RESPONSE OF AMICE AISBL Brussels, 12/6/2013

CONSULTATION ON THE RESULTS OF THE STUDY ON THE CURRENT SITUATION AND PROSPECTS OF MUTUALS IN EUROPE

THE QUESTIONNAIRE

Question 1: Information about the respondent

Q.1.1. Name of the person/ organisation/service/mutual society /company/ association etc., the legal form, field of activity and country of origin, address and your function, as well as -in the case of a person or entity registered in the European Transparency Register (TR)[1], your Transparency Register ID number.

The **Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE aisbl,** having its registered seat at Rue du Trône, n. 98, B-1050, Brussels, Belgium**)** represents the mutual and cooperative insurance sector in Europe, with over 100 direct members and several national associations of mutual/cooperative insurers. More than two thirds of all insurers in Europe belong to the mutual and cooperative insurance sector which accounts for close to 25% of all insurance premiums paid by European policyholders. Mutual insurers add to the diversity and competitiveness of the European insurance market, and provide a wider choice for consumers. In addition, many of them were and still are created to remedy market imperfections by offering insurance cover in difficult, very small or specific sectors.

Our members offer to their customers/owners a very broad range of insurance products and services including life insurance, pension and health insurance as well as a full range of non-life insurance products.

Our association is registered in the European Transparency Register under ID number # 62503501759-81.

Q 1.2. If you answer as an individual: Are you a member of a mutual-type organisation and of what type?

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 1.3. If you are answering for a mutual society:

> Q 1.3.1. Please indicate the field of activity (health services, complementary social security, mandatory social security, life and non-life insurance, credit or building society or other) of your mutual, your business volume, and the approximate number of members.

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[1] The Commission asks organisations that wish to submit comments in the context of public consultations to provide the Commission and the public at large with information about whom and what they represent. If an organisation decides not to provide this information, it is the Commission's stated policy to list the contribution as part of the individual contributions http://europa.eu/transparency-register/

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 1.3.2.Does your mutual society conduct cross-border activities within the single market and if yes, under which legal form (e.g. subsidiary, joint venture, agency, branch, cross-border provision of services, cooperation with a local enterprise in the host country, other)?

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 1.3.3.Does your mutual society plan to expand its activities to other EU/EEA area Member State(s) in the foreseeable future? If yes, under which legal form? Please indicate to which Member State(s).

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Question 2: Barriers to cross-border activities/establishment of mutual society

The study identifies a number of barriers/difficulties proper to the mutual societies in the EU which affect their possibilities to engage in cross-borders activities:

a. mutual-type organisations are not allowed to operate in all Member States or they are not allowed to start or conduct some activities, while the other legal forms of companies operating in the same field -like cooperatives or public limited-companies are permitted or are not restricted;

b. the lack of possibilities, or the existence of very limited possibilities to form horizontal cross-border groups that are not based on vertical ownership structures, while other legal forms of companies in the same field can do so; (for groups see question 4)

c. the general lack of understanding and awareness about mutual-type organisations in many Member States; (see question 5)

d. high capital requirements for starting up a mutual[2];

Q 2.1. Do you agree with these findings?

a.
While in some European Union Member States domestic insurance mutuals are allowed to operate without restrictions, this is, unfortunately, not the case in every single Member State of the European Union. In some Member States (ex. the Czech Republic), the legal form of a mutual does not exist as such. In other Member States specific restrictions apply to mutuals, restrictions which do not reflect the fair level-playing field desired within the European Union.

b.
Difficulties to form horizontal groups are present in the insurance sector at the European Union level. In a number of European Union Member States such difficulties are properly addressed via national laws (see, for example, the current legal status in France and Germany), however such national solutions do not properly address the issue of cross-border groups.

[2] In examining this "obstacle" it must be considered that a number of pieces of EU legislation, regulating activities mostly in the financial sector e.g. in prudential insurance legislation (Solvency I and II), require a minimum capital as a guarantee for the public.

