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Democracy and Social and Solidarity Economy (SSE) : the example of mutual health insurance in France

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Working Paper

**Democracy and Social and Solidarity Economy (SSE) -
The example of mutual health insurance in France**

Yannick LUCAS

CIRIEC No. 2023/03

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Democracy and Social and Solidarity Economy (SSE) - The example of mutual health insurance in France^{*}

Yannick Lucas^{**}

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Abstract

Democratic governance is a constitutive element of a large part of social economy enterprises¹.

In France, the first mutuals, in the modern sense of the term, appeared in the early 19th century. Bringing together free and equal citizens sharing a collective identity and wishing to break away from charitable practices based on unequal conditions, mutuals immediately adopted democratic principles². The statutes provide for the compulsory participation of members in the general assembly during which important decisions concerning the management of the mutual are taken³.

The specific features of democratic practice within mutuals will evolve over time.

In the first legally recognised mutuals, the President was appointed by the public authorities to prevent mutual benefit societies from being used as a front for trade union and political activities in a context where trade unions and political parties were prohibited. Democratic practice was then limited to management decisions.

¹ Eric Bidet (2019), *L'économie sociale et solidaire en France, un secteur en expansion*, Paris, Informations Sociales, 2019/1 (n°199), p. 10-13.

² Jean-Louis Laville (2013), *Economie sociale et solidaire, capitalisme et changement démocratique*, in *Théorie générale de l'économie sociale et solidaire*, Bruxelles, Larcier, 2013, p. 24 et s.

³ Voir par exemple les « Statuts de la Société de Secours Mutuels des Ouvriers Tourneurs en bois et refendeurs de la Ville et des Faubourgs de Paris » dans Rémi Gossez (1984), « Un ouvrier en 1820 manuscrit inédit de Jacques Étienne Bédé » Presse Universitaires de France 1984 p. 174 et 175.

With the development of political freedoms, this control was to diminish and eventually disappear, but another form of limitation of democracy was to appear with the supervision of the guarantees offered by the mutual societies. At the same time, the increase in the size of mutuals and in the number of their members limits the possibilities of direct participation of members in management decisions. Democratic practice is evolving towards a representative democracy in which democratic procedures are essentially used to appoint leaders⁴. The democratic exercise is then situated at another level within the governance bodies.

These developments, combined with an increase in the consumerist practices of members, mean that mutuals, like other organisations, are suffering from a "democratic crisis⁵" which they are trying to resolve by recreating spaces for exchange and meeting with their members.

Keywords: Governance, Democracy, Mutuals, Social Economy, History

JEL Codes: I13, L31

⁴ Bernard Manin (2007), *Principes du gouvernement représentatif*, Paris, Flammarion, 2007.

⁵ Thomas Branthôme (2020), *Crise dans la démocratie ou crise pour la démocratie ?*, The Conversation, 20 novembre 2020.

"Democracy consists of assembling to decide together and on an equal footing on common affairs"⁶, this is a constitutive element of a large proportion of companies in the social economy⁷.

In this respect, the social economy *"seeks to define new rules that will enable the economy and business to function more effectively, in a way that respects the same values as civil and political society, i.e. democratic values"*⁸.

Some social economy organizations, however, do not have democratic governance. This is the case with Foundations, which do not have a general meeting, and whose members of the board are appointed, under French law, by the founders and possibly, depending on the legal status chosen, by the public authorities⁹. However, this remains the exception rather than the rule, and democratic governance is one of the elements traditionally used to define social economy organizations.

In France, as far as mutuals are concerned, and more specifically health mutuals to which we will limit the scope of our study, democratic governance is considered a fundamental characteristic enshrined in law: *"[Mutuals] set up a democratic governance system, determined by the statutes, providing for the participation of members"*¹⁰.

Traditionally, this democratic governance has two dimensions: firstly, each member is called upon to participate in management decisions, even if, as we shall see, this is often indirect; secondly, each member is also likely to exercise the highest responsibilities in the governance of the mutual by becoming a member of the board of directors, or even president of the mutual.

