

## The International Review of Financial Consumers

www.eirfc.com

---

### Development of Mutual Insurance in France: 1960-2017

Jean-Paul Louiset<sup>†</sup>

---

#### ABSTRACT

Mutuality is the oldest social movement on French soil as the first mutual support groups were founded just before the French Revolution at the end of the 18th century, that is half a century before the first cooperatives and one century before workers' unions.

The tremendous development that the mutuality underwent in the second half of the 20<sup>th</sup> century in France, especially in the non-life insurance market where it was not a real actor until then, attracted the attention of professionals the world over. It is a reference that is even contemplated in the Islamic World where it could serve as a model for *Takaful*, and in developing countries where it could be adapted to micro-insurance.

Beyond their importance in the French insurance markets, both non-life and life mutuals insurance play an important role in European economy and society, providing social coverage and other types of insurance to a significant proportion of European citizens.

Some have questioned whether the liberal inspired European legal environment might threaten the future growth of mutual in the 21<sup>st</sup> century, or even the existing market shares, for a model that has proven efficient not only in its initial domain healthcare, but also in non-life insurance where it has really bloomed since World War 2. Following a presentation of the historic development of the mutuals in France since the Revolution, this article presents an overview of the specific features and roles of mutual societies in France, mentions relevant French and EU law applicable to mutuals, and considers the performance of mutuals through the financial crisis. The article takes the view that mutuals have the potential to contribute to the inclusive and sustainable growth of the European Union.

---

*Keywords: Welfare, innovation, democracy, independence, solidarity, liberty, Solvency II, Takafuls, mutual governance, social security, change*

---

#### 1. The early days of the mutuality spirit<sup>1</sup> and institutionalisation

The mutualist movement is rooted in the difficult social history of the 19<sup>th</sup> century. Confronted with mass poverty

and governments mismanagement, citizens joined forces to create the first solidarity organisations. In a country that was still under a law that Jean Jaurès<sup>2</sup> called awful, short of calling it treacherous, the first initiatives in mutuality are the result of a deep yearning for Liberty, Fraternity, and Equality which is the motto of the French republic and yet far from being the reality of the society

---

<sup>†</sup> Université de Paris 1 Panthéon-Sorbonne  
JLOUISOT@aol.com

<sup>1</sup> Un engagement civique issu de l'histoire - Jean Sammut -Président de l'institut Polanyi France, fondateur de Procial, cabinet conseil en mutualité et économie sociale - The author recognises his debt to this paper which constitutes one of the founding source for the current article.

---

<sup>2</sup> Jean Jaurès was a French politician born in 1858 and assassinated on July 31, 1914 for his stance against World War 1. He was elected a member of the French Parliament in 1885. He took part in the foundation of the French Socialist party in 1905 (SFIO) and was at the forefront of workers fight for better working conditions and salaries.

at that time, when the lack of solidarity was obvious to social observers and activists.

- **From the Revolution to the Third Empire (1795 – 1970):** At the time of the final stage of the French Revolution, when Robespierre populism is definitely buried under the Thermidor liberalism and Bonaparte begins his march towards a new Empire, men and women of goodwill confronted with basic daily necessities share the little they have in excess of survival to face the unexpected. The penny for the shroud<sup>3</sup>, one of the first mutual rescue societies to be traced, aims at making sure that corpses are not thrown naked in the mass graves, to paraphrase the words of a song popular among silk workers in Lyon in the 19<sup>th</sup> century.

Mutuality sprung from this initial civic commitment, eluding the legal ban on coalitions, often with the active support of caring and philanthropic leaders. The pioneers, inspired by Proudhon socialist groups and autonomous groups advocating for federalist ideals, learned how to regroup the small groups to give enough impetus to the mutualist movement. It was soon a force to reckon with as it had a membership of more than three million at the end of the nineteenth century.

The mutualist opened a market for collective protection that the first for-profit companies that were founded, capitalised on. Napoleon III<sup>4</sup> tried to take over the movement through the authorised mutual and strict control.

- **The Third Republic & the French State<sup>5</sup> (1971 – 1945):** Whereas Napoleon III and his government saw what could be gained politically and economically through the institutionalisation of the mutual movement, it was only nearly two decades after the Fall of the regime that the Third Republic granted the mutual a legal status in 1888, but it was not until 1998 that it voted a Mutuality Charter loosening the corset imposed by Imperial control.

The French Government was fully aware of the

risk that social movement might split because of the official framework the mutual movement was legally forced to comply with. In 1902, the first assembly of the national federation of French Mutuality (FNMF<sup>6</sup>), the Congress unifying the two branches of the General Confederation of Workers (CGT<sup>7</sup>), Labour Exchanges, and the Federation of Industries opened the gates for a clear separation of Unions and mutuality, each having a specific mission. As they focused on social demands, professional organisations condemned the mutual movement as a “social compromise”.

The situation will prevail all through the third republic, even during the government of the Popular Front<sup>8</sup> and even until the end of the 20<sup>th</sup> Century in spite of the change brought by the creation of Social Security in 1945.

Throughout this period, whatever their status, mutuals have remained true to their origin and Values; they are local structures established in a territory, a company, or an industry, and managed by committed citizens.

## II. A new start: the creation of Social Security in 1945

Whereas not all the provisions of the National Council of the Résistance<sup>9</sup> programme were enacted when General de Gaulle became head of the provisional government<sup>10</sup>,

---

<sup>6</sup> Fédération Nationale de la Mutualité Française

<sup>7</sup> Confédération Générale du Travail

<sup>8</sup> “Le front Populaire” was a coalition of left leaning parties that want the 1936 general election and governed France until 1940 and enacted a number of social advances to benefit the workers; like paid vacations and limiting the number of hours worked weekly by employees and workers in spite of the number of short lived governments it went through

<sup>9</sup> The Conseil National de la Résistance (CNR) is the body created by Jean Moulin under the guidance of General de Gaulle to unify and coordinate the different resistance movement that arose in France during the German Occupation. In March 1945 it adopted a programme for governing France upon its liberation. It was largely influenced by Communist thinking. It called for a social democracy and a planned economy including the creation of a national health and pension plan.