As a further example for a national group of mutuals, we are informed that a project in Finland to form a mutual group, based on national private-law guarantees of capital and contracts, is well advanced despite its significant complexity in the absence of the relevant legal basis.

Unfortunately that is not the existing situation in all Member States of the European Union (see for example, the response of our Spanish member, Mutua Madrileña).

Fully aware that they also have the freedom to set up subsidiary companies in other Member States (since plc-type companies are permitted to provide insurance services in all Member States), many mutuals hesitate to do so or do so only with reservations. For many, the establishment of plc-type subsidiaries is not compatible with the mutualist model and therefore considered not to be appropriate. Others have established subsidiaries, but make an effort to run these subsidiaries to the extent possible along mutuality lines by involving their clients in their governance, by restricting the flow of dividends to the foreign parent company and/or by finding ways of letting their clients and/or their communities take part in the financial results of the company.

We refer also to our comments below under 2.2.

c.
We agree that in several but not all Member States of the European Union, there is a lack of awareness and understanding, both on the side of the general public and, more importantly, on the side of the political forces (parliaments, governments, supervisors). It is one of AMICE's key objectives to effectively promote the mutual and cooperatives key messages, values and business model across the European Union.

The current lack of awareness is of course most manifest in those Member States where mutual insurance is not established in the legal framework (see above), but also in Member States where, despite the legal possibility, no mutual insurer exists.

In several Member States, the mutual insurance sector is small and underdeveloped which is, in some cases, clearly attributable to an absent, inadequate and/or outdated legal framework (e.g., in Italy) or to outright scepticism or, even hostility, by customers and politicians and/or supervisors. Even in countries with a strong and successful mutual insurance sector situations are diverse.

d.
As an organisation of mutual (and cooperative) insurers, we are of course aware of the specific minimum capital requirements for insurance undertakings in general (regardless of their legal form) as specified in the relevant sectoral EU legislation (Solvency I life and non-life regime and, *pro futuro*, Solvency II).

Given the application threshold of EUR 5 million GPW (an exemption with an individual opt-in facility and a country option to apply the same regulation also for smaller undertakings) embedded within Solvency II, any minimum capital requirements for small start-up insurance undertakings (remaining below the Solvency II application threshold) have to be discussed individually with national regulators. Members from some European Union Member States report to us that, there are clear indications from their national regulators that the set-up of a new mutual insurer would probably not be supported. On the other hand, our German members report that in Germany new mutuals have been set-up over the last years.

Which of these barriers is the most important one for you?

Whereas for some of our members not all of the mentioned barriers exist, others put the importance in a different order. For further details we refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 2.2. Do you see other barriers/difficulties? Please specify.

We note that some of our members have experienced additional difficulties linked notably to: a legal or *de-facto* minimum number of founding members required to establish a mutual (*e.g.*, France, 500), or founding members who make substantial monetary contribution, or a possibility for hybrid solutions (e.g., in Poland) where the providers of the founding stock have certain prerogatives (e.g., governance or surplus-distribution) until their founding capital has been paid back; or the differences in national legislation (see above 2.1.) and capital-maintenance related concerns. Some other members have not experienced legal-form related difficulties.

We note that, currently, there is no European Union-wide Code of insurance law.

It is important to mention that most of the barriers that mutual insurers would face when trying to expand their business activity to other countries could also result, in addition to those related to their legal form, from their small and medium size.

It is therefore not surprising that successful examples of international activities are most often found (a) in industrial insurance business, (b) in specialised products, (c) in neighbour countries/regions sharing the language of the home state, and/or (d) where a mutual takes over (as a subsidiary) a local insurer with its domestic staff and established brand and product range.