According to Jean Leca's definition, *"democracy is the procedure, in its representative version, by which the governed govern, designate and sanction the governors"*¹¹. However, as Maurice Duverger points out, *"democracy is*

⁶ Alain Supiot and Thibault Le Texier (2018), *De la citoyenneté économique*, in *Esprit*, N° 442, p. 56.

⁷ Eric Bidet (2019), *L'économie sociale et solidaire en France, un secteur en expansion*, Paris, Informations Sociales, 2019/1 (n°199), pp. 10-13.

⁸ Jean François Draperi (2013), *Economie sociale, économie solidaire, entrepreneuriat social des projets politiques et économiques différents*, in *Vers une théorie de l'économie sociale et solidaire*, edited by David Hiez and Eric Lavillunière, Bruxelles, Larcier, p. 57-58.

⁹ See in particular the standard statutes for foundations recognized as being of public interest, Conseil d'Etat, Section de l'intérieur, opinion no. 40057 of April 28, 2020.

¹⁰ Code de la Mutualité (French Mutual Code), art. L110-1 al. 3.

¹¹ Jean Leca (2004), *Quand la démocratie et le libéralisme ne font pas sens*, in *Le Jihad au quotidien*, Bernard Rougier, Paris, PUF.

*both a technique and an ethic, a form of government and a system of values*¹²". Going even further, the guide "*La gouvernance démocratique dans l'ESS*"¹³ emphasized that democratic values called for formalized rules, but also "*practices reflecting these values which, taken as a whole, form a culture: interactions between members, meeting methods, circulation of information, etc.*"

The concept of democracy must therefore be seen in the light of these two dimensions, if we are to study how it has been implemented within mutuals. Over and above procedures, we need to check whether values are respected.

1. A democratic requirement rooted in the history of mutuals

The first mutuals, in the modern sense of the term, developed in France in the early 19th century. It was at this time that the first autonomous organizations appeared, designed to enable their members to cope with the vagaries of life.

Under the old regime, this type of assistance was generally an ancillary activity of professional organizations.

From the outset, mutuals have embraced democratic principles¹⁴. As such, they are part of "*popular public spaces*" in which "*democratic solidarity is approached as a voluntary reciprocity uniting citizens who are free and equal under the law, in contrast to charity and philanthropy, which are based on unequal conditions*"¹⁵.

The mutual governance model is inherently egalitarian. In a mutual, members are also policyholders and insurers. This is a self-management logic that can only function on an egalitarian basis.

These democratic principles are not a novelty, as other organizations were already operating according to this principle. The democratic functioning of mutuals is directly inherited from the professional solidarity of the Ancien Régime. In these organizations, decisions are traditionally taken by

¹² Maurice Duverger (1983), *Nécessité de la démocratie*, in *Rivista di Studi Politici Internazionali*, Vol 50, N°4 (200), p. 513-522.

¹³ Démocratie ouverte (2021), *Democratic governance in the SSE*, p. 7.

¹⁴ Jean-Louis Laville (2013), *Economie sociale et solidaire, capitalisme et changement démocratique*, in *Théorie générale de l'économie sociale et solidaire*, Bruxelles, Larcier, 2013, p. 24.

¹⁵ Éric Dacheux and Jean-Louis Laville (2003), *Penser les interactions entre le politique et l'économique*, In Hermès, La Revue 2003/2 (n° 36), Editions CNRS, pages 9 to 17.

all members at a general meeting. Likewise, it is the members who appoint the directors.

This mode of operation, which materializes the equality of conditions of the members of the corporation, is itself directly derived from the practice of the first religious communities¹⁶.

Examples include guilds, whose "*organization, like their composition, was very democratic*"¹⁷, and guilds.¹⁸

The links between these professional organizations and mutual benefit societies are recognized: "*The forms of organization that the world of work has adopted since the Middle Ages formed the roots of mutual benefit societies.*"¹⁹

Civil and commercial companies, whose governance was based on a general meeting attended by all partners, also obeyed a form of democratic governance. However, the democratic operation of these companies was not necessarily the rule, since, as Georges Ripert points out²⁰, the law left the partners free to organize the company's governance. What's more, it was generally not egalitarian, since each partner had a number of votes proportional to his or her contribution.