<sup>10</sup> The first “gouvernement provisoire de la République” lasted from September 10,1944 to November 2,1945 and the second from November 21, 1945 until January 20, 1946. Both were headed by General de Gaulle.

---

<sup>3</sup> Le sou du Linceul

<sup>4</sup> Emperor of France from December 2, 1852 when then president of the Second Republic he led a coup until the defeat of Sedan against Prussia on September 2,1870

<sup>5</sup> L’Etat Français, the “collaboration” regime founded by Marshal Philippe Pétain that lasted while France was occupied by Germany during most of World War II,

and the ensuing governments until the establishment of the 4<sup>th</sup> Republic in January 1947, which did not meet all the promises for a social democracy, nevertheless one of the major points of the resistance manifesto became reality: it was this Republic that founded the Social Security that was meant to offer a universal health coverage and to be managed jointly by workers and employers' unions.

In February 1947, a specific act, *Loi Morice*, gave the Mutuality the right to establish local sections for social security, giving them a legal position as a body to complement the legal system. As far as civil servants' mutuels are concerned, another act dated April 9 gave them a delegation to manage the regime for state civil servants.

In spite, or maybe because of, the role the mutualist movement gained in the 1950s in the French social protection system, in the following years, it grew slowly distant from the vital labour forces. As the organisms regrouped and grew in size, the power in their midst was taken up by leadership. Therefor the social movement dimension of mutuality tended to fade away.

However, in the sixties, during the first year of the Fifth republic, a renewal started under the leadership of the president of the National Federation of workers; Louis Calisti was a leading figure of the mutuality movement in France during two decades (1970s and 1908s) and a proponent of a "mutuality of action and management". He was instrumental in bringing democracy and social commitment back to the heart of the movement.

In 1967, the move from strict political neutrality to a more elusive "independence in mutuality" represents a true overture to the other social actors that led the mutuality leaders to meet officially, for the first time in its history, the three leading workers' unions. This put an end to a long schism in the French social movement. As mentioned earlier the fraction in the labour movement was considered to be a consequence of the 1947 laws; the reality is that it dated back to the Third Empire when the control of mutuels was established as described above. Since then, the dichotomy between those who manage (mutualists) and those who demand (union activists) has been complete. Thus, the forces are united between workers' mutuels and those that are institutionalised.

The creation of the Federation of the Mutuels of France (FMF), which welcomed some mutuels that had been excluded from the FNMF, was the final act in the change of direction.

Proximity with the members, i.e. democracy, independence, solidarity and liberty are the true values, the four pillars, of the mutuality. They out-trump any numbers that can be deceiving as it seems unlikely that the leaders could call to action the membership as was the case in 1980. That was the year that over seven million signed a document denouncing the mandatory co-payment that limits the freedom of mutuels to reimburse their members as they see fit.

These founding principles are too often forgotten whereas they are the mutuality's best bulwark in its efforts to resist the increasing pressures from the insurance mega groups that see the health and social protection markets as great potential for growth in revenues and profits. Stock Insurance companies are funded on the law of large numbers but in a financial logic where each insured party should pay according to the risk he/she represents; conversely the mutuels, societies of persons are funded on solidarity.

At a time when liberal ideology is gaining momentum, when the individualisation of situations is more valued than collective efforts, when some leaders would push for biased competition rules, mutuality leaders must grow beyond the long-held certainties and face challenges they may have not anticipated. As a reminder, the 1985 reform of the code of mutuality gave a wider range of possibilities and new means for mutual companies. Have they all taken advantage of the new context?

### III. The adventure of the 1960's and the developments in Niort

So far, we have focused essentially on the mutual movement in the Health and Life markets but France is a case study of the development of non-life mutual insurance. However, the French Mutual movement has gained international attention mostly with the rapid evolution of a new breed of non-life insurers in the second half of the 20<sup>th</sup> century. They are known as MSI<sup>11</sup> as their distribution channel do not included intermediaries (agents or brokers) but salaried employees whose salary

---

<sup>11</sup> MSI - Mutuelles sans intermédiaire

are not related to the volume of contributions generated (note that Mutuels insist on not using the term “premium,” preferring the term “contribution”). They are also known as “*Mutuelles Niortaises*” as the most important are headquarters in Niort, a town in Central France.

#### Jacques Vandier

Whereas the MACIF was founded through the initiative of a group of industry leaders and storekeepers in Niort, Jacques Vandier is the man behind its success story. Considered by insurance professionals as a great manager, even a visionary, he devoted the second half of his professional life to this mutual of which he was the first CEO.

Born in 1927 in the vicinity of Niort, he attended the École Polytechnique in Paris before starting his career in 1950 as an insurance supervisor, then as part of the Ministry of Finance.

In 1960, when he was offered by the founding partners to lead the MACIF he accepted on condition that the mutual would not only insure storekeepers and industrial companies, but also all the salaried personnel of commerce and industry.

He defined his business project: “At the time, insurance companies sold their products through a network of insurance agents and brokers and were charging high premiums. The rates did not reflect the reality of the risks insured, and were often highly overvalued. While working in the supervisory team, I had analysed the situation and knew how to remedy it. The solution was called risk segmentation. The key was to establish a taxonomy of risks based on a number of criteria – for automobile, territory, type of vehicle, insured profile – and then screen the good and the bad drivers to provide cover not to anyone, and not anyhow”

And he added: “Add to that a contract based on essential covers, very low overheads, and a closely monitored portfolio and the introduction of a deductible for damages to the vehicle. I wanted the insured, when responsible, to bear part of the cost of the accidents. It was both moral and empowering. This is the recipe I developed and implemented. If the MACIF business model has lasted for so long, it is because it was rooted in reality.”