Q 2.4. If you are answering for a mutual society:

> Q 2.4.1. Can you give concrete examples of the barriers and/or difficulties you have encountered when trying to start activities in another Member State, either by setting up a mutual society there, by establishing a subsidiary, branch or agency, or by offering your services across borders? How did you deal with these barriers/difficulties? Have they influenced your plans to conduct cross-border activities or to develop the business scope or geographical scope of your mutual-type organisation? (For groups see question 4)
>
> We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.
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> Q 2.4.3. Have you ever tried to merge with another mutual-type organisation registered in your country or another Member State? If yes, what kind of difficulties have you encountered with your partners or with the supervisory authorities?
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> We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.
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> Q 2.4.7. Are you interested in the transfer of your head-office or registered seat to another Member State? Can you specify your reasons why your organisation may want to transfer the seat and the problems experienced or expected, if any?
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> We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Question 3: Content and form of a possible statute for a European Mutual Society

The study recognises that a European Mutual Statute could help mutual societies to gain recognition, to increase the understanding concerning the benefits one can get from them, and to better respect their interests at the EU level by offering more level playing field. It will help them to be introduced in Member States where until today this type of enterprises (in the complementary social security services or in insurance etc.) does not exist or is, to a certain extent, restricted and also to create groups.

It is evident that if a European Mutual Society were proposed by the Commission the text should not affect obligatory and or 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 (see Berlinguer report, Recommendation 3). Furthermore the draft should in principle take on board the particular operating rules of mutual societies and their common characteristics as described in point 3 of the Introduction.

As a general comment, AMICE would like to stress the fact that the uniformity and autonomy of any proposed legal instrument at the European Union level should not hamper, in any way, the specificities of the national mutual models, on the contrary, it should facilitate their existence and spreading. Moreover, a detailed discussion with our sector is highly encouraged in order to ensure that any possible legal instrument would be fully respectful of our values and would provide a workable solution to our sector.

Q 3.1. Do you believe that the Statute should be a uniform piece of legislation applying the same way without derogations in all Member States?

Our French members and representative associations, GEMA, FNMF and ROAM, and some of our member companies (FOLKSAM of Sweden, Local Tapiola Group of Finland and Ethias of Belgium) respond positively: they agree with the findings in those European Commission/European Parliament studies on mutuality in Europe which conclude that an **optional and an additional statute,** enacted at the level of the European Union, containing a maximum of common rules applicable independently of the business sector of the mutual, addressing governance issues and with minimum reference to national legislation would provide for a basis for business for mutuals both within their home Member State and across the European Union. For them, an optional legal instrument applicable throughout the European Union as a 29th legal regime would be an ideal legal solution. They would not see a danger that such an instrument would lead to a harmonisation of current national legislations.

Our German members respond by the negative, and argue as follows: due to the diversity of laws for mutuals across the different various Member States of the European Union, a uniform legislation applying the same way without derogations in all those Member States is unfeasible. As it is because of this diversity that mutuals add considerably to the European economy and society at large and deserve a strong position in European insurance markets, this diversity has to be protected. As there is no clear all-encompassing legal concept of what defines a mutual-type organisation, providing a definition of mutuals that is acceptable for all stakeholders in the different Member States is not possible. Thus according to the mutual concept, any European legislation should provide for an applicable extent of liberty in the by-laws. A uniform legislation applying in all Member States of the European Union would unavoidably lead to an indirect harmonisation of national legislation and the diversity would diminish.

Our Spanish member, Mutua Madrileña, finds that such legislation should be anyhow optional, so as to respect the legal framework of the existing mutuals in their own respective countries. An

important advantage of the mutuals is that they have, at a national level, a legal framework perfectly adapted to their necessities and reality. A unique and compulsory legislation at European level could eliminate this advantage. Moreover, the lack of flexibility could collide with the many specific characteristics in each Member State with respect to mutual-type organisations and the imposition of some of the above referred rules could affect or even hamper the future development of some organisations.

Q 3.2. Should the Statute achieve autonomy from the national legislation, (in case there is one), in the sense that it does not afford any flexibility to Member States, in the sense that it should not contain references to national law regulating mutual societies (or similar entities)? In other words do you think that the Statute may deviate from these rules, values and principles that are nevertheless applicable to every other national mutual society in the Member State concerned e.g. allowing a European mutual society to foresee for multiple voting rights, or for a selection of risk, or for admitting non-members as clients/users, or non-member investors etc., in order to open up additional financing options, copying methods that are open to joint stock companies?

