong business case for mutuals, since a high number of European citizens still specifically choose them for accessing quality healthcare and social services and insuring themselves against every kind of social and property risk, as well as for finding the most suitable solution to other needs.
3) Lastly, analyses show that there might be in the future a growing need for companies that have social responsibility deeply rooted in their organisation with a view to maintaining sustainable, affordable social protection systems in line with the European Union's strategic objectives.

But how can we ensure that the idea of mutuality is safeguarded in the future or, in other words, that mutuals are granted an equal chance in comparison to joint-stock companies or other types of economic operators to maintain their role and position within the European society and economy of the future?

It starts with the mutuals themselves: they need to improve their products and spread the idea of mutuality as the core value of their organisation, and convince future members that this is a cost effective and sustainable alternative to commercial service providers. In addition, mutuals can make European citizens more aware that they have a choice as to the insurance model they wish to join.

Moreover, it is important to create a level playing field in which factors hampering mutuals when competing with their stock holding counterparts are removed as far as possible (regarding their activities, market entrance, grouping and working across borders).

Lastly, at a European level, mutuals should be better recognised as a distinct and important actor within the European economy and society. For this purpose, an appropriate instrument could be a statute for European mutuals, as largely proposed by the sector, the European Parliament, the European Economic and Social Committee and, recently, by the European Commission.

ANNEX 1: NATIONAL LEGISLATION ON MUTUALS

Annex 1A: Definition of mutuals in 27 Member States

	Definition of mutuals in 27 Member States
AT	An insurance mutual ("Versicherungsverein auf Gegenseitigkeit") is defined as an association that provides insurance to its members under the principle of reciprocity. (Source: Finanzmarktaufsicht glossary). A member of an insurance association at the same time contracts insurance by this association. However, mutual insurance associations can offer insurance to non-members as well (source: The Separation of Ownership and Control: An Austrian Perspective). Small insurance associations, which are restricted to a specific location, provide only fire and other property damage insurance, and have no more than 20,000 members, have a special status in Austrian law (source: Versicherungsaufsichtsgesetz)
BE	A mutual health insurance fund (ziekenfonds/mutualité) is defined as an association of individuals which promotes the physical, mental and social wellbeing in a spirit of precaution, mutual help and solidarity and carries out its activities without any profit. (source: Law on health insurance funds). Besides the mutual health insurance funds, there are also mutual insurance associations (onderlinge verzekeringsvereniging/association mutuelle d'assurance): associations of people who have agreed to insure themselves mutually 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 (BIJZONDERE COMMISSIE BELAST MET HET ONDERZOEK NAAR DE FINANCIËLE EN BANKCRISIS: Rapport préliminaire du collège d'experts)
BG	Mutuals are defined as "mutual insurance cooperatives" (Взаимозастрахователна кооперация). A mutual insurance co-operative society is a co-operative society that has been granted a licence to perform insurance activities. 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 (source: Insurance Code).
CY	Mutuals do not seem to exist
CZ	Mutuals do not seem to exist
DK	Mutual companies ("gensidige selskaber") are insurance companies owned by their policyholders. Policyholders are also known as members (http://www.finanstilsynet.dk/upload/Finanstilsynet/publik/publikationer/forsikring97/dn28_ord.html).
EE	Mutual and cooperative insurance are not known in Estonia (source: AMICE); 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 (http://www.legaltext.ee/text/en/X90004.htm)
FI	Finnish legislation distinguishes between small mutuals (operating in no more than 40 municipalities), which are called insurance associations ("vakuutusyhdistys/försäkringsförening"), and larger mutuals, which are called mutual insurance companies ("keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag"). 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. According to the Insurance Act, the purpose of mutual insurance companies is to provide profit or other economic benefit to members, unless otherwise prescribed by the statutes. Policyholders of mutual insurance companies are also members (http://www.finlex.fi/sv/laki/ajantasa/2008/20080521).
FR	There are two types of mutuals in France: the "sociétés d'assurance mutuelle", which fall under the Insurance Code, and the "mutuelles" that fall under the Mutuals Code (Code de la mutualité). The main difference between the two is that those that fall under the Insurance Code are allowed to practice risk selection (http://www.assufrance.com/mutuelle_de_sante_en_france.php). Mutual insurance companies are owned by the members-policyholders. They operate on a non-profit basis and have no share capital (http://www.senat.fr/rap/r98-0452/r98-0452132.html). According to article L 111-1 of the Code de la Mutualité: "mutual societies 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." (AIM)
DE	A mutual insurance association (Versicherungsverein auf Gegenseitigkeit) is a private insurance company on the basis of an association with legal capacity whose members are the policyholders (http://www.versicherungsnetz.de/onlinelexikon/VersicherungsvereinaufGegenseitigkeit.html).

