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FOR MUTUAL BENEFIT

V.3 – 30 September 2010

Consultation on a Proposal for Reforming the Regulation of Insurance Associations
File 86955-3/2010

Comments submitted by AMICE

(Association of Mutual insurers and Insurance Cooperatives in Europe)

Introduction

AMICE is the European Association of Mutual Insurers and Insurance Cooperatives with some 120 direct and around 1,600 indirect members in 17 European countries, including the Central European countries of Hungary, Poland, and Slovenia. We have been informed by our Hungarian members KÖBE and TIR of the consultation by the PSZÁF on reforming the regulation of insurance associations of 10 August. Given the short time between the end of the summer holiday season and the deadline, we submit our comments provisionally in English and apologise for any inconvenience caused. We will follow with a full Hungarian translation as soon as possible.

We are aware of the major developments in the Hungarian insurance market over the past two years, notably of the very disturbing events around the closure of MÁV ÁBE. At the same time, we have learnt of the strong commitment of the new Hungarian government and the new management of the PSZÁF to protect the interests of consumer (i.e. policyholders).

We agree with the authors of the consultation document that the timing of this consultation is opportune. Indeed, also to our knowledge, nothing seems to currently endanger the operations of insurance associations in your country or the interests of their policyholders. Any meaningful and educated debate can much better be carried out in "times of peace" without undue factual pressure which may require "quick fixes". AMICE, together with its Hungarian members, offers and has the intention to engage with the PSZÁF and other Hungarian authorities in such a meaningful discussion with the aim of optimising the outcome for all involved: the authorities, the mutual insurers, their policyholders, and the Hungarian insurance market at large.

After studying in depth the current regulatory framework for insurance associations we agree that there is room for improvement. The law on non-profit associations without a business activity seems indeed an inappropriate tool to regulate the governance and business of financial services providers of any (material) size. Insurers, like all other businesses, need to make a surplus. This applies equally and – as we will try to explain – even to a greater extent to mutuals. What makes the difference between mutuals and limited companies is what the companies do with their financial bottom-line.

Insurance associations accumulate their capital over time from the surpluses they make. These accumulated own funds are collectively owned by the entirety of membership; during the going-concern phase, they are not sliced into portions attributable to individual owners (shareholders) as in the case of plc-type insurers.

Our association with its membership in 17 countries of very different legal traditions has, together with its predecessors AISAM and ACME a longstanding experience in working with and for mutual and cooperative insurers and has direct and indirect access to an array of knowledge in the field. We would be more than happy to assist the Hungarian authorities in devising a modern and flexible, but robust legal framework for mutual insurance.

Before going into greater detail, we would like to emphasise that our comments should not be seen as a criticism of the consultation document or of its underlying observations. The openness of the consultation process permits us to share our comments and observations on the wider European market with PSZÁF and we hope that AMICE can be of assistance to your authority in tackling the issues. We would therefore highly appreciate to be informed of any further developments and are committed to be involved to the extent that PSZÁF would regard beneficial. In the following passages of our response, we have given indications where we believe that the collective experience of AMICE and its members could contribute to an educated and meaningful discussion.

Mutuals as solid and trustworthy insurance undertakings

1. Mutuals are solid. Many mutual insurers in Europe have existed for more than 100 years or even longer and have weathered many a storm – literally and as a figure of speech. Insolvency statistics of insurers are dominated by limited companies. We are of course, as mentioned, aware of the recent events in the Hungarian market, but believe to have understood that the initial reason for the commercial difficulties of MÁV ÁBE had nothing to do with its status as an insurance association.[1] We have noticed that the consultation document is also – with one exception – widely neutral as to the reasons why insurance undertakings might get into difficulties. In this context, we would like to see our observation understood as an argument for the lower probability that a mutual insurer would become a "guarantee case".

2. That mutual insurers are solid is not an argument created by AMICE, their own association. In a Special Comment Report of August 2009[2], Moody's list the following key differences between mutual and stock-company insurers. According to this report, mutuals are characterised by
   - stronger capitalisation;
   - less risky business focus and product offerings;
   - less financial/public disclosure and (therefore less) headline risk *(i.e. reputational risk)*;
   - Diminished access to capital markets, but (therefore) less dependence on it;
   - Greater alignment of owners and ... policyholders with longer-term orientation.

