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The mutualist economy: what is their foreseeable future in the Single Market?

Project "The Single Market 20 years on"

Marie-José Fleury

As an expert of European issues, **Marie-José Fleury** is the founding manager of the consultancy specialised in European affairs *L'Europe à la Une*® (www.leuropealaune.eu).

Introduction

Faced with the financial, economic and social crisis which has grown into the most serious crisis of confidence and meaning that the European Union has ever known since its creation, a further deepening of the Single Market, the driving force of economic and social development of the EU, is needed. This is the purpose of the Single Market Act, one of whose levers[1] is specifically devoted to social entrepreneurship[2]. Clearly, mutual societies cannot be ignored from the Single Market. So, for Michel Barnier, European commissioner responsible for the internal market and services, "Europe must be re-orientated towards a social market economy, re-establish man at the heart of the European project (…)".

If man is at the heart of the mutualist project in agreement with the principles of social economy, the fact remains that the project is carried by fully-fledged companies, key actors in the European economy, who operate in the same markets than conventional firms. This is what Jacques Delors[3] reminds us of when he highlights the fact that "the social and solidarity-based economy and market-driven enterprise must learn to cohabit". Following the example of other forms of enterprise, faced with the challenges posed by the Single Market and the globalisation of the economy, they must be able to be competitive and above all, develop within the EU without losing their specificity, their identity. This requires the EU to treat all forms of enterprise equally, providing them with a legal framework adapted to the specific features of each one, enabling them to develop freely their activities and their potential[4].

This Policy Brief is a modest contribution to reflections on the future of the mutualist economy in Europe. In part 1, it takes stock of the mutualist sector in Europe. It concentrates in part 2 on the challenges to which the mutualist sector is confronted and evokes in part 3 some perspectives, whether European or national, of this sector.

1. Communication from the Commission, "The Single Market Act. Twelve levers to boost growth and strengthen confidence. 'Working together to create new growth'", COM (2011) 206 final, Brussels, 13 April 2011.
2. "Based on values of solidarity and as efficient, competitive businesses, mutuals could be useful instruments for achieving the objectives set at the European Summit in Lisbon in March 2000, which aim to combine sustainable economic growth with a quantitative, qualitative improvement in employment and greater social cohesion" *in* Commission of European Communities, "Mutual societies in an enlarged Europe", Consultation document, 3 October 2003.
3. Jacques Delors, "L'économie sociale et solidaire met en cause l'économie de marché"(The social and solidarity-based economy calls into question the market economy), Article published on the site of UNIOPSS, 3 May 2012.
4. Commission of European Communities, "Mutual societies in an enlarged Europe", *op. cit.*

1. The current state of the mutualist sector in Europe

1.1. Mutual societies, enterprises… of the social economy

Different types of enterprise cohabit within the European Single Market, including those of the social economy: associations, foundations, cooperatives and mutual societies. The notion of social economy varies depending on countries and cultures. Even if it has not been clearly defined within Europe, it is accepted that "the organisations of the social economy are economic and social actors present in all sectors. Above all, they are characterised by their aim and a different way of functioning"[5]. The social economy represents 10% of all European enterprises and 6% of total employment[6]. Mutual societies constitute the smallest section and represent between 3 and 3.5% of total employment in the organisations of the social economy.

Mutualist traditions vary considerably from one Member State to another. This diversity renders difficult the formalisation of a common definition. However, the Commission defines them as "a voluntary group of people (physical or moral) whose aim is the satisfaction of members' needs as opposed to the remuneration of an investment. These forms of societies are characterised by the principle of solidarity between members and their involvement in the management of the company; they are governed by private law"[7] and, in essence, they are socially responsible. Thus, certain principles appear to be common to the majority of mutuals *(See Box 1)*.

