



## European Added Value Assessment

# A Statute for European mutual societies

An assessment accompanying the European Parliament's  
Legislative own-Initiative Report (Rapporteur Luigi Berlinguer MEP)



# **European Added Value Assessment**

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## **A Statute for European mutual societies**

On 26 March 2012, the **Committee on Legal Affairs** (JURI) requested a European Added Value Assessment (EAVA) to support its work on the legislative initiative report of Mr Luigi Berlinguer with recommendations to the Commission on a Statute for European mutual societies.

In its report, JURI calls on the Commission to present a legislative proposal on a Statute for European mutual societies. The arguments in favour of this approach are set out in detail in this European Added Value Assessment.

This paper has been undertaken by the **European Added Value Unit** of the Directorate for Impact Assessment and European Added Value, within the Directorate General for Internal Policies (DG IPOL) of the General Secretariat of the European Parliament.

This assessment builds on existing studies such as the study commissioned by Policy Department A for Economic and Scientific Policy 'The role of mutual societies in the 21st century' (July 2011) and the Study on the current situation and prospects of mutuals in Europe, drafted by Panteia (November 2012). Other academic materials used are duly cited in the bibliography.

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## Executive summary

Mutual societies represent a significant share of the insurance market in Europe. They are based on principles such as democratic governance and solidarity, and they present an alternative to profit-making stockholding insurance companies. The European Commission, after initially embracing the idea of a statute for European mutual societies, withdrew the proposal, despite numerous expressions of support for a Statute.

In its legislative own-initiative report with recommendations to the Commission (rapporteur: Mr Luigi Berlinguer (JURI), rapporteur for opinion: Ms Regina Bastos (EMPL)), the Parliament calls on the Commission to submit a proposal for a Regulation on a statute for a European mutual society.

This assessment argues that such a statute would bring significant added value and would:

- give **visibility** to, and expand the notion of, mutualism across the European Union, thus enhancing economic wellbeing through a **more democratic and resilient corporate model**;
- allow **economies of scale** and contribute to the **effective implementation of the Single Market** by enhancing cross-border services and providing for a regime for the grouping of mutual societies;
- provide greater **legal certainty** to mutual societies, citizens and economic operators, who would benefit from a uniform, homogeneous set of rules and would save **costs**;
- contribute to promoting a **sound social economy**.

A statute for a European mutual society would help provide with a clear and uniform regime, expand the mutualist principles of solidarity and democracy as bases of a corporate model, increase market diversification and make insurance markets stronger against crises. It would mean more competition and better prices and conditions for consumers. Furthermore, it would allow the cross-border transfer and grouping of mutual societies, which now need to overcome obstacles to their freedom of establishment and services.

## Introduction

The mutualisation of risks - which is the principle behind the functioning of a mutual society - entails the spreading of risk over a homogeneous group of people. It is the most elementary and effective form of insurance, with a long history in Europe

It is calculated that, today, mutual societies provide healthcare and social services to 230 million European citizens and represent about 180 billion euros in insurance premiums. Mutual societies are reported to employ 350,000 people in Europe. The European Commission's figures indicate that mutual societies exist in most European countries and that they account for 25% of the European insurance market. Mutual societies in Europe are numerous but small: almost 70% of the total number of insurance companies in Europe are mutual societies, according to the latest figures.

Despite this, the Commission maintains that the lack of reliable and exhaustive statistics limits the possibilities to draw up an exact and accurate overview of the place of mutuals at the European level. Similarly, it argues that the 'lack of progress' in the legislative progress is another of the main reasons why the idea of a Statute for European mutual societies had to be abandoned. Nonetheless, according to its press service, the Commission is ready to continue the dialogue on the subject and 'to review the situation on the basis of new information'<sup>1</sup>.

The European Parliament has repeatedly indicated its support for a legal framework for mutual societies in Europe. In 2012, the JURI Committee adopted a legislative own-initiative report<sup>2</sup> drafted by Mr Luigi Berlinguer MEP (S&D), with an opinion of the EMPL Committee (Rapporteur: Ms Regina Bastos, EPP) under the associated committee procedure, requesting that the Commission finally present a legislative proposal on a statute of mutual societies.

The latest piece of research on the subject, a study drafted by Panteia and published in November 2012 by the European Commission, suggests there is a strong case for the recognition of the legal entity of mutual-type organisations at European level and for giving new impetus to the idea of a statute for European mutuals.

A statute for a European mutual society would establish a level playing-field for mutuals giving them equal possibilities to add a European dimension to their

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<sup>1</sup> <http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/>

<sup>2</sup> 2012/2039 (INI)

organisation and activities. It would also provide them with adequate legal tools to facilitate their cross-border and transnational activities, as well as with a way to group and develop their organisation and activities in the Single Market.

The idea of having a legal instrument at European level allowing for the creation of European mutual societies has been mooted since the 1990s. The first draft, presented as a draft Council Regulation by the European Commission in 1992, remained fourteen years on the European agenda. In 2003, the European Commission launched a consultation whose results were published in the document entitled '*Mutual societies in an enlarged Europe*'<sup>3</sup> and contained most of the essential elements of the planned instrument. However, in September 2005 the President of the European Commission announced his intention to withdraw all legal initiatives in this respect, a move that disappointed both the European Parliament and most stakeholders. The withdrawal was confirmed in March 2006.

The draft presented in 1992 mirrored the statutes created for the European cooperative society and the European foundation. However, given the specificity of mutual societies and the scope of their actions, a considerable part of their activities was left for Member States to decide: the scope of the proposed Regulation excluded explicitly basic obligatory social security schemes managed by mutuals. No further legislative action in this field has been undertaken by the Commission. As a reaction to the withdrawal of the statute for mutual societies from the agenda, three representative associations (AIM (*Association Internationale de la Mutualité*), ACME and AISAM, now AMICE (*Association of Mutual Insurers and Insurance Cooperatives in Europe*)) prepared a joint proposal for a new text and forwarded it to the Commission in order for it to be reinserted in the political agenda.

As regards the necessity of a statute for European mutuals, there is almost unanimous agreement among stakeholders that such a statute would be welcome, since it would increase the visibility and the recognition of mutual societies at European level and would allow them to accede to and benefit from the internal market. A recent study commissioned by the European Commission supports the idea of promoting the mutualist scheme for three reasons: mutuals are less prone than joint-stock-type insurers to pursue risky speculative activity; a mixed system (where mutual societies coexist with stock companies) contributes to stability in the financial sector in times of crisis; and a stronger mutual sector enhances competition.<sup>4</sup>

Nonetheless, there are also evident problems that need to be tackled, learning from the previous experiences of similar instruments, and in particular that of the

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<sup>3</sup> [http://ec.europa.eu/enterprise/policies/sme/files/mutuals/mutuals-consult-doc\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/mutuals/mutuals-consult-doc_en.pdf)

<sup>4</sup> Panteia study, p. 10.

European cooperative society. Among other considerations, creating a legal form which does not exist in some Member States might pose some difficulties, so new company forms should be carefully checked against existing national law so that, on the one hand, the new form is as flexible as national companies, and, on the other, it does not interfere with national arrangements. Similarly, certain areas of law, such as taxation, competition, employee involvement in the decision-making process or intellectual property rights, might conflict with the statute.

