

A EUROPEAN STATUTE FOR MUTUALS?

BENEFITS, LIMITATIONS AND LEGAL AND POLITICAL OBSTACLES

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Notre Europe - Jacques Delors Institute offers you the synthesis of the seminar on the European statute for mutual societies organised in partnership with the EESC Workers' Group on 2 October 2012 in Brussels.

On 2 October 2012, Notre Europe - Jacques Delors Institute, working in conjunction with the EESC Workers' Group, organised a seminar on the statute for mutual societies on the premises of the European Economic and Social Committee (EESC) in Brussels. The event counted with the participation of Pervenche Berès, MEP and chair of the European Parliament's Employment and Social Affairs Committee; Georges Dassis, president of the European Economic and Social Committee's Workers' Group; Apostolos Ioakimidis, principal administrator of the European Commission Directorate-General for Enterprise and Industry; Christian Horemans, member of the working group on mutuals at the International Mutuals Association (AIM); and Yves Bertoncini, director of Notre Europe - Jacques Delors Institute.

On 10 May 2011 the European Parliament adopted, by a broad majority, a written declaration calling for the establishment of European statutes for mutual societies, foundations and associations. Following this call, the European Parliament's Employment and Social Affairs Committee and its Legal Affairs Committee got together to work on a legislative initiative report on the statute of the European mutual society, which is due to be published in the autumn of 2012.

The European Commission, for its part, has recently added the issue of mutuals back onto its agenda, announcing the launch of a study to analyse their situation in Europe, focusing in particular on the legal and administrative problems that they encounter when offering cross-border services. The results of this study, due out in mid-October, are to form the basis for a reflection within the Commission which could lead to the submission of a proposal for a European statute for mutuals. All of this progress

comes nineteen years after the failure of an initial proposal for a European statute for mutuals submitted by the Commission in 1993, but withdrawn in 2006 in view of the lack of interest in such a statute evinced by a majority of member states.

Do we need a European statute for mutuals? Is the context more favourable to its creation today than it was in 2006? What strategy should we adopt to restore this issue to the European agenda? These and other questions were discussed in the course of a debate at a seminar organised by Notre Europe in conjunction with the European Economic and Social Committee's Workers' Group in Brussels on 2 October 2012. The seminar allowed the approximately sixty participants, including representatives of the mutuals, politicians and experts, to take stock of the situation today and to explore in greater detail the benefits, limitations and obstacles to the creation of a European statute for mutuals.

This summary endeavours to review the key issues addressed at the seminar. It is divided into different thematic sections corresponding to the issues addressed during the discussions.

1. Why do we need a European statute for mutuals?

The debate identified the existence of at least three different arguments in favour of a European statute for mutuals.

The most important argument is that a common statute could provide a legal basis for mutuals' cross-border business. As things stand today, in the context of the single market, mutuals are subject

to competition from traditional for-profit companies. If they are to be able to take this competition on, they need to get bigger, either by merging or grouping together with other mutuals, or by expanding their business to other member states. The trouble is that legislation governing mutuals changes considerably from one end of Europe to the other, and indeed in several member states there is no national legislation governing mutuals whatsoever. In addition to this, in the absence of common European legislation, mutuals doing business in two member states are subject to two different bodies of national legislation and often find themselves in a situation where they cannot cooperate or group together while continuing to honour all of their basic principles, such as democratic governance or the “one member, one vote” principle. A common European statute would overcome these obstacles, allowing mutuals to conduct their business across borders on an equal footing with their for-profit competitors.

A second argument in favour of a European statute is that such a statute would make it possible to build the specific features of mutuals into European legislation better. As things stand today, European regulations in several EU spheres and policies respond to the characteristics and requirements of traditional businesses but fail to take into sufficient account the *modus operandi*, the values or the goals of mutual societies. Such spheres range from state aid to taxation, accounting rules and company law, or more recently to the European legislation on solvency requirements for insurance companies (the so-called “Solvency II” directive). One participant pointed out that this jeopardises the very survival of the mutual model in Europe because “everything that does not enjoy explicit recognition at the European level is *ipso facto* more fragile”. The existence of a European statute for mutuals would ensure that the specific nature of the mutual society is not ignored when European decisions are taken in the future.

Thirdly, the creation of a European statute could also facilitate the promotion and dissemination of the mutual model in Europe. It could extend familiarity with this legal format in countries that have no mutual tradition and it could act as a focal point for the development of national legislation. Several participants argue that it would even symbolise EU support for mutualism. In that sense, it was stressed that the statute issue embraces both

the defence of a model (the creation of a common statute is necessary to ensure the mutual model’s survival in Europe) and that model’s promotion (the EU must promote and facilitate the spread of the mutual model in Europe, a move perfectly compatible with the EU 2020 strategy’s objectives and philosophy; the creation of a European statute would be a move in that direction).