As he allowed the vast majority of drivers to find covers at a just cost, Jacques Vandier has democratised automobile insurance. All along his tenure at the helm of the MACIF, he multiplied initiatives in favour of the insured. He was one of the promoters of the “amicable accident report” that simplified and accelerated claim settlement. Members and the MACIF and their families were also among the first to be insured for bodily injuries occurring in the course of private life. He was also behind the regionalisation of the MACIF in 1987 so that partners be closer to decisions centres and increased substantially the number of insured representatives, the delegates.

Jacques Vandier was president of Macif until 1987, then he was chairman for 10 years; since then, he has been, and continues to serve as, Honorary Chair.

As a matter of fact, the development of mutuels in France is attached to the city of Niort whose expansion is the direct result of the large number of personnel employed by the mutuels. It remains to be explained why Niort became the home of mutuality? One of the prominent explanations is that Niort became the cradle of peasants’ solidarity following the phylloxera catastrophe that hit the vineyards in the 1850-1880 period. Whether this is historically true, Niort and the region saw the creation of the first peasant union in the early years of the 20th century as well as the first Agricultural Insurance.

This is the reason why Niort has grown into a “natural location for mutuels” since the 1930s as talents were present and further accompanied by the University offerings to prepare for the jobs the mutuels need to fill to ensure their future growth.

Below is a list of the major actors in Niort, each of which would justify a monograph that would go beyond the scope of this article:

- **MACIF**<sup>12</sup> – Mutuelle assurance des commerçants et industriels de France et des cadres et des salariés de l’industrie et du commerce. It is one of the two members of the union<sup>13</sup> created with the MATMUT under the name of SFEREN. It is the number 1 insurer in France for the number of insured (the prominent role played by Jacques Vandier justifies the box here above)
- **MAAF**<sup>14</sup> – Mutuelle d’Assurance des Artisans de France – Funded in 1950, MAAF developed in 2003 a group of insurance mutuels Covéa regrouping MAAF and MMA<sup>15</sup> further joined by GMF and then a welfare institution Apgis (2011) and SMI (2013). Currently Covéa insured more than 11 million French persons and employ 26,000.
- **MAIF**<sup>16</sup> – Mutuelle d’assurance des Instituteurs de France – The oldest actor in Niort it was funded in 1934. It has 3.5 million insured and total revenues in excess of € 3,200 million (over 80% in non-life,

<sup>12</sup> <https://www.macif.fr/assurance/a-propos-du-groupe-macif/panorama-du-.../dates-cles> <https://www.macif.fr/assurance/a...du...macif/panorama-du-groupe>

<sup>13</sup> SGAM – Société de Groupe d’Assurance Mutuelle)

<sup>14</sup> [www.maaf.com/qui-sommes-nous/il-etait-une-fois-maaf](http://www.maaf.com/qui-sommes-nous/il-etait-une-fois-maaf)

<sup>15</sup> MMA – Mutuelle du Mans Assurance – A traditional Mutual Insurance using intermediaries

<sup>16</sup> [https://fr.wikipedia.org/wiki/Mutuelle\\_d%27assurance\\_des\\_instituteurs\\_de\\_France](https://fr.wikipedia.org/wiki/Mutuelle_d%27assurance_des_instituteurs_de_France)

under 20% in life).

- **GMF**<sup>17</sup> – Mutuelle Générale des Fonctionnaires – Founded in 1934, it is specialised in civil servants and has played a leading role in the Mutuality movement
- **SMACL** – Société Mutuelle d'Assurance des Collectivités Locales – (see development below)

## A. Mutualité Agricole

Outside of Niort, the largest professional mutual organisation in France is the Mutualité Agricole that is open to farmers and by extension to those employed in the food industry. One of the challenge of the Farmers' Mutual is the dwindling and aging population in this activity.

The group consist in many local branches, in principle one for each of the ninety departments (counties) in France, but they have been consolidated into a smaller number as the "insurable substance was diminishing" and to achieve economies of scale.

The Agricultural Mutual Benefit Fund is made up of 62 regional funds and a national fund and operates as a federation.

Recently they have formed a union with the Crédit Agricole, the Mutual Bank of the profession, which has developed both life and non-life traditional insurance companies to sell insurance through its networks of local branches. Crédit Agricole is one of the largest bank in the world in terms of total assets.

The farmers' mutual institutions would require a complete study that would be beyond the scope of this article.

## B. Other professional mutuals

However, other professional mutuals offering covers to specific activities could not be left aside as they play a major role in providing coverage in sometimes niche but difficult markets like:

- **MAF** – for architects
- **SMABTP** – For construction and public work activities including, but not limited to decennial liabilities<sup>18</sup> and professional indemnity

- **SHAM** – For public hospital professional indemnity and buildings & equipment damage covers
- **MACSF** – For doctors in private practices and private hospitalisation facilities.

It is to be noted that these mutuals usually offer automobile insurance too and actively participate in risk-management development to assist their members while protecting the "mutuality".

Other trades also have generated mutuals but they are not listed here as they have a less prominent role. Also, the insurance companies, subsidiaries of mutual bank groups are not mentioned here as they really operate as traditional insurers although they are parts of the overall "mutual movement" in France.

## C. Smacl - A French specialty – A mutual to ensure local authorities

It would be difficult to cover the mutual world in France without a specific mention for the SMACL at a time when the equivalent in the United Kingdom collapsed nearly two decades ago leaving at the time part of the insured without a solution for replacing their coverage except the Subsidiary of a Swiss Insurer – Zurich.