### *The need for a definition of the European mutual society*

The European Commission defined a mutual society as '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.'<sup>5</sup> However, mutual societies pursue very different activities in different Member States, and even the classic features of a link between membership and being a policyholder, or the absence of shares, are loosely applied. For that reason, stakeholders prefer to simplify the definition to 'a legal person which organises solidarily financed goods and services in the interests of its members'<sup>6</sup>.

The latest two major studies on the subject agree on the fact that there is 'no clear all-encompassing legal concept of what defines a mutual-type organisation', as 'there are differences concerning traditions, history, (political) choices, markets, businesses, governance models and rules'<sup>7</sup>. However, despite (or maybe thanks to) those differences, mutual-type organisations in Europe make, as seen before, a considerable contribution to the European society and economy at large, and deserve a strong position in the European markets.

In its legislative own-initiative report, the European Parliament identifies a set of essential traits that differentiate mutuals from other economic agents, and asks a proposal for a statute for a European mutual society which takes them into account:

1. Mutual societies organise services and provisions in the interests of their members, on a basis of solidarity and in a collectively financed manner;

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<sup>5</sup> <http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/> and the 2003 consultation document 'Mutuals in an enlarged Europe'.

<sup>6</sup> Article 1 of the Working Document from the European mutual sector 'Final Proposal for a Regulation on the Statute of the European Mutual Society', 28.11.2007.

<sup>7</sup> Study by Panteia (see literature list), p. 15.

2. in return, the members pay a contribution or equivalent, the amount of which may be variable; and
3. the members cannot exercise any individual right over the assets of the mutual.

The 'academic' definition for the purposes of a statute for European mutuals mentions the features indicated by the Rapporteur, and adds some other complementary traits that are summarized below:

- i. **a private entity** governed by private law, independent and neither controlled by the government nor funded by public subsidies. When mutual-type organisations are part of the public system they are subject to administrative/ public Law, and are hence excluded from the scope of this assessment and likely from an eventual statute for the European mutual society;
- ii. **a grouping of persons** and not a pooling of funds. It does not matter whether its members are physical or legal persons as long as they 'own' (as in they decide on and control) the mutual society or at least the majority of it;
- iii. **subject to democratic governance** granting their members proportional rights to vote and making the managers (also chosen from the members) accountable to them;
- iv. **subject to the principle of solidarity** among members, allowing free entry and exit of everyone fulfilling the conditions agreed upon in the Statutes; and
- v. **its profits are used for the benefit of its members**, usually as discounted premiums or rebates, or are reinvested to improve services for the members, finance the development of business, to increase its won funds, or for benefit of society or the community at large.

Apart from that, it is also necessary that it **be somehow recognised as a mutual by law**, which excludes those organisations that present the above features but are legally considered as associations or cooperatives.

### **Why is action at EU level needed?**

The following section will analyse the advantages of having a statute for a European mutual society in comparison with the current state of play, in which it does not exist, or with actions at national level. These advantages (in other

words, the European added value of the initiative) will be organised around three axes:

1. Social added value,
2. Economic added value, and
3. Added value from a legal point of view

## 1) Social added value

### 1.1) *Visibility*

One of the main advantages of a European regime of mutual societies is the **recognition of the status of mutualisation** as a principle behind the organisation and functioning of a company at European level.

Most of the insurance companies in Europe are mutual societies. This figure accounts for the importance that the mutualist model has in the insurance sector: more than two out of three insurance companies in the EU are mutual societies. The mutualist company model and the insurance sector, with its increasing relevance in the current moment of crisis, go thus hand in hand in Europe. However, the Treaties do not include any mention of mutual societies: they deal with undertakings classified as either public or private enterprises, with a special mention of cooperative societies<sup>8</sup>. The latest studies stress the **barriers relating to the knowledge and understanding of the mutualist model in many Member States**, especially at the level of the supervisory authorities and national policy makers. Academic research has in general also ignored the mutual-type business form, so it is mostly mutual-type organisations which develop information campaigns and educational offers. The mutual society sector believes this has undoubtedly undermined its status and its specific nature, in practice erasing it from all legislative texts in the last thirty years<sup>9</sup>.

More recently, the bulk of the legislative efforts carried out at the initiative of the Commission have concerned the stockholding company model. In other words, **the Commission has regulated the formation and functioning of insurance and financial institutions mostly around the stockholding model**, which poses the risk of levelling the insurance market around this model (as a side effect of the standardisation of the legal framework). This could eventually lead to the marginalisation of mutual societies and other company forms of social economy which have importance in the field of insurance being marginalised, forcing them to 'de-mutualise' in order to survive.

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<sup>8</sup> Article 54 TFEU

<sup>9</sup> The only texts which mention mutual societies appear in the annex of the first generation of insurance directives (1973 and 1979).

In particular, mutual societies are obliged to comply with the latest rules on **solvency requirements** for financial institutions. Among others, the 'Solvency II' regime<sup>10</sup> requires increased solvency margins and risk differentiation for providers of economic services. However, mutual societies have a very narrow field of action, and with access to capital becoming more difficult in general, and in particular for them (as they work on a non-profit basis and are mostly financed through their members' contributions), compliance with these requirements might prove difficult. Mutual societies might then be forced to increase their premiums to obtain more capital, thus possibly threatening another of the traditional advantages of mutual societies, namely the offer of competitive premiums by comparison to benefit-driven companies.

A statute for the European mutual society would thus **mitigate the risk of demutualisation in the EU**. Demutualisation is the process whereby mutual societies are forced to move towards stockholding principles in order to be able to compete and survive in the market. The example of the United Kingdom suggests that this phenomenon (whereby mutuals acquire a progressively lesser role in economic life) is to be avoided. According to the UK All-Party Parliamentary Group for Building Societies and Financial Mutuals, '*previous demutualisations have restricted consumer choice, as the mutual sector has acted as a check on the public limited companies both in terms of value and on 'non-financial' issues such as branch closures and charges on cash machines*. But is also found that competitive pressures are putting increasing strain on the mutual model'<sup>11</sup>. In all, demutualisation in the UK weakened the diversity in the financial services sector, which is considered as a detrimental effect for consumers. The recognition of a European mutual society through the statute would offer not only a choice for companies to constitute themselves as European mutuals, but also to group (see below), merge and transfer their seat, opening a range of options and alternatives to the conversion into the stockholding model.

### ***1.2) Promoting social values and engaging citizens in economic life***

The mutualisation model presents a series of advantages that can be interesting as alternatives to profit-driven schemes, and more so in the current crisis situation. Although most of the economic benefits will be analysed below, some of them deserve to be mentioned here for their important social component. For instance, mutual societies are organised around the **principle of solidarity** and the sharing of benefits among the members, and these participate in the governance of the business and often have a longer term engagement with its

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<sup>10</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

<sup>11</sup> The All-Party Parliamentary Group for building Societies and Financial Mutuals (2006), *Windfalls or Shortfalls? The true cost of demutualisation*.

functioning and results. In other words, their 'share' or membership in the mutual society is not acquired for the sake of trading it and obtaining a benefit in the trade, like in the case of stockholding companies whose stockholders might be encouraged to sell their shares. On the contrary, members are encouraged to continue taking part in their mutual society with incentives like the investment of benefits in redistributive activities for its members (such as school grants or courses, cultural activities, financial contributions to social projects, etc.).

Mutual societies are **often also more democratic and more client-friendly** for the reasons cited above and because they are often smaller in size than their stockholding counterparts. Mutual societies tend to operate closer to their policyholders and to be more attentive to their needs. The literature on the topic suggests that mutuals tend to be better connected to and better valued by their clients.

