

**Opinion of the European Economic and Social Committee on the Statute for a European Mutual Society: views, role and contribution of civil society (own-initiative opinion)**

(2014/C 226/03)

Rapporteur working without a study group: **Mr CAMPLI**

On 22 January 2014, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on the

*Statute for a European Mutual Society: views, role and contribution of civil society (own-initiative opinion)*

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 March 2014.

At its 497th plenary session, held on 25 and 26 March 2014 (meeting of 25 March), the European Economic and Social Committee adopted the following opinion by 140 votes to one, with five abstentions.

## **1. Conclusions and recommendations**

### *1.1 Conclusions*

1.1.1 Like cooperatives, foundations and associations, mutual societies are a part of the European economic and social model. Irrespective of how enterprises are defined in national legislation, the diversity of forms of enterprise, including the spectrum of social economy enterprises, is a vital aspect of the European Union single market as well as being crucial in terms of supporting, investing in and developing the pluralism of Europe's business landscape.

1.1.2 Mutual societies are entitled to a European statute to enable them to respond to the need for risk coverage, in particular social and health protection for workers, businesses and individuals.

1.1.3 Mutual societies refuse to accept that demutualisation is inevitable and for its part, the EESC wishes value to be placed on maintaining diverse forms of enterprise, including social economy players, in order to preserve Europe's economic and social heritage. Nevertheless, useful though it may be, an information campaign is no substitute for the legal framework that is required.

1.1.4 There are many different types of mutual society in Europe (around 40 have been identified), but, looking beyond their diversity, 95 % operate according to the same principles.

### *1.2 Recommendations*

1.2.1 In accordance with the commitments it made at the Strasbourg event on social entrepreneurship, the EESC urges the Commission to move quickly to introduce the legislative proposal on the draft regulation on the Statute for a European Mutual Society.

1.2.2 The EESC wishes the mutualist model to be recognised through a coherent European-level legal framework consistent with its economic weight and social role.

1.2.3 The EESC recommends that the statute should be concerned with governance rather than activities, in order to maintain the wide variety of mutual societies.

1.2.4 The EESC recommends that the statute should not aim to harmonise national laws and that it should be optional.

1.2.5 The EESC calls for a precise timetable for the presentation and adoption of the draft Statute for a European Mutual Society to be made public.

## **2. Introduction**

2.1 The objective of this opinion is to urge the Commission to move as quickly as possible to present a proposal for a Regulation on the Statute for a European Mutual Society.

2.2 The perception of European civil society and the stakeholders involved is that without an appropriate legal basis, the activities of mutual societies — at European level — will, effectively, be discouraged. This would have grave consequences — on the social level, in the context of the shrinking role being played by the state; on the healthcare level (less equal access to healthcare for people in Europe); on the employment level (loss of job opportunities, including specialised jobs), and from the point of view of Europe's social cohesion and the process of European integration.

2.3 *We have been discussing, procrastinating about and failing to reach a decision on a European Statute for some time.*

2.3.1 The initiative of introducing a Statute for a European Mutual Society has a very long history, which goes back to 1993 and the European directives on insurance. In this context, the mutual societies asked for their original form of governance to be recognised in a European Statute.

2.3.2 The Commission withdrew a first draft proposal for a regulation in 2006 and, despite a 2003 Communication on company law, in which it undertook to introduce new European legal forms, in particular for mutual societies, a commitment that was reiterated in the 2006 Action Plan on the Modernisation of Company Law and Corporate Governance, it withdrew the draft Statute for a European Mutual Society from its agenda in 2006.

2.3.3 Another move to re-launch the proposal was initiated by the European associations representing mutual societies in 2007.

2.3.4 In March 2010, the European Parliament adopted a written declaration backing the idea of a Statute for a European Mutual Society and in 2010 it produced a report on the role of European mutual societies which concluded that there was a need for such a statute.

2.3.5 In March 2013, the European Parliament unanimously adopted Mr Berlinguer's own-initiative report on the feasibility of a statute for a European mutual society.

