

# MUTUAL INSURANCE COMPANY - A NEW COMPANY FORM REGULATED BY ROMANIAN LAW AND ITS POSSIBLE INTERACTIONS WITH PUBLIC ADMINISTRATION

PhD. Ilie DUMITRU<sup>1</sup>

## **Abstract**

*For many decades, mutual insurance companies have been very present in developed countries, in various areas of activity, often interfering with public administration or with various public institutions. For example, mutual insurance companies can manage mandatory health insurance schemes or provide supplementary insurance for sickness and old age or alternatives to national insurance schemes. In Romania, mutual insurance companies did not benefit from such regulation, although in other less developed countries they could operate at least as voluntary organizations with the role of raising funds and managing financial loans to cover various risks. Very recently was promulgated in Romania Law no. 71/2019 on mutual insurance companies. These societies will undoubtedly be present in social life and many of them will specialize in activities that interfere with those of public institutions and authorities, so a study of this new type of society can be a benefit for everybody.*

**Keywords:** mutual insurance company, mutualism, insurance fund, public administration.

**JEL Classification:** K20, K22

## **1. Brief introduction to the concept of “mutualism”**

Mutualism is a principle of interhuman cooperation presupposing the pooling of some means belonging to some individuals, with a view to reach some common objectives of the whole community. The mutualism idea therefore precedes even the idea of state and, moreover, the concept of public authority or of bodies of state administration.

The concept was theorized at the beginning of the modern era, in the period of “Industrial Revolution”, when the two ideologies, the liberal and the socialist one, were grounded at a doctrinarian level.

Liberalism is a political and economical doctrine that is grounded on the economic and political freedom of the individual, being against collectivism, socialism, etatism and, in general, being in opposition to political ideas and forms of state organisation that are interested mainly in society as a whole, in state or nation, in general.

The basic element of the liberal doctrine is the axiom of non-aggression, proclaiming that each individual must be free by law to do anything he/she wants, as he/she does not threaten or damage another person or its properties acquired legally.

Socialism represents a form of social organisation in which the society’s interest prevails in front of the interest of an individual or a retrained group of individuals, being therefore in opposition to liberalism. On an economic plane, socialism presupposes the transfer of means of production from the property of the individual into the property of the organized society, of the state, owning therefore all the material production factors, and being thus able to direct production according to the needs of each of them.

Having the schematic representation of these two great economic and political doctrines, we can position correctly the mutualism concept. It presupposes, as the socialism, an association, a pooling of some means belonging to the individual, but following one of its personal choices, and without transferring its property to community, to the state.

In the history of modern society, various forms of mutual organizations appeared (mutual societies, mutual funds, mutual aid funds, etc.). They have been and they still are present especially in the countries and social-political organisation systems where the state is not preoccupied

---

<sup>1</sup> Ilie Dumitru - Associate teacher, Department of Law, Bucharest University of Economic Studies, Romania, ilie.dumitru@cig.ase.ro.

sufficiently of the organisation and operation of social protection systems and of solidarity or where their operation is deficient.

The history of mutual organizations separated after the Second World War, according to the political regime existing on one side or the other of the “Iron Curtain”. In socialist/communist states, mutualism was integrated in the ideology specific to this political system, by taking over and undertaking the aim of mutual societies, but by the deformation of one of their foundation principles, namely the freedom of association. On the other side of the “wall”, in democratic regimes, mutual organizations were either co-opted into public systems of social insurances under various forms, or they developed secondarily, simultaneously with the great schemes of public or private insurances.

In recent economic and legal terminology, the concept of “mutualism” was, to a certain extent, integrated into that of “social economy”, without being confounded with the latter.

The conceptual distance between the two is one of the type “part-whole”: “social economy” means a diverse organizational reality grouping associations, foundations, cooperatives, etc., including mutual organizations, whose association is subsumed to the will of being governed democratically and to the assumption as priority objective of the desideratum of meeting a common need, defined this way by their members or associates.

Mutual organizations can have various legal forms, from cooperatives of various types to credit unions, to mutual societies and mutual aid associations.