Furthermore, mutual societies are an excellent way of getting citizens involved in economic life and in the management of the economic aspects of their life (insurance, healthcare, pensions). A Statute for European mutual societies would formally recognise values that are fully coherent with the Europe 2020 Agenda, particularly sound economic performance and social integration.

Summing up, establishing a European regime for mutual societies would help expand the logic of solidarity behind this model to all Member States, allowing existing mutual societies to enlarge their geographic base by converting into a European mutual society, as well as permitting the creation of new mutual societies in those countries in which this legal form does not exist or is marginal. It is often argued that **a mixed sector** containing both social economy companies and stockholding companies **would create a systemic advantage**, as a diversified landscape of ownership structures contributes to a more competitive and less risky market than an environment where only mutual or stockholding companies exist. This argument will also be analysed below.

## 2) Economic added value

### *2.1) Mutual societies complement the social coverage of Member States*

**Demographic changes** make it difficult for the existing social protection systems to be sustainable and affordable in the long term. As of today, many statutory systems in Member States have reduced either the quality or the quantity of their coverage, and are forced to progressively rely more on supplementary services. However, this shift puts huge pressure in private insurers, who will have to differentiate premiums on the basis of risk profiles, making the maintenance of sufficient coverage too expensive for the weakest layers of society (aged population, unemployed people, etc.). Since, as seen before, mutual societies

have a limited access to external capital, in order to maintain affordable costs for citizens in supplementary social protection, **fair conditions for all companies providing with insurance services should be established**, encouraging stock-holding companies, mutual societies and other companies to pay special attention to the soundness of their portfolios.

The European Union has repeatedly stated its commitment with a smart, sustainable and inclusive economy taking into account the changing global context<sup>12</sup>. The values and philosophy of mutual societies are in line with all three objectives, and hence the adoption of a Statute for European mutual societies would be a coherent policy choice.

**Mutual-type societies play indeed an essential role in the European economies.**

Table 1 below shows their market share in insurance from 2008 to 2010, when European mutual insurers together had, according to the International Cooperative and Mutual Insurance Federation (ICMIF), 1,161,397,893 million Euro of assets, with a growth of more than 6% in comparison with the previous year. In 2009 itself, at the beginning of the economic crisis, mutuals had grown by 7.6%. The figures below show the stability of the mutualist model in most Member States, resisting the difficulties of the economic crisis and even increasing its economic presence despite it.

**Table 1: Market share of mutuals in insurance in Europe, 2008-2010**

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

Source: Panteia study, 2012

<sup>12</sup> European Commission, Communication from the Commission: Europe 2020 A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010, COM (2010)2020.

It is worth noting that there is a **geographical imbalance in the market penetration of mutual societies**. Mutuals are more present in the Western and Nordic markets, whereas in Southern and Eastern European markets this is less the case. The reasons behind this difference are historical (a general distrust in socialist structures due to socialist past in the East of Europe) and cultural (mutual societies providing mainly social services and healthcare in the South of Europe). The countries where mutuals have the largest amounts of assets are Germany (EUR 423 billion), France (EUR 333 billion) and the UK (EUR 105 billion). However, when obtaining a relative figure of assets per one thousand citizens, the Nordic countries (Norway, Sweden and Finland) rank higher.

**These current figures would change if the possibility of having European mutual societies becomes a reality**, according to most of the stakeholders. It is foreseeable that a voluntary European mutualist scheme including the possibility of groupings would increase the visibility of mutualisation in countries where it does not exist or is marginal, which may lead to a subsequent increase of the presence of mutuals in those countries where they do not exist or do not present meaningful economic activity, be it through the establishment of 'new' European mutual societies, the conversion of existing companies into European mutuals or by their cross-border grouping or transfer of seat.

## *2.2) Mutual societies present higher economic sustainability*

Closely linked to the social added value as mentioned above, mutual societies present a very particular feature: **they acquire their capital mostly or only through their members, and not via capital markets**. Consequently, they have a more restricted access to capital, but they are at the same time more resilient to financial and credit crises, and hence are more sustainable in economic terms. In the current economic situation, mutual societies can avoid the need of external financing and thus risk capital, which in practice means the reduction of a risk factor of the economy.

The argument of the economic stability of mutuals speaks in favour of a greater involvement in insurance (as complementary or substitute of national coverage). Because of their stronger capitalisation and their general better quality capital (with smaller amounts of debt in their capital structure), mutual societies can **absorb economic shocks better**. Furthermore, they are less affected by the constant changes in stock exchange markets and by adverse publicity (what is known as headline risk).

When mutual societies need more capital (for example, as required by the 'Solvency II' legislation), they are forced to either **attract more members**, to enter new markets or to expand their range of products to existing members. This last option is especially difficult, as in many Member States the activities that mutual

societies can develop are limited (mostly to health or pension insurances, or general insurances at most). Alternative options for obtaining capital are merging with other mutual societies (or other companies) or creating economies of scale by allying themselves with other mutuals within or between Member States. If there were a European regime for mutual societies, **the possibility of creating international synergies would be greatly enhanced**, making mutual societies more cost-effective by reducing administrative and legal costs and barriers and by allowing them to enter larger markets, as will be explained below.

### *2.3) A Statute for European mutual societies would help implement the Single Market and would reduce duplications and foster economies of scale*

The effort to provide mutual societies with a statute that would help them overcome the barriers they face in operating across national borders is not new. Over the last twenty years, a series of initiatives have taken place, but none of them has been successful. However, in the last years, the importance of the completion and proper implementation of the Single Market has been brought to the fore again, making it a suitable moment for European legislation on mutual societies to be passed.

The Single Market Act<sup>13</sup> contains proposals to provide better quality legislation for organisations in the social economy (of which mutual societies are part). In line with it, the Commission has also stated the importance of companies (and particularly SMEs) being able to operate across borders<sup>14</sup> in order to unfold the real potential of the Single Market. Other instruments coming from the Commission, such as the communication on the Social Business Initiative<sup>15</sup> recognise the importance of social enterprises, which contribute to smart growth by responding with social innovation to needs that have not yet been met. They also create sustainable growth by taking into account their environmental impact and by their long-term vision. In addition, social enterprises are at the heart of inclusive growth due to their emphasis on people and social cohesion: they create sustainable jobs for women, young people and the elderly. In other words, their key aim is to effect social and economic transformation which contributes to the objectives of the Europe 2020 Strategy.

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<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 'Social Business Initiative - Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (COM(2011)0682), 25.10.2011.

Although not much debated, **establishing cross-border cooperation is particularly difficult for national mutual societies in the current state of affairs.** Typically, mutual societies are small and work geographically close to their members, having mostly a local focus and a relatively weak interest in expanding geographically. Nonetheless, to operate cross-border, it is effectively compulsory for them to set up a holding company with joint-stock company structures, which in practice translates **into losing their mutualising principles** and their specific character. Otherwise, mutuals can try to have members in another country and grant them the same or similar rights as the members in the home country. Alternatively, they can participate in a cross-border grouping of similar organisations.