   AMBest, another large insurance rating agency regularly publishes almost identical analysis.[3]

3. The main reason for the financial solidity of mutual insurers lies in their specific financing structure. In the absence of share capital, mutuals have built up their capital from retained profits,

[1] For the time being, we maintain the term „insurance association", in accordance with the consultation paper. We will comment on semantic issues later in our document.

[2] "Revenge of the Mutuals – Policyholder-owned US life insurers benefit in harsh environment" http://www.northwesternmutualnews.com/images/20041/Revenge+of+the+Mutuals.pdf

[3] for example recently in "Mutuals maintain momentum, but challenges mount", dated 10 May, 2010 http://www3.ambest.com/DisplayBinary/DisplayBinary.aspx?TY=P&record_code=172451&URatingId=227173

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by and by and in a safe way. They had to. This means that most of them today have a very solid capital basis. Results of the fourth quantitative impact study on Solvency II (QIS4) have shown that mutual insurers tend to have a better capital base (a higher multiple of Solvency Capital Requirements) than their peers in their respective countries. We see the possibility and the obligation to retain profits as strength and we know that member-policyholders tend to agree to strengthening reserves.

4. A second important reason for the solidity of mutual undertakings is their governance structure. As the authors of the consultation paper rightly observe, the owners and their attitudes play a decisive role in creating and maintaining stability in an insurance undertaking. We will explain later in this document that and how the members of mutual insurance companies can develop the sense of ownership and how the multitude of owners and their immediate interest as clients (policyholders) can contribute positively to the well-being of their company.

5. The mutual business model (in insurance and beyond) is characterised by democratic principles. In a good legal framework for mutual insurance (either in a law or in the statutes of individual mutuals), the influence of policyholders is guaranteed either through direct democracy or – necessary and common in larger mutuals – through member representatives who themselves are delegated, elected or confirmed by membership. We agree that good governance models are key to trust-building and solidity. International benchmark models exist.

6. Towards the end of the consultation document, the authors rightly address the issue of conflicts of interest between principal and trustee, in the given case between owner(s) and management. We think that (particularly) in the case of an insurer the discussion about conflicts of interest has to include a third "interested party", namely the policyholders., For us the most dangerous conflict of interest in the business of insurance is the conflict between the clients=policyholders=members and the owners of the company. In principle and in the shorter run, any claim paid out and any additional service provided to the customer reduces the profit. Equally, every decision to add part of the surplus to the reserves or to pay it out to policyholders reduces the amount available for distribution to the shareholders in the given period.[4]

7. In a mutual, the identity of policyholders and owners (see below) abolishes this particular conflict of interest almost completely. This allows mutual insurers to pursue longer-term strategies and to resist the temptation to go for short-term profit maximisation with the aim of maximising the amount available for dividends at the end of the reporting period. The member-policyholders can realise – and we agree that this is a major communication task for the mutual insurer – that retaining profits in the company and/or using them for the direct benefit of policyholders is in their supreme interest.[5]

[4] The 2009 joint issues paper by the IAIS and the OECD on insurers' governance clearly describes this conflict (par. 157-165, p. 40-41) http://www.iaisweb.org/view/element_href.cfm?src=1/7520.pdf :

> "Such appointed actuaries usually have a legal obligation to the supervisors to ensure that the interests of policyholders are protected. ..."
>
> "In some jurisdictions, actuaries cannot concurrently hold other positions in the insurer. For example, the functional actuary cannot also be the chief executive officer or the chief financial officer. ... A dual or multiple role may put the actuaries in a conflicts of interest situation. **For instance, a chief executive officer may focus on maximising the shareholder interests which might conflict with ensuring that the policyholder dividends are appropriate (an objective of the actuary).**

[5] For further most valuable insight into the risks of short-termism, driven by the interest of shareholders in receiving dividends and by top managers to maximise their own remuneration tied to profits, dividends paid and/or stock price performance, we refer to the Green Paper by the European Commission **Corporate governance in financial institutions and remuneration policies** COM(2010) 284 final and its accompanying

8. We recall in this context the Letter to CEOs No. 6/2009 by PSZÁF of March 2009 which emphasised the importance for insurers of strengthening own funds by retaining profits and abstaining from paying dividends in times of financial crisis.[6] We have no complete overview of the reactions of Hungarian plc-type insurers to this letter, but understand that still a notable amount of dividends was paid out to their mother companies. Mutual insurers, in contrast, used their surplus to strengthen their own funds. As further anecdotal, but serious evidence we would like to cite a Finnish study demonstrating that during the time of the stock market bubble in the late 1990's (1998-2000) the largest Finnish plc insurer paid out EUR 2.8 billion in dividends when total premium income during this period amounted to only EUR 1.5 billion.