Our French members and representative associations, GEMA, FNMF and ROAM, and some of our member companies (FOLKSAM of Sweden, Local Tapiola group of Finland, Ethias of Belgium) respond by the positive: they refer to the draft of a Statute authored by the representative pan-European/global associations AIM, ACME and AISAM in 2007 and would propose that text as a workable basis for a new legal instrument. They regard the proposal as complete in terms of inclusion of relevant mutuality principles and coherent functioning rules. They argue that it is also fully respectful of the various EU good governance principles and, in particular, of the subsidiarity principle as it does not have a binding effect on Member States but only on economic operators which chose to make reference to/apply it. For them it provides therefore a legal opportunity for all without becoming an obligation for parties which have not specifically opted for its application. In the view of our members listed above, the statute should be an optional piece of European Union legislation, therefore, as such, its purpose is not to harmonise existing legislation on mutuals of the Member States of the European Union but rather to offer an additional, 29th legal regime.

Our German members respond by the negative and argue as follows: according to the European Parliament Resolution (2012/2039(INI)) it should be the objective of a statute to "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". Thus the aim is (also) to promote the economic cross-border development of the already existing mutuals. This objective can only be achieved if an existing national mutual can be converted into a European mutual without losing its corporate identity. This goal is not possible if the new European legal form deviates from national characteristics, rules, values and principles. In that case national and European mutuals may of course share some of their characteristics but in fact they do not share the same legal form and a conversion will, most probably, result in a lost legal identity. A European legal form could only be of use for the existing national mutuals if it shares the same characteristics. Due to the diversity of mutual laws across the Member States of the European Union such a goal can only be achieved by making references to national law regulating mutual societies. All this pleads for a differentiated treatment, which can only be properly addressed at the national level. Company law can only function properly as part of national jurisdiction that supplements it.

Q 3.3. What is your opinion as the necessity or consequences of an introduction of such options as above, in any future European Mutual Society?

Please refer to our answer provided under point 3.2 above.

Q 3.4. According to the study, the effect of the Solvency II Directive[3] on the corporate governance of mutual-type organisations should be closely monitored. Issues raised include:

a) the required 'fitness' of the persons managing effectively the undertaking;
b) the principle of proportionality;
c) the possibility or not to create mutual group structures as a reply to the requirements of the directive.

Do you believe that the statute of a European Mutual Society could help to find an answer to these concerns? What kind of other problems do you believe that such a Statute could solve? Please justify your reply.

Our Belgian member, Ethias, takes the view that, the statute of a European mutual society should explicitly allow for a mix composition of the Boards of mutual societies: on one hand, representatives of the mutual members and, on the other, insurance technicians. Such an approach would improve both the governance and functionality aspects at the Board level, each category of Board members assuming a different but complementary role. As far as small and medium-sized mutuals are concerned, the only possibilities to meet the requirements of the Solvency II Directive would be to create mutual groups. Such groups would define the procedures at group level, while their members would only ensure compliance, hence, realizing significant economies of scale. On top of that, such an instrument would guarantee a level playing field allowing for much desired fair competition between mutual and "capital-based" insurance undertakings.

Our French members and national associations members take the view that mutual societies carrying out insurance business are subject to European Union solvency rules. The latest Solvency II draft texts regarding corporate governance and internal control procedures do not properly take into account the fact that mutual societies are groupings of persons. The required "fitness of the persons managing effectively the undertaking" should take duly into account that the Board of Directors of mutual societies are elected by the General Assembly among its members.

Our German members respond as follows: all questions resulting from the Solvency II directive have to be settled independent of the legal form of the insurance undertaking within the framework of the Solvency II legislation. All issues raised above (3.4. a to c.) are not related to the legal form and do not belong to corporate but insurance law. As on national level "fit and proper" requirements are already implemented for all insurers, mutuals do already fulfil the relevant provisions and they do not fear the Solvency II "fitness" obligation. The treatment of solvency surplus or internal group diversification effects have to be settled in the framework of the Solvency II legislation. A new European legal form is not suited for solving problems resulting from Solvency II Directive.