The **legal barriers** arise then when mutuals intend to operate in countries where mutual-type organisations are not foreseen or incoming ones are not accepted, or when it is not possible to participate in groupings. These problems will be addressed below, as they concern the legal added value of a statute for European mutual societies. However, it is worth pointing here that, as things are now, **it is not clear that mutual-type organisations can benefit from the freedom of services and the freedom of establishment.** According to the latest study published by the Commission, the **lack of transparency** on the application of the two fundamental rights causes obstacles, mostly of a practical nature, for mutual-type organisations when planning to expand across borders. This means that the most significant legal barriers are not burdensome rules, but the lack of transparency concerning how they operate: namely which legal frameworks are applicable and how national supervisory authorities regard mutual-type organisations, domestic or foreign. Thus, as will be seen below, **a statute for European mutual society would have the added value of providing with a unified and transparent regime to be homogeneously applied all over Europe** which would give **certainty and a coherent legal regime** to mutual societies opting to adopt this regime, to all economic operators who engage in business with them, to their customers and to public authorities of any Member State.

Last but not least, the entry into force of a new, unified regime would ideally mean the **expansion of the possibility of adhering to the mutualist logic in all Member States**, as has been discussed above. European mutual societies would join other company models in the insurance sector, and consumers of all Member States would have the choice to join a mutual society for their insurance. This is particularly important in Member States where this possibility did not exist before. Increasing consumer choice would bring also an increase in competition among companies, whatever their form, which at the same time is supposed to result in better prices and conditions for consumers.

The importance of diversity in the market is supported by academic evidence. **When there is diversity, economic sectors adapt better to changing circumstances:** in times of rising stock markets, stock companies have an advantage compared to mutuals, but in times of crisis a longer-term perspective inherent in the business of mutuals might be more appropriate. In a changing economic environment as the one we live in now, where it is difficult to predict which corporate form is best suited, diversity in company structures reduces institutional risks. Figures show that mutuals perform better in times of crisis than their public limited company competitors, and, in comparison, have drawn on very little support from national governments. In the Netherlands, studies indicate that mutualism is a factor contributing to solvency.<sup>16</sup>

### 3) Added value from a legal point of view: more certainty and coherence.

National laws governing mutual societies, if they exist, present many differences both in formal and in content aspects. In some Member States they are authorised to carry out all kinds of activities, from insurance to property management and banking, whereas in others they are only allowed to deal with insurance and healthcare. Besides, the formalities behind the setting up, operating and winding up of mutual societies are also marked by their disparity, as is the importance that Member States attach to their respective mutual sectors.

This statute would, as seen before, also help **expand the mutualist model** across Europe, in particular in those legal systems in which it does not exist (namely Estonia, Lithuania, Czech Republic and Slovakia in the EU, and Liechtenstein and Iceland outside). If conceived as a non-compulsory legal statute (such as the European cooperative, the *Societas Europaea*, the European economic interest group and the European Foundation<sup>17</sup>), it would allow the creation of European mutual societies for whatever the activity maintaining at the same time its core features: the objective of providing with goods and services financed jointly in the interest of the members, no share capital but a formation fund, no members' rights on the net assets and a governance based on democracy.

The most recent study on the matter recommends enabling mutual-type organisations to establish in the countries where currently no legal possibilities are available. Efforts to establish legal possibilities for mutual-type organisations could be boosted and, according to the study, by, among others:

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<sup>16</sup> De Haan, L. and J. Kakes (2007). Are non-risk based capital requirements for insurance companies binding? DNB Working Paper 145.

<sup>17</sup> In the Commission's proposal of 8.2.2012: Proposal for a Council Regulation on the Statute for a European Foundation (FE), SWD(2012) 1 and 2 final.

- i. **Promoting a clearer idea about the specific characteristics of the mutual-type legal entity at European level** to make sure that policymakers and supervisors at national level are not confronted with different national principles. This goal could be better achieved by having a statute at European level which contained a legal characterisation of mutual societies independently from the activities these are allowed to perform according to national law; and
- ii. **Stimulating the recognition of the legal entity of mutual-type organisations at European level**, for which a statute for European mutuals is the most indicated instrument. It would not necessarily interfere with other national forms and it would leave it for companies to choose whether to adhere to it or not, guaranteeing at the same time legal certainty and a uniform status across Europe.

It is important to indicate that, when asked about the **obstacles** to the creation of mutual societies in different Member States, most contributions received by the Commission in the 2003 consultation pointed at **legislative difficulties**, such as the high threshold requirements or the high number of founders for its constitution. Besides, most contributions spoke in favour of a statute for European mutual societies as an essential tool for their cross-border business and to bridge the lack of a specific grouping instrument. **A statute for European mutual societies, creating the figure of the European mutual society as previous statutes have created the European private company (*societas europaea*) or the European cooperative, would provide those companies interested in adopting a mutualist rationale with a clear regime** as regards number of founders or thresholds, with the additional guarantee that these would be identical all across Europe.

Furthermore, a statute for European mutual societies, including provisions tailored to the way mutuals work (as in absence of share capital, involvement of members in governance and collective solidarity) but respectful of national peculiarities, would **allow European mutuals and those interacting with them to refer to a common set of rules in a single instrument. Costs would therefore be reduced**, as well as barriers for cross-border operations: there would be no further need to investigate national regimes, which is often a source of high costs for companies and turns out to be complicated due to the need to translate national laws. **The perspective of cost-saving is particularly interesting for small national operators who lack either branches in other Member States or the means to interact with other mutuals beyond the frontiers of their own Member State.**

In all, the recent study financed by the European Commission clearly states that '*working towards a more uniform, modernised and harmonised legal framework would be beneficial for mutual-type organisations willing to offer their services in other countries*'<sup>18</sup>.

### ***Subsidiarity and proportionality aspects***

According to Article 5 of the Treaty of the European Union (developed by Protocol 2), the principle of subsidiarity implies that, 'in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'.

As far as the objective of the Regulation proposed by the legislative own-initiative report is to provide the European Union with a unified legal framework for the constitution and functioning of European mutual societies, it is clear that Member States cannot achieve this objective better than the Union. The Statute for European mutual societies comprises transnational aspects that cannot be resolved by Member States on their own. More concretely, the differences in legal systems across the Union and the fact that mutual societies do not exist in all of them and differ greatly from one another, make it difficult to imagine how Member States could achieve a successful outcome through individual, or even coordinated, action. An action at European level in this field would have clear advantages over no action or to national action, as will be seen below.

The principle of proportionality implies that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. As for the content, a statute that would recognise the form of mutual societies at European level while at the same time flexible enough to respect the features that national Law imposes on company forms would pass the proportionality test. Besides, a statute would give European mutual societies a similar status to that enjoyed by the European Foundation (EF), European Society (*societas europaea*, ES) and European Cooperative Societies. The fact that these statutes are not considered as infringing the subsidiarity principle and have passed the relevant test is a strong indication that a statute for the European mutual society would meet the subsidiarity requirements as set by Article 5 TEU.

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<sup>18</sup> Study by Panteia (see literature list), p. 15.

The statute for European mutuals would be used on a **voluntary basis** (meaning that companies could opt to constitute themselves according to its rules or not, but if they did, the rules would be binding in their entirety). This would increase the opportunities to adopt the new regime without creating barriers for those mutuals who would rather continue operating under national regimes. Likewise, as it would only mean the creation of a statute for a very particular sort of mutual society (the European one), it would be less intrusive for national law regimes, not forcing them to introduce what could be considered as an 'alien form', but rather allowing mutual societies to expand their activities to new Member States even if the mutual form does not specifically exist in these countries (such as Estonia or the Czech Republic).

