

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

**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), your Transparency Register ID number.*

The Association of Financial Mutuals (AFM) represents 53 member companies in the UK and Ireland, most of which are owned by their customers. Between them, AFM members manage the savings, protection and healthcare needs of 20 million people, and have total funds under management approaching £100 billion. This equates to around 7% of the UK market today, though as recently as 1995 mutuals accounted for over 50% of insurance premiums in the UK.

The nature of their ownership and the consequently lower prices, higher returns or better service that typically result, make mutuals accessible and attractive to consumers. In response, the UK Parliament has recognised the need to “foster diversity and strengthen mutuals”, and the Bill that created the UK new supervisors from 1 January 2013 requires them to formally explore what different consequences new or amended rules might have for mutuals.

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

Not applicable.

*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.*

*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)?*

*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).*

Not applicable.

<b>Question 2: Barriers to cross-border activities/establishment of mutual society</b>
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The study identifies a number of barriers/difficulties proper to the mutual societies in the EU which affect their possibilities to engage in cross-border 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.

*Q 2.1. Do you agree with these findings? Which of these barriers is the most important one for you?*

We agree that the findings outlined in the paper represent some of the key barriers to cross-border development of mutuals, and explore some of themes further below.

(a) In the UK there is a long and proud history of mutuals, with the first friendly societies established in the sixteenth century. At their height, there were over 25,000 UK friendly societies, serving local communities and trades before the creation of the Welfare State.

Today friendly societies and provident associations retain their own legislation, which reflects their mutual status, although it is often now updated as quickly and effectively as company legislation. The UK government has announced that this year it will undertake legislation to consolidate around 17 pieces of legislation currently in place for co-operatives. There is no clear definition of a mutual insurer and most of these organisations are governed by Companies Act legislation.

The current UK government is committed to “promoting diversity and strengthening mutuals”, and has undertaken a range of actions to support the development of new mutual and quasi-mutual structures in the public sector, and is committed to the mutualisation of the Post Office. A new All-Party Political Group for Mutuals was established in May 2013, with 151 members (drawn from members of both Houses of Parliament) signed up on launch to support its work.

In short, the government's approach is largely permissive, and there is a positive commitment to working with the mutual sector. However we envisage many ways in which mutuals and the government can do more to work more closely with mutuals for the good of society. Accordingly, the mutual sector including AFM has recently published a [mid-term Mutuals manifesto](#) (from later in June 2013) to propose a series of actions politicians might undertake to strengthen the sector, including support for the European Mutuals Statute.

(b) We have seen a number of non-UK insurers take over UK insurers in the past in order to build a UK presence. We have not though seen a non-UK European takeover of a UK mutual.

Some UK mutuals have established subsidiaries in Ireland, where there are no perceived language or legal barriers, and where the relative tax treatment in the past was more favourable. However, this practice has tended to focus on non-life insurance only, and via a subsidiary or branch structure which means that policyholders (either in the UK or Ireland) are not granted full membership rights.

A number of European mutuals have established subsidiaries in the UK. A number of these have grown substantial, though they are all vertically-owned in the country of origin. The UK legislation does not appear to enable the form on horizontal grouping that is characterised in France by the Société de Groupe d'Assurance Mutuelle Covéa ([Covea](#)). We also note that in 2012 similar legislation was passing through the Belgian parliament to enable the creation of a [mutual insurance holding company](#).

Other forms of mutuals in the UK do have group structures. For example, UK credit unions offer a range of savings and affordable loans to their members, who generally share a 'common bond'. In 2013 the sector and UK government announced the launch of the [Credit Union Expansion Project](#), involving the creation of a centralised hub to streamline the operations of 31 existing credit unions. The UK building society sector has not explored the possibility of group structures to any great extent. One society cannot be a subsidiary of another - each society is an independent, sovereign entity accountable only to its individual members.