They are differentiated from the other organizations with which they are in economic competition (private or public companies) by the role the profit has in each of them, as well as in its use. As it was fairly asserted in specialty literature, “private companies focus on maximization of value of shares by profit increase”. Mutual organizations, having no shareholding, do not distribute the profit to the members, but they re-invest it (*asset lock*), increasing the capital of the mutual organisation and its capacity to support its members.”<sup>2</sup>

Being therefore involved in meeting the needs of a community or society, mutual organizations interfere with public law and public administration.

## 2. Mutual organizations and mutual insurance company - notion and role in European context

Mutual organizations have been defined as those “private companies, formally organized, with decision-making autonomy and free appurtenance, created to meet the needs of their members through market, through the production of goods or provision of services, of insurances or finance, and in which decision-making and distribution of profits or excesses between members has no direct connection with the capital or contributions of the members, each of them having only one vote”<sup>3</sup>.

The definition given by European Commission to mutual society is a similar one: “an autonomous association of persons (natural or legal) that meet voluntarily, having as main aim meeting their mutual needs, and not to acquire any profit or supply of a capital return. It is directed according to the principles of solidarity between members, they participating to the collective direction. That is why it is liable towards those for whose needs it was created”<sup>4</sup>.

The **mutual** company or **society** is governed by 4 principles:

---

<sup>2</sup> Mihaela Lambru, *Organizațiile de ajutor reciproc*, Polirom Publishing House, Bucharest, 2013, p. 14. The author also shows that “Mutual organizations or companies are a distinct model of economic organization occupying a unique position at the level of social economic organizations, namely to discover collectively and mutually risks of the members. These risks are various: financial exclusion, disease and death, social exclusion by reduced access to dwellings etc.”

<sup>3</sup> See Jose Barea, Jose Luis Monzon, *Manual for drawing up the satellite Accounts of Companies in the Social Economy: cooperatives and mutual societies*, Centre International de Recherches et d'Information sur l'Economie Publique, Sociale et Cooperative, Université de Liege, Liege, 2006, p. 33.

<sup>4</sup> For this definition, see Gabriel Stănilă, Corina Căce, Ana-Maria Preoteasa, *Organizațiile mutuale și economia socială - Manual de intervenție*, Expert Publishing House, Bucharest, 2011, p. 13.

- the purpose to serve its own members or communities to which they belong, rather than generation of profit;
- an independent management;
- a democratic decision-making process;
- preeminence of people and work on the capital in the distribution of incomes.

These main characteristics of mutual societies are, in general, common in the entire Europe. However, there are considerable differences between EU member states. The characteristics that are considered as differentiating the mutual societies of other organizations (namely the relationship between the status of member and that of insured, the principle on member – one vote and the absence of shares or shareholdings) are not found in all member states.

Therefore, there could be a wide interpretation in Europe of the notion of “mutual organization”, and, sometimes, organizations that consider themselves equivalent in various countries could have, however, few resemblances.

At the same time, the role the mutual organizations play in the social protection systems of the states varies in the entire Europe. This is mainly due to the historical, cultural and political evolutions, specific to various member states.<sup>5</sup>

**Mutual insurance companies** represent a special business formula for insurance service providers. Mutual insurances can cover all types of property and life risks and they may be active on the health insurance markets or they can offer private pension schemes (mainly through life insurance policies). Mutual insurance companies are spread in most European countries and they compete with other types of private and commercial economic operators.

Historically, one should recall that an important factor that determined a considerable importance of the role played by mutual societies in the insurance field, especially of health insurances, was, in many European countries, the establishment of some national health services after the second world war and subsequently.

In France, against the introduction of a governmental health insurance system, the mutual societies preserved a great importance. In Great Britain, the National Health System was created in 1948, but mutual societies are also active at present on the voluntary health insurance markets, next to the insurance companies that operate on the principles of market economies and maximization of the profit. A different example is that of Italy, where the role of mutual societies decreased after the reforms from the 1970s, when a national health system was created. The national health system established a universal coverage for all Italians and it took over the services provided previously by mutual societies. There are also member states (especially new member states) where mutual societies are not involved in health insurances, either because they do not exist or because they focus on other types of insurances.