### *Capital requirements*

The issue of minimum capital requirements deserves some attention from a legal point of view. Normally the amount required depends on the activity-related capital requirements (meaning that capital requirements for insurance activity apply in most of the cases). This imposes a particular pressure on mutual-type organisations, which can only obtain this capital<sup>19</sup> from the (founding) members in order to constitute themselves; consequently, mutuals need to group a relatively high number of founding members in order to start functioning as such. Difficulties in accomplishing these conditions may eventually result in a decreasing of the number of mutuals, either because they cannot meet the requirements at all and thus cannot establish themselves as mutual societies, or either because they will eventually have to opt for a different legal form that allows them to seek financing beyond the contributions of their members. As said earlier, this threat could be avoided by a European statute recognising the particularities and benefits of the mutualist model setting specific, ideally less burdensome capital requirements or finding alternative means to ease the access of mutuals to the insurance sectors.

### *Groupings of mutuals*

The Berlinguer report provides that the Statute should "allow for the **establishment of a European mutual society** by physical persons **resident in different Member States** or legal entities established under the laws of different Member States; to make it possible for a European mutual society to be established by the **cross-border merger of two or more existing mutual societies**, given the non-applicability to mutual societies of the Cross-border Merger Directive; to allow for the creation of a European mutual society by the

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<sup>19</sup> EUR2.5 million for non-life insurance and EUR3.7 million for life insurance, in accordance with the two Directives on life and non-life insurance.

**conversion or transformation of a national mutual society** into the new form without its first being wound-up, where the society in question has its registered office and head office within one and the same Member State; and to allow for the **creation of a European mutual group**".

Thus Parliament calls for the statute to provide for with rules for the grouping of mutuals, their conversion and merger. The grouping of mutuals presents however a particular problem. To start with, a grouping might mean that 'external' stakeholders (even if these are mutual societies themselves) take control of a part of the mutual society, thus reducing the share of the members' control and weakening the strict mutual principles. Furthermore, a vertical grouping is not possible, as that would mean that a mutual is totally owned by another mutual and not by its members, which is an essential element of the mutualist form. Horizontal groupings are not always possible, and they depend on the assessment that supervisory authorities make of them. In this sense, mutual-type organisations can have tax disadvantages compared to joint-stock scheme companies, as they have more difficulties in grouping. Hence a statute for a European mutual society would have an added value if it provides legal ways to form groupings, and particularly cross-border ones, either via a specific grouping instrument, either via establishing financial ties through the exchange of guarantee capital (the so-called Nordic model), but always guaranteeing the highest protection possible to the mutualist principle.

### *The Statute for European Cooperatives*

Some have argued that there is no need for a statute for European mutual societies, as these could use the statute of European cooperatives<sup>20</sup>. Based on the similarities between cooperatives and mutual societies and the fact that both belong to the 'social economy' concept, some also argue that the alleged failure of the European cooperative statute anticipates a similar failure for the European mutual society. However, mutual societies have particular features that make the application of the European cooperatives' regime unsuitable and justify a regime on their own, as will be explained below. Furthermore, the European cooperative's experience (which should still be assessed) can be useful as a learning experience for the European legislator.

In the Berlinguer report, Parliament indicates, without mentioning explicitly the European cooperative, that 'the statute [for a European mutual society] will have to lay down precise and clear conditions for the creation of a true and effective new category of European mutual societies, and considers it essential, in this

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<sup>20</sup> Council Regulation (EC) 1435/2003 of 22 July 2003, supplemented by Council Directive 2003/72/EC of 18 August 2003 with regard to the involvement of employees.

respect, to *bear in mind previous model statutes of European entities where the significant flexibility afforded to Member States and the lack of an added value have failed to create the conditions for successful use of such a European tool.*'

The message from Parliament is clear: first, **mutual societies deserve a legal regime on their own**. There are important differences between cooperatives and mutual societies that render the statute for European cooperatives difficult to apply to mutual societies. For example, the members of a mutual society are most often the addressees of its products, which is not the case for cooperatives, which are more of a 'supplier' nature and deliver services to non-members as well. Secondly, cooperatives are allowed and often have share capital, whereas mutual societies do not. Finally, as regards ownership, mutuals are controlled by their members by election among themselves through a democratic process, whereas cooperative societies are not. These differences are of a fundamental nature; allowing the mixing of these essential traits would result in legal confusion and in loss of the core logic of mutual societies.

Secondly, though detractors of a Statute for European mutual societies have also indicated that it would repeat the 'failed' **experience of the European cooperative society**, this is **not a valid reason to discard an own regime for European mutual societies**. In fact, many of the intentions behind the European Cooperative regime are praiseworthy: 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. The SCE contains chapters on general provisions, formation, formation by merger, conversion into SCE, its structure, how to deal with financial and administrative issues and how to wind up a SCE.

A study by the European Commission was carried out in 2010 to evaluate how the European Cooperative Regulation had worked. Its results showed that a limited number of European cooperatives had been established (17 as of May 2010) and that many issues remained unresolved despite the Regulation. In particular, the Regulation refers back to national legislation on many occasions, and since national forms of cooperatives also differ largely, undesired legal variations amongst European cooperatives quickly came up. Besides, bearing in mind how few European cooperatives have been established according to the statute, questions about how useful the statute was also arose. However, stakeholders tend to agree that the real value of the statute was not in creating a

European legal form that would compete with national forms, but in the recognition and acknowledgement of the value of cooperatives.

Last but not least, the Regulation applied from 18 August 2006 onwards, and the study gathered data received until 8 May 2010. It can also be argued that the process of indirect approximation of national legislative frameworks is still ongoing and was quite limited when the study took place<sup>21</sup>.

## Conclusions

The present assessment aims to highlight the main benefits of a statute for the European mutual society and at arguing for the European added value of the proposal contained in the legislative own-initiative report of Mr Berlinguer MEP. The added value of the proposal has been analysed from a social, economic and legal perspective, and the various benefits that a Statute for European mutuals would bring about have been enumerated and explained.

The current situation where mutual societies are known in many, but not in all, Member States, but with a possible risk of loss of mutualist principles has been contrasted with the advantages of having a regulation providing for a statute for European mutual societies. The European mutual society would then be a European legal form with a specific Union character which would not interfere in the legislation regulating other forms, or even mutual societies, at Member State level.

While the analysis of the possibility of a statute for the European mutual society contained in the most recent study has not found 'conclusive evidence' that a proposed Statute would overcome the principal barriers preventing mutuals from operating cross-border, it recognises how it would have an added value: the positive presentation of the positive principles underpinning mutual societies, would help mutuals gain recognition and visibility, and provide a boon for the mutualist idea. This would be worthwhile in itself.

The content of such an instrument would include a series of traits that must undoubtedly taken into account in any European instrument wanting to recognise mutual-type societies at European level, and which are included in the legislative own-initiative report

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<sup>21</sup> In fact, according to the study, Italy, which had failed to implement the SCE Regulation, counted with the highest number of SCEs in Europe.

A statute for European mutuals, to be effective, would be used on a **voluntary basis** (meaning that companies can opt to constitute themselves according to its rules or not, but if they do the rules are binding in their entirety). Similarly, it **should not describe nor prescribe the markets in which mutuals are allowed to operate**, leaving it for Member States to specify and to decide whether mutual-type organisations based on the statute at European level can operate on specific markets. However, Member States must always respect the freedom of services and the freedom of establishment when deciding. Member States should remain free to entrust the management of obligatory social security schemes to European mutuals and, in this case, they should also be free to decide under which conditions.