In 1792, a Parisian physician, J. Marsillac, drew up the articles of association for "*civic societies*"²¹, which were in every respect the ancestors of modern mutual societies, since they were intended to provide "*artisans with physical and moral assistance in the event of illness or human affliction*".

Article XIV of these bylaws stipulates that there will be an annual "*General Meeting at which the Treasurer will render his accounts, and all officers will be re-elected...*". Attendance at the AGM is compulsory, under penalty of fine.

¹⁶ On this point, see Pierre Rosanvallon (2010), *La légitimité démocratique*, Paris, Points Essais, p. 40 and 41.

¹⁷ Etienne Saint Martin de Léon (1922), *Histoire des corporations de métiers*, Paris Librairie Felix Lacan, p. 50 see also in this same work the description of the governance of guilds (pp. 120-126).

¹⁸ Etienne Saint Martin de Léon (1922), *Histoire des corporations de métiers*, Paris Librairie Felix Lacan, p. 120-126.

¹⁹ Michel Dreyfus (2001), *Liberté, égalité. Mutualisme et Syndicalisme (1852-1967)*, Ivry-sur-Seine, Editions de l'Atelier, p. 118.

²⁰ Georges Ripert (1940), *La loi de la majorité dans le droit privé*, in *Mélanges juridiques dédiés à M. le Professeur Sugiyama*, Sirey, 1940, p. 352.

²¹ Jean Bennet (1975), *Des statuts types en... 1792*, in "*La Mutualité française à travers 7 siècles d'histoire*", CIEM Paris, pp. 83-91.

Beyond this general meeting, members are invited to meet once a week, and "*no expenditure shall be deemed valid unless decided by a majority of the members*" (art. VIII).

The Members' Meeting also has the power to amend the by-laws, but to avoid any untimely decisions, an amendment must be approved at four different meetings by a majority of votes (art. LII).

This "*civic society*" never saw the light of day, but the principles of governance laid down by J. Marcillac were to be found in the statutes of the mutual societies that were to develop again from 1800 onwards.

In all mutuals, the articles of association provide for regular general meetings at which important management decisions are taken. In some mutuals, the general meeting also decides on membership applications (Jean Bennet p. 118).

Attendance at the Annual General Meeting is compulsory, and failure to attend is punishable by a fine²².

Discussions within these societies must undoubtedly have been lively, as provision was generally made either for "*commissaires d'ordre*" to enforce discipline during assemblies (Jean Bennet p. 105), or for fines to be imposed on members who "*curse their brother, swear, play games of any kind, break (sic) silence...*" (Jean Bennet p. 86) or "*show up in a room inebriated*" (Jean Bennet p. 121). (John Bennet p. 86) or "*appear in a room inebriated*" (John Bennet p. 121 - see also other examples on the following pages).

2. Interactions between mutuals and democracy

The relationship between mutuals and democracy is multifaceted.

Mutuals are players in democratic life. As a social movement dedicated to the emancipation of citizens who take their destiny into their own hands, independently of the state, in order to cope with the hazards of life, mutuals are players in the democratic life of the country.

²² See, for example, the "*Statuts de la Société de Secours Mutuels des Ouvriers Tourneurs en bois et refendeurs de la Ville et des Faubourgs de Paris*" in Rémi Gossez (1984), *Un ouvrier en 1820 manuscrit inédit de Jacques Étienne Bédé*, Presse Universitaires de France 1984 p. 174 and 175 or the statutes of the 5^{ème} bureau de bienfaisance known as "Sainte Anne" in Grenoble in Jean Bennet (1975), *La Mutualité française à travers 7 siècles d'histoire*, CIEM Paris, p. 83 to 91.

Like other organizations in the social economy, mutuals "*contribute to social and political democracy by encouraging everyone to participate in the life of the city*"²³.

What's more, the social economy, insofar as it prioritizes the general interest over the profit motive, can also be seen by some as a "*democratic element*".