	Definition of mutuals in 27 Member States
	The statutory insolvency insurance institution for occupational old-age pension schemes is the Mutual Pension Insurance Association (Pensions-Sicherungs-Verein auf Gegenseitigkeit (PSVaG)). It was set up by the Occupational Pensions Act (Gesetz zur Verbesserung der betrieblichen Altersversorgung – Betriebsrentengesetz – BetrAVG) which came into force on 1 January 1975. As a mutual insurance association, the PSVaG is subject to supervision by the Federal Institute for the Supervision of Financial Services (Bundesanstalt für Finanzdienstleistungsaufsicht). It is funded by compulsory contributions by employers (http://www.uni-mannheim.de/edz/pdf/sek/2008/sek-2008-0475-en.pdf).
EL	'Mutual insurance cooperatives', or 'mutual insurance funds', provide mutual insurance exclusively to their member policyholders (www.bankofgreece.gr/Pages/en/deia/PrivateInsuranceFirms.aspx#mutual). According to the Law Regarding Private Insurance Undertakings, providing mutual insurance to their members must be the exclusive object of mutual insurance cooperatives. The main features of the mutual health funds are insurance solidarity, mutual democratic management, and their non-profit character (http://www.oatye.gr/index-en.php). These mutual insurance funds are private legal entities ('associations', according to the Greek Civil Code) created by employees' associations. 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 pillar (http://www.isi.org.gr/GR/files/Greek%20Benefits.pdf). Affiliation is voluntary. Benefits are financed through members' contributions, but employers may also choose to contribute (http://www.isi.org.gr/GR/files/Greek%20Benefits.pdf, see also: http://www.mzes.uni-mannheim.de/eurodata/newsletter/no7/feature.html)
HU	According to Act LX of 2003 on Insurance Institutions and the Insurance Business, a mutual insurance association (biztosító egyesület) is a non-profit voluntary association set up on a reciprocal basis, which provides insurance to members: http://net.jogtar.hu/jr/gen/getdoc.cgi?docid=a0300060.tv&dbnum=62 According to Act XCVI of 1993 on the Voluntary Mutual Benefit Societies, a voluntary mutual insurance fund (önkéntes kölcsönös biztosító pénztár) is set up by natural persons voluntarily, on the basis of independence, mutuality, solidarity, in order to provide additional (substitutive or supplementary) social protection services (http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99300096.TV).
IE	Friendly societies 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 (http://www.cro.ie/ena/business-registration-friendly-society.aspx). A building society shall have as one of its objects the raising of funds for making housing loans. Every person holding one or more shares in a building society shall be a member of the society (http://www.irishstatutebook.ie/1989/en/act/pub/0017/print.html#sec9)
IT	According to the Civil Code (Codice Civile), members of a mutual insurance society (società di mutua assicurazione) are also policy holders, and vice versa. There are also mutual aid societies (Società Operaie di Mutuo Soccorso), which 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 cannot select its members; mutual assistance societies carry out their activities exclusively for and among members), democratic participation (those belonging to mutual assistance 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) (www.fimiv.it/default.asp?modulo=pages&idpage=26).
LV	Mutual insurance cooperative societies have members, whereas insurance companies have shareholders.
LT	Mutuals do not seem to exist
LU	A mutual insurance association (association d'assurances mutuelles) is defined as an association of persons or legal entities, formed to insure its members against risks on a non-profit basis (https:/www.rcsl.lu/mjrcs/webapp/static/mjrcs/pdf/forms/note_pmor_ASSMUT.pdf). A mutual aid society (société de secours mutuel) is a non-profit grouping of natural persons, which carries out actions of foresight, solidarity and mutual assistance in the social domain, which consists in repairing the social consequences of the risks facing their members. 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 (http://fnml.lu/ssm.htm).

	Definition of mutuals in 27 Member States
MT	According to the Insurance Business (Assets and Liabilities) Regulations, "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 as "a company owned by its policyholders" (http://mymoneybox.mfsa.com.mt/pages/glossary.aspx?l=M).
NL	A mutual society (onderlinge waarborgmaatschappij) is an association that concludes insurance agreements with its members (http://www.kvk.nl/wetten_en_regels/rechtsvormen/overzicht_rechtsvormen/de_cooperatie_en_onderlinge_waarborgmaatschappij/).
PL	Mutual insurance societies provide insurance to their members on a reciprocal, not-for-profit basis (Towarzystwa ubezpieczeń wzajemnych w Polsce report).
PT	A mutual insurance society (mutua de seguros) is an insurance company formed by the association of individuals who are both insurers and insured. The mutual does not accumulate profits. In Portugal, a mutual takes the form of a cooperative society with limited liability, comprised of people with the same profession, with the intent to insure against risks arising from their professional activity. Only members can enter into contracts with a mutual insurance society: (http://ww5.generali.pt/generali/servicos-cliente/glossario.html?task=list&glossid=1&letter=M) (Insurance Act of 1998). Mutual associations (Associações Mutualistas) are non-profit associations that develop complementary actions of social security, health, social work and promoting quality of life, preferably for their members and their families. According to the Mutual Associations Code, the main purpose must be to provide social security and health benefits, but they may also pursue other objectives related to social protection and promoting quality of life (i.e. social support services, social work, cultural activities): (http://www.3sector.net/equalificacao/src_cdroms/novos_conceitos_praticas/recursos_complementares/Mutualismo.pdf).
RO	Law no. 32/2000 on insurance companies and insurance supervision defines mutual insurance societies as legal persons whose members are both insured and insurers.
SK	Mutuals do not seem to exist in Slovakia.
SI	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.
ES	Mutual insurers (mutuas de seguros) are private non-profit organisations that are intended to cover their members' risks. Policyholders are also members (Law on Private Insurance Organisation and Supervision). Social security mutuals (mutualidades de previsión social) are private non-profit organisations that provide voluntary insurance, complementary to the compulsory social security system. Again, policyholders are also members (Regulation on Social Security Mutuals).
SE	Mutual insurers (ömsesidiga försäkringsbolag) are communities of interest for their policyholders, who are also members. An insurance association (försäkringsförening, previously called understödsförening – benevolent society) is an association which has the objective to promote members' economic interests by carrying out insurance business. Under the old Law on Benevolent Societies (which will be applicable until the end of 2014 for those societies that have not yet received a permit under the new Law on Insurance Business), benevolent societies are designed primarily for employees of a certain or certain companies, persons belonging to a particular profession or the like, and provide pension insurance, endowment insurance or health insurance (usually pension funds, sickness funds, burial funds or sickness and burial funds) (http://www.sweden.gov.se/content/1/c6/03/08/43/ed3eccd6.pdf).
UK	A mutual company is a company without shareholders which carries on business on a mutual basis, that is, in such a way that the policy holders are entitled to the surplus arising from the business. However, some companies that are mutual in the sense of having no shareholders may carry on all or part of their business in a way that takes that business outside the legal concept of mutuality, for instance because the policyholders are not members. (http://www.hmrc.gov.uk/manuals/gimanual/gim1180.htm). In the UK there are several legal forms associated with mutualism: Friendly societies, Building societies, industrial and provident societies and credit unions: (http://www.fsa.gov.uk/Pages/Doing/small_firms/MSR/index.shtml).