Box 1 – Common principles of mutual societies in Europe

- **Absence of securities (shares, members' shares) giving access to property rights or remuneration of shareholders' capital:** mutual societies operate on the basis of an initial capital financed by the members or by borrowing, which is the collective and indivisible property of the mutual.
- **Democratic governance:** the principle of "one person, one vote".
- **Affiliation:** mutual societies are open to any person who fulfils the conditions established in the articles and who adheres to mutualist principles.
- **Aim exclusively non-profit-seeking:** the absence of a profit-seeking aim does not mean absence of economic activities, or profitability, or even surpluses. These are reinvested in order to improve the quality of services provided to the members, to fund the development of the company, to increase the capital resources, or even within certain limits they are redistributed to members.
- **Solidarity between members:** founding principle, which means the joint and several liability and mutualisation between good and bad risks, and without discrimination between members.
- **Independence:** mutuals are not controlled by government representatives and do not depend on public subsidies to exist.

Source: European Parliament, DG for Internal Policies, Policy Department A: Economic and Scientific Policies, Employment and Social Affairs, "The role of mutual societies in the 21st century", Study IP/A/EMPL/ST/2010-004 PE 464.434, July 2011, page 21.

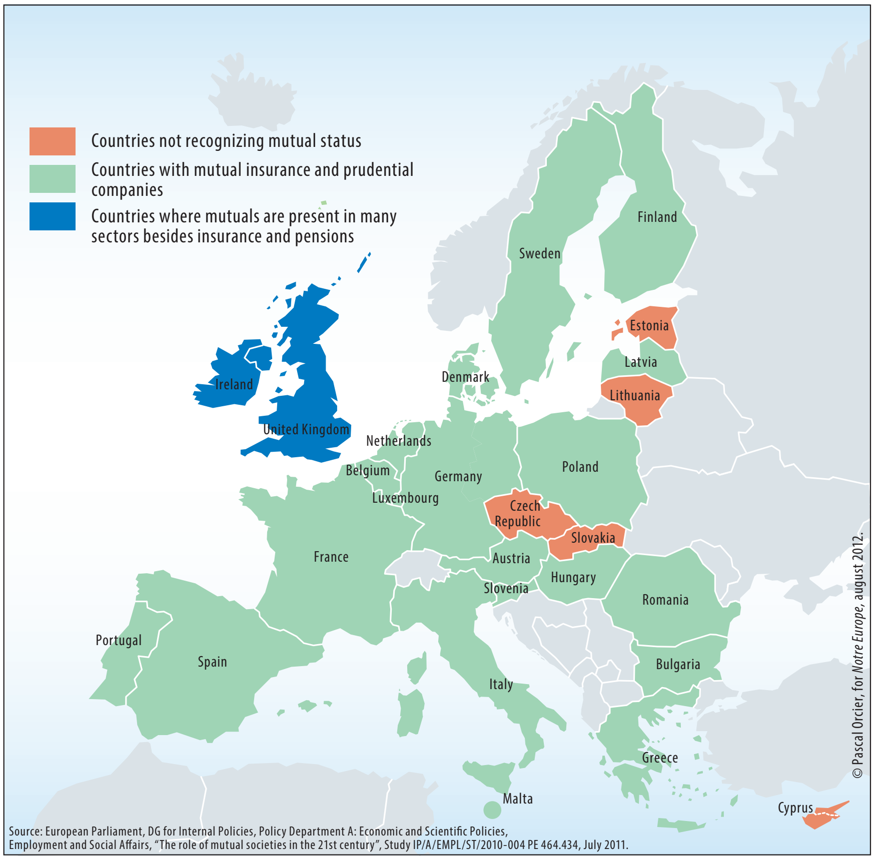
1.2. Panorama of mutual societies in Europe

Mutual societies employ roughly 350,000 people in Europe[8]. They provide social services and health care for 230 million European citizens and overall represent more than €180 billion in insurance premiums[9].

These figures hide different realities from one country to another *(See Map 1)*. According to countries, three situations can be identified.

5. Charter for the principles of social economy promoted by the European Standing Conference of Cooperatives, Mutual societies, Associations and Foundations (CEP-CMAF), now known as Social Economy Europe, 2002.
6. Social Economy Europe, *Answer to the European Commission's consultation on the future "EU2020" strategy*, 19 January 2010.
7. Commission of European Communities, "Mutual societies in an enlarged Europe", *op. cit.*
8. Centre international de recherches et d'information sur l'économie publique, sociale et cooperative (CIRIEC - International Centre of Research and Information on the Public, Social and Cooperative Economy), *The Social Economy in the European Union*, 2007.
9. According to AIM (Association Internationale de la Mutualité, a grouping of autonomous health insurance and social protection bodies).