Our Spanish member, Mutua Madrileña, believes that specific Solvency II-related issues should be addressed within the Solvency II legal framework in order to avoid regulatory confusion.

Q 3.5. Do you believe that an adaptation/amendment of existing European legislation (e.g. the statute for the European Cooperative Society or the Directive on Cross-border Mergers that regulates only cross border mergers of limited liability companies – n°2005/56/EC) could be an alternative solution? Could such amendments provide

[3] When responding to this question with respect to insurance mutuals, please take into regard the provisions of Art. 212(1)(c)(ii) of the Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

sufficient legal possibilities for mutual-type organisations to expand across borders and/or to create horizontal groups of mutual societies? Please justify your reply.

As explained earlier, AMICE is pursuing several working strands with the aim of finding solutions to the challenges that our members and mutual insurers at large are facing.

One of the possibilities we have analysed is certainly checking the alternative legal solution of the amendment of the scope of the European Cooperative Statute. This being said, no mutual member of our association is in favor of using such an amendment for the purposes exposed in the question.

As for the specific situation of mergers, in a similar way as for the transfer of registered office, we believe that neither of them should be linked to the legal form of a company but rather allow any existing company to pursue such cross-border activities. Therefore the provisions of the cross-border merger directive should be expanded to mutuals by safeguarding the principles of the mutual business model and, hence, prevent demutualization.

Question 4. The need to create groups?

As it is mentioned in the introduction of Question 3, one of the problems of mutual is the lack of possibilities, or the existence of very limited possibilities to form horizontal cross-border groups that are not based on vertical ownership structures, while other legal forms of companies in the same field can do so. Groups seem to be a solution to the question of how to increase the solvability of mutual societies.

Q 4.1. In your country, is it possible to create a horizontal group of mutual societies?

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 4.2. Have you ever tried to create a horizontal group with other mutual-type organisations within your country or with other mutual-type partners from other Member States? If yes, what kind of difficulties have you encountered with your partners or with the supervisory authorities? What has been the result?

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Q 4.3. As a substitute or complement to forming horizontal groups of mutual societies, the study proposed some other options for mutual-type organisations, allowing them to overcome their (cross-border or internal) barriers for growth

- to find possibilities for the exchange of guarantee capital (e.g. as a kind of subordinated loan), through which mutual-type organisations can establish financial ties;
- To improve any existing national legislation on the conditions for the creation of horizontal groups of mutual societies so as to better respond to the existing legal requirements.

Do you believe that these options can provide a practical solution? Do you have any other proposals?

Mutual insurers tend to revert to the freedoms of the Treaty when wishing to offer their services abroad and therefore do so either through the cross-border provision of services or through establishment.

Examples from mutuals in several Member States show that guarantee capital solutions can indeed, as a complement but not as a substitute, address and partially solve part of the growth pains (capital needs) of mutual insurers – otherwise such concepts would not be pursued. As it is AMICE's preoccupation to address challenges common to our sector and resulting from the mutual legal form, we do work on such models and try to foster the information exchange between those members who have successfully used such concepts and those members that are in search of solutions to address the problem of raising capital, especially in the context of (future) Solvency II regulation.

It is clear, however, that steps such as those described above tackle only one of many challenges – they are, therefore, seen by many as worthwhile pursuing, but not sufficient to address the much longer list of challenges and barriers as identified in the study and as perceived by themselves.

We argue that Commission services should devote considerable creativity and resources on the development of a European legal framework for groups of companies. It would, in this context, of course be absolutely essential that such framework be phrased in a way that equal opportunities are created for groups of plc-type companies, groups of mutuals, and hybrid types. As we explained earlier, the mutual and cooperative insurance sector includes small and medium-sized undertakings but also many large groups. Making the formation of groups among mutuals possible (or considerably easier) could improve the structure within the sector (by creating the potential for more larger mutuals) and would foster the so much desired development of the single market in (retail) financial services.

Question 5 – What solutions would be most appropriate?