In the early seventies, school teachers, shopkeepers and artisans already had their own mutual company, but not local elected officials, in spite of the very specific exposures that local authorities and their staff are confronted with. This is this situation that prompted the creation of Smacl Assurances<sup>19</sup> in 1974.

After more than four decades in operation, Smacl has become the reference in France for the insurance of the "territorial family" and offers mutual protection to municipalities, department, regions, to their establishments and groupings, as well as to their elected officials and agents when the act within the scope of their functions.

Over the years, listening to the need expressed to the network of local inspectors or by the representatives elected by the members, and thanks to a very attentive study of new legal and regulatory dispositions as well as decisions by the different jurisdictions, etc. Smacl Assurances has developed an organization and coverage that are tail-

<sup>17</sup> <https://www.gmf.fr/gmf/histoire-gmf>

<sup>18</sup> Responsabilité Décennale - It imposes any party in the construction

of buildings in France to provide a 10 years warranty, no-fault cover that must be insured for the duration of the warranty

<sup>19</sup> SMACL – Société Mutuelle d'Assurances des Collectivités Locales

ored to the operations, the constraints and the culture of players in the territories and local authorities.

Two mayors of Niort played a leading role in the creation and development of Smacl. M. René Gaillard was the mayor at the time of the creation and the operations were headed by an executive VP, Bernard Bellec, who later became chairman and succeeded him in the position of mayor.

Smacl has chosen to be specialised and is proud of its choices as:

- Local authorities' risks and operating modes are very different from those of industrial companies or private citizens,
- Legal protection for local authorities, their elected officials, and their agents (employees) relies on an in-depth knowledge of administrative law, specialized codes, and very specific case law,
- Private life risks are intertwined with elective or associative commitments as in the case of on-call work and the professional devotion of territorial civil servants; Smacl guarantees the consistency of all contracts covers,
- The values of Smacl, general interest, solidarity, transparency, equity, are also those that motivate the daily operations of local authority staff and elected officials.

Here below are key data to illustrate the position of the Smacl in the insurance market in France and its main recent initiatives:

**Revenues:**

- € 390.5 million in 2016
- € 372.6 million in 2015
- € 352.4 million in 2014
- € 341 million in 2013

**Revenue split:**

- Public entities: €329 million (84 %)
- Private entities (*associations & companies*): € 44.4 million (12 %)
- Individuals: € 17.1 million (4 %) – 22000 members and 18,000 decision-makers for their private life.

**SMACL Insurance penetration in Local authorities:**

- 60 % of municipalities with less than 7,000 residents,
- 74 % of municipalities with between 15,000 and 40,000 residents,
- 70 % of municipalities with between 40,000 and 100,000 residents,

- 46 % of municipalities with more than 100,000 residents,
- 80 % of departmental assemblies,
- 33 % of communities of municipalities,
- 61% des communities of conglomeration,
- 39% des SDIS (firemen brigades).

**Other data:**

- Own funds: € 90.4 million
- Equalisation reserves: € 20.8 million
- Staff: 792 employees with an average seniority of nearly 10 years, and nearly two-third female employees, and a strong investment in further education (4.12% of salaries – twice the legal level)

**Smacl-Santé:** Although the historical business of the mutual is property and casualty damages for local authorities, in 2006 it created Smacl-Santé to offer health and welfare covers for local authorities' agents and it brings in over €20 Million in revenues.

**“Territoires d’Avenir”:** As one of the increased cooperation movement induced by Solvency II, the mutual union (UGM), “Territoires d’avenir”, was created on January 1, 2016. It makes sense as the partners are service providers to the same insured groups. The decision to form the Union was voted by the representatives of the *Mutuelle Nationale des Territoires* (MNT) and SMACL Assurances at the constituent general meeting on October 10, 2015 in Paris. It is a light structure to frame the cooperation between the members. A new member and two auditor-partners has been admitted at a meeting on December 5, 2016 effective January 1, 2017. The new member is *Mut’Est*, and the two observers, *le Crédit social des fonctionnaires (CSF)* and the *Caisse nationale de prévoyance de la fonction publique (Préfon)*.

**D. The current position of mutual institutions in the French Insurance Market**

The table below summarises in a few key figures the important position that the mutuals occupy in the French insurance market.

It is clear that they have become a major actor in the economy of the country both through the coverage they offer and their investment capacity. The mergers or union movement initiated at the end of the last century

gained impetus with the implementation of Solvency II and the lines are somewhat blurred between “true mutuals”, the MSI, that sell directly to consumers without intermediaries and “mutual companies,” which function like a traditional company, except that they do not have shareholders. The governance of both are theoretically similar but the insistence on democracy with the MSI has been somewhat lost in the other category, i.e. the mutual companies whose governance was closer to publicly traded insurance company.

Will the creation of the FFA-Assurances regrouping all insurers allow the mutuals members of the AAM preserve their values while gaining international momentum? Only time will tell but their weight in the protection of French citizens (see table below) should retain the attention of French authorities!

<b>MAIN DATA FOR MUTUALS IN FRANCE</b>	
<b>STAFF:</b>	79 500
<b>MEMBERS/INSURED:</b>	44 Million ( <i>French population in 2016 is close to 67 million</i> )
<b>MARKET SHARES</b>	
• AUTOMOBILE:	56.0 % in 2016
• Household Insurance:	50.4 % in 2016
• Health/Welfare Insurance:	17.0 % in 2015
• Life/Assets Insurance:	13.2 % in 2015
<b>The Association of Mutual Insurer (AAM) within the Insurance Association (FFA-Assurances) was founded on May 18, 2016</b>	
<b>MUTUALS MEMBERS OF THE AAM:</b>	36 including one partner-organisation; 110 companies are represented.