9. In Hungary, most insurance limited (joint-stock) companies are owned by foreign institutions. As a consequence, all dividends paid out to their shareholders are flowing abroad. We assume that this should also raise the concern of the public authorities, both from a macroeconomic and microeconomic viewpoint – or at least strengthen the case for the existence of strong Hungarian mutual insurance companies whose profits are being used to strengthen their own balance sheets or to even more directly benefit their Hungarian members.

Guarantors

10. We have read with interest the sections in the consultation paper where the forms of ultimate guarantor are presented, both in theory and in practice. Above, we have laid out arguments that mutual insurers do not pose a particular <u>systematic</u> risk (or risk by legal nature). Even less do we believe that they pose a <u>systemic</u> risk for the Hungarian insurance sector, financial market or overall economy due to their small relative size on the Hungarian market.

11. If we calculate the risk (and the consequences) of a further failure of a Hungarian insurance association as the product of the probability of failure and the size of the loss, we would therefore argue that such risk is very low, due the solidity of mutual insurers (low probability) and their relatively small size (see also our comments on the existence of a guarantee scheme for motor TPL insurers in Hungary as from earlier this year.

12. Still, we understand the concerns of PSZÁF about the consequences of such a failure and would therefore like to comment in this section on the various possible forms of guarantee discussed.

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staff document "***Corporate Governance in Financial Institutions: Lessons to be drawn from the current financial crisis, best practices***" (SEC(2010) 669).

[6] With respect to the difficulties of raising additional liquidity and capital the HFSA expects the following from the insurance undertaking by emphasizing prudential arguments as follows:

> 1. During the period of increasing risks, the sustainability of the adequacy of technical provisions and solvency raises the requirement of additional capital towards insurance undertakings, when it is becoming more and more difficult and expensive to raise external capital. In situations like that internal capital-raising becomes more appreciated and therefore it is especially important that insurance undertakings use the obtained profit for the stabilization of their solvency situation.
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> 2. Besides prudent provisioning, another method for strengthening the capital status of the institutions is if the insurance undertakings do not declare and pay dividends from the after tax profit but leave such amount with the institution. Therefore the HFSA expects that the executive officers of the insurance undertakings will not advocate the disbursement of dividends to the owners. Moreover the HFSA proposes to the owners of the insurance undertakings to render self restraint with respect to the disbursement of dividends and refrain from this possibility.

13. We are not as convinced as the authors of the consultation paper that the **"profit-oriented scheme"**, i.e. the insurer in the form of a limited (or joint-stock company) is the only solution – we would argue that it is not even the best one. Most Hungarian plc insurers are owned by one or few foreign strategic partners, commonly large international insurance groups. This entails several risks:
    - The gap between the policyholders and the owners is even wider; there is practically no opportunity that the policyholders benefit in any way from the profitability of the insurance company.
    - The management of the plc insurer is working (as rightly described in the section on the principal-trustee relationship) for the interests of the owner whose interest lies exclusively in its own economic benefit, either in the form of a (dividend) stream of income or in the possibility to sell the subsidiary at a later point at a better price. This creates a scheme of incentives for the owners and their agents (the management) that is in any case in contradiction to the interest of the policyholders. If the preference of the owners lies in assuring a constant stream of income (through dividends), the management is wrongly induced to pursue short-term profit goals
    - Examples in many countries of Central and Eastern Europe where ownership structures in the financial sector are similar to those in Hungary, have shown the devastating effect of profits being drained from these emerging economies (and their citizens) towards dominant Western shareholders and their ultimate owners.
    - This risk is being even increased if the remuneration scheme for the management is based on criteria that induce short-term profit maximisation (such as profits in a given period, dividends paid to the parent company or price achieved at the moment of the sale).
    - Short-termism is inherently against the principle of risk spreading (over periods of time as well as over a larger number of risk bearers) in insurance. For the wider negative consequences of short-termism in financial services, we refer you to the recent Green Paper of the European Commission on corporate governance in financial services and the excellent staff document accompanying it (see reference in earlier footnote).