There is a long-term trend towards consolidation in the UK mutual insurance market, driven by the need to remain cost-effective, and to meet high standards of governance and regulation. Many UK mutuals have merged, whilst many of the largest mutuals of 20 years ago demutualised. There are also some cross-border transactions: Covéa, as mentioned above, has now established a substantial UK business, through the transfer in of Provident Insurance and Gateway Insurance on 1 October 2012. However, whilst this is a group structure, ownership remains within Covéa, and the policyholders of the two acquired businesses have no membership rights. The combined group is an underwriting business for its French parent, with around 1 million policyholders, and stresses the benefits of its restructuring as: "By having one insurance company, instead of three separate companies, Covéa simplified its governance and regulatory arrangements, while continuing to service policies effectively."

Examples of AFM members expanding to other member states are relatively limited, reflecting some of the barriers outlined in the report as well as those we cover below, and include:

- Dublin-based member of AFM, IPB Insurance offers a range of property and liabilities insurances to public authorities and corporations, and sets aside a significant part of its profits to both member dividend and a community fund. It has recently expanded its business, to serve public authorities in Northern Ireland (part of the UK).
- The UK's largest mutual insurer, Royal London, provides protection products in Ireland through its Dublin-based subsidiary Caledonian Life (acquired as part of the transfer of Royal Liver in 2011), and
- Dentists' Provident offers income protection products in Ireland.

(c) As per our response to (a) above, there is an increasingly healthy level of awareness, amongst politicians and regulators, of differences in business model between PLCs and Mutuals in the UK, and a commitment to remove some of the barriers to future success. There are some concerns though on the proportionality of EU rules, such as those covered via the Solvency II Directive, as well as audit and accounting reform, which contribute to the challenges of smaller businesses remaining in business.

Our research amongst consumers indicates that spontaneous awareness of mutuals is low, and AFM has launched a website, [www.OwnedByYou.org](http://www.OwnedByYou.org), to explain the benefits of mutuals, as well as the rights of members of mutual organisations.

(d) In the UK, no new consumer mutual has been established for close to 20 years. This is the result of the significant regulatory hurdles in place, and in particular the requirement for start up capital. Section 5(2)(b)(i) of the Friendly Societies Act 1992 provides, in effect, that only members (or persons connected with members) can receive benefits from the Society- thus precluding external capital.

Alongside this, maintaining high levels of capital, as well as achieving scale remains challenging for many mutuals, in an era where regulation favours large organisations.

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

For UK mutuals the most significant barriers to cross-border activities are macroeconomic, including:

- currency differences, which create extra transaction costs and risks;
- approaches to tax treatment are different in different member states, and UK mutuals enjoy specific tax privileges which would be unlikely to be replicated elsewhere;
- relative levels of market maturity- the UK insurance market is mature and well-developed, and sits along an extensive range of state benefits;

- regulatory differences- UK supervisors are increasingly intrusive but provide a relatively predictable approach, which reflects the UK market, and other member states have different approaches which, even where working with a partner, could take up significant management time;
- where the UK intends to sit outside the planned Financial Transaction Tax, the creation of a branch in another member state will create further cost and complexity for the organisation;
- different approaches to Insurance Premium Tax and rates in different member states (see ECJ case C-243/11, RVS Levensverzekeringen, February 2013); and
- political and economic uncertainty in the Eurozone.

In themselves, these issues are not insurmountable, at least for the largest mutual organisations. But they do represent significant hurdles which make overseas expansion, or cross-border deals, less attractive than organic growth in the home state.

As we understand it, the single passport (provided under the 'Directive of the European Parliament and the Council of 5 November 2002 concerning life assurance' (2002/83EC), means that a UK mutual, authorised by the dual-UK regulators, can conduct business throughout the EEA from its base in the UK without the need for separate authorisation, or that it can set up a branch or agency in another member state (subject to implementation of the directive under the domestic law of that member state).

Hence, as the UK insurance market is becoming increasingly concentrated and mature, meaning that growth prospects are becoming more difficult in some areas, and in the future- particularly if there is a common set of operating rules and enabling legislation- this might increase the prospect of a very small number of UK mutuals operating in other member countries.