2.3.6 In parallel, in the framework of the Single Market Act, the Commission decided to finance a study (known as the Panteia study) on the situation and difficulties of mutuals in the Single Market. This major study, published on 12 October 2012 and led by the Commission, provided the first exhaustive picture of the legal, economic and social environment of mutual societies in the EU Member States <sup>(1)</sup>.

2.3.7 In the wake of this, the Commission organised a public hearing on the conclusions of this study (the results of which were published in October 2013) <sup>(2)</sup>. The success of this consultation (over 300 responses, two thirds of them positive) led the Commission to organise an impact assessment on the feasibility of a draft statute for a European mutual society.

2.4 In its opinion (October 2009) on *Diverse forms of enterprise* <sup>(3)</sup>, the EESC stressed that *'The pluralism and diversity of the various forms of enterprise are recognised in the Treaty and borne out by reality, through the different legal statutes that have been approved or are currently under consideration.'* The Committee included mutual societies as one of the forms of social economy enterprise.

2.5 The appendix to the declaration given in Strasbourg at the social entrepreneurship event co-organised by the Commission and the EESC on 16 and 17 January 2014 states that, *'Many stakeholders consider that social entrepreneurship policies should encompass all social economy enterprises (cooperatives, mutuals, foundations, etc.). The EU should propose a European statute for mutual societies, in order for them to carry out cross-border activities, merge, and face the challenges of Solvency II, and propose a European Statute for associations.'* At this event, the Commissioner responsible for enterprises, Antonio Tajani, announced that the Commission was to start the procedure for a legislative proposal on the Statute.

### 3. Description of mutual societies

3.1 Mutual societies exist in a broad range of legal forms in the various EU countries. These various forms of mutual society and the role they play depend on the culture and history of the mutual movement in each particular country. Historically, mutual societies introduced Europe's very first forms of social security. Currently, within the EU, the primary aim of mutual societies is to serve their members in a context of general interest and to ensure that their members are covered against risks by offering them insurance, social, health and personal support services.

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<sup>(1)</sup> *Study on the current situation and prospects of mutuals in Europe* [http://ec.europa.eu/enterprise/policies/sme/files/mutuals/prospects\\_mutuals\\_fin\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/mutuals/prospects_mutuals_fin_en.pdf).

<sup>(2)</sup> [http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/index\\_en.htm](http://ec.europa.eu/enterprise/policies/sme/promoting-entrepreneurship/social-economy/mutuals/index_en.htm).

<sup>(3)</sup> OJ C 318, 23.12.2009, p. 22.

3.2 In total, almost **40 different types of mutual organisation** have been identified in the EU. Nearly 95 % of mutuals share the same five governing principles:

1. **the organisation must be a private law body**, in other words, independent from government and not subsidised by public funds,
2. the organisation must be a **group of persons** not capital,
3. the governance system must be democratic and based on the principle of **one person, one vote**,
4. the **principle of solidarity** between members must apply: membership must be open to all, with no selection criteria,
5. the profits must be used for the **benefit of members**.

3.3 The **average market share** of mutual organisations in Europe is 15.8 % (12.8 % for life underwriting, 20.5 % for non-life underwriting). In addition, it is estimated that mutual organisations provide **health and social services to almost 230 million** European citizens, around 100 million of whom rely on them for their compulsory health insurance. They employ around 350 000 people across Europe. It is widely agreed that the economy benefits from being made up of a **wide variety of different structures**, since this diversity enables it to **react more quickly** to market changes. Furthermore, in this period of crisis, the **long-term vision** of mutual organisations gives them an advantage over capital companies.

#### 4. **General issues concerning the draft Statute for a European Mutual Society (SEMS): Why introduce a Statute for a European Mutual Society?**

4.1 As things stand in the European Union, European statutes only exist for public limited companies and cooperatives. For foundations, the proposal for a European statute is currently under consideration. For their part, mutuals do not have a European statute <sup>(4)</sup>.

4.2 The process of European integration has resulted in greater mobility of workers, businesses and individuals. It is crucial to ensure that their health, social and other insurable risks can be covered throughout the EU, avoiding any breaks in their rights, entitlements and forms of protection.