    We recall the strong opposition of several Eastern European EU Member States during the discussions on the Solvency II framework directive against the system of group support. One of the main arguments in this debate against such a system was that it would open the door for the large Western insurance groups dominating the markets in those countries to withdraw funds from their subsidiaries in the smaller and still emerging economies for the benefit of their Western European subsidiaries and/or their groups as a whole with their dominantly Western European shareholders. We respect this scepticism and believe that a similarly critical assessment of the benefits and risks of having a dominant foreign shareholder (and, more widely, of having an insurance market that is dominated by subsidiaries of foreign insurance groups) is necessary.

14. We agree with the analysis that a sense of ownership is a key element of identifying with the fate of indeed any company, including insurers. Our proposal for addressing the weaknesses of the Hungarian legal framework for insurance mutuals therefore includes a strengthening of the sense of ownership among the policyholder-members of the mutual, including some rights for them that are commonly regarded as ownership rights. It goes without saying that ownership generally also entails certain duties or obligations towards the enterprise, a fact that is sometimes forgotten. Member-policyholders of a mutual are commonly more aware of the character of these obligations since they are often more closely following the development of "their" undertaking and hence take a more active interest in its well-being.

15. We do not fully share that the view that an insurance company in trouble may be sold by its parent "even for zero" to somebody who considers it worth saving, while such a measure is not available for a mutual insurer. Of course, an insurance association as such cannot be sold, but emphasising the contrast to the situation of a limited-company insurer may be missing the point.
    - Firstly, the argument that only a (commercially) interested owner would be prepared to put his resources up for saving a company would not apply here – the buyer would be a newcomer without any historic interest in the purchased entity and his interest in rescuing it from eventually failing (when he got it "for zero") could also be zero.
    - Secondly, what is frequently transferred in the case of taking over or saving an insurer that is in difficulties is the insurance portfolio (of policies). The possibility of selling (part of) its insurance portfolio to another company is equally available to mutual insurers and to limited companies.

16. Our observations of the landscape of mutual insurance in Europe (and indeed globally) lead us to believe that the organisation of insurance in a mutual form is not contradictory to the principle of profit-oriented management. Many of the largest mutuals and mutual groups operate very much along commercial, profit-oriented lines. They see the need to achieve positive financial results and to strengthen their company by retaining the annual surpluses/profits. Otherwise, they would not have survived or, in many cases, grown into important players in their markets.

17. We agree in this context that the legal structure of the mutual insurance undertaking should not be the same as for not-for-profit (benevolent) associations, as they are known in the areas of sport, culture, and many more. In many European countries where mutual insurers exist, their structure and governance is regulated in the respective national insurance (supervision) laws (e.g. the German and Austrian VAGs; but also in France where mutual insurers other than complementary health insurers are also governed by the "Code de l'Assurance").[7] This is why we suggest later in this paper the creation of a legal framework with suitable complementary rules for insurance mutuals (e.g. in the Insurance Act and/or the Civil Code). As already mentioned above, this framework should include provisions that strengthen the sense of ownership among the member-policyholders.

18. Another important element for creating and enhancing the sense of ownership among an insurance mutual's members is of course the emphasis that the management must give to explaining the true benefits of mutuality to its members. In addition to the use of any surplus for the benefit of members (instead of an outflow to outside shareholders), the principles of solidarity and principle and democracy are highly important. A feeling of solidarity is probably easier to be achieved in insurance mutuals with a smaller membership and/or a homogenous (professional) membership (e.g. lawyers, pharmacists, architects, but also farmers).[8] What the legislator can do in this regard is creating a framework that prescribes and/or fosters democratic decision-making, including efficient and reliable procedures in the case that the size of the mutual's membership practically excludes direct democracy (full members' assemblies).

[7] German and Austrian law on associations distinguish between "non-profit" and "for-profit" associations. In Austria, the creation of new "for-profit" associations was forbidden as from the year 2000; even before, such associations were only permitted if no other legal form would have been possible. In Germany, the "for-profit" associations are still theoretically possible, but permitted only in rarest cases, if ever. Savings banks and insurance mutuals, however, are in both countries governed by special provisions, taking into account their character as associations exercising a business activity.