Annex 1B: Main legislative sources

	Institutional policies and laws (laws on establishment, statutes, generic or specific legislation)
AT	Mutual societies, like all insurance companies, fall under the "Versicherungsaufsichtsgesetz" (Insurance Supervision Act), the "Versicherungsvertragsgesetz" (Insurance Contract Act) and other general insurance acts. (Source: VVO Kleine Versicherungsvereine auf Gegenseitigkeit). Sections 26 to 73 of the Insurance Supervisory Act contain special rules for mutuals, regarding establishment, organisation, finances, winding up, mergers, demutualization. There are also special provisions for branches of foreign mutuals and small mutuals.
BE	Mutual health insurance funds are covered by the "Wet betreffende de ziekenfondsen en de landsbonden van ziekenfondsen/ Loi relative aux mutualites et aux unions nationales de mutualites" (Law on health insurance funds and unions of health in-surance funds). This law contains rules regarding establishment, organisation, services health insurance funds must provide, finances (including government contributions), mergers, winding up and supervision of the health insurance funds. Other mutuals are covered by the "Wet betreffende de controle der verzekeringsondernemingen/Loi relative au contrôle des enterprises d'assurances" (Law regarding the supervision of insurance undertakings). This law does not apply to mutuals (or cooperative insurers) that limit their activity to one municipality or a group of adjacent municipalities. According to this law, they have the same obligations as joint-stock insurers. The law contains special provisions for mutuals regarding establishment, finances, demutualization and mergers.
BG	Mutual insurance cooperatives are covered by the Insurance Code. Section II of this code contains special provisions for this type of insurer, regarding establishment, organisation and finances. Moreover, this law limits the activities of mutual insurance cooperatives to life assurance. Where the Insurance Code does not specify otherwise, the provisions of the Cooperatives Act apply to mutual insurance cooperatives as well.
CY	-
CZ	The law prohibits the creation of societies in mutual form (apart from the health insurance funds) (source: Equal Theme D: Thematic Update)
DK	Mutual societies fall under the Financial Business Act (lov om finansiel virksomhed), which includes some special regulations for mutuals regarding organisation and finances.
EE	-
FI	Mutual insurance companies fall under the Insurance Act (Försäkringsbolagslag 18.7.2008/521), which includes special regulations for mutuals regarding establishment, organisation, finances, mergers, demutualization and winding up. Insurance associations are covered by the Law on Insurance Associations (Lag om försäkringsföreningar 31.12.1987/1250), which includes regulations on establishment, finances, organisation, mergers, winding up and inspection of this type of mutuals.
FR	The 'Sociétés d'assurance mutuelle' are covered by the insurance code (Code des assurances). The insurance code contains special provisions for mutual insurance, regarding establishment, organisation and finances. The 'code de la mutualité' includes rules regarding establishment, organisation and finances. The code has separate sections for mutuals active in insurance and those active in prevention, social action and other health/social/cultural activities.
DE	Mutuals fall under the Insurance Supervision Law (Versicherungsaufsichtsgesetz – VAG). Articles 15-53b of this law contain special regulations for mutuals, regarding establishment, organisation, finances and winding up. There are also special provisions for small mutuals in article 53-53b. Some provisions of the Companies Act, the Commercial Code, the Works Constitution Act 1952, the Cooperatives Act and the Civil Code also apply to mutuals (http://www.arge-vvag.de/fsets/fthemen.htm).
EL	Mutuals fall under the Law Regarding Private Insurance Undertakings (Νομοθετικό Διάταγμα 400/1970 «Περί Ιδιωτικής Επιχειρήσεως Ασφαλίσεως»), which includes special regulations for mutuals, regarding establishment, inspection and finances. Furthermore, this law restricts the activity of mutuals to non-life insurance (English: http://www.eaee.gr/cms/eng/uploads/nd400-70en.pdf).
HU	The Act XCVI of 1993 on Voluntary Mutual Insurance Funds provides the legal framework for the establishment of voluntary non-profit insurance in the area of health, pension and self-support (http://www.euro.who.int/__data/assets/pdf_file/0006/80826/E68317.pdf).