*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)*

*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?*

*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?*

Not applicable/ answered above.

### **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.

*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?*

*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?*

*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?*

We strongly support the creation of a European Mutuals Statute. We consider this will have value to mutuals across Europe, and by extension- given their stronger focus on getting better deal for consumers- to society in general.

Whilst in many European countries there is already effective support in legislation to maintain a viable mutual sector, this is not the case in all member states, so the most significant advantages of a statute will be in removing barriers to the development of mutuals in countries where currently they are not permitted.

We consider the legislation should include a limited number of core requirements with wide effect, with the remainder having derogated powers, due to the unique tax laws and maturity of the market in different member states.

To illustrate, many smaller mutuals have a strong identity and link to the local community that they serve and would not expect to benefit from pan-European legislation unless it was effectively transposed to the local supervisory rulebook.

Such organisations may have been created to serve a particular population (often geographic or trade), and over the years will have created significant value, that is constitutionally held for the benefit of current and future policyholders. Legislation that applied in the same way without derogation would therefore be harmful to the operations of these unique organisations- unless it was very high-level and superficial, in which case we do not think it could successfully address some of the barriers articulated in the EC report.

We consider such an approach would still enable the creation of a statute with real meaning and value; for example in requiring every member state to carry legislation that enables the creation of mutual organisations, with appropriate start-up capital requirements, as well as to facilitate the development of horizontal groups of mutuals.

We would be very happy to work with officials to explore how such an approach might be taken forward.

*Q 3.4. According to the study, the effect of the Solvency II Directive 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.*

In the UK, Solvency II does not present a significant new hurdle in relation to fitness and governance arrangements, as the directive is similar to the existing capital regime in the UK, at least in this respect.

However, we do have concerns about the proportionality of proposals. National supervisors and EIOPA each appear to blame each other for the high costs of implementing Solvency II, as well as its disruptive nature.

To illustrate, ring-fencing arrangements, including in the UK conduct supervisors rulebook will be materially effected by the proposals in Solvency II, and we believe this will significantly affect the ability to create group structures for mutuals. In this respect, a European Mutuals Statute might alleviate these problems.

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

We do not believe adaption of existing legislation will work effectively. The EAVA on a European Mutuals Statute<sup>1</sup> provides, we believe, a compelling case for a statute, and we can readily see the potential added value (summarised as visibility; cross-border opportunities; legal certainty; and promoting a sound social economy).

#### **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?*

There is no precedent for this in the UK. Some building societies have attempted to create a shared outsourcer, though this has had limited effect: Mutual One was established in 1997 as a joint venture between a number of building societies. It is currently focused on the delivery of shared resources for internal audit, compliance, corporate insurances and training for a range of mutuals<sup>2</sup>.

We consider the legislation and regulation would currently prevent hurdles to the creation of a horizontal group of mutual societies in the UK. We are though aware of extensive support for group structures in France (see text box below), and note the development of similar legislative proposals in Belgium.

We consider these approaches could be a basis for similar development in the UK, where the potential benefits of a group operating structure are becoming more apparent, particularly for smaller mutuals, in response to the increasing costs and complexity of being in business today.

##### **Overview of group structures for mutuals in France**

The French law of the 29<sup>th</sup> of August 2001 (number 2001-766) established a legal instrument for mutual societies (insurance, provident or health) to form grouping structures. The French law transposes EU Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group.

The four forms of structural groupings according to the legislation are:

- 1) The Group Insurance Company (Société de groupe d'assurance) – SGA
- 2) The Mutual Insurance Group Company (Société de groupe d'assurance mutualiste) – SGAM
- 3) The Provident Institution Group (Groupement paritaire de prévoyance) – GPP
- 4) The Union Mutualist Group (Union de groupe mutualiste) – UMG

The SGAM was the first of the grouping structures to be formed, under SGAM Covéa in 2003. The purpose of the SGAM is to enable consolidation and cooperation between partners without setting up a company with share capital. The SGAM is also legally bound to manage important and sustainable financial solidarity links through an “affiliation agreement” between the member companies.