Mutual organizations are considered “societies” according to the definition of TFEU<sup>6</sup>. Therefore, they enjoy the rights associated to the freedom of establishment and the freedom to provide services in the entire European Union, and European legislation also applies to them as to any other economic operators.

Based on these considerations, within the achievement of the internal market and to allow the free circulation of persons, goods, services and capital in equal conditions of competition between various actors and legal forms on the same markets, a project was adopted in 1992 for a Regulation for the status of European mutual societies<sup>7</sup>, together with a Statute for cooperative societies<sup>8</sup> and a Statute of associations<sup>9</sup>, with a view to improve the legal integration of social

---

<sup>5</sup> For an analysis of compared law at the European Union level, see the study of the authors Douwe Grijpstra, Simon Broek, Bert-Jan Buischool, Mirjam Plooi, *The role of mutual societies in the 21st century*, Policy Department Economic and Scientific Policy, European Parliament, Brussels, 2011, p. 21-23.

<sup>6</sup> Treaty on the Functioning of the European Union.

<sup>7</sup> Commission of the European Communities, COM (91)273 final, Brussels, 5 March 1992 SYN 390 Proposal for a Council Regulation (EEC) on the Statute for a European mutual society.

<sup>8</sup> Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 388, Proposal for a Council Regulation (EEC) on the Statute for a European cooperative society

economy into European Union. Each project of regulation was supplemented by a directive on the involvement of employees<sup>10</sup>.

For many years since 1996, the legislative process on the adoption of statutes was blocked in the Council, especially because of some divergent opinions on the directive on the involvement of employees.

In 2003, European Commission launched a consultation on “Mutual organizations in an extended Europe”<sup>11</sup> for the resumption of discussions on the adoption of statutes. With this occasion, the Commission noticed special difficulties mutual societies face in operating at a cross-border level. Mutual societies with activity in two member states fall under the incidence of two different national legislations and they cannot organize, in most cases, their cooperation in a way observing all their key principles, such as the democratic governance and the principle “one member – one vote”.

Against positive responses received with the occasion of consultation, which offered generally support for initiative, the project of Regulation on the Statute of European mutual societies was withdrawn by European Commission in 2006. European Commission grounded the decision indicating a lack of progresses within the old legislative procedure of more years, reason for which the proposal was to a great extent exceeded and it must be re-assessed based on the new political and economical priorities.

After 2006, European Parliament expressed on several occasions the regret related to the withdrawal of regulation projects on the statute of European mutual societies and of those for European associations and it requested to the European Commission to propose new statute projects.

In more recent documents on the completion of the unique market, European Commission responded to these requests and engaged in offering a better legislation for the organizations within social economy (including mutual societies)<sup>12</sup>, highlighting the fact that mutual societies should be able to operate over the borders, as a contribution to the EU efforts aiming at “stimulating the increase and consolidation of trust” in the Economic European Area.

### 3. Regulation of mutual insurance company in Romania

In the historical, political and economical context described above, a regulation related to the mutual insurance companies<sup>13</sup> also appeared for the first time after 1989 in Romania, in April 2019.

It's about the Law no. 71/2019 on mutual insurance companies<sup>14</sup>.

---

<sup>9</sup> Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 SYN 386, Proposal for a Council Regulation (EEC) on the Statute for a European association.

<sup>10</sup> Commission of the European Communities, COM(91)273 final, Brussels, 5 March 1992 - SYN 387, Proposal for a Council Directive (EEC) supplementing the Statute for a European association with regard to the involvement of employees; SYN 391, Proposal for a Council Directive (EEC) supplementing the Statute for a European mutual society with regard to the involvement of employees; SYN 389, Proposal for a Council Directive (EEC) supplementing the Statute for a European cooperative society with regard to the involvement of employees.