	Institutional policies and laws (laws on establishment, statutes, generic or specific legislation)
	This act regulates the scope of activity, organisation, management, organisational changes and supervision of these funds (source: Information on the major benefit regulations and organisational structure of the pension insurance system in Hungary). The Insurance Act LX of 2003 does not apply to voluntary mutual insurance funds.
IE	The principal legislation relating to societies registered under the Friendly Societies Acts is as follows: • Friendly Societies Acts, 1896-1977 • Insurance Act, 1989 • Electoral Act 1997 (as amended) (source: Register of Friendly Societies Annual Report, 2009) Building societies fall under the Building Societies Acts (1989-2006)
IT	Mutuals are covered by articles 2546-2548 of the Civil Code (Codice Civile), which states that certain rules established for cooperatives (in that same Code) also apply to them. Mutual aid societies are still covered by Royal Decree no. 3818 of 15th April 1886. 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 (AIM).
LV	Mutuals are covered by the Law On Insurance Companies and Supervision Thereof.
LT	-
LU	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), which includes special provisions for mutuals, regarding establishment and organisation. Mutual aid societies are covered by the law of 7 July 1961 concerning the mutual aid societies (loi du 7 juillet 1961 concernant les sociétés de secours mutuels) and 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).
MT	The Insurance Business Act and Insurance Business Regulations include special provisions for mutuals.
NL	Mutuals (as well as cooperatives) are covered by articles 53-63 of book 2 of the Civil Code (Burgerlijk Wetboek). Because mutuals and cooperatives are defined as special associations, regulations for associations (articles 26-52) are, in principle, applicable to mutuals as well, unless otherwise provided in the articles on mutuals and cooperatives.
PL	Mutuals are covered by the Act of 22 May 2003 on insurance activity, which includes special regulations for mutuals, regarding establishment, organisation, finances, winding up, mergers and demutualisation. The Act also contains special provisions for small mutuals.
PT	Mutual insurance societies are covered by the insurance acts of 1998 and 2009, as well as by provisions of the Cooperative Code, provided that they do not contradict the insurance acts. The insurance acts contain special provisions for mutuals regarding establishment, but mostly the rules applying to joint-stock insurers apply to mutuals as well. Mutual associations are covered by the Mutual Associations Code (Código das Associações Mutualistas).
RO	Mutuals are covered by Laws 32/2000 and 403/2004 on Insurance Companies and Insurance Supervision, which include some provisions related to the special character of mutuals, but mostly the rules applying to joint-stock insurers apply to mutuals as well.
SK	-
SI	Mutuals fall under the Insurance Act, which includes special provisions for mutuals, regarding establishment, organisation, finances, winding up, mergers and demutualisation. Mutuals in the supplementary health insurance sector furthermore have to comply with the Health Care and Health Insurance Act. The only mutual active in this sector, Vzajemna, was established by Law Amending the Law on Health Care and Health Insurance (Official Gazette of the Republic of Slovenia, no. 29/98), which separated it from the Health Insurance Institute of Slovenia (the provider of compulsory insurance). The Act on the Reorganization of the Status of Vzajemna health insurance regulates the conditions for possible demutualisation of this mutual.
ES	Mutuals are covered by the Law on Private Insurance Organisation and Supervision (Ley de ordenación y supervisión de los seguros privados) (2004) and the Regulation on Private Insurance Organisation and Supervision (Reglamento de Ordenación y Supervisión de los Seguros Privados) (1998), which include special provisions for mutuals regarding organisa-tion finances, mergers and demutualization. Special provisions for social security mutuals, regarding establishment, activities, organisation and finances, can be found in the Regulation on Social Security Mutuals (Reglamento de mutualidades de previsión social) (2002).

	Institutional policies and laws (laws on establishment, statutes, generic or specific legislation)
SE	Mutuals (both mutual insurance companies and insurance associations) are covered by the Insurance Business Act (Försäkringsrörelselag), which includes special provisions for both types mutuals (different provisions for each type), regarding establishment, organisation, finances, winding up and mergers. This act makes several references to the Act on Economic Associations (cooperatives) (lag om ekonomiska föreningar): provisions from this act apply to mutuals unless otherwise provided for in the Insurance Business Act (this is new – the old Insurance Business Act did not refer to the Act on Economic Associations). The new Insurance Business Act, repealing the Insurance Business Act of 1982 and the Law on Benevolent Societies of 1972, comes into force April 1, 2011, but insurance associations will still be covered by the old Law on Benevolent Societies (lag om understödsföreningar) until they have been issued a permit under the new law. They have until the end of 2014 to apply for such a permit (http://www.riksdagen.se/webbnav/index.aspx?nid=3322&rm=2010/11&bet=FiU8) (http://www.sweden.gov.se/sb/d/13416/a/152060).
UK	Registered friendly societies are unincorporated societies set up under the provisions of the Friendly Societies Act 1974 and earlier similar legislation, and carry on types of business within the objects of that legislation. The Friendly Societies Act 1992 provided for a new breed of incorporated friendly society and gave registered societies the ability to convert into the new style incorporated society. Most 'Directive' societies, those large enough to be regulated under the EC Insurance Directives, have incorporated (http://www.hmrc.gov.uk/manuals/gimanual/GIM1200.htm). Building societies are regulated by the FSA subject to legislation set out in the Building Societies Act 1986. That Act has subsequently been amended on numerous occasions, and was substantively revised by the Building Societies Act 1997 and by the Financial Services and Markets Act 2000 (http://www.bsa.org.uk/policy/policyissues/bslegislation/bslegislation.htm).

ANNEX 2: LIST OF INTERVIEWEES

Name	Organisation
Apostolos Ioakimidis	DG Enterprise and Industry Directorate F Tourism, Corporate Social Responsibility, Consumer Goods and International Regulatory Agreements Unit F2- Small businesses, cooperatives, mutuals and Corporate Social Responsibility
Antonia Carparelli	DG Employment, Social affairs and inclusion, Directorate D: Europe 2020: Social Policies
Ulf Lindner	DG Internal market, Directorate F – Free movement of capital, company law and corporate governance. Unit F2 – Company Law, Corporate Governance and Financial Crime
Gregor Pozniak Caterine Hock Helen Sheppard	AMICE (Association of Mutual Insurers and Insurance Cooperatives in Europe)
Rita Kessler Philippe Swennen Cristina Vallina Magdalena Machalska Willi Budde	AIM (Association Internationale de la Mutualité)
Bernard Thiry	CIRIEC/Ethias (Belgium)
Lieve Lowet	ICODA European Affairs (Belgium)
Serge Jacobs	VVOV/UAAM (Verbond van Verenigingen van Onderlinge Verzekering/ Union des Associations d'Assurances Mutuelles) (Belgium)
Mike Aiken	Open Univeristy UK (United Kingdom)
Cornélia Federkeil Giroux	Mutualité Française (France)
Arielle Pieron Garcia	Mutualité Française (France)
Luc Roger	Harmonie Mutuelles (France)
Bill McPate	Independent consultant/ Benenden Health care (United Kingdom)
Martin Shaw	AFM (Association of Financial Mutuals) (United Kingdom)
Loredana Vergassola	FIMIV (Federazione Italiana della Mutualità Integrativa Volontaria) (Italy)