The study provides proposals for (political) action by which "behavioural" barriers of Member States where currently no legal possibilities are available in order to create a mutual-type organisation could be removed. It proposes that the values of mutual societies and the benefits for having a diversified market with a variety of legal entities should be better communicated to the responsible policymakers and to national supervisory/regulatory authorities.

Q 5.1. Do you believe that mutual societies suffer from insufficient public recognition, even in Member States where this type of enterprises exists in one or other form? Can you give examples?

Our French members and national representative associations, GEMA, FNMF and ROAM, believe that mutual societies do suffer from insufficient public recognition at both the national and the European levels. This is the case, for instance, when proposing regulations which are thought only for/from the business-model angle of « joint stock» companies and/or when anti-discrimination rules which do not respect the specificities of mutuals are enacted at the national/European Union level. Such is the situation also in Finland, where Local Tapiola Group reports that the specificities of mutual societies are not automatically taken into account when governmental legal proposals are made, and that stock-listed companies are much more quoted in the local media. Similar views are also expressed by our Belgian member, Ethias, which offers as an example, the fact that the "fit and proper" norms applicable to Board members do not take due account of the specificities of mutual societies and of their democratic way of electing Board members.

Our German members do not believe that this is the case in Germany. Insurance mutuals are generally known and accepted and a functional level-playing field with insurance stock companies is a reality on the German insurance market. Also on the European level the business

model is well known. For example the Solvency II Directive expressly mentions mutual insurance companies.

Our Spanish member, Mutua Madrileña, responds that, in Spain, mutual societies are sufficiently recognized.

In Sweden, Folksam reports that the authors of a governmental study on life insurance mutuals carried out during 2012 did not understand the mutual business model at all. As a consequence, the conclusions and the recommendations of the study became critical to all mutual life insurance companies in that Member State.

AMICE, as an association that supports its members, when requested, in their national efforts to defend and promote mutuality, has in some cases observed a lack of knowledge at national levels among policymakers, the media, the public and even in national insurance associations.

Q 5.2. If you believe that the mutualistic idea should be promoted (because as of today the capacity of the mutual business model is not fully exploited), what kind of actions do you think are needed at national and/or European level in order to promote a better understanding of the mutual-type organisations' role and importance?

At the European level, we argue that the European institutions should embark on a major horizontal (multi-DG) project to foster mutual model solutions. A significant quantitative and qualitative data collection and communication exercise is certainly needed on the specific points identified above.

For instance, the recent International Year of Cooperatives – we are aware that this was a UN project – gave a tremendous boost of recognition and motivation to the cooperative sector. In that line of thought, we should note that AMICE's newest member is a newly established cooperative insurer from Turkey. We therefore suggest starting to plan for a European Year of Mutuals and are available for further discussions on possible initiatives in this context.

Of course, any EU support to promote the mutual business model in the financial services/insurance would be most welcome. We firmly believe that every euro spent will multiply in its direct effect to the European citizens.

We identify a serious deficit on awareness of and attention for the mutual business model in the curricula of schools and higher education. While this is obviously an issue more appropriately addressed at national level (by including the relevant elements into the national education curriculum) or even, directly, with individual educational institutions, we believe that the European institutions could provide essential stimuli in this field.

One more essential activity at the European level was identified by the authors of the study. They write that "formal recognition of mutuals as an organisational form at European level could be a way to stimulate this knowledge exchange". They refer to the necessity of fostering a knowledge exchange between the sector, supervisors and policymakers at the European and national levels with the purpose of improving the understanding and acceptance of the model. We urge the European institutions, and, in this context, in particular EIOPA, to enter into such knowledge exchange with the purpose of diminishing scepticism, wrong perceptions and sheer lack of knowledge about mutual (and cooperative) insurers.

One longer-term objective of AMICE's work is to have a reference to the specific legal form of the mutual included in primary EU legislation (Treaty). The authors of the study also ventilate this as a stimulus for the knowledge exchange which is so much needed.