[8] See also the absolutely topical reference in the consultation document to the much greater success chances of a "compulsory supplementary calls scheme" in the "case of financial organisations with special, well-defined purposes and a small community". Among AMICE's membership, there is a number of "professional" mutuals of different sizes where a very strong sense of solidarity can be witnessed.

19. Reinsurance (here to be understood in the "traditional" meaning of the term as a "routine risk spreading technique") is of course available to insurance mutuals as to other insurers. The new Solvency II framework emphasises the importance of reducing capital requirements by risk mitigation techniques such as reinsurance. Together with the largest European reinsurers, AMICE has developed a model of non-proportional reinsurance in non-life insurance and is lobbying actively for full recognition of this technique under Solvency II. The specifications of the current QIS5 exercise include a method to recognise non-proportional reinsurance in the standard formula.[9]

20. The mention of a "relationship" between insurance associations in the section on "reinsurance" (in the wider sense) allows us to draw the attention of the authors to the model of the SGAM (mutual insurance grouping), existing in France. Its essence is described in Art. 212(1)(c)(ii) of the Solvency II framework directive.[10] The French SGAM[11] is basically a contractual agreement between two or more mutuals (and potentially other partners) to establish "strong and sustainable financial relationships" that can be regarded by supervisors as a form of group consolidation.

21. In at least one other European jurisdiction, insurance mutuals can raise forms of deeply subordinated capital that functions as "guarantee capital" in the case of a winding-up of the insurer. The owners of such guarantee capital may have a certain legally defined status in the governance of the insurance mutual, including (limited) voting rights.

22. In addition, of course, other forms of subordinated debt exist and are accessible to insurance mutuals. A dedicated task force of our association deals with the question of capital maintenance for mutuals, including different models of capital raising that are compatible with the underlying principles of mutuality. AMICE would be happy to provide additional information about such models of external finance and to establish contacts between the Hungarian side and experts in the home countries of AMICE members.

23. On behalf of its members, AMICE follows with interest the discussions at the European level about insurance guarantee funds. Within AMICE, as within the CEA (the European insurance and reinsurance federation), the attitude towards the idea by the European Commission to establish a Europe-wide system of insurance guarantee funds meets a very mixed response. The idea of

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[9] We refer to the paper on the AMICE website http://www.amice-eu.org/Download.ashx?ID=17095 and are available for any further discussion on the document and its background.

[10] "Csoport": vállalkozások csoportja, ... amelyek alapja a vállalkozások közötti erős és tartós pénzügyi kapcsolatok szerződéses vagy egyéb módon való kialakítása, és amelyhez biztosító egyesületek vagy biztosító jellegű egyesületek is tartozhatnak, feltéve, hogy

– a vállalkozások egyike a központosított koordináción keresztül ténylegesen döntő befolyást gyakorol a csoporthoz tartozó többi vállalkozás határozataira, köztük a pénzügyi döntésekre is, valamint

– az ilyen kapcsolatoknak a fenti cím alkalmazásában történő kialakítása vagy felbontása a csoportfelügyeleti hatóság előzetes jóváhagyásának tárgya,

amennyiben a központi koordinációt végző vállalkozás tekintendő az anyavállalatnak, a többi vállalkozás pedig a leányvállalatnak;

[11] The SGAM is currently a concept recognised (as a form of group) only by the French supervisor – although there has been one effort to obtain recognition (for French supervisory purposes) of a SGAM including a Belgian insurer. This project, however, has been abandoned due to unrelated developments. AMICE works actively on spreading the idea of the SGAM in other countries and strives to discuss its feasibility and acceptability under Solvency II with other jurisdictions. The association organises a seminar of forms of mutual groupings later this year.

mutual insurance includes a strong commitment towards the protection of policyholders, i.e. the members. We believe in principle that the mutual business model and the intrinsic values of mutual insurance (such as sustainability and democracy) are the best guarantor of policyholder protection (see our comments above about the reduced likelihood of a mutual insurer becoming as guarantee case). We understand however that a guarantee fund has been set up by and for Hungarian motor TPL insurers, across all involved companies, regardless of legal form and origin of ownership. We would regard this fund as an important contribution to the safety of the Hungarian motor insurance market and as one good solution to address the issues raised in the consultation paper. The effect and effectiveness of this fund should in any case be taken into account during the further discussions on any reform of the legal framework for mutual insurance in Hungary.