4.3 The Commission and the Council are currently working on financial and insurance services (Basel III, Solvency II), and on the posting and mobility of workers; a new directive on cross-border healthcare has been applicable in the Member States since 1.1.2014. However, the only legal possibility open to mutual societies in the Member States wishing to participate in this process of European integration and the development of the internal market is to transform and adopt the status of a European cooperative or a European public limited company. The mutual societies themselves refuse to accept this fate and, for its part, the EESC wishes value to be placed on maintaining diverse forms of enterprise, including social economy players, in order to preserve Europe's economic and social heritage.

4.4 Furthermore, 'Solvency II', the prudential framework for insurers, provides additional support for a European statute for mutual societies, as it would allow them to access the so-called 'diversification benefit' and carry out reinsurance and asset management operations to reduce their costs for the benefit of their members.

4.5 As mutual societies do not have access to capital markets, they need tools for cooperation, including at European level, if they are not to disappear from what is an extremely competitive market.

4.6 Mutual societies which carry out activities at European level are not simply motivated by competition or a search for new markets, but rather, primarily, by the desire to improve the services they provide to their members.

4.7 Mutual societies in general need official recognition from the EU, which would give them a legal basis and legitimacy as stakeholders in the process of European integration.

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<sup>(4)</sup> EESC Opinions on:

- the Statute for a European Foundation, OJ C 351, 15.11.2012, p. 57;
- cooperative societies, OJ C 234, 22.9.2005, p. 1;
- the European company statute, OJ C 129, 27.04.1998, p. 1.

4.8 The introduction of a statute for a European mutual society would represent a recognition of the existence of mutual societies and their specific role in the area of risk management for individuals, particularly in the field of social protection and health.

4.9 To summarise, the EESC wishes the mutualist model to be recognised through a consistent European-level legal framework commensurate with its economic weight and social role. Moreover, this would cut unnecessary red tape, lead to economies of scale and allow the mutualist model to develop in all the EU Member States (including the four where it does not yet exist), making full use of the new statute, the freedom of establishment and the freedom to provide services.

#### **5. Specific issues relating to the SEMS initiative. What form should a statute for a European mutual society take?**

5.1 There are many different types of mutual society in Europe (around 40 have been identified), but, looking beyond their diversity, 95 % operate according to the same principles. Accordingly, the EESC recommends that the statute should cover governance not activities.

5.2 Furthermore, the group aspect of the SEMS would enable the pluralistic and diverse fabric of Europe's mutual societies to be preserved in its original form, allowing the various structures to maintain their identities whilst making it possible to introduce economies of scale with this common tool (for example through joint purchases and products). So as to be able to retain the national diversity of structures, which hallmarks the legal form of mutual societies across Europe, the EESC recommends stipulating that a distinctive element thereof be as much freedom of statutes and structure as possible for members.

5.3 The statute should be optional rather than mandatory, to avoid impacting on national legislation.

5.4 It will be important to give mutual societies the possibility to group together and to encourage them to operate across borders to develop the European dimension of the mutualist model.

5.5 The draft Regulation must make it possible for a European mutual society to be established:

- by physical persons resident in different Member States or legal entities established under the laws of different Member States;
- by the cross-border merger of two or more existing mutual societies;
- 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 Member State and a branch or subsidiary in another Member State;
- and allow for the creation of a European mutual group.

5.6 Like national mutual societies, the European mutual society would continue to be bound by the general rules in force in the Member States, for example, on the involvement of employees in the decision-making process, labour law, social legislation, tax law, competition law, industrial and intellectual property rights, bankruptcy procedures and rules on cessation of payments. Special national provisions on the activity of mutual societies and on monitoring by supervisory authorities ought to apply fully to mutual societies. The provisions of the Member States' law and of Community law are therefore applicable in the above areas and in other areas not covered by this Regulation.

5.7 The rules on the involvement of employees in the European mutual society are established in the directives on the rights of workers which constitute an inseparable complement to this Regulation and are to be applied concomitantly.

5.8 It should be possible to make provision in the statute for a European mutual society for the general meeting to be made up of members or their delegates. As regards voting rights: as well as affording the same voting rights for every member ('one person one vote'), provision should be made for different, weighted voting.

Brussels, 25 March 2014.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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