MAP 1: MUTUALISM IN EUROPE: THE DIVERSE REALITIES OF THE EU.



First of all, mutual societies do not exist in a whole group of countries where this status is not recognised. This is the case in Cyprus, Czech Republic, Estonia, Lithuania and Slovakia.

Secondly, in the great majority of countries that recognise the status of mutuals (Austria, Belgium, Bulgaria, Germany, Denmark, Greece, Spain, Finland, France, Hungary, Italy, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Sweden, Slovenia), the latter fall into two categories depending on the type of their activities: either mutual insurance societies, or health providence societies.

Mutual insurance societies are widespread in the majority of European countries. Most of them correspond to the following definition[10]: "A mutual insurance company is a private legal entity of persons engaged in insurance and as such subject to the European Economic Area (or comparable) solvency prudential regulation - established, owned and/or controlled by its member-policyholders". They provide non-life insurance services (property/damage) and life insurance (prudential, private pensions, etc.).

Health providence societies or mutual benefit societies provide welfare coverage concerning health, as well as insurance and services which cover social risks such as illness, handicap and old age, whether in the form of complementary or compulsory cover.

Three situations can be distinguished:

a) The compulsory social security scheme is covered by mutuals (Belgium, Germany with the *Krankenkassen*);
b) The State chooses to manage welfare cover, in which case the mutuals often play an alternative role and propose complementary insurance (Spain);
c) Management is shared between the mutual societies and the State (France).

Finally, at the other end of the spectrum, in the United Kingdom and Ireland, mutual societies are active in many other sectors besides insurance and health providence, notably in the credit sector, water distribution and transport.

This overview indicates that it appears difficult to ignore the role of mutual societies in the deepening of the Single Market.

10. AMICE, Definition adopted by the Board of Directors on 4 October 2011.

2. Challenges facing the mutualist sector in Europe

The Single Market supposes the realisation of the four major fundamental liberties (free movement of persons, goods, services and capital) and its aim is to work as a European domestic market in which all enterprises can thrive. Thus, social economy enterprises should be able to benefit from the strengths of the Single Market to the same degree as capitalist enterprises. And yet their potential for growth remains largely under-exploited.

At European level, mutual societies are faced with two major difficulties:

- on the one hand, the diversity of types of mutuals existing in Member States or the absence of recognition of this status in some countries makes the cross-border development of their activities more difficult and explains to a large extent that they are poorly represented beyond national borders;
- on the other hand, European directives tend to ignore the specific nature of mutuals and impose on them undifferentiated rules, which are almost exclusively based on those corresponding to other types of companies. This has a particularly high impact on mutual societies which undertake insurance activities.

Moreover, the ageing of the population, which is a challenge for the European economy as a whole, poses specific problems for the mutualist model. Finally, whether at a European or national level, mutual societies are faced with a major challenge, that of promoting the specific characteristics of their entrepreneurial approach, i.e. cooperation within a rationale of member participation.

2.1. Developing cross-border activity

Mutual societies first developed through internal growth becoming external via geographical and material diversification on a national level. Their development should be able to pursue its course at European level, in particular in alignment with the internationalisation of the economy and increased competition on the markets.

However, whereas the EU is now equipped with a set of European regulations designed to facilitate the cross-border activities of enterprises, such as the 2005/19/CE directive[11] on mergers, these regulations do not apply to the whole of the mutualist sector[12], meaning that mutual societies are not always authorised or able to group together at European level.

Concerning this point, mutuals evoke, amongst others, the difficulties encountered in the development of their cross-border activity[13] due to the profusion of national regulations or even the absence of legal status in certain cases *(See Map 1)*.