#### IV. Islamic Insurance & Takafuls

Although they are not developed in France, except for a few local and limited experiments, the percentage of the population that is Islamic should awaken the MSI to the potential for a new market if they decided to found Islamic insurance companies, or Takafuls.

Let us introduce briefly what Takafuls are and how the MSI could get interested in making inroads into the Islamic population, currently over 5 million, or 7.5% of the French population. However, some projections see it rising slowly to over 8% in 2020.

Traditional insurance contains elements of uncertainty (*gharar*), game (*maisir*) and interests (*riba*), which are

not compatible with Islamic law. Generations of Muslims have lived in countries worldwide convinced that they are barred from purchasing insurance covers, that insurance is not *sharia compliant*. However, in 1985, the Islamic academy *Fiqh* ruled that insurance is acceptable to Islam if it operates through mutual self-help and cooperation, an important social tenet of Islam. The *Takaful*, whose name is derived from the Arabic word for “mutual guarantee” offers covers in a mutual framework. The policyholders (or members) pay contributions (*tabarru*) to a fund through which participants accept to bear collectively the risk of each one so that those participants who suffer a loss are compensated by the fund. The surplus that are not kept as reserves are paid back to the participants or distributed as a gift (*zakat*) to a charitable organisation. *Zakat* is one of the five pillars of Islam—obligation of the faithful.

Clearly a Takaful could be managed following the MSI model but most Takafuls are managed by commercial entities that seek profits. The manager of the funds is also responsible for raising the necessary capital to ensure the solvency of the operations. If the fund is in deficit, the manager must find the cash needed loaned without interest (*qard hassan*), the manager is usually himself the lender. The loan is paid back by surpluses, but if they prove insufficient the manager bears the burden of the loss.

Clearly, the MSI could easily function as a Takaful as their liability side is managed in compliance with Shariah rules, however they should be careful on the asset side to invest in Shariah-compliant assets according to Islamic finance, i.e. physical assets that produce legitimate income. That may prove a challenge within the solvency rules and the need to remain liquid to some extent, but less so in a period where interest rate are so low.

However, the final point is to appoint a supervisory Shariah board filled with independent members fully versed in the Shariah rules and that can provide the seal of approval that all operations within the Takaful are “Hallal”!

Thus, it seems that the MSI have already in their midst the main talents and competencies, including reaching out to prospects through social media, to develop a new niche, but a niche that encompasses several million people. It is true that they are also not always in the highest income range and might be candidates for micro-insurance,

or in this instance micro-takafuls.

## V. Mutual organisations in the Liberal Economics & Legal Environment of the EU

As far as French Mutuals are concerned looking at the French legal environment and the mutuality code is not enough as the French authorities have to transpose into French legislation the directives published by the instances of the European Union.

As is the case for the life assurance sector, the goal of EU directives on non-life insurance is to introduce a single authorisation system; this is the founding principle that allows a company headquartered in one Member State and authorised to provide non-life insurance covers under national law, to, at the same time, open branches or carry out business activities in any of the 26 other EU member country.

The first and second generation of insurance directives only opened the European market for insurance programmes concerning “large risks”, such as those associated with insurance in the field of aviation and marine insurance or very large industrial companies, the third generation established a single market for insuring all types of risks falling within the scope of direct insurance, other than life assurance, including health-related risks thus directly touching one of the main areas covered by Mutual Companies.

The legal formalities that insurance actors must conform to in order to be authorised to offer non-life insurance coverage in most EU Member States are similar to those set by life assurance directives. In general, very small companies operating in niche-markets are not covered by the non-life directives. As far as mutual associations are concerned, they may also be excluded from the scope of application of the directives if they fill some conditions that are related to the way additional contributions are collected, the size of the mutuals, types of activities and their reinsurance programmes.

As is the case for life assurance, operations of provident and mutual benefit institutions whose benefits vary according available resources and in which the contributions of the members are determined on a flat-rate basis are

excluded from the scope of the non-life insurance directives. Also, provisions concerning the minimum fund and the related special treatment allowed for mutuals are similar to those in Directive 2008/83/EC.

As for all other forms of insurance companies, mutual institutions cannot offer life and non-life covers within the same organisational structure. In member states where it was allowed prior to the enforcing of those provisions, local government may allow this to continue provided that separate management was adopted by the providers concerned. It is to be noted that in France mutuals were already required to set-up separate entities for life and non-life activities, therefore these dispositions do not change their status.

### A. Preferential tax treatment for Mutual Insurers – Health Additional Insurance market

However, one French specificity was in the European authorities’ radar. Since 1945, preferential tax treatment was granted to mutual health insurers in France, their contracts were exempted from the tax on insurance contracts. As both organisations covered by the Insurance Code and those regulated by the “Code de la Mutualité” operate on the same markets, issues arose on the matter of compliance of such preferential treatment with EU rules on State aid.

Based on this principle, the French Federation of Insurance Companies<sup>20</sup> lodged two complaints against the French government in 1992 for this allegedly discriminatory tax policy, arguing that it contravened EU rules on state aid and provided the European Commission with an excuse to rule on the issue. In 2001, the Commission asked the French government to either abolish the tax exemption, or to ensure that the benefit would not exceed the costs for “the constraint of providing services of general economic interest”. The Commission further noted that the provision of insurance to individuals by mutual societies could not be regarded as a service of general economic interest explicitly provided for in their articles.

In order to comply with the European Commission’ requests, the French government removed the tax benefit and in 2004 introduced a new type of private health insurance contract, named “contrats solidaires” and

---

<sup>20</sup> Fédération Française des Sociétés d’Assurances (FFSA)

“contrats responsables”, which are provided without a prior medical examination or other reference to an individual’s risk of health issues; furthermore, private health insurers had to agree not to cover new co-payments intended to encourage patients to obtain a referral for specialist care and to adhere to protocols for the treatment of chronic illnesses.