We would like to mention in this context that several AMICE members, all of them insurance mutuals, are major players or even leaders in their national motor insurance markets (HUK Coburg #2 in Germany, MACIF leading the market in France, Mutua Madrileña #1 in Spain, etc.).

24. We note and agree with the considerations in the consultation paper with regard to the moral hazard created by the existence of "external" guarantors. This problem of moral hazard arises in fact in both cases, when there is a general insurance guarantee fund, and with regard to the ultimate role of the state in the case of "too big to fail".

    In this context, we recall a passage from the 2007 Report by Oxera on insurance guarantee schemes.[12] The report cited studies that had shown that "the ... introduction [of insurance guarantee schemes] in the USA resulted in shifts in the portfolio composition of at least some US property and liability insurers towards more risky assets; the greater risk-taking [applied] to stock companies, but not mutual insurers".

Solvency II

25. Overall, AMICE members welcome the new Solvency II framework as an appropriate tool for insurers to assess the adequacy of their technical provisions and own funds with regard to the totality of risks that they face.[13] It is an appropriate framework for all types of insurers and will apply to all insurers in the same way, regardless of their legal form. After the introduction of Solvency II, the likelihood of failure will ex ante be the same for mutual and limited-company insurers. Supervisors will have an objective method at hand to assess the resilience of any individual insurance undertaking as a function of its solvency ratio.

26. As a consequence of our appreciation of the Solvency II framework as an appropriate risk-based tool for supervising European insurers, we would not see the necessity and the benefits of the solution proposed by the consultation document: to permit the existence of insurance associations without a capital requirement, thus forcing them out of the application of Solvency II and thus limiting their size to below the EU legal threshold. The lack of appropriate own funds would in

[12] http://ec.europa.eu/internal_market/insurance/docs/guarantee_schemes_en.pdf , page 114

[13] This generally positive assessment is not as such in contrast with the critical views shared by many of AMICE's members: e.g. that the timeline of the project is too demanding, that certain particularities of certain specialised insurers are not appropriately taken into consideration, that its application by supervisors will most certainly not be proportionate, that requirements in the areas of governance and reporting are unsuitable for small and medium-sized insurers etc.

insurers subject to that non-Solvency-II scheme would, in our opinion, create exactly the risks that the PSZÁF addresses in its paper.

27. This equal treatment of insurers of all form will automatically lead to equivalent risk assessment and capital requirements in equivalent insurance undertakings. This, as a consequence, will also reveal arguments on either side of the legal-form divide against the idea of joint industry guarantee schemes as purely anti-competitive.

28. Both in the Level I text and in the (draft) implementing measures, much emphasis is given to the principle of proportionality – the appropriate recognition that differences in nature, scale and complexity of insurers' operations and risks exist and have to be acknowledged by the legislators (in the drafting of the rules) and supervisors (in their day-to-day exercise of their supervisory functions). AMICE is arguably the most outspoken organisation at the European level on the importance of the proportionality principle. We would therefore to refer in this context both to the possibilities, but also the obligations that the principle of proportionality creates for supervisors in their implementation of Solvency II.

29. As already mentioned earlier, Solvency II will also oblige specialised insurers to reduce their risk and hence their capital requirements by risk mitigation techniques such as reinsurance, or by increasing their diversification to the extent feasible. These strategic pressures will apply absolutely equally to insurers of all legal forms.

30. Solvency II, as a risk-based framework, complements the prudential financial requirements with a comprehensive set of requirements in the area of management/governance structures and processes (pillar II). The ORSA (Own Risk and Solvency assessment) is at the heart of these requirements. We understand that KÖBE, as an example, will run its ORSA voluntarily in 2010 – three years in advance. We hope that Hungarian insurers will have the opportunity to discuss their findings from QIS5 and trial-ORSAs with the authority.