<sup>1</sup> [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/494461/IPOL-JOIN\\_ET\(2013\)494461\(PAR00\)\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/494461/IPOL-JOIN_ET(2013)494461(PAR00)_EN.pdf)

<sup>2</sup> <http://www.mutual-one.co.uk/aboutUs/>

In November 2012, the largest French mutual insurer, **SGAM Covea** announced it was to create a stock holding company called **Covea Cooperations**. The stock holding company would be held 100% owned by the three biggest members of the SGAM; MMA, AM-GMF and MAAF (at 33.3% each). At present, there are no plans to list the holding company. The main reason for the creation of the holding company is said to be due to the regulatory constraints of Solvency II - Covea wants to be considered as a "group" structure. Covea also wants to be able to access capital markets more quickly in order to make acquisitions more easily.

*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?*

*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?*

As the Panteia report illustrates, UK legislation was amended in 2007 via the Building Societies (Funding) and Mutual Societies (Transfers) Act. This enabled different forms of mutuals to merge together, and was accelerated through parliament in advance of a merger between the Cooperative Group and Britannia Building Society. However this was devised as a vertical group rather than a horizontal group, and no legislation adequately caters for the latter.

However, the constitution of UK mutuals such as friendly societies, and the capital they have created over many generations would enable them to develop new partnership approaches. In particular, recent analysis by Dome Advisory has identified UK friendly societies as an ideal vehicle for shariah compliant insurance. This is because the legislation requires all contributions to be made voluntarily, and because the structure is much simpler than other shariah compliant approaches such as Takaful<sup>3</sup>.

#### **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

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<sup>3</sup> "Friendly societies and other UK mutuals- a vehicle for Shariah compliant insurance in the European Market", International Takaful Report 2012-13

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?*

We can see from the Panteia report that there are several member states where it is (almost) impossible to operate a mutual organisation. This is not the case in the UK- indeed insurance is by nature a mutual product, where individuals work collaboratively to exchange a small regular premium for a large uncertain risk.

As the country report on the UK illustrates, there has been a breadth of legislation in the UK on the mutual sector, with the first Act of Parliament for friendly societies as early as 1793. For 150 years after that time, the UK government saw a vital role for mutuals, and made a series of new legislation that put the sector at the heart of savings policy and the welfare state in the UK. At their height, there were over 25,000 friendly societies in the UK, operating in every community and for every trade.

Today the position is very different, and there are no meaningful natural advantages for mutuals in UK legislation. Indeed, the sector has suffered through a combination of benign neglect of its legislation, as well as government-sponsored bias towards shareholder owned businesses. This is illustrated in a number of ways:

- In 1995 over 50% of the UK insurance market remained mutual. At its lowest point in 2007, this had fallen to less than 5%. Many of the largest mutuals decided to convert to PLC status, due to restrictions on their capital and operations. However as the text box below illustrates, demutualisation has not in most cases brought significant value to either customers or owners.
- Many AFM members are constituted as companies today, and therefore their relevant statute is the Companies Act 2006. For friendly societies, the relevant legislation is significantly older and not as well constructed, meaning societies have a number of competitive disadvantages<sup>4</sup>. Whilst the government recently announced (in the Queen's Speech, May 2013) it was taking forward proposals to consolidate legislation for Cooperatives and mutuals, the Treasury has insisted that only the former will benefit from the overhaul.
- Regulators have in the past made little effort to moderate their approach for mutuals, on the basis that their powers do not allow them to differentiate according to business model. More recently the UK government has introduced a new twin-peaks system of regulation, and the two new regulators are required to consider the different consequences of new rules on different business models. We see similar

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<sup>4</sup> For a fuller critique, see the following article in the AFM newsletter, Mutually Yours, from February 2012: <http://www.financialmutuals.org/resources/mutually-yours-newsletter/a-single-mutuals-statute>

shortcomings in some EU rules, and hope the current stocktake consultation will increase political desire to address some of these<sup>5</sup>.