Name	Organisation
Frederik Andersson	University of Lund, Institute of Economic Research (Sweden)
Gunnar Andersson	Folksam (Sweden)
Mihael Perman	AZN (Agencija za zavarovalni nadzor/ Insurance Supervision Agency) (Slovenia)
Dusan Kidric	Vzajemna (Slovenia)
François Daue	Itinera Institute (Belgium)
Isabelle Hirtzlin	Université de Paris 1 (Panthéon-Sorbonne) (France)
Manuela Krütt	Gothaer Finanzholding AG (Germany)
Ed Mayo	Co-operatives UK (United Kingdom)
Ellen Bramness Arvidsson	Sveriges Försäkringsförbund/Swedish Insurance Federation (Sweden)
Marie-Hélène Kennedy	ROAM (Reunion des Organismes d'assurance mutuelle) (France)
Claudio Travaglini	Università di Bologna (University of Bologna) (Italy)
Rado Bohinc	Univerza na Primorskem (University of Primorska) (Slovenia)
Marcel Smeets	The European Business and Health Care Forum (the Netherlands[228]

[228] Consulted during the final phase of the study.

ANNEX 3: ICMIF: MUTUAL AND COOPERATIVE MARKET SHARE 2008

Table 2: Mutual and cooperative market share 2008

	Total market share	Life	Non-life	Market share change 2007-2008	market share in $ (millions)	Life	Non-life	Staff	Assets in $ (millions)
FI	73.20%	79.60%	48.00%	2.20%	17,224	14,915	2,310	6,038	117,532
AT	59.80%	48.80%	69.00%	-0.40%	14,269	5,283	8,986	13,834	68,217
DE	43.90%	60.80%	29.70%	-0.10%	106,124	67,001	39,123	86,647	751,788
DK	42.40%	54.40%	19.30%	0.80%	13,728	11,575	2,153	4,080	188,464
FR	38.70%	32.10%	51.70%	0.60%	106,807	58,741	48,065	83,754	759,120
SK	38.50%	35.20%	41.30%	0.30%	1,131	484	647		
NL	33.10%	29.80%	34.80%	7.10%	37,905	11,568	26,337	18,684	191,807
ES	29.40%	16.30%	40.70%	0.60%	25,513	6,554	18,959	16,394	99,458
CZ	25.10%	15.10%	32.00%	0.40%	2,057	503	1,553	4,668	3,405
SE	23.50%	11.10%	52.60%	0.30%	8,644	2,887	5,757	4,694	86,770
RO	21.30%	9.50%	24.40%	1.20%	756	69	687		1,280
EE	19.50%	13.30%	4.00%	4.40%	101	16	16		12
HU	18.90%	17.80%	20.10%	1.30%	948	475	473	4,025	3,079
BE	18.60%	16.60%	22.30%	-1.20%	8,420	4,841	3,579	4,249	64,618
IT	15.10%	11.20%	20.70%	1.10%	21,265	9,222	12,043	6,079	89,297
LU	13.90%	16.50%	1.80%	-6.50%	2,683	2,622	61		
SI	13.40%	3.80%	17.90%	-0.50%	399	36	363		
BG	13.40%	22.10%	12.00%	5.80%	181	41	140		153
PL	5.80%	3.50%	9.20%	0.80%	1,421	505	915	60	103
UK	5.30%	3.50%	9.90%	1.40%	20,902	10,055	10,847	26,703	187,725
EL	3.90%	0.10%	8.00%	-0.10%	273	4	268	486	73
PT	3.00%	1.10%	7.50%	-0.60%	671	187	484	1,048	2,371
IE	1.60%	1.60%	1.50%	0.30%	837	677	160	667	9,253
Europe[229]	23.90%	21.50%	27.30%	2.10%	405,700	214,353	191,277	282,110	2,699,550

Source: ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010; table drawn up by the authors

[229] The total data reported by ICMIF for Europe include non-EU Member States as well, such as Switzerland, Liechtenstein and Iceland.

REFERENCES

- A.M. Best, Mutuals Maintain Momentum, But Challenges Mount, 2010.
- A.M. Best, Mutuals Under the Microscope As Market Share Grows, 2009.
- Ádám, Zoltán, The Hungarian Pension Reform. Paper presented at the I. Lancut Economic Forum (Poland), April 2005; Ministry for National Economy. The reform of the Hungarian pension system (A reformed reform), 2010.
- Adams, Mike, Mahmud Hossain, Choice of organizational form in the life insurance industry: New Zealand evidence, in: Asia Pacific Journal of Management Vol 13, No 1:19-35, 2005.
- AIM, Healthcare protection today: Structures and trends in 13 countries, 2008
- AIM/AISAM/ACME, Final Proposal for a Regulation on the Statute of the European Mutual Society (EMS) A Working Document from the European mutual sector, November 2007.
- AIM/AMICE, A European Statute for Mutual Societies, 2007.
- AIM/AMICE, European Mutual Society, AMICE / AIM Draft Regulation 2007, Explanatory Memorandum, 2008.
- AISAM, Governance of Mutual Insurance Companies: the current state of legislation, 2006.
- AISAM, Mutual Insurance in Figures, 2007.
- AISAM, Future of mutuality, in: Mutuality N°52, 2001.
- Albreht, T, Turk E, Toth M, Ceglar J, Marn S, Pribaković Brinovec R, Schäfer M, Avdeeva O and van Ginneken E. Slovenia: Health system review. Health Systems in Transition. 2009; volume 11(3): 56, 142.
- Allianz Global Investors, Funded Pensions in Western Europe 2008, International Pension Studies, 2008.
- Alter, K., Social enterprise typology, 2007.
- Alter, Sutia Kim, et al, Generating and Sustaining Nonprofit Income, 2004.
- AMICE, The market share of Mutual and Cooperative Insurance in Europe 2008, 2009.
- AMICE, List of Parliamentary reports mentioning the need for a European statute for mutual societies, 2010.
- Amitsis, Gabriel, Current Policies and Reform Plans for the Greek Benefits Framework, Benefits & Compensation International, Volume 31, Number 7, March 2002.
- ANIA, Italian Insurance 2009-2010, 2010.
- Archambault, Edith, Mutual organizations, mutual societies, in: International Encyclopedia of Civil Society, Anheier H. and Toepler S. (Ed.), 2009.
- Arts, Wil, John Gelissen, Three Worlds of Welfare Capitalism or More? A State-of-the-Art Report, in: Christopher Pierson, Francis Geoffrey Castles (Eds), The Welfare State Reader, 2006.
- Association of British Insurers (ABI), Industry report 2007/08 Customer impact survey, 2008.
- 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.