Mutuals, indeed, like any other European enterprise within the Single Market, benefit from the freedom of establishment in another Member State notably through subsidiaries. However, this cross-border establishment can only take place in the form of joint stock companies (generally public limited companies), controlled and governed by shareholders or associates who could be exclusively mutual societies. In such a case, policyholders of the subsidiaries are not considered as members but as simple clients who are not able to participate in governance. Thus, the principles of democracy and common ownership cannot, for most of the time, be exercised beyond borders[14].

2.2. Mutual societies and European legislation

Considered as companies, mutual societies are supposed to benefit from the free movement, freedom of establishment and freedom to provide services throughout the EU. Indeed, Single Market rules apply to mutual societies as to any other economic actor. This is all the more true for mutuals which operate on regulated markets, such as the insurance market.

Within the framework of the integrated insurance market, they are confronted with certain difficulties specific to their status[15]:

- life-insurance: the service provider must have one of the legal forms required by the original Member State. Furthermore, in many Member States, mutual societies are not, for example, authorised to carry out certain activities and cannot, therefore, always provide additional services. In certain countries they cannot provide life-insurance cover (Greece), in others they can only provide life-insurance cover (Bulgaria);
- non-life insurance: in certain cases, mutual societies are also excluded from the scope of these directives due to their size, the types of activity

11. Council Directive 2005/19/EC of 17 February 2005 amending Directive 90/434/EEC 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.
12. *Cf.* annex 1 of the 2005/19/EC directive. See AMICE, "Cross-border business and cooperation in the mutual and cooperation insurance sector. Example of practical cooperation and business expansion abroad. Responses to capital needs through cooperation", 2011.
13. AMICE, "Cross-border business and cooperation in the mutual and cooperation insurance sector (...)", *op. cit.* Recently two mutuals (one French mutual, *Harmonie Mutualité*, and the Italian mutual, *Cesare Posso*) have organised their cross-border activities thanks to a European cooperative.
14. "*Les mutuelles dans le marché intérieur*" (Mutuals within the Single market), Legal arguments in favour of European mutuals, Groupe Europe, 2012.
15. European Parliament, "The role of mutual societies in the 21st century", *op. cit.*, pages 45 to 48.

of the mutuals, the reinsurance provisions or the minimum guarantee fund.

One of the European legislation acts having the strongest impact on the mutualist sector is the "Solvency II" directive[16] concerning solvency requirements for insurers[17]. It is based on three pillars: the first defines quantitative requirements with regard to the solvency margin and establishes two regulatory levels for capital requirements; the minimum capital requirement (MCR) and the solvency capital requirement (SCR). The second pillar defines the qualitative requirements with regard to the monitoring and management of risks. Finally, the third pillar concerns market discipline.

The second pillar imposes restrictions with regard to governance, the supervision and management of risks which do not seem adapted to the governance of mutual societies[18]. To address these concerns, some changes have been anticipated or proposed for the mutuals to enable them to ensure their compliance both with the "Solvency II" directive and the "Omnibus II" directive project[19] in terms of the timescale (i.e. until the end of 2011 and beyond)[20] as well as measures relating to governance requirements, reporting and solvency capital requirement (SCR).

Some of the activities of mutual societies could be also considered as "social services of general interest" (SSGI). In the absence of a European text concerning the SSGI, the rules relative to the Single Market, competition and services of general economic interest (SGEI) apply to these services.

2.3. Ageing of the population

During the last decades, there has been growing awareness of the fact that the ageing of the population will have a significant impact on social protection systems in all EU Member States. The ageing of the population goes hand in hand with pressure on public finances due to the growing expenditure on social protection. What exactly will be the repercussions for the mutualist sector in Europe?

The ageing of the population could lead to a shift towards voluntary health and social cover. Thus, the standardisation of risk selection techniques and premium differentiation with a view to maintaining healthy risk portfolios could weaken or even exclude vulnerable groups and persons exposed to greater risks, who subsequently will have to pay increasingly high premiums for the services of voluntary health and social insurance. Given that mutuals have a vocation built on solidarity and equal treatment between policyholders and members, they will continue to accept the most vulnerable persons. However, there is a risk that it becomes impossible to maintain an adequate level of protection for these groups.