While most participants came out in favour of a European statute for mutuals, some put forward counter-arguments. On the one hand, several people referred to the experience of the European statute for cooperatives, adopted in 2003. This statute was also something for which cooperatives had been clamouring, yet it has enjoyed only very limited success because only a handful of European cooperative companies have been set up, doubtless due to the statute’s complexity. So lessons need to be drawn from that experience when the proposal for a European statute for mutuals is drafted.

Some participants also warned against the risk of believing that “small is beautiful”, in other words, they warned against believing the contention that, just because a mutual society’s main asset is its proximity to its members and the fact that it works on a local scale, a statute for mutuals is unnecessary because such societies are not designed to expand or to operate on a Europe-wide scale. Several participants questioned that argument, based as it is on the idea that the national and European levels are completely separate.

2. The statute: not the only tool for resolving mutual societies’ problems in Europe

While the creation of a European statute for mutuals would be a welcome step forward for such societies, it must not be perceived as the only possible solution to the obstacles standing in the way of their operating on a European scale. In this connection, a parallel was drawn with the services of general economic interest (SGEI) issue, where the parties involved have been calling for a long time for a specific directive on the issue. It might be the best solution, but faced with the political obstacles hindering approval of a directive of this kind, the European Commission has resorted to the use of different tools for safeguarding such services at the European level, in particular by building the obligation to provide a public

service into sectoral legislation covering a variety of different areas.

Nor should a European statute for mutuals be perceived as the solution to all of the problems that such societies encounter in Europe. European mutuals face other challenges, such as communication challenges (lack of a high public profile, and ignorance of the mutual model on the part of the man in the street), supervision challenges (ignorance of the specific nature of mutuals on the part of European supervisory bodies, particularly the European Insurance and Occupational Pensions Authority), and financial challenges (the difficulties that mutuals have in conforming to capital requirements for acquiring an insurance licence). The creation of a statute can provide several answers to these challenges (for instance, by imparting a higher profile to mutuals) but it cannot under any circumstances be considered the primary response to the challenges as a whole.

3. Is the context more favourable for the creation of a statute today than it was in 2006 ?

Several participants argued that the present economic context, marked by an economic and financial crisis affecting the EU as a whole, would work in favour of the cause of mutual societies in Europe. According to them, the crisis has highlighted both the limitations of the financial rationale and the benefits of the mutual model, and it has pointed up the important role that they play in Europe from both an economic and a social viewpoint. In particular, certain participants underscored the fact that mutuals have withstood the crisis better than companies quoted on the stock market, demonstrating the soundness of this kind of business and the need to promote it in the years to come. Others felt that the credit crisis caused by irresponsible commercial practice clearly argues in favour of mutualism and of the diversification of financial institutions. And lastly, in a context of public spending cuts, of an ageing population and of the explosion of social issues, there is going to be a growing need for social organisations capable of guaranteeing access to welfare at accessible prices. Mutual societies are very well placed to provide such a response, given the important role that they play in such spheres as health, the performance of social services, home care and care for the aged.

From a political standpoint, the context also appears to be more favourable to the creation of a European statute for mutuals in 2012 than it was in 2006. The European Commission appears to be more sensitive to this issue since its establishment in 2009, after the European parliamentary elections. In the context of its drive to impart a boost to the single market, it has pledged to provide better-quality legislation for organisations working in the social economy (mutual societies, foundations and associations) and it has recently launched a specific study on mutuals in Europe.

In addition to this, there is the support for this cause evinced by the European Parliament on several occasions, most recently with its decision to draft a legislative initiative report on the issue. Obstacles appear to be more likely to be forthcoming from the EU Council. Just as happened in 2006, certain member states (mostly from central and eastern Europe) have no mutualist tradition and do not appear to be interested in promoting such a model at the European level. But above all, there is a major member, Germany, which still seems to be opposed to the plan for a European statute for mutuals. Given that any proposal for a European statute for mutual societies requires the Council's unanimous approval, if any states oppose the project, that could well prevent its adoption.

The German government's opposition reflects the lack of enthusiasm for this project evinced by a large number of German mutuals. Several participants identified the absence of a common position among the mutual societies themselves on this issue as being the main, underlying obstacle to the adoption of a European statute. In fact, among European institutions, this issue is frequently perceived as a "Franco-Belgian" issue, interesting solely to French and Belgian mutuals. Aware of this perception, the European mutual societies' associations have been making an effort over the past few years to bring their German and other colleagues into their internal debates on the European statute issue. As things stand today, while a few large German mutuals are still somewhat contrary to the idea, interest in a European statute is shared by mutuals in several countries (France, Belgium, the United Kingdom, Italy, Spain and Portugal) as well as by a number of German mutuals.