At the national level, many of the activities mentioned above would also be useful. Indeed, some of them do exist in one or more Member States, but not beyond, others are not yet pursued.

Improving the national legal framework for mutual insurers is chiefly a Member State's task. Such improvements should be driven by the wish to create legal certainty, to modernise existing provisions, and by meticulous observation of fair competitive conditions (including conditions for growth and its financing) for insurance undertakings of all legal forms.

In countries where mutual insurers are restricted in their activities (e.g. to non-life business as in Greece or to life business as in Ireland), legislation should open all branches of insurance business to mutuals, if necessary after amending existing laws and regulations. Similarly, in countries where mutuals exist, but are not permitted in insurance, efforts should be made to adapt and strengthen legislation on mutuals in order to open opportunities for them to offer insurance services.

In countries where no legislation exists at all for mutuals, the development process might have to take two steps: creating a legal framework for mutuals and then opening the provision of insurance services to them. This step could, of course, be practically combined in one, particularly if the legislator would directly develop a specific legal framework for insurance mutuals as it exists in several European jurisdictions.

Q 5.3. What arguments can one use as to the need for allowing mutual-type organisations in all countries?

Against the background of the current financial crisis it appears that mutuals are likely to be more resilient than joint stock companies in such times. The large variety and diversity of mutuals in the various EU Member States fosters competition and has a clear effect on providing increased consumer choice and product quality to a significant number of European Union citizens.

Our members conduct business in a socially responsible way and offer a higher breadth of insurance products (covering specific sectors and niche markets) to their customers-owners. Moreover, given the specificities and the needed proximity embedded in our business model, our members act as significant local employers,[4] investing responsibly in the well-being and growth of their local communities.

For all the above reasons we argue that the mutual and cooperative business model should not only be maintained but also spread and encouraged across Europe.

Q 5.4. Did you ever contact local authorities, policy makers and/or supervisors on this subject?

AMICE as a European association is, of course, in touch with the relevant European institutions on all of the issues included in our response. We regularly invite national regulators and supervisors to AMICE seminars and other events where our members have an opportunity to fruitfully exchange views with them. This often leads to exchanges on specificities and advantages of mutual insurers and their business model.

When suggested or requested by members, we also meet with national policymakers and supervisors, usually to support our members and their national sector in their local discussions.

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[4] According to European Economic and Social Committee report "The Social Economy in the European Union", cooperatives and mutual societies were the employers of approximately 5 million citizens within EU-27 (aggregated data 2009-2010, please refer to Table 6.1, page 38 of the report).

Our member national mutual associations also have regular contacts with their relevant authorities/regulators. Please refer also to their individual answers.

Q 5.5.The study observes that in many Member States, mutual societies are not allowed to operate or are restricted to conducting certain activities. Apart from a Statute for a European Mutual Society, the supporters of the need to promote the idea of "mutualism" in Europe (see Berlinguer report) request the Commission to submit[5] one or more proposals allowing mutual societies to act on a European and cross-border scale.

> Q 5.5.1. What kind of actions for the approximation of laws do you believe can give a solution to the problem of promoting legislation on mutual-type organisations in these countries?

Our members and French representative national associations, GEMA, FNMF and ROAM, as well as our Belgian member, Ethias and our Swedish member, Folksam believe that the only clear and viable answer is the enactment of a EU legal act which should provide for a optional 29th legal regime within the European Union. Such 29th legal regime would in no way mean to approximate national laws or directly or indirectly harmonise national legislations on mutuals.

For our German members**,** this issue can only be solved at the national level. At the European Union level, a decision should be taken to legally allow mutuals under national legislation. Approximation of laws or indirect harmonisation is not demanded nor is it necessary, therefore a 29th legal regime is not a solution.

> Q 5.5.2. Do you believe that the difficulties to act cross-border can be addressed by re-examining issues relevant to the application of rules referring to the freedom of establishment or the right to provide services etc., in order to create a more level playing field for mutual societies when competing in the same markets with joint-stock companies? Please give some examples.