31. Solvency II is in our view also a very valuable regulatory and supervisory framework for supervisor. It provides the tools for constant accompanying, for regular in-depth reporting, for early warning, for measured and appropriate intervention long before an undertaking gets onto any "sliding scale". We believe that supervisors can already today gain confidence in the opportunities that Solvency II delivers to them for a modern and risk-based supervision of the industry. It is therefore in our view timely to discuss the future of the regulation of insurance mutuals in Hungary, but such discussion should be carried out with a view to the future regulatory and supervisory framework in Europe and to the changes this framework will bring for the insurance undertakings and their supervisors.

Market structure considerations

32. Competition is not only a matter of a differentiation between the names of providers or between the prices of their products, but also a matter of differentiation between business models and legal forms. Mutual insurance provides an alternative form of enterprise and an integrative and policyholder-oriented business model. The proliferation of legal forms has an inherent value as such, as it provides a healthy balance of interest and additional choice to the consumer.

33. The top 5 players in MTPL insurance in Hungary are owned and/or controlled by foreign interests and had a combined market share in 2008 of more than 70 %. Reducing the availability of choice

plays into the hands of the large international groups – a development that may not be appreciated by citizens at large.

34. As a potential consequence of reduced competition, it has to be feared that prices for MTPL – one of the most basic and therefore in the population most widely sought insurance products – would rise considerably. Practically every household in Hungary would be affected by this development, which would add to the already drastically increased costs of car driving.

35. In addition, a second price driver would be created by the disappearance of the mutual business model because insurance mutuals (characterised in this context by the absence of shareholders that have to be served with appropriate returns on their investments) have the opportunity for more attractive conditions. We are convinced that a small insurance market like the Hungarian one should particularly strive for efficiency. We would like to quote in this context ...

Proposed way forward

36. A we have tried to lay out on the preceding pages, we agree with the authors that the current Hungarian legal framework for the organisation, structure and governance of insurance associations is inappropriate, being more or less one devised for sports and cultural clubs and alike. Insurance is a business – and certainly not one of the easier ones – and deserves therefore appropriate legal structures.

37. Solvency II will provide a prudential framework which will take care of the financial requirements for all insurers on a level-playing field basis, regardless of legal form. The implementation of pillar I into Hungarian law should therefore in our view include only very few references to the legal form: namely in the provisions about ancillary own funds (see Art. 89(1) last subparagraph of the Directive) and about insurance groups (see Art. 212 (1)(c)(ii)). In the national provisions implementing pillar II, a need could arise to refer to the governance of insurance mutuals when specifying the role and duties of the “managing, administrative or supervisory body”.

38. The process of fundamentally overhauling the legal framework for insurance mutuals in Hungary provides a unique chance for the Hungarian legislator to benefit from the experience in many European countries and to create a modern and up-to-date legal framework. As already said earlier, AMICE and its members in (besides Hungary) 16 European countries are most interested in the respective developments in the Hungarian market. We and our colleagues at our members are available to discuss the existing regimes and their strengths and weaknesses with the Hungarian authorities.

39. We would also like to inform the Hungarian authorities that the world body of mutual and cooperative insurers, ICMIF (International Cooperative and Mutual Insurers’ Federation) has additional experience in advising governments and legislators on the creation and improvement of legal frameworks for mutual insurance. We understand that ICMIF will submit its own response to the consultation.

40. Without going into further detail, we would just like to mention that the framework governing the legal structure of insurance mutuals probably need not be very extensive. We observe that in many countries the provisions on the governance of the boards (executive & supervisory), on the organisation and governance of the General Assembly, and on reorganisations (merger, asset transfer etc) refer to the pertinent passages in company law. Moreover, the degree to which the

legal framework leaves the more detailed rules to the statutes of the mutuals (or provides a default option which can be changed in the individual mutual's statute) varies. We acknowledge that both approaches – a more stringent one in the law and a more flexible one delegating the decisions about governance to the members of the mutual – have their merits and different angles of view let one or the other seem favourable. Through our contact in the 17 countries of our members and beyond, we would be able to provide valuable input, should the Hungarian authorities wish to embark on this discussion.

41. We have referred earlier to the "ownership spirit" that characterises the relations between many mutuals and their policyholder-members. The details of the legal constructions vary between the European jurisdictions. In many countries, the mutual's members are entitled to a share of any liquidation surplus. This model combines the benefits of retaining capital in the company in the going-concern phase with an ownership element in the case of liquidation. Also on this issue, AMICE would welcome the opportunity of providing the Hungarian authorities with more information.