Health insurance providers – whether they are mutuals or private insurers – would consequently receive tax benefits related to the number and proportion of “contrats solidaires” and “contrats responsables” provided. Initially it appeared that the introduction of this type of contract satisfied the European Commission. In 2007 however, it started formal investigations into the question of whether this practice could be indeed regarded as non-discriminatory and how much consumers would really benefit from the advantages granted to insurers.

On 26 January 2011, the Commission ruled that the proposed measures constituted State aid incompatible with EU rules. The Commission held that it was not possible to demonstrate that the benefits of the tax reduction would be transferred to consumers. In addition, it considered the scheme as discriminatory, as it favours certain operators, such as mutual institutions, which have an obligation to conclude this type of contracts.

This ruling by the European Commission on the *contrats solidaires* and *contrats responsables* in relation to EU law on state aid prompted the French government to reform these contracts. The reform decree was published on April 1, 2016 and took effect on January 1, 2016: the contracts have to comply with the new rules, and clauses to this effect were inserted into additional health insurance contracts.

Within the scope of these new contracts “*responsables et solidaires*” the health-related cost refunds granted to the insured are to remain within limits with minimums and ceilings. The same rules apply to all additional health covers whether the contact is individual or collective (via an employer) and whether contacted with a mutual or a traditional for-profit insurer.

In the case of non-compliance with these rules, there is a tax penalty as the tax rate jumps to 20.27%, against 13.27% in the case of compliance; hence the additional tax burden increases the contract cost. It is too early to assess the impact of the new limitations on the costs and price of these contracts, and whether the EU authorities might rule again.

## B. The mutuals & Solvency II

The basic principles behind the directive, which was adopted in 2009 and finally entered into force on 1st January 2016, three years later than initially planned, is that insurance institutions in Europe should rest on better risk assessment, better spreading of risks and better financial foundations, so as to improve the stability of the market and reinforce consumer protection.

The main innovation introduced by this directive is that, in establishing an improved foundation for the insurance sector, the directive concerns more than only capital solvency requirements as they currently exist. It also lays down rules concerning the whole organisation of insurance undertakings in Europe. It concerns:

- the taking-up and pursuit, within the European Union, of the self-employed activities of direct insurance and reinsurance;
- the supervision of insurance and reinsurance groups;
- the reorganisation and winding-up of direct insurance undertakings.

The system set up by 'Solvency II' is based on three pillars:

- **The first pillar** contains two capital requirements, the Solvency Capital Requirement (SCR) and the Minimum Capital Requirement (MCR), which represent different levels of supervisory intervention.
- **The second and third pillars** provide for qualitative requirements (such as risk management and supervisory activities) and supervisory reporting and disclosure respectively.

Therefore, the Directive has a direct impact on the way insurance businesses are organised, what kind of internal control mechanisms they have, how supervisors work, the way insurers report on solvency and financial conditions, how they can acquire other financial undertakings, etc. The aspect excluded from the scope of this directive is the insurance as part of a statutory system of social security.

Also for small undertakings with an annual gross written premium income not exceeding 5 million euros, the Solvency II Directive does not apply. The national supervisory authorities check whether undertakings are excluded from the directive.

For mutuals the new solvency regime can have severe effects. The increasing need for one's own funds, risk differentiation and solvency requirements could prove

to be difficult for small and medium-sized insurance companies, and for mutuals in particular to comply with, since they are often focussed on niche markets and specialised in very select types of risks.

Coping with the new solvency regime has forced smaller mutuals to raise contributions from members, or to partially reject their mutualistic values by becoming a stock holding company in order to obtain additional funds or to merge with other companies. The fear of a de-mutualisation, i.e. the process of a mutual transforming into a different legal form has not really materialised so far.

Specifically, for mutual insurers and the way they acquire additional funds, it is mentioned in the directive that for mutual-type associations with variable contributions, ancillary own funds may comprise any future claims on their members by means of a call for supplementary contributions.

To facilitate the implementation of Solvency II, a five-year transition period has been negotiated to comply with the regulatory demands. If, after five years, i.e. in 2021, insurance undertakings do not comply with the Solvency II rules, they will no longer be entitled to benefit from the so-called 'single passport' authorising the insurer to sell insurance throughout the EU and EEA on the basis of authorisation in its home Member State. Let us point out here that this one of the issues raised by the Brexit for UK-based insurance companies.

### C. Solvency II & a New Mutual Governance

Cooperatives and mutuals are before anything else partnership and differ from other forms of companies by their governance rooted in the democratic principle "one person, one vote" and the dual status of their members who are also customers, or associates and producers, and/or clients or employees. However, since January 1, 2016, organisations in the mutual and parity sector must demonstrate that their new directors are, according to EU requirements, "*fit and proper*".

As evidenced by the preceding presentation, Solvency II has introduced a number of new concepts that disrupt the traditional way to conduct business, hold power and responsibilities in that mutual organisations that have to comply. Traditionally, the annual general meeting of all physical persons (participating members and honorary members) elect the directors following a basic democratic

principle: one person-one vote at the general meeting.

Depending on the bylaws, the general meeting may also elect the chair person. The chair may also be elected by the board. The chairperson of the board enjoys all the powers stipulated in the code of mutuality: he/she organises and runs the board meetings, and is responsible for the overview of all the mutual bodies. When it comes to third parties, the mutual is liable for the consequences of the acts of the chairperson.

With Solvency II the conditions of mutuals' management change and the function of the administration bodies must evolve to take into account the requirement to appoint an operational leader. This person is appointed by the board on a proposal by the chairperson. This person cannot be a director and must be under a work contract with the Mutual the elements of which are approved by the board.