Furthermore, the statute should allow a **minimum of statutory freedom** when aligning mutual-type organisation to national regimes. In other words, the objectives of a statute at European level would not be achieved if there is no clarity both for authorities and stakeholders on the main features of mutuals based on the European statute. There will obviously be differences, but it is recommended that these result from the activity-related legislation and requirements (applicable by activity sector and regardless of the company form), and not from the statute itself, which should be clear and uniformly applied.

The statute should also be **accessible to small groups of natural and legal persons with limited capital resources**, as seen above. If the minimum number of initial members and the minimum capital requirements are unreasonably high, undertakings which would initially be interested in acquiring the European mutual society form might be deterred from doing it, in which case the statute would not achieve its goal of promoting the mutualist logic among European companies.

Furthermore, in order to remove all barriers to cross-border cooperation between mutual societies, the European mutual society should be **opened to natural persons residing in different Member States or legal entities established in accordance with the national laws of different Member States**. Similarly, rules for **groupings and transformations should be provided for**, as there would be no regime applicable by analogy (the Cross-border Merger Directive<sup>22</sup> is limited in its scope and would not cover mutual societies).

As concerns investments, the statute should allow non-member investments based on guarantee capital and interest, instead of share capital, which is incompatible with the mutualist logic. Any other solution would dilute the very

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<sup>22</sup> Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies.

core of the mutualist model. Finally, it is necessary for the statute of the European mutual society to **indicate clearly that members are the owners of the organisation**, granting the corresponding competences to the meetings regardless of the corporate model chosen and providing for a system of voting rights and distribution of assets that is coherent with the mutualist model. For example, there should be clear rules on transparency and supervision and members should not be able to exercise any individual right over the assets of the mutual society.

In general, mutual societies are diverse and fragmented in the European Union as regards the services they provide, their size and their geographical impact. In some European countries they do not even exist as yet. The undeniably beneficial effect that they have on national economies, together with the values they help to spread and their financial stability are all arguments in favour of supporting their extension throughout the European Union, and providing for a statute for a European mutual society.

In the current times of crisis, a statute for a European mutual society would be a meaningful step towards more competition and more stability in the markets, the reduction of barriers in the internal market, more choice for consumers, more legal coherence and certainty and, last but not least, more socially responsible and sustainable management of healthcare and social services.

### Recommendation

A Regulation containing a statute for the European mutual society would bring clear added value to the insurance market, consumers, stakeholders, society and the economy in general.

It would provide with a clear, uniform and homogeneous legal regime, saving costs.

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**European Parliament resolution of 14 March 2013 with recommendations to the Commission on the Statute for a European mutual society (2012/2039(INI))**

The European Parliament ,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the Commission proposal for a Council Regulation on the Statute for a European mutual society (COM(1991)0273) and the amended proposal (COM(1993)0252),
- having regard to the Commission communication of 27 September 2005 on the outcome of the screening of legislative proposals pending before the Legislator (COM(2005)0462),
- having regard to the Commission communication of 13 April 2011 entitled 'Single Market Act - Twelve levers to boost growth and strengthen confidence - Working together to create new growth' (COM(2011)0206),
- having regard to the Commission communication of 25 October 2011 entitled 'Social Business Initiative - Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation' (COM(2011)0682),
- having regard to its resolution of 16 May 2006 on the outcome of the screening of legislative proposals pending before the Legislator(1) ,
- having regard to its resolution of 4 July 2006 on recent developments and prospects in relation to company law(2) ,
- having regard to its resolution of 19 February 2009 on Social Economy(3) ,
- having regard to its resolution of 23 November 2010 on civil law, commercial law, family law and private international law aspects of the Action Plan Implementing the Stockholm Programme(4) ,
- having regard to its declaration of 10 March 2011 on establishing European statutes for mutual societies, associations and foundations(5) ,
- having regard to its resolution of 14 June 2012 on the future of European company law(6) ,
- having regard to the European Added Value Assessment on a statute for European mutual societies, presented by the European Added Value Unit to the Committee on Legal Affairs on 21 January 2013(7) ,
- having regard to Rules 42 and 48 of its Rules of Procedure,

- having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A7-0018/2013),

A. whereas the Commission withdrew its draft proposal for a Regulation on the Statute for a European mutual society in March 2006;

B. whereas a Regulation on the Statute for a European Cooperative Society (SCE)(8) was adopted in 2003 and whereas on 8 February 2012 the Commission presented a proposal for a Council Regulation on the Statute for a European Foundation (FE);

C. whereas the study commissioned by Parliament's Committee on Employment and Social Affairs in 2011 gave a clear presentation of the social, political and economic implications of an intervention by the Union in the field of mutual societies;

D. whereas in recent years Parliament has adopted several resolutions calling for the adoption of a regulation on the statute for a European mutual society; whereas it is regrettable that the Commission, having withdrawn its proposal for a statute for a European mutual society in 2006, has not brought forward any new proposals which would give mutual societies a suitable legal instrument to facilitate their cross-border activities;

E. whereas the Commission has undertaken to review some of the previous proposals on the statute for a European mutual society and to reconsider the need for legislative intervention with a view to a comprehensive impact assessment; whereas Parliament welcomes the study which the Commission has commissioned in this context on the current situation and prospects of mutual societies in the Union, which explores the difficulties confronting mutual societies on account of the lack of existing legal frameworks in certain Member States and the problems concerning the creation of new mutual societies due to capital requirements and the lack of solutions for grouping; whereas the Commission should propose adequate solutions to those problems in order to better recognise the contribution made by mutual societies to the social economy, including a statute;

F. whereas the Commission has laudably recognised the need for a statute and is committed to delivering better legislation for social economy organisations (including mutual societies), while stressing that mutual societies must be able to operate across borders as a contribution to the European effort to 'boost growth and strengthen confidence' in the European Economic Area(9) ;

G. whereas it is to be hoped, therefore, that this European statute will be ambitious and innovative, with a view to protecting workers and their families when they move within the Union;

H. whereas mutual societies are voluntary groups of natural or legal persons whose purpose is to meet the needs of their members rather than to achieve a return on investment; whereas they operate according to the principles of voluntary and open membership and solidarity between members, and are managed according to democratic

principles (such as the one member/one vote principle for mutual societies composed of individual persons), thereby contributing to responsible and sustainable management;

I. whereas, due to their diversity, mutual societies in Europe exist within a very diverse framework, as regards the services provided by them, or their dimension, or their mission, or their geographical impact;

J. whereas two main types of mutual societies exist in Europe, namely 'mutual benefit' (or 'health providence') societies and 'mutual insurance' societies; whereas 'mutual benefit' societies provide welfare coverage which is supplementary to, complementary to or integrated into statutory social protection systems; whereas 'mutual insurance' societies can cover all types of property and life risks, and whereas in some Member States mutual societies can even provide services in other fields, such as housing or credit;

K. whereas, despite their diversity, mutual societies organise services and provisions in the interest of their members on a basis of solidarity and in a collectively financed manner; whereas they organise themselves democratically and use the surplus from their activities for the benefit of their members;

L. whereas the Union, with the objective of ensuring equal terms of competition and of contributing to its economic development, should provide mutual societies, which are a form of organisation recognised in most Member States, with adequate legal instruments capable of facilitating the development of their cross-border activities and allowing them to benefit from the internal market;

M. whereas mutual societies play a major role in the Union's economy by providing health care, social services and affordable insurance services to more than 160 million European citizens; whereas they represent more than EUR 180 billion in insurance premiums and employ over 350 000 people;