The reason for certain German mutuals' opposition to the plan for a statute was debated at some length. Certain participants argued that this opposition is quite simply a protectionist position based on fear of the competition that the existence of a European statute could trigger. Others, on the other hand, see German opposition reflecting not so much a protectionist stance but a "fear of the unknown", because the statute project is still vague and the mutual societies do not have any real idea of the impact that it would have on their business.

4. The mutualist sector, an industry in search of an identity

The absence of a common position among mutual societies regarding the project for a statute can be explained in part by the diversity of mutualist profiles that exists in Europe. In some countries mutuals are leading players in complementary health insurance and life insurance; in others they play a partner role in the compulsory health service; in others, the mutualist sector has developed only in a minor area of the insurance business; and in yet others, mutuals are simply not authorised to operate in the health insurance industry. This diversity is a weakness when it comes to influencing European decisions because the mutuals have a hard time defining common positions.

This diversity of mutualist profiles translates also into problems of visibility. Mutuals find it hard to explain their specific characteristics either to the man in the street or to the political decision-makers, or as one participant put it, to "define their DNA". This leads to a widespread misunderstanding of what exactly a mutual society is, and to confusion over the differences between such societies and for-profit companies or cooperatives. This incomprehension is clear even among European political decision-makers and supervisory bodies. One solution to the problem was postulated in the course of the debate, based on the creation of a European information centre on mutuals, capable of providing information on the managerial, legal and prudential aspects of mutual societies.

Lastly, in addition to profile issues the mutuals also suffer from poor communication, failing to effectively communicate either their values or their specific features. While they still tend to be perceived by most citizens in a positive light overall, they often come across as rather antiquated and not particularly dynamic structures. Offering a dynamic and innovative image of mutual societies is thus a challenge that will need to be addressed in future years. By the same token, it is imperative to maintain a standard of excellence in the way mutuals are managed.

5. Principles and recommendations for the potential proposal of a European statute for mutuals

Several participants offered indications relating to the potential proposal of a European statute for mutuals. The primary recommendation was to "stick to basics", in other words to draft a proposal based on mutuals' basic principles without aiming to cover every possible modality or situation; this, both in order to avoid the complexities which have thwarted the success of the statute for cooperatives, and to build up as broad a consensus as possible among the mutual societies themselves.

Several other more specific recommendations were made during the debate:

- The European statute for mutuals should be optional rather than compulsory. It should consist in a 28th legal system to which mutuals wishing to conduct business across national borders can subscribe if they so wish.
- The statute regulation should not include a description of the areas in which mutuals subscribing to the European system may operate.
- The European statute should allow only a minimum of statutory freedom to align mutual-type organisations tonational systems.
- The European system should be accessible to large and small mutual societies alike.
- Lastly, the statute should make it quite clear that societies of a mutual nature are the property of their members.

Seminar Programme

A statute for European mutuals? Advantages, limits and legal and political obstacles



Brussels, 2 October 2012



European Economic and Social Committee
Annex: 2, rue Van Maerlant, room 3

Interpretation provided in DE-EN-FR

10.00 Registration

10.20 Welcome Address by **Georges DASSIS**, President of the Workers' Group, EESC

10.30 Speech by **Pervenche BÉRÈS**, President of the European Parliament Committee on Employment and Social Affairs, on the theme "The role of mutual societies in the 21st century"

11.00 Round table on the theme: "Project of statute for a European Mutual society"

- **Apostolos IOAKIMIDIS**, Principal Administrator, European Commission, DG Enterprise and Industry
- **Christian HOREMANS**, Member of the Working group on Mutuals, AIM (Association Internationale de la Mutualité)
- **Simon BROEK**, Researcher, Institute for Policy Research "Research voor Beleid"

Moderator: **Marie-Jo FLEURY**, Head of *L'Europe à la Une*

Q&As

12.45 Concluding Remarks by **Yves BERTONCINI**, Director, *Notre Europe - Jacques Delors Institute*

On the same them...

FOR A NEW RELAUNCH OF THE SINGLE MARKET
Jacques Delors, *Viewpoint, Notre Europe - Jacques Delors Institute*, October 2012.

THE MUTUALIST ECONOMY: WHAT FUTURE IN THE SINGLE MARKET?
Marie-José Fleury, *Policy Brief No 37, Notre Europe*, August 2012.

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