**The operational leader (president or CEO?)** operates under the control of the board and within the framework of the orientations decided by the board. He/she attends the board meetings during which the conditions of delegation of powers needed for an effective management of the mutual are discussed and approved. The Chairperson and the operational leader are *ipso jure* the effective officers of the mutual.

Other persons may be nominated "effective officers" at the initiative of the Chairperson if they enjoy sufficiently wide competencies, powers, and responsibilities over the activities of the mutual, and provided their readiness to operate for the mutual justifies the move, and that they are involved in decisions that have an important impact on the mutual, like strategy, budget and financial issues.

**A new governance system** must be developed to clearly delineate the responsibilities of all actors and must include the following functions: risk-management, compliance, internal audit, and actuaries. Each of the persons in charge of any of these four key functions report to the operational leader (president?) but the board can at will decide to set up specific hearings for the persons in charge of these key functions, and at least once a year for each of them.

Solvency II has introduced the concepts of "fit and proper" concerning all directors, as a whole and individually, as well as all operational persons in key functions. Their appointments and terminations must be notified to the control authority<sup>21</sup>. The ACPR can oppose a nomination if it deems the persons involved unfit to serve as proposed in terms of honourability, competencies,

or experience.

With the requirement that next to the Chairperson who holds his/her legitimacy from a democratic election, be appointed an operational leader to share the effective management of the mutual, Solvency II has modified the balance of powers and is causing a reconfiguration of the mutualistic world.

## VI. New opportunities and new territories for the mutual idea

Whereas mutuals play an important role in the insurance and welfare markets in the European Union although not always with the market shares they enjoy in France, they are welcome for their impact on individuals' and families' protection thus contributing to societal resilience, and a sustainable future through their involvements in CSR activities.

Some mutuals have spread in Africa, especially for the development of farmers' cover still at very low penetration level, in spite of the existence of informal support group including burial costs and tontine<sup>22</sup> for micro-investments. However, countries outside Europe could benefit from adapting the models to their specific legal, societal, and cultural environment.

The rapid development of Takafuls in countries with overwhelming Muslim majority like Indonesia, Malaysia and to a lesser degree, the Middle East and the Maghreb, has proven the need for protection among these populations. In other countries with sizeable Muslim minority and whose government do not feel the need to enact specific Takaful legislations, the mutual model adapted to micro-insurance would offer a solution within the existing regulatory framework, like the CIMA code in French speaking Africa, provided their leaders are aware of the need to invest in Shariah acceptable assets and

to add an Islamic advisory board to allow practicing Muslims to gain access to insurance protections.

Furthermore, a number of traditional religions and beliefs place the values held by the mutual movement at the heart of their value system. Long held traditions in Asia like Buddhism, Zen, Confucianism, Hinduism and others have compassion consideration that are aligned with the Mutual System. Whereas the penetration of insurance remains somewhat low, mutual companies created with the mutual governance as their guide might help offer answers to the need of protection, while, at the same time, collecting long-term funds to invest in the necessary infrastructures to enhance the economic and social development in the region.

There are clear opportunities for the Mutual Movement in developing micro-finance and micro-insurance in the developing countries with the additional bonus that reserves could be invested in local economies by helping small and medium size initiatives, agricultural, industrial, as well as commercial. As can be seen in Senegal for example, the mutual model is the way to go in Rural areas where traditional insurers do not want to do business or have no personnel. They are a good place to establish mutual insurers with the assistance of local traditional chieftainships that retain a strong influence and following among local farmers.

Young Insurance professionals in all these countries that are motivated by the values shared by millennials the world around, are all too aware of their common future; they could be leaders to start and/or grow a sustainable mutual system in their countries. If an important need for mutuals can be demonstrated through robust research studies, then they will be in a position to assist regulators and authorities in developing model laws, governance, and financial solvency rules that can assure viability for mutuals by gaining experience through the European mutuals, and especially the French mutual companies, which could offer technical assistance through internships for national professionals and expatriates to assist local initiatives. It might even make sense for them to invest financial resources to help the start-ups in developing countries.

---

<sup>21</sup> Autorité de contrôle prudentiel et de résolution (ACPR)

<sup>22</sup> In the insurance industry, a scheme for life insurance in which the beneficiaries are those who survive and maintain a policy to the end of a given period. In Africa, a group of private persons put in common a sum of money that is loaned to one of them and then when reimbursements come in, another member may be the beneficiaries depending on priority rules defined between the members (a traditional approach to micro-loans)

## VII. CONCLUSION – Future prospects for Mutual Organisations in France, and beyond

All through its history, the French Mutual movement had to adapt and change to meet the challenges of evolving environment conditions, social, economic, political, cultural. Had it not been the case, it would have probably disappeared as was the case in several European countries, and more specifically the United Kingdom where it was really powerful until the eve of World War I.

The deep divide between the managers of welfare programmes and those who lead the demands of the working-class has been a constant aspect of the French situation since the second half of the 19th Century, and it has no equivalent in Europe. The consequences are still visible today and it has endowed the leaders of the mutual movement with exceptional international responsibilities at a time when the fight for a European Mutualist Status is far from over and demands vigilance as both Insurance Mutuals Federation are all too aware.

Implementing democratic decision-making processes has remained a key mission that French mutual leadership has cherished. And they learned to use the media to interact with the general public rather than with paid advertisements, which they did not shy away from however. But, beyond price, innovation, quality service, etc. their reputation relies on the democratic process that must be preserved even through complying with Solvency II. Their share of the personal lines of the insurance markets, especially automobile and household, is a testimony to the enduring public support.

However, the new challenges with the digital revolution, and very low interest rates pose new challenges that the leadership will have to face to reinforce its relevance and sustainability in the 21st century, and that includes on-line administration and participating actively in social media to attract millennials both as staff and customers.