N. whereas mutual societies facilitate access to care and social inclusion and participate fully in the provision of services of general interest within the Union;

O. whereas in 2010 some 12.3 million European citizens, or 2.5% of the Union's active population, were working in another Member State;

P. whereas in some Member States statutory health insurance funds are prohibited from operating as private-sector companies;

Q. whereas mutual societies represent 25% of the insurance market and 70% of the total number of undertakings in the industry; whereas mutual societies cannot continue to be forgotten by the single market<sup>(10)</sup> and should be given a European statute to place them on an equal footing with other forms of undertaking in the Union; whereas the diversity of forms of entrepreneurship is an asset that should be fully recognised and encouraged;

R. whereas mutual societies play or should play an important role in the Member States' economies, given that they contribute to the Union's strategic objectives – confirmed by demographic trends – of ensuring inclusive growth with access to basic resources, to social rights and services for all, and to adequate health and long-term care, on the basis of solidarity, affordability, non-discrimination and non-exclusion and the guarantee that the need of elderly persons for additional care will not lead them into poverty and financial dependency;

S. whereas mutual societies are particularly active in the areas of health, long-term care, pensions and social services including the needs of an ageing population; whereas the involvement of mutual societies as major stakeholders is crucial for the long-lasting future of social protection, given that population ageing currently poses major challenges in Europe, placing a particular strain on national budget balances and risking putting public expenditure on social protection under pressure; and whereas mutual societies, whilst able to play an important role in proposing socially responsible pension schemes in the private sector, cannot replace a strong first pillar of the pension system;

T. whereas the private sector is called upon to contribute in finding solutions to the challenges of the reform of the Union's welfare systems and the social economy; whereas, more specifically, mutual societies have a natural role to play as stakeholders in the attainment of this goal;

U. whereas mutual societies, with their core values of solidarity, democratic governance and an absence of shareholders, operate for the benefit of their members and hence, by their nature, in a socially responsible way;

V. whereas the values of mutual societies correspond to the fundamental principles of the European social model; whereas, as well as being based on values of solidarity, mutual societies are major operators in the social market economy of the Union and should be given greater recognition, particularly by establishing a European statute;

W. whereas the increase in expenditure on health care and pensions could have significant consequences for the continuity and cover of the current social protection schemes; whereas mutual societies promote key values of the welfare state such as solidarity, non-discrimination, equal access and high quality of social services in the private sector; whereas the enhancement of mutual societies' contribution to the European social market economy should not take place at the expense of Member States' action on social protection; whereas, however, that voluntary social protection must not replace statutory social security; whereas the diversity of social protection systems, some of them borne fully by the state, some by the mutual societies and some on a shared basis between the two, should be respected; whereas the statute for a European mutual society is essential but must not be used to make up for Member States' deficiencies in terms of social protection;

X. whereas it is to be hoped that it will be made easier for all workers, in particular workers in small businesses, to join a mutual society, and that they will be encouraged to do so;

Y. whereas it is to be hoped that, in that case, a worker's membership of a system of mutual societies will be encouraged by exemptions from social security contributions or by tax relief;

Z. whereas mutual societies, given the challenges which governments face in relation to social protection, could help to provide an affordable safety net for those at risk; whereas mutual societies offer additional and affordable opportunities for Union citizens;

AA. whereas certain mutual societies have a very strong voluntary component and whereas this volunteer ethos must be preserved and facilitated;

AB. whereas in some Member States, alongside insurance services, mutual societies provide low- or zero-interest loan services to their members;

AC. whereas the added value of mutual societies compared to their commercially driven counterparts will be even stronger at the Union level, taking into account their economic weight and the positive impact of a Union-wide playing field;

AD. whereas the social economy – and mutual societies in particular – plays an essential role in the Union economy, by combining profitability with solidarity, creating high-quality jobs and local jobs, strengthening social, economic and regional cohesion, generating social capital and promoting active citizenship, solidarity-based social welfare and a type of economy with democratic values which puts people first and supports sustainable development and social, environmental and technological innovation;

AE. whereas mutual societies have a role to play in meeting these challenges alongside the private sector and must, in order to do so, be able to compete on equal terms with other forms of undertaking in the Union; whereas the existing European statutes, such as those for the European cooperative (SCE) or the European company (SE), are not suitable for mutual societies due to the differences between their governance models;

AF. whereas the gap in Union legislation is regrettable, as mutual societies are not specifically mentioned in the treaties and respect for their business models is not covered by any secondary legislation, which refers only to public and private enterprises, thereby undermining the status of mutual societies, their development and the establishment of cross-border groups;

AG. whereas the European statute for a mutual society is essential for achieving better integration in the single market, for enhancing awareness of the specific qualities of mutual societies and for enabling them to make a greater contribution to achieving the growth and employment objectives of the Europe 2020 strategy; whereas a European statute would also facilitate the mobility of European citizens by enabling mutual societies to provide services in several Member States and thus create greater continuity and coherence in the single market;

AH. whereas the European statute for mutual societies would provide a way of promoting the mutualist model throughout an enlarged Union, especially in the new Member States, where it is not covered by some legal systems; whereas a Union regulation, which would naturally be applicable throughout the whole of the Union, would have the dual advantage of providing those countries with a European reference statute and of contributing to the status and public profile of this kind of undertaking;

AI. whereas the statute could provide opportunities for mutual societies to create economies of scale in order to maintain competitiveness in the future and would increase recognition of the value of mutual societies within Union policy making;

AJ. whereas mutual societies are solid and sustainable organisations which have well withstood the financial crisis in all economies and have contributed to a more resistant, diversified market, particularly in the area of insurance and social protection; whereas mutual societies are particularly active in the area of population ageing and social needs; whereas the involvement of mutual societies in the area of pensions offers additional opportunities for Union citizens and whereas they have a role to play in preserving the European social model;

AK. whereas mutual societies have no shares but are owned jointly, their surpluses being reinvested rather than distributed to the members; whereas this has helped mutual societies to resist the crisis better than other private-sector entities;

AL. whereas a European statute would be a voluntary tool additional to existing national legal provisions applying to mutual societies, and would thus not affect the already existing statutes but would rather be a '28th' system making it easier for mutual societies to engage in cross-border activities;

AM. whereas the Commission should take into account the specific characteristics of mutual societies so as to ensure a level playing field, with a view to avoiding additional discrimination and ensuring that any new legislation is proportionate, as well as guaranteeing a fair, competitive and sustainable market;

AN. whereas the plea for diversification in the insurance sector is growing, thus emphasising the role that mutual societies can play compared to their stock-holding counterparts in making the sector as a whole more competitive, less risky and more resilient to changing financial and economic circumstances;

AO. whereas mutual societies are subject to intense and growing competition, especially in the insurance sector, and whereas some of them are shifting towards demutualisation and financialisation;

AP. whereas in at least six Member States of the Union and the European Economic Area, it is legally impossible to create a mutual-type organisation; whereas this creates market distortions; whereas a European statute could remedy this and could inspire the creation of mutual societies in those Member States;

AQ. whereas mutual societies lack the necessary legal instruments to facilitate their development and their cross-border activities within the internal market; whereas, given the availability of European statutes for other corporate forms, mutual societies are still at a disadvantage; whereas, in the absence of a European statute, mutual societies are often obliged to make use of inadequate legal instruments for their cross-border activities, leading to their demutualisation.