2.4. Training and recognition of the mutualist model

Opinion polls on the image of mutuals show that, globally, they are struggling for recognition of their model[21]. Although their image remains globally positive, associated with a sense of trust, they nevertheless come across as lacking in dynamism. Thus, one in four persons is indifferent as to whether they are covered by a mutual society or a traditional insurance company.

Publicity campaigns centered on values are really quite rare. With a few rare exceptions, most mutuals advertise above all the notion of price and/or services. And yet, placing the client at the heart of the enterprise is also the declared objective of traditional insurance companies. Moreover, pension institutions and companies also invest in communication relating to ethics and solidarity. Faced with the risk of trivialisation, it seems that mutuals do not explain and promote public knowledge of the way they function, including the precise nature of the redistribution mechanisms of their surpluses, which are little known.

For Jean-Louis Bancel[22], giving a meaning to the word "value" is a critical challenge[23] to propose the mutualist model as an alternative to banks and private companies, whose image has been somewhat tarnished by the current crisis.

16. Directive Solvency II, of 10 July 2007, adopted by the European Parliament in April 2009.
17. European Parliament, "The role of mutual societies in the 21st century", *op. cit.*, pages 19, 24 and 49.
18. Legal arguments in favour of a statute for European mutuals, adopted by GEMA and sent in addition to the response by MACIF to the European Commission's public consultation on the future of European company law, May 2012.
19. Proposal for a directive of the European Parliament and of the Council (...) in respect of the powers of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, COM(2011) 8 final, 19 January 2011. The directive in its final draft was due to be adopted by the European Parliament and Council at the end of 2011. Following the introduction of new control authorities, the Commission adopted a proposition of the Omnibus II Directive further clarifying the powers of the new authorities, notably in the insurance sector. The Omnibus II Directive includes amendments to the Solvency II Directive.
20. According to the latest European compromise, the implementation of the Solvency II dispositions should be postponed until 01 January 2014, i.e. a year after the time limit initially planned in the Omnibus II directive project published in January 2011.
21. Lefèvre E.,« Fusions, regroupements et partenariats: les mutuelles françaises et l'intégration européenne » (Mergers, amalgamations and partnerships: French mutuals and European integration) MBA for insurance managers, CNAM-ENASS, February 2011. In September 2010, the CREDOC (*Centre de Recherche pour l'Etude et l'Observation des Conditions de vie*) carried out a qualitative study for the FNMF (*Fédération Nationale de la Mutualité Française* – National Federation of French Mutual Benefit Societies) on mutualist differences (page 100).
22. Former Deputy General Manager of the *Fédération Nationale de la Mutualité Française* (FNMF).
23. Lefèvre E., *op. cit.*, page 99.

3. European and national perspectives

In order to face up to the challenges evoked previously, different actions are necessary on both a European and a national level.

3.1. European perspectives

It is important to favour, both on a European and a national level, a level playing field by removing obstacles hindering mutuals when they find themselves in competition with their counterparts in the capitalist sector (factors relating to activities, market entry, mergers and cross-border activity).

After a first attempt to legislate on a European statute for mutuals in 1992 – which failed in 2006 – the debate returns to the fore with the publication of various studies and documents from the European Commission[24] and the European Parliament[25].

Mutuals, as well as all the other organisations within the social economy, should be in a position to benefit from the Single Market in the same way as the other companies and without having to abandon their specific characteristics.

A European statute would help mutuals to overcome legal and administrative difficulties which obstruct their cross-border and transnational activities, as well as cooperation within the Single Market.

All the parties concerned are nevertheless far from seeing eye to eye on the subject. Thus, those in favour of one type of statute advocate for better recognition of mutuality on a European level and greater possibilities for mutuals to exercise their cross-border activities. Their opponents question the practical usefulness of the instrument proposed, taking into consideration the experience acquired with the statute for European cooperatives, for which the complexity of referral to national legislations hampers the practical implementation of the regulation[26].