Mutuals are also agents of democracy, in that they implement democratic principles internally.

Finally, as players in public life, mutuals are also the objects of democratic life, since the internal operating procedures of mutuals are impacted by the political environment. As a result, the specific features of democratic practice within mutuals will evolve over time and in line with their political environment.

The links between democracy in solidarity organizations and democracy in the city are not new. In the Middle Ages, for example, "*the corporation was intimately linked to municipal freedoms, of which it was both the emanation and the reflection*"²⁴.

In modern times, mutual members are both insurers and policyholders, just as in the political arena, citizens are both governors and governed.

However, we need to be aware of the limits of the analogy between the political sphere and the corporate world, even in the social economy. As Alain Supiot points out at²⁵, this is partly due to the monofunctional nature of business, and partly to the permanent nature of the State. As a result, political concepts cannot be fully transposed to the corporate world.

Over time, mutuals have adapted to changes in their political environment.

After the French Revolution, the Le Chapelier law of June 14, 1791, in keeping with the "*liberal*" vision of the revolutionaries, rejected any form of intermediation between the people and the rulers: "*no constituted body shall come between the citizens and their representatives charged with making the law*".

These principles were reinforced in 1820 by the law on associations. This law, to which mutuals were subject, limited associations to a maximum of 20 people.

²³ Damien Rousselière (2004), *Problèmes et pratiques de la démocratie économique*, Quatrièmes rencontres Interuniversitaires d'Economie Sociale et Solidaire, CNAM, 14 avril 2004.

²⁴ Etienne Saint Martin de Léon (1922), *Histoire des corporations de métiers*, Paris Librairie Felix Lacan, p. 64.

²⁵ Alain Supiot and Thibault Le Texier (2018), *De la citoyenneté économique*, in *Esprit*, N° 442, pp. 53-54.

Some mutuals respected this constraint, with all the organizational difficulties we can imagine, while others went underground, tolerated by the public authorities.

The revolution of February 1848 and the establishment of the Second Republic ushered in a brief period of improved civil liberties, with the introduction of universal suffrage²⁶. A few months later, the election of Louis Napoléon Bonaparte to the presidency marked the return of an authoritarian government.

Nevertheless, in 1850, the first law on "sociétés de secours mutuels" (mutual aid societies) marked a turning point in mutualist history. In keeping with the spirit of the times, members had the right to appoint their own leaders: "*The presidents and vice-presidents are appointed by the association in accordance with the rules laid down in the company's articles of association.*"²⁷

The end of the Republic and the restoration of the Empire reinforced the authoritarian nature of power. For mutuals, this meant a return to public control. Henceforth, "*the president of each company will be appointed by the President of the Republic*"²⁸. The control of mutuals took place in a context where trade unions and political parties were banned, to prevent mutual benefit societies from being used as a front for trade union and political activities. The practice of democracy within mutual societies was therefore limited to the appointment of board members and management decisions.

With the development of political freedoms, this control diminished, and democracy within mutuals followed the same trends as democracy in public life. Thus, on October 27 1870, less than two months after the proclamation of the Republic, the election of the president by the general meeting of member-policyholders was authorized²⁹. The proximity of the values espoused by political leaders and those of mutuality is such that we speak of a "*republicanization of mutuality*"³⁰.

We are entering a special period when "*there is a perfect congruence between the values of the social economy and those of the republic. The republic translates*

²⁶ Universal suffrage is relative, since it excludes women.

²⁷ Bull. Lois July 20, 1850, n°290, p. 99.

(<https://gallica.bnf.fr/ark:/12148/bpt6k4861258/f130.item>)

²⁸ Bull. Lois 6 avril 1852, n° 514, p. 914.

(<https://gallica.bnf.fr/ark:/12148/bpt6k486128d/f963.item>)

²⁹ André Guelsin (1998), *L'invention de l'économie sociale et solidaire*, Economica, p. 227.

³⁰ Madeleine Rebérioux (2017), *Premières lectures du congrès de 1883. À propos des sociétés de secours mutuels*, in *Pour que vive l'histoire*, Belin, pages 203 to 216.