AR. whereas national laws on mutual societies vary considerably within the Union and whereas the European statute could allow the creation of transnational mutual societies, thereby strengthening the European social protection model;

AS. whereas mutual societies themselves should spread the idea of mutuality as their core value, and convince future members that this is a cost-effective and sustainable alternative to commercial service providers;

AT. whereas mutual societies must be prevented from taking steps, in order to remain competitive, to become lookalikes of their commercial counterparts, for instance by introducing risk selection or stricter criteria for membership, or even by issuing shares to increase their solvency margins;

AU. whereas mutual societies, especially medium-sized ones, might be forced to become part of larger organisations, even joint-stock companies (by way of demutualisation), thereby increasing the distance between the organisation concerned and the policyholders;

AV. whereas the lack of a statute continues to impede cross-border cooperation and mergers of mutual societies;

1. In the light of the outcome of the recent study on the situation of mutual societies in the Union, and bearing in mind the clear preference expressed on several occasions by Parliament for a statute for a European mutual society, requests the Commission swiftly to submit, following the detailed recommendations set out in the Annex hereto, on the basis of Article 352 or, possibly, Article 114 of the Treaty on the Functioning of the European Union, one or more proposals allowing mutual societies to act on a European and cross-border scale;

2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;

3. Considers that the financial implications of the requested proposal should be covered by appropriate budget allocations;

4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

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(1) OJ C 297 E, 7.12.2006, p. 140.

(2) OJ C 303 E, 13.12.2006, p. 114.

- (3) OJ C 76 E, 25.3.2010, p. 16.
- (4) OJ C 99 E, 3.4.2012, p. 19.
- (5) OJ C 199 E, 7.7.2012, p. 187.
- (6) Texts adopted, P7\_TA(2012)0259.
- (7) <http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=83593>
- (8) Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) (OJ L 207, 18.8.2003, p. 1).
- (9) Commission Communication of 13 April 2011 entitled 'Single Market Act - Twelve levers to boost growth and strengthen confidence - Working together to create new growth' (COM(2011)0206).
- (10) See COM(2011)0206, referred to above.

## **ANNEX**

### **DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

Recommendations regarding the statute for a European mutual society

*Recommendation 1 (on the objectives of the statute for a European mutual society)*

The European Parliament considers that the diversity of enterprises should be clearly anchored in the Treaty on the Functioning of the European Union and proposes that mutual societies be included in Article 54 thereof.

The European Parliament considers that a combination of strategies and measures is required to establish a level playing field for mutual societies, including a European statute, giving them in equal measure the possibility of adding a European dimension to their organisation and activities and providing them with adequate legal instruments to facilitate their cross-border and trans-national activities. In this respect, mutual societies could operate across the Union according to their specific governance.

The European Parliament considers that a statute for a European mutual society will create a voluntary scheme in the form of an optional instrument allowing mutual societies to act in different Member States, to be introduced even in countries where they do not currently exist, and therefore insists that the European mutual society be considered a European legal form with a specific Union character.

The European Parliament recalls at the same time that any legislative initiative will leave unchanged the different national laws already in existence, and cannot be regarded as aiming to approximate the laws of the Member States applicable to mutual societies.

The European Parliament affirms that the essential aims of a regulation on the statute for a European mutual society will be:

- to remove all barriers to cross-border cooperation between mutual societies while taking account of their specific features, which are deeply rooted in the respective national legal systems, and to allow mutual societies to freely operate in the European single market, thus strengthening the principles of the single market itself;
- to allow for the establishment of a European mutual society by physical persons resident in different Member States or legal entities established under the laws of different Member States;
- to make it possible for a European mutual society to be established by the cross-border merger of two or more existing mutual societies, given the non-applicability to mutual societies of the Cross-border Mergers Directive(1) ;
- to allow for the creation of a European mutual society by the conversion or transformation of a national mutual society into the new form without its first being wound up, where the society in question has its registered office and head office within one and the same Member State;
- to allow for the creation of a European mutual group and to allow mutual societies to enjoy the advantages stemming from a European group of mutual societies, in particular in the context of the Solvency II Directive(2) for those mutual societies which provide insurance.

*Recommendation 2 (on the elements of a statute for a European mutual society)*

The European Parliament calls on the Commission to take into account that the making available of such an optional regulation in Member States' legislation should embody mutual societies' governance characteristics and principles.

The European Parliament recalls that a proposal for a statute for a European mutual society has to take account of the particular operating rules of mutual societies, which are different from those of other economic agents:

- mutual societies provide a broad spectrum of insurance services, loan services and other services, in the interests of their members, on a basis of solidarity and in a collectively financed manner;
- in return, the members pay a contribution or equivalent, the amount of which may be variable;
- the members cannot exercise any individual right over the assets of the mutual society.

The European Parliament believes that the statute will have to lay down precise and clear conditions for the creation of a true and effective new category of European mutual societies, and considers it essential, in this respect, to bear in mind previous model statutes of European entities where the significant flexibility afforded to Member States and the lack of an added value have failed to create the conditions for successful use of such a European tool.

The European Parliament calls on the Commission to introduce into the proposed regulation, based on Article 352 of the Treaty on the Functioning of the European Union, the main characteristics of mutual societies' person-based societies, namely the principle of non-discrimination as far as risk selection is concerned and the democratic orientation by their members, with a view to improving social conditions of local communities and of wider society in a spirit of mutuality.

The European Parliament underlines the importance of the principle of solidarity in mutual societies, where clients are also members and thus share the same interests; recalls the principle of common ownership of the capital and its indivisibility; and stresses the importance of the principle of disinterested distribution in the event of liquidation, that is to say, the principle that assets should be distributed to other mutual societies or to a body having as its object the support and promotion of mutual societies.

*Recommendation 3 (on the scope and coverage of a statute for a European mutual society)*

The European Parliament highlights the following aspects regarding the scope and coverage of the future regulation for a European Statute:

- it should not affect obligatory and/or statutory social security schemes managed in certain Member States by mutual societies, nor the freedom of Member States to decide whether or not, and under what conditions, to entrust the management of such schemes to mutual societies;
- in view of the specifically Union character of a European mutual society, the management arrangement adopted by the statute should be without prejudice to Member States' laws and should not pre-empt the choices to be made for other Union texts on company law;
- the regulation should not cover other areas of law, such as rules on employee involvement in the decision-making process, employment law, taxation law, competition law, intellectual or industrial property law or rules on insolvency and suspension of payments;
- since the framework within which mutual societies operate differs from one Member State to another, the regulation should ensure that European mutual societies are able to freely define their own objects and to provide a broad spectrum of services, including social insurance and health insurance and the granting of loans, to their members.

*Recommendation 4 (on governance of European mutual societies)*

The European mutual society should be managed democratically and financed collectively for the benefit of its members. The statute should stipulate that the members are the collective owners of the mutual organisation.

The statutes of a European mutual society should lay down governance and management rules providing for the following: a general meeting (which can take the form of a meeting of all members or a meeting of delegates of the members), a supervisory organ

and a management or administrative organ, depending on the form adopted in the statutes.

Each member (natural or legal person) or delegate of the general meeting should in principle have equal votes.

The member or members of the management organ should be appointed and removed by the supervisory organ. However, a Member State may require or permit the statutes to provide for the appointment of the member or members of the management organ by the general meeting.

No person should at the same time be a member of the management organ and a member of the supervisory organ.

The effect of the Solvency II Directive on the corporate governance of mutual organisations should be closely monitored.

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(1) Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies (OJ L 310, 25.11.2005, p. 1).

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

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