<sup>11</sup> Commission of the European Communities, Consultation document: Mutual Societies in an enlarged Europe 03/10/2003

<sup>12</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: *"Towards a Single Market Act - For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another"*, Brussels, 27.10.2010 - COM(2010)608 final.

<sup>13</sup> The operation of mutual and mutual aid associations was confirmed on Romanian territory in Transilvania since XVIII<sup>th</sup> century. In 1744, in Braşov, “Casa de Incendiu” (Fire Fund) was operating, which was established by the merger of more mutual societies of this type. Generally, at that moment, on Romanian territory, mutual insurance companies had an activity focused on mutual animal and Agricultural cultures insurances. The phenomenon of private insurances was extinguished in 1948, when the insurance societies and mutual societies were nationalized, and they continued to operate until September 1<sup>st</sup>, 1949, when all these were dissolved and liquidated, and the portfolio and reserves were processed by the general Soviet-Romanian society of shareholding insurances, “Sovromasigurarea”, established during the same year. For details, see Vasile Nemeş, *Dreptul asigurarilor*, 4<sup>th</sup> edition, Hamangiu Publishing House, Bucharest, 2012.

<sup>14</sup> Law no. 71 as of April 22, 2019 on mutual insurance companies and for the amendment and supplementation of some normative acts, published in Official Gazette of Romania no. 323 as of April 24, 2019.



1. **The legal definition of mutual insurance companies** can be found in the provisions of art.2, para. 1 letter g): *“non-profit legal person, with an unlimited and a variable number of members, established according to the present law, having as object the activity of insurance according to the provisions of the Law no. 237/2015, as subsequently amended and supplemented, and which is funded mainly by the contributions of the members”*.

2. According to art. 3 of this law, mutual societies have as **aim** covering, by the insurance contracts, the risks of its members and the payment of compensations for damages and insurance allowances to them, the beneficiaries of contracts and/or damaged third parties, in case of occurrence of insured risks.

3. Therefore, **their object of activity** can consist, as a rule, only of insurance activity and operations related directly to this activity for their members, based on the **principle of mutuality**, and by way of exception, they can conclude with their members, legal entities or entities without legal personality, group insurance contracts for their employees, the latter not becoming members, the obligation of paying the contributions provided by the present law, by the articles of incorporation and the contracts in question being incumbent on the said members.

4. **Social obligations of the mutual societies** are guaranteed by their social patrimonies, the members being not liable personally towards the creditors of mutual society.

5. As regards the **establishment** of mutual insurance companies, they are created based on the articles of incorporation, which is concluded under private signature of the founding members and which contains at least the data and information listed in art. 6 para. 2 of the law.

After the signature of the articles of incorporation, to be able to register with the Trade Register, mutual insurance companies must obtain the prior endorsement of the Financial Supervisory Authority.

According to art. 7 para. 1 of the law, the mutual society acquires legal personality since the date of registration with the Trade Register, it being considered the date of company's establishment. The registration with the Trade Register of mutual societies is made taking into consideration the procedures provided by the legal provisions related to the registration with the Trade Register of joint-stock companies, to which it applies similarly.

6. Subsequently to the establishment, **changes** of the mutual society can be made, but also with the prior agreement of Financial Supervisory Authority, which can reject the endorsement of the amendments brought to the articles of incorporation, if the interests of the members, in their capacity of insured persons, or parties in the insurance contracts concluded with the mutual society are not protected or the amendments proposed could lead to the failure to observe the requirements of solvency and/or related to the prudence indicators, according to the legal provisions.

7. As regards the **number of members** that form the mutual insurance company, it is minimum 5 and they are conditioned by the acquirement of the capacity of insured person upon establishment; the insurance contract is concluded subsequently to the acquirement of operating authorisation.

If it decreases below 5 for a period of 12 consecutive months, the general assembly of its members decided immediately the dissolution and liquidation of the company. However, mutual societies are not dissolved if, up to the pronouncement of the court decision of dissolution as being final and irrevocable, the minimum number of member is re-established.

8. The founding members of the mutual society are signatories of the articles of incorporation. Subsequently, **the capacity of member** is acquired by the conclusion of at least one insurance contract with the mutual society.