- Beblavý, Miroslav, New welfare state models based on the new member states' experience? Slovak Governance Institute, 2008.
- 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.
- Beveridge, William Henry, Social Insurance and Allied Services, 1942.
- Bikker, Jacob A., Janko Gorter, Restructuring of the Dutch nonlife insurance industry: consolidation, organizational form, and focus, in: The Journal of Risk and Insurance, 2011, Vol. 78, No. 1, 163-184.
- Bodenheimer, Thomas, High and Rising Health Care Costs. Part 2: Technologic Innovation, in: Annuals of Internal Medicine, vol. 142 no. 11, 2005, p. 932-937.
- Bonoli Giuliano, Classifying Welfare States: a Two-dimension Approach, in: Journal of Social Policy (1997), 26: 351-372
- Bourlès, Renaud, On the emergence of private insurance in presence of mutual agreements, 2009.
- Bryndová L, Pavloková K, Roubal T, Rokosová M, Gaskins M and van Ginneken E. Czech Republic: Health system review. Health Systems in Transition. 2009; 11(1).
- Busse R, Riesberg A. Health care systems in transition: Germany. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
- Campbell, David, Richard Slack, The Influence of Mutual Status on Rates of Corporate Charitable Contributions, in: Journal of Business Ethics, Vol. 74, No. 2 pp. 191-200 Year: 2007.
- CEA, European Insurance in Figures, 2009.
- CEA, European Insurance in Figures, 2010.
- CIRIEC, Manuel for drawing up the satellite accounts of companies in the social economy: Co-operatives and mutual societies, 2006.
- CIRIEC, The Social Economy in the European Union, 2007.
- Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 390, Proposal for a Council Regulation (EEC) on the Statute for a European mutual society. SYN 391, Proposal for a Council Directive (EEC) supplementing the Statute for a European mutual society with regard to the involvement of employees. SYN 388, Proposal for a Council Regulation (EEC) on the Statute for a European cooperative society. SYN 389, Proposal for a Council Directive (EEC) supplementing the Statute for a European cooperative society with regard to the involvement of employees. SYN 386, Proposal for a Council Regulation (EEC) on the Statute for a European association. SYN 387, Proposal for a Council Directive (EEC) supplementing the Statute for a European association with regard to the involvement of employees.
- Commission of the European Communities, COM(93)252 final, Brussels, 6 July 1993.
- Commission of the European Communities, Communication from the Commission, Implementing the Community Lisbon programme: Social services of general interest in the European Union COM(2006) 177 final, 2006.

- Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Working together, working better: A new framework for the open coordination of social protection and inclusion policies in the European Union, COM(2005) 706 final, 2005.
- Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Accompanying the Communication on "A single market for 21st century Europe" Services of general interest, including social services of general interest: a new European commitment, COM(2007) 725 final, 2007.
- Commission of the European Communities, Consultation document: Mutual Societies in an enlarged Europe 03/10/2003.
- Commission of the European Communities, Commission Communication, The demographic future of Europe – From challenge to opportunity, COM(2006) 571 final, 2006.
- Commission of the European Communities, Commission staff working document – Demography Report 2008: Meeting Social Needs in an Ageing Society, SEC(2008) 2911, 2008.
- Commission of the European Communities, Législation relative aux mutuelles dans les Etats Members / Legislation regarding mutuals in Member States (draft of 03/10/03):

  http://ec.europa.eu/enterprise/policies/sme/files/mutuals/mutuals-legis-in-ms.pdf.
- Controledienst voor de ziekenfondsen en de landsbonden van ziekenfondsen/ Office de contrôle des mutualités et des unions nationales de mutualités: Yearly report 2009.
- Cooperative Europe, Study on the implementation of the Regulation 1435/2003 on the Statute for European Cooperative Society (SCE), 2010.
- Corens, Dirk, Health Systems in Transition, Belgium Health system review, Vol. 9 No. 2 (2007).
- Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees.
- Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE).
- Cuevas C.E., Fischer K.P., Cooperative Financial Institutions, Issues in Governance, Regulation, and Supervision, World Bank Working Paper n°82, 2006.
- DIESIS, Map of European and national social economy institutions and organisations, 2008.
- Doherty, N.A., and Dionne, G., Insurance with Undiversifiable Risk: Contract Structure and Organizational Form of Insurance Firms, in: Journal of Risk and Uncertainty, 1993, 6, p. 187—203.
- Drechsler, Denis, Jütting, Johannes P., Private Health Insurance in Low and Middle-Income Countries: Scope, Limitations, and Policy Responses, 2005.
- Eckerberg, Per Johan, Peter Morawetz and Per Brandt, A possible modernization of the Swedish Insurance Business Act. In: Nordisk Försäkringstidskrift, 2009: www.nft.nu.