AMICE takes the view that both the freedom of establishment and the freedom to provide services are fully applicable in the insurance market for mutuals as well as for insurance stock companies and that on all the territory of the EU. However, a situation of legal discrimination exists, for instance, in cases where, because of lack of legal provisions or significant restrictions thereof, a mutual type company cannot be established as such in a EU Member State.

As far as cross-border activities are concerned mutual insurance undertakings of medium and small-size broadly face the same difficulties as any other SMEs the business model of which is based on marketability and proximity to customers.

[5]On the basis of, possibly, Article 114 of the TFEU on approximation of laws, that foresees for the adoption of a measure the ordinary legislative procedure that gives the same weight to the European Parliament and the Council of the European Union on a wide range of areas, while no unanimity by the Council is required as in the case of article 352 TFEU; see http://www.europarl.europa.eu/aboutparliament/en/0080a6d3d8/Ordinary-legislative-procedure.html

Question 6: Asset protection systems

The study analyses the issue of the legal regimes for the protection of the assets of a mutual society. Such regimes foresee that in the event of the liquidation of a mutual society and/or its conversion to a capital-type company (like a plc), the remaining assets, mostly those which are allocated to the indivisible reserves, are transferred to a similar or other not-for-profit organisations and are not distributed to members. Where they apply, such asset-protection schemes (sometimes called "asset locks") are deemed to protect mutual societies from demutualisation, because they do not provide any incentive for the mutual society's members to vote for liquidation or demutualisation (conversion) because they would not benefit from it. The study stated that while asset protection systems discourage de-mutualisation, no evidence was found that the existence of asset protection systems is necessary to prevent demutualisation from happening.

Q 6.1 Do you consider asset protection systems as an indispensable element of the nature of the mutual societies? Do you have comments on the necessity of asset protection systems? Do you believe that there are other ways to avoid de-mutualisation?

We share the finding of the study that asset protection systems discourage demutualisation – because the primary incentive for a mutual's members to vote for demutualisation, namely to receive a "share" in the demutualised company which can then be sold on the market, falls away: the liquidation surplus is not distributed among members.

We also agree, on the other hand, with the further finding that asset protection systems (such as the "asset lock") are not the only way to prevent demutualisations.

We are aware that in Germany and Spain an obligation for an asset protection system by law would be incompatible with the national legal system.

In our view, the best way to prevent demutualisation is of course to be a successful mutual, recognised for its legal form and for the advantage that this legal form brings to its members. The specific governance is one of these advantages. Another key factor for preserving and protecting the mutual legal form and defending its advantages is the pro-mutual attitude of the insurer's management. We see a close connection here with the question of an appropriate and adequate inclusion of mutualist principles in management education (see above).

Q 6.2. Do you consider that mutual societies should be not allowed to convert to another legal company form?

Some members of AMICE who exist in a legal regime that does not foresee the conversion of a mutual into another legal form emphasise that they would not wish to convert, anyway, and that therefore see no need for opening this opportunity.

AMICE finds it difficult to argue that the freedom of choice of a legal form (and of possible conversion from one legal form to another) could be legally restricted. Of course, as an organisation devoted to fostering and promoting the mutual (and cooperative) business model in insurance, we regret every single case of demutualisation and encourage and support all members of the sector to be successful in their mutual legal form.

These efforts to make demutualisations "unnecessary" bring us back to our earlier comments on opportunities for mutual insurers to export their model to members abroad. *De facto*, some of our members see themselves restricted in doing so and feel forced to revert to non-mutual, plc-subsidiary solutions. Others, however, have successfully established member relations with

foreign clients and have integrated them into their client-membership and governance. Language, contract law and market-practice barriers, however, remain challenging for them too (see above).

Question 7: National report on your Member State (Part III)

Q 7.1 Do you have any comments on the national report of your Member State (Part III)?

We refer to the answers provided by our members. A full list of our members is included as Annex 1 to our response.

Question 8: Any other comments?

AMICE would like to take this opportunity and thank the European Commission's services for offering many possibilities to comment during the work on the general part of the study and to the authors of the study for the excellent working relationship.