Once acquired, the capacity of member of the mutual society is preserved until:

- the death of the member natural person;
- the de-registration from the Trade Register of the member legal person or entity without legal personality;
- the termination of capacity of insured person of the mutual society or party in an insurance contract concluded with the mutual society, according to the provisions of the articles of incorporation;

- occurrence of another event provided in the articles of incorporation.

The insurance contract concluded by the member can continue to [produce effects until the date provided in it.

9. As regards **decision-making** in the mutual society, the rule “one member- one vote” is consecrated by art. 9 para. 4 of the law.

10. The **funding resources** of the mutual societies are established from:

- the initial fund, which is established at the disposal of the mutual society by the contribution of the founding members and which is used for the coverage of expenditures of establishment and financing of its activity subsequently to the operation authorisation;

- the balancing fund for unfavourable situations;

- fixed and/or variable contributions;

- additional contributions;

- other resources provided in the articles of incorporation.

All the contributions of the members must be paid in cash, being not allowed the contributions in kind or in receivables.

11. For the **regulation of the mutual insurance company management**, the Law no.71/2019 refers to a series of provisions of the Law no. 31/1990 on commercial companies, related to joint-stock company.

Generally, the activity of the mutual insurance company is supervised by A.S.F., which aims at protecting the insured persons and to contribute to the preservation of stability of insurance market.

#### 4. Conclusions

The recent re(occurrence) in the Romanian legal landscape of this new form of company, we believe that it cannot be but auspicious for Romanian citizens, because by the mechanisms specific to mutualism, mutual aid, they can provide with much lower costs the assets, professional risks, health and even life. This alternative can also generate a process of exemption for public authorities that manage social insurance budgets or social health insurances.

It is obvious that Law no.71/2019 on mutual insurance companies is not fully and exclusively a reflexion of mutualism principles. But this can be explained even by the provisions of the European legislation on insurance and financial institutions, which are based mainly on the models of shareholding companies. The general trend seems to be that the insurance market be more even, so that the mutual societies should operate progressively similarly to the joint-stock companies or, in other words, to “demutualize”.

However, according to the activities carried out and the legal/organizational context in which it carries out its activity, some mutual societies can fall under the incidence of definitions “general interest social services”, according to EU legislation, so that it is not always easy to determine if and how the rules of the internal market and competitors are applied, especially taking into consideration that the mutual societies often provide services in different complementary fields.

The arguments in the favour of a statute for a European mutual society seem to have credibility because, this way, mutual societies would be given opportunities to contribute to the economic development and to preserve competitiveness for the future. The European Parliament, European Economic and Social Committee and European Commission could express recently their availability to resume debates on a statute on European mutual society.

#### Bibliography

1. Douwe Grijpstra, Simon Broek, Bert-Jan Buiskool, Mirjam Plooi, *The role of mutual societies in the 21<sup>st</sup> century*, Policy Department Economic and Scientific Policy, European Parliament, Brussels, 2011.
2. Gabriel Stănilă, Corina Căce, Ana-Maria Preoteasa, *Organizațiile mutuale și economia socială - Manual de intervenție*, Expert Publishing House, Bucharest, 2011.

3. Jose Barea, Jose Luis Monzon, *Manual for drawing up the satellite Accounts of Companies in the Social Economy: cooperatives and mutual societies*, Centre International de Recherches et d'Information sur l'Economie Publique, Sociale et Cooperative, Universite de Liege, Liege, 2006.
4. Mihaela Lambru, *Organizațiile de ajutor reciproc*, Polirom Publishing House, Bucharest, 2013.
5. Vasile Nemeș, *Dreptul asigurărilor*, 4<sup>th</sup> edition, Hamangiu Publishing House, Bucharest, 2012.
6. Treaty on the Functioning of the European Union.
7. Law no. 71 as of April 22, 2019 on mutual insurance companies and for the amendment and supplementation of some normative acts, published in Official Gazette of Romania no. 323 as of April 24, 2019.