- Markets have responded warily to the perceived shortcomings of the mutual business model. Ratings agency in particular have been reluctant to rate mutuals positively due to concerns about their ability to raise external capital. Encouragingly though a recent report on the US life insurance market by Moody's recognised that mutuals were generally stronger than their shareholder-owned counterparts<sup>6</sup>.

<b>Demutualisation in UK insurance</b>			
In recent years many of our current shareholder-owned companies demutualised:			
<b>Demutualised company</b>	<b>Year</b>	<b>Average windfall</b>	<b>Fate</b>
Clerical Medical	1996	£520	Taken over by Halifax and absorbed into HBOS
Scottish Amicable	1997	£1,430	Taken over by Prudential
Norwich Union	1997	£1,200	Now called Aviva; share price around half float level; 2011 profit halved whilst dividend up 6%
Scottish Widows	2000	£6,000	Taken over by Lloyds TSB
Scottish Provident	2000	£3,636	Company closed and split up
Friends Provident	2001	£1,200	Taken over by Resolution
Standard Life	2006	£1,250	Remained independent, share price up; 2011 profits down a third, dividend up 6%

Source: Association of Financial Mutuals, with additional data from Morningstar

So most shareholders of demutualised insurers have not benefitted from demutualisation in the way managers promised- but what about policyholders? Customer research indicates that policyholders have generally seen falling standards of customer service, worse claims handling, and higher complaints dissatisfaction. Consumer advocacy is much lower than for mutuals according to AFM research.

The largest windfall payment from a demutualised company was £6,000 from Scottish Widows in 2000. However, policyholders have been paying for it ever since. Before Scottish Widows demutualised it was one of the insurance industry's leading performers, at its peak paying out £107,941 in 1998 for a 25 year with-profits policy paying £50 a month. This was around 20% better than the average for mutual insurers. In 2012 their average payout had collapsed to £28,071- one of the worst performers in the Money Marketing tables, and 34% less than the average mutual. Had Scottish Widows remained a mutual, one of its policyholders with a policy maturing on 1 January 2012 would have received a payout of £14,228 more, assuming the company had performed at the mutual average level.

<sup>5</sup> <http://www.europarl.europa.eu/committees/en/econ/subject-files.html?id=20130314CDT63219#menuzone>

<sup>6</sup> 'Top US Mutual Life Insurers: Similar Credit Strengths, Interesting Distinctions', March 2013

*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?*

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

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

*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 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?*

*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.*

We believe that the UK government and the mutual sector have a shared responsibility for promoting the values of the sector.

The UK government is committed to “promoting diversity and strengthening mutuals”, and has taken a number of actions to this effect. As previously mentioned, the trade bodies supporting mutual insurers, building societies and cooperatives produced a report (the mid-term Manifesto), due for release in June 2013, setting out how the sector and all the main political parties can work together.

Amongst the recommendations is the adoption by government of a ‘diversity index’ as a simple basis for demonstrating that any actions or legislation targeted at promoting the sector has a positive effect. We consider that such an index might be adopted on a pan-European basis and that this would encourage more imaginative approaches to promoting the mutual sector.

AFM has produced a website, [www.ownedbyyou.org](http://www.ownedbyyou.org), dedicated to helping people to understand the benefits of mutuality, as well as the rights of members

of mutuals. We have also seen extensive campaigns from some large mutuals to promote the virtue of the model- click on the images below for illustrations.



What is very apparent, and well-documented in the Berlinguer report as well as the Panteia research, is that markets with an effective mutual sector work more effectively. Our own research shows that mutuals are more trusted, provide higher standards of customer service, and deal more fairly with customers, as well as providing the prospect of better products and/ or higher rates of return. Mutuals proved resilient in the recent financial crisis, and epitomise the principles of the European social model.