3.2. National perspectives

In response to the difficulties evoked relating to mergers, solutions have been envisaged on a national level. Thus, in some countries, it is possible to create merger structures between mutuals, which facilitate management, control and the development of the mutualist group thus constituted. Certain countries (notably Germany, the Netherlands and Austria) benefit from the statute of "holding mutual" which enables 49% of the capital to be placed on the stock market, whereas the remaining 51% remains under the control of the members[27]. Similarly, French mutuals benefit from legal tools such as the *Union technique de mutuelle 45*, the *GIE (Groupement d'intérêt économique)*, the *Société de groupe d'assurance mutuelle (SGAM) (See Box 2)*, the *Union de groupe mutualiste (UGM)* and the *Union mutualiste de groupe (UMG)*, real alternatives to mergers.

Box 2 – The *Société de groupe d'assurance mutuelle* (SGAM)

The *Société de groupe d'assurance mutelle* (SGAM, or Mutual Insurance Group Company), is a flexible legal instrument, created in 2001 by the French legislator which enables the regrouping of mutual insurance societies in a more or less integrated way and one which respects the principles of social economy, (participative democracy) and the specific mutualist characteristics (absence of social capital), and establishes a mutualist group structure.

Their degree of integration as well as their scope and the conditions of financial solidarity between members are decided by the founders. The SGAM is not only open to mutual insurance companies, but also to health mutuals, pension institutions, and insurance or re-insurance companies of mutual or cooperative type or joint management whose company headquarters is in a European Union Member State or another State which is a party to the Agreement on the European Economic Area.

Source: GEMA, Argument on the SGAM, April 2012.

24. Broeck S. D., Buiskoll B. J., Vennekens A., Panteia, *Study on the current situation and prospects of mutuals in Europe, First progress report*, Zoetermeer, February 3, 2012.
25. Declaration of the European Parliament of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations.
26. AISAM-ESSEC, De Beaufort V., Camboly J-M., « Comparaison des statuts de droit des sociétés UE » (Comparison of European company law statutes), Brussels, 2008, 145 pages; AISAM, « *Sociétés d'assurance mutuelles. Les dispositifs réglementaires, financiers et fiscaux* » (Mutual insurance societies. The regulatory, financial and fiscal instruments), Brussels, 2007.
27. Lefèvre E., *op. cit.*, page 81.

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19 rue de Milan – 75009 Paris – France
Tel: +33 (0)1 44 58 97 97 / Fax: +33 (0)1 44 58 97 99

However, these national solutions emerge in certain countries but not throughout the EU. The difficulty of this alternative is that a local grouping structure will not be usable in the other EU countries because it will not be recognised, which is contrary to the aim of easy access to the Single Market.

Finally, the mutuals themselves are implicated. Thus, the role of making the mutualist model known and recognised, and that of informing European citizens and consumers is incumbent upon them. Hence, operations implemented by the AMI (Association of Mutual Insurers), created in 2004 by thirteen English mutuals, illustrates the success of a global communication strategy based on mutualist values[28].

Conclusion

How would it be possible to guarantee the recognition, preservation and above all, reinforcement of mutuality in the future? The European public consultation[29] brought to light the expectations of civil society both with regard to growth and employment, and in relation to the social dimension of the Single Market in the protection of public services, echoing the strong adherence of economic actors to a highly competitive social market economy.

Mutuals, in comparison to their competitors provide an added value for the European economy and the whole of society in cultural, political and also economic and social terms. Many Europeans deliberately choose mutuals to benefit from a good level of health care and social services, to insure themselves against all types of risk and find the best solution to their needs.

The progressive implementation of the Single Market should not mean uniformity. Thus, mutuals should be better recognised as distinct and important economic actors of European society. As Jacques Delors emphasizes, "these new structures take into account what neither the market economy, nor the public economy is able to grasp, and at the same time offer viable and complete economic solutions through their values of innovation. They must occupy their rightful place in our society in the quest for a developing way which is more caring towards Man and more respectful of nature"[30].

28. Lefèvre E., *op. cit.*, page 101.
29. Communication from the Commission, "Single Market Act. (...)", *op. cit.*
30. Jacques Delors, *op. cit.*

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