- Ederveen, Sjef, Ruud de Mooij, Arjan Soede, Social Europe, European network of economic policy research institutes, occasional paper no. 5/November 2003.
- Esping-Andersen, G., The Three Worlds of Welfare Capitalism, Cambridge: Polity Press, 1990.
- Eurofi, Achieving the Integration of European Financial Markets in a Global Context, Monday 3 and Tuesday 4 December 2007, At the European Parliament in Brussels, Conference report.
- European Commission, Commission staff working document, Second biennial report on social services of general interest, Brussels, 22.10.2010, SEC(2010) 1284 final.
- European Commission, Communication from the Commission: EUROPE 2020 A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010, COM(2010), 2010.
- 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.
- European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Towards a Single Market Act For a highly competitive social market economy 50 proposals for improving our work, business and exchanges with one another, COM(2010) 608 final, 2010.
- European Commission, Demography Report 2010, Older, more numerous and diverse Europeans, 2011.
- European Commission, DG Enterprise, Promotion of entrepreneurship and SMEs Crafts, small businesses, cooperatives and mutuals, Overview of the contributions: http://ec.europa.eu/enterprise/policies/sme/files/mutuals/summary-replies_en.pdf.
- European Commission, State aid: Commission rules against the unequal treatment resulting from certain insurance policies ("contrats solidaires" and "contrats responsables"), IP/11/69, Brussels, 26 January 2011.
- European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Single Market Act, Twelve levers to boost growth and strengthen confidence: "Working together to create new growth", COM(2011) 206 final, 2011.
- European Parliament, Written declaration on establishing European statutes for mutual societies, associations and foundations, WD 84/2010.
- Eurostat, Health care expenditure by financing agent, consulted 18-03-2011.
- Eurostat, Social protection expenditure, main results. Extracted by authors 27-04-2011.
- Expert Group on insurance and pensions, Financial services action plan: progress and prospects, 2004.
- Gaál P. Health care systems in transition: Hungary. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
- Gerkens S, Merkur S. Belgium: Health system review. Health Systems in Transition, 2010, 12(5):1–266.

- Giannakouris, Konstantinos, Ageing characterises the demographic perspectives of the European societies, Population and social conditions, Eurostat Statistics in focus, 72/2008.
- Glenngård A.H, Hjalte F, Svensson M, Anell A, Bankauskaite V. Health Systems in Transition: Sweden. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2005.
- 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.
- Harrington, Scott E., Greg Niehaus, Capital Structure Decisions in the Insurance Industry: Stocks versus Mutuals, in: Journal of Financial Services Research 21: 1/2 145-163, 2002.
- Hlavačka S, Wágner R, Riesberg A. Health care systems in transition: Slovakia. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
- Iannello, Francesco, Edoardo Greppi & Patrick Peugeot, The European Mutual Society: The challenge of a renaissance of mutuality, Mutuality Review 55, 2003.
- ICMIF Annual Mutual Market Share & Global 500 for 2007–2008, 2010.
- Jenkins, David and Takau Yoneyama, The History of Insurance, 2000.
- Kernot, Cheryl, Social Enterprise: A Powerful Path to Social Inclusion, 2009: www.socialinclusion.gov.au/Documents/SocialEnterprise_PowerfulPath.pdf.
- Koene, Bert, De Caeskopers. Een Zaanse koopmansfamilie in de Gouden Eeuw, 2011.
- Kotkas, Toomas, Governing Health and Social Security in the Twenty-First Century: Active Citizenship Through the Right to Participate, in: Law Critique (2010) 21:163–182, 2010.
- Laux, Christian, Alexander Muermann, Financing risk transfer under governance problems: Mutual versus stock insurers, in: Journal of Financial Intermediation 19 (2010) 333–354, 2010.
- Ligon, James A., Paul D. Thistle, The Formation of Mutual Insurers in Markets with Adverse Selection, in: The Journal of Business, Vol. 78, No. 2 pp. 529-556 Year: 2005.
- Lópes Castellano, F., Una sociedad 'de cambio y no de beneficencia'. El asociacionismo en la España Liberal (1808-1936), CIRIEC-España, nº 44, 2003, p. 199-228.
- Lo Scalzo A, Donatini A, Orzella L, Cicchetti A, Profili S, Maresso A. Italy: Health system review. Health Systems in Transition, 2009; 11(6)1-216.
- Lowet, Lieve, Wat is een SGAM? (What is a SGAM?), in: Larcier, Financieel Forum-Bank en Financiewezen, 2008/8, pp 497-503, 2008.
- Marshall, J.N., Willis R, Richardson, R, "Demutualisation, strategic choice, and social responsibility" Environment and Planning C: Government and Policy 21(5) 735 – 760, 2003.
- Maurizio Ferrera, The 'Southern Model' of Welfare in Social Europe, in: Journal of European Social Policy February 1996 6: 17-37.
- Mayers, D. and C. Smith, Ownership Structure across Lines of Property-Casualty Insurance, in: Journal of Law and Economics, 31, 351-78, 1988.