Those virtues have of course been delivered in the absence of a European Mutuals Statute, but our experiences of the near-collapse of the sector during the 1990s/ early 2000s, also show that benign neglect and inconsistencies in national government policy, can have a catastrophic impact on mutuals. This is well illustrated in the text box on child trust funds below.

#### **UK Child Trust Funds**

The UK Labour government introduced the Child Trust Fund (CTF) in 2005, and all children born from September 2002 received an introductory voucher worth at least £250, to invest on either a cash or equity basis, with the product to mature at age 18.

The product was acclaimed as offering a combination of enabling all young citizens to start to create financial assets, with financial education, with a broader social value- all merits that appeal to community-focused mutuals.

Due to the long-term nature of the product and the low returns (charges are capped at 1.5% on the preferred, stakeholder version and investment limits are low), mutuals dominated the market, with friendly societies opening half of all CTFs, and building societies a further third. PLC banks and insurers generally turned their back on the product, due to the unattractive returns for shareholders.

The incoming coalition government in 2010 signalled it was going to end the CTF. Instead a Junior ISA vehicle, with no incentive would be launched, and the UK government is now consulting on whether the six million CTF policies might be allowed to transfer into the still-fledgling Junior ISA.

Friendly societies immediately experienced the unwinding of a business plan, critically centred on receiving a predictable volume of new business over the long-term. A number of friendly societies have already been forced into mergers in order to maintain the best interests of their policyholders.

The CTF is therefore an example of how mutuals can support government initiative more effectively than PLC counterparts. But it has also dented confidence in the sector's desire to support new initiatives that might have political motives.

## 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 demutualisation?*

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

This has been an area of extensive work in the UK. The recent Commission on Ownership provided a recommendation that the UK government should explore the concept of perpetual mutuals, via a process of disinterested distribution, to create an ‘asset lock’<sup>7</sup>.

Currently mutuals in the UK do not have perpetual form, and are therefore at risk of winding up or demutualisation. To combat this, many building societies amended their articles in the 1990s, to provide for charitable assignment on any windfall on conversion. However, this approach has not been adopted by mutual insurers and friendly societies, where the long-term nature of products tends to make ‘carpetbagging’ more difficult.

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<sup>7</sup> The Ownership Commission (2012), Plurality, Stewardship and Engagement. The Report of the Ownership Commission, March 2012.

### **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)?*

AFM was pleased to contribute extensively to the report on the mutual sector in the United Kingdom. We are therefore broadly content with the coverage of the UK mutual sector, subject to comments below.

The report authors highlight the nature of the definition of mutuals in the UK, which is somewhat broader than in other member states. From our perspective, the nature of ownership is the critical differentiator, and therefore it seems quite natural to have a common definition of mutual for all organisations owned by their customers. Indeed, as mutuals organisations have evolved over time, it has been their ownership that has remained the constant not necessarily their product offerings.

As the report authors Panteia point out, the definition of a mutual in the UK is relative recent (drawn from the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007), and imperfect. For example, recently the UK government has actively encouraged the 'mutualisation' of some government departments, though as a recent article from Coops UK points out, some of these are better described as part-privatisation<sup>8</sup>.

Equally, the report includes data for companies that do not meet the AFM approach to mutual, such as BUPA (<http://www.bupa.com/investor-relations/our-status-and-governance>).

The UK national report infers that mutuals are more active in non-life than life insurance in the UK. This might be implied by the relative market shares, but in reality around two-thirds of premium income in the sector is derived from life and investments.

### **Question 8: Any other comments?**

We are very grateful to the European Commission for its continued interest in the mutual sector, and its intent to remove some of the remaining barriers to its success. Last year's report provided plenty of evidence of the opportunity for mutuals to bring stability to markets, as well as greater focus on healthy competition in the best interests of the consumer.

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<sup>8</sup> <http://www.guardian.co.uk/commentisfree/2013/may/03/nudge-unit-mutualisation-but-not-as-we-know-it>