We could borrow a conclusion from the French philosopher and sociologist, Edgar Morin with an excerpt of his article “What remains of the European universal” published in the daily *Libération* on November 22, 2009 as it seems to open a wide range of new possibilities for mutuals in the second decade of the 21<sup>st</sup> century, as follows:

“Individualism had always two faces. One face of autonomy and one egocentric and egoistic that our civilization has over-developed. All the old solidarities are disintegrating: family, couple, village solidarities, work solidarities. How could solidarity be regenerated in our society? Political thinking should deal with this crucial issue. The fundamental shortcoming of Economy is that it is a closed science that does not take into account human factors and realities, and only rests on computations.

The road will call for a pluralistic Economy, one that is social and values solidarity, developing cooperatives, mutuals, and associations. A new culture is called for, one that will combine the idea of multiple reforms and a deep transformation, which I call the metamorphosis.”

It is all too clear that the current societies are very different from the past, even the recent past. It would be all too easy to illustrate these changes, as the preceding development of the recent mutations linked to the digital economy are making the world ever more complex and volatile. However, the four pillars of the mutual movement, liberty, democracy, solidarity and independence are always valid, and validated by a thinker of Edgar Morin’s calibre. All through its existence, now over two centuries long, mutuality has always found a way to adapt to changing environments, to different territories, times, and cultures.

There is no way the mutual movement could compromise on its fundamental principles, but the challenge that leaders have to face is to find new ways to implement them, as is the case in the EU with the implementation of Solvency II to all insurance organisations, including mutual institutions. What their predecessors have accomplished during the 19<sup>th</sup> and the 20<sup>th</sup> centuries, 21<sup>st</sup> century mutual leaders will no doubt find ways to continue, even if at a pace and a depth as yet unknown and will be agents of the metamorphosis that the current context requires. After all, its past is probably the strongest bond for the future in the insurance industry of the mutual model in France, and worldwide; the French mutuals might be wise to seize the opportunities offered by the developing world and its need both for protection and structural investments!

## VIII. Bibliography – General

- **The role of mutual societies in the 21st century**  
www.europarl.europa.eu/document/activities/cont/201108/...
- **Rapport Annuel 2016** – Association des Assureurs Mutualistes - www.aam-asso.fr
- **Le mutualisme : répondre aux défis assurantiels** – Arnaud Chneiweiss & Stéphane Tisserand – Fondation de l’Innovation Politique (Novembre 2015) – www.fondapol.org
- **L’histoire de la Mutualité : quatre grands défis** – Michel Dreyfus - <https://www.cairn.info/revue-les-tribunes-de-la-sante-2011-2-page-49.htm>
- **Comment Solvabilité II transforme la gouvernance mutualiste** – Jérôme Herbet / Avocat Associé, Winston & Strawn LLP, Les Echos January 7, 2016 – <https://www.lesechos.fr/idees-debats/cercle/cercle-146473-solvabilite-ii-les-consequences-pour-les-mutuelles-ne-sont-pas-simplement-financieres-1190338.php>
- **Gouvernance et légitimité : le modèle mutualiste** - Alexandrine Lapoutte – Dissertation to obtain the degree of Doctor of the University of Occidental Brittany – December 9, 2013 - <https://tel.archives-ouvertes.fr/tel-01124158/document>

## IX. Bibliography – The history of Mutuality in France (health)

- DESGRE Stève et SOUCHET Jean-Luc, La force des solidarités vendéennes, Mutualité de Vendée, 2007.
- DESSERTINE Dominique, FAURE Olivier, NOURRISSON Didier, La Mutualité de la Loire face aux défis : enracinement local et enjeux nationaux (1850-1980), Publications de l’Université de

Saint-Etienne, 2005.

- DREYFUS Michel, Liberté, Égalité, Mutualité, Éditions de l’Atelier, 2001.
- DREYFUS Michel, Traité de Sécurité sociale, tome V La Mutualité, Yves Saint-Jours (dir.), L.G.D.J., 1990.
- DREYFUS Michel, GIBAUD Bernard, GUESLIN André (dir.), Démocratie, solidarité et mutualité, autour de la loi de 1898, Economica, 1999.
- DREYFUS Michel, GIBAUD Bernard, La mutualité dans le siècle (1900-2000), Mutualité Française, 2000.
- GIBAUD Bernard, De la Mutualité à la Sécurité sociale. Conflits et convergences, Éditions ouvrières, 1986.
- GIBAUD Bernard, Mutualité-Assurances (1850-1914), les enjeux, Economica, 1998.
- GIBAUD Bernard, Fédérer autrement. Histoire de la Fédération nationale de la Mutualité française 1902-2002, Racines mutualistes, Mutualité française, 2002.
- GUESLIN André, L’invention de l’économie sociale : idées, pratiques et imaginaires coopératifs et mutualistes dans la France du XIX<sup>e</sup> siècle, Economica, 1997 (reed.).
- SOUCHET Jean-Luc, La mutualité en Loire-Atlantique, dix générations de traditions et d’innovations solidaires, Les Mutuelles de Loire-Atlantique, 1996.
- TOUCAS-TRUYEN Patricia, Histoire de la Mutualité et des Assurances, Syros, 1998.
- TOUCAS-TRUYEN Patricia, La Mutualité au sein des populations littorales (1850-1946), Librairie de l’Inde, 1998.
- TOUCAS-TRUYEN Patricia, L’identité mutualiste, ENSP, 2001.
- TOUCAS-TRUYEN Patricia, Le fraternel rapprochement, Éditions Le Tiers-Livre, 2007.

---

Received/	2017. 08. 14
Revised/	2017. 09. 16
Accepted/	2017. 09. 25