- Mazur, Michael, Mutuals promote their "mutuality", in: ABA Banking Journal, July 2010.
- 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.
- Michie, Jonathan, Promoting Corporate Diversity in the Financial Services Sector, 2010.
- Mink, Reimund, General government pension obligations in Europe, in: IFC Bulletin, No 28, 2008.
- MISSOC, Comparative tables, 2010.
- MISSOC, Cross-cutting introductions to MISSOC Tables 2010.
- Monique Kerleau, Anne Fretel, Isabelle Hirtzlin, Regulating Private Health Insurance in France: New Challenges for Employer-Based Complementary Health Insurance, Documents de Travail du Centre d'Economie de la Sorbonne, 2009.
- Monti, Mario, A new strategy for the single market at the service of Europe's economy and society; Report to the President of the European Commission José Manuel Barroso, 9 May 2010.
- Moody's insurance, Revenge of the Mutuals Policyholder-Owned U.S. Life Insurers Benefit in Harsh Environment Summary Opinion, 2009.
- Mossialos, Elias and Sarah Thomson, Voluntary Health Insurance in the European Union, European Observatory on Health Systems and Policies, Copenhagen: WHO, 2004.
- Mossialos, Elias, Anna Dixon, Josep Figueras and Joe Kutzin, Funding health care: options for Europe, European Observatory on Health Care Systems, 2002.
- Mutuo, Britain: Made Mutual Mutuals Yearbook 2010.
- Mutuo, Post Office: Made Mutual, A publicly-owned, co-operative post office, 2010.
- Mutuo, Public Services: Made Mutual, 2010.
- OECD Health at a Glance, 2009.
- OECD, Insurance and private pensions compendium for emerging economies; private pensions: selected country profiles, 2001.
- OECD, Pensions at a Glance, Public policies across OECD countries, 2007.
- OJ C 64/3 17.3.2006, Withdrawal of Commission proposals following screening for their general relevance, their impact on competitiveness and other aspects (2006/C 64/03).
- OJ C 83/5 30.3.2010, Consolidated versions of the Treaty on European Union and the Treaty on the functioning of the European Union (2010/C 83/01), 2010.
- OJ C 318/22 23.12.2009, Opinion of the European Economic and Social Committee on the 'Di-verse forms of enterprise' (Own-initiative opinion) (2009/C 318/05)
- 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 207/25, 18.8.2003, Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, 2003.
- 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 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).
- 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).
- 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.
- 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.
- Erhemjamts, Otgontsetseg, Leverty, James Tyler, The Demise of the Mutual Organizational Form: An Investigation of the Life Insurance Industry, in: Journal of Money, Credit and Banking, Vol. 42, No. 6, September 2010.
- 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.
- Paquy, Lucie, Compostela Group of Universities, European Social Protection Systems in Perspective, 2004.
- Przywar, Bartosz, Projecting future health care expenditure at European level: drivers, methodology and main results, In: Economic Papers 417, July 2010.
- PWC, Belgium, International Comparison of Insurance Taxation, 2009.
- Report of the high level group of company law experts on a modern regulatory framework for company law in Europe, Brussels, 4 November 2002.
- Rothschild, Michael, Stiglitz, Joseph E, Equilibrium in Competitive Insurance Markets: An Essay on the Economics of Imperfect Information, in: The Quarterly Journal of Economics, MIT Press, vol. 90(4), p. 630-49, 1976.
- Sandier S, Paris V, Polton D. Health care systems in transition: France. Copenhagen, WHO Regional Office for Europe on behalf of the European Observatory on Health Systems and Policies, 2004.
- Seanor, Bull, Rory Ridly-Duff, Mapping social enterprise: do social enterprise actors draw straight lines or circles?, 2007:

  www.lsbu.ac.uk/bus-cgcm/conferences/serc/2007/speakers/seanor-serc-2007.pdf.
- Serifsoy, Baris, Demutualization, Outsider Ownership, and Stock Exchange Performance: Empirical Evidence, 2006.
- Shinozawa, Yoshikatsu, Mutual verus proprietary ownership: an empirical study from the UK unit trust industry with a company-product measure, Annals of Public and Cooperative Economics Volume 81, Issue 2, p. 247–280, June 2010.

- Shiwakoti, Radha K., Kevin Keasey, Robert Hudson, Comparative performance of UK mutual building societies and stock retail banks: further evidence, in: Accounting & Finance, Volume 48, Issue 2, p. 319–336, June 2008, p. 320.
- Smith, B. and M. Stutzer, Adverse Selection, Aggregate Uncertainty, and the Role of Mutual Insurance Contracts, in: Journal of Business, 63(4), p. 493-510, 1990.
- Soede, A.J., J.C. Vrooman, P.M. Ferraresi, G. Segre, Unequal Welfare States: Distributive consequences of population ageing in six European countries, SCP/CeRP, 2004.
- Southall, H. R., "Ni Etat ni marché: Les premières prestations sociales en Grande-Bretagne", in MiRe, Comparer les systèmes de protection sociale en Europe, Volume 1: Rencontres d'Oxford, Paris, MiRe, 65–103, 1995.
- Stewart, Jim, Mutuals and Alternative Banking: A Solution to the Financial and Credit Crisis in Ireland?, 2010.
- Swiss Re, Global Insurance review 2010 and outlook 2011/12, 2010
- The Building Societies Association, Mutual societies in an enlarged Europe. Response by The Building Societies Association to the Consultation Document issued by Enterprise Directorate General in October 2003.
- The Building Societies Association, Written evidence submitted by the Building Societies Association, September 2010.
- Thomson, Sarah, Foubister, Thomas, Mossialos, Elias, Health care financing in the context of social security, European Parliament, 2008.
- Thomson, Sarah, Elias Mossialos, Private health insurance in the European Union, Final report prepared for the European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities, 2009.
- Trifiletti, Rossana, Southern European Welfare Regimes and the Worsening Position of Women, in: Journal of European Social Policy February 1999 9: 49-64.
- UK Cabinet Office, Building the Big society, 2010.
- VV.AA., La Economía Social y el Tercer Sector, Escuela Libre Editorial, 2003
- Westall, Andrea, Business or third sector? What are the dimensions and implications of researching and conceptualising the overlap between business and third sector? Third Sector Research Centre Working Paper 26, 2009.
- WHO, Norwegian Ministry of health and care services, Norwegian Directorate of Health, Health in times of global economic crisis: implications for the WHO European Region, Discussion Paper, 2009.

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