*democratic values into the political arena, while the social economy translates democratic values into the economy.*³¹"

The Mutual Societies Statute of 1898³² enshrines the principle of free administration and independence of mutual societies: "*Members of the board of directors and officers of mutual aid societies shall be appointed by secret ballot*".

3. Contemporary issues

For a century, the legal regime governing mutuals remained virtually unchanged, despite changes in the political and social context in which they operated. Legislation passed in 1945³³ and 1985³⁴ made no major changes to democratic principles.

It was in the 2000s that profound changes began to take place.

A number of factors were to come into play, profoundly changing the mutualist landscape.

From an economic point of view, the most striking phenomenon is the concentration and consequent reduction in the number of mutual insurers³⁵.

The development of group contracts offered in companies and the evolution of techniques have led to a phenomenon of consolidation, confirming the "inescapable³⁶ nature of the process", whereas it was thought that mutuals, because of their "a-capitalist" nature, could be preserved.

³¹ Jean François Draperi (2013), op. cit., p. 73.

³² *Loi du 1er avril 1898 relative aux sociétés de secours mutuel*, art. 3.
(<https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000314621>)

³³ *Ordonnance n° 45-2456 du 19 octobre 1945 portant statut de la mutualité*.
(<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000699044/>)

³⁴ *Décret n° 55-1070 du 5 août 1955 portant codification des textes législatifs concernant la mutualité*.
([https://www.legifrance.gouv.fr/download/securePrint?token=\\$Gz2bdWR6xizULr9TYft](https://www.legifrance.gouv.fr/download/securePrint?token=$Gz2bdWR6xizULr9TYft))

³⁵ On the phenomenon of concentration in mutual health insurance companies, see Marc Leclère (2020), *Taille et stratégies des mutuelles face aux mutations de l'assurance santé complémentaire en France*, Dissertation for the Master 2 professional degree in AES, specializing in Mutuality, Insurance and Provident Management, Université Paris Panthéon Sorbonne.

³⁶ Gérard Farjat (1982), *Droit économique*, PUF, p. 148.

The development of group contracts enabling companies to offer their employees a compulsory supplementary insurance contract has created a new market to which mutual insurers were not adapted.

Composed of individual members recruited on a professional or geographical basis, mutuals were often unable to offer services tailored to the needs of companies.

On the one hand, this concerned sales methods, with the need to create networks of sales representatives able to go out and canvass companies, whereas mutual employees were generally trained to receive customers in sales agencies. On the other hand, it concerned the need to offer services to all company employees, regardless of where they lived. The geographical limits inherited from the 19th century were suddenly becoming too narrow.

From a technical point of view, the development of computerized management methods required substantial investment in new software. At the same time, the development of competition rendered obsolete traditional communication methods based on personal relationships and proximity actions. Access to advertising, particularly in the audiovisual media, also required investments that the smallest mutuals could not afford.

This phenomenon is set to accelerate with the amendment of the Mutual Code in 2001³⁷ to transpose European insurance directives into the Mutual Code.

In order to better protect policyholders, the new regulations require large reserves that exceed the capacity of smaller mutuals, which are then forced to join larger mutuals with larger reserves.

The number of mutual insurance companies has been divided by 5 in 20 years, from 1,528 in 2001 to 388 in 2021³⁸.

At the same time, the public authorities were showing increasing interest in the complementary health insurance activity of mutual insurers. Rising healthcare costs, and the concentration of compulsory health insurance reimbursements on hospitalization and long-term conditions, made AMC a key element in access to healthcare, and in particular access to primary care, the cost of which was rising all the time.

³⁷ Ordonnance no 2001-350 du 19 avril 2001 relative au code de la mutualité et transposant les directives 92/49/ CEE et 92/96/ CEE du Conseil des 18 juin et 10 novembre 1992. (<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000580325>)

³⁸ DREES (2022), *Rapport 2022 sur la situation financière des organismes complémentaires assurant une couverture santé*, p. 10.

Membership of a mutuelle, or more generally the subscription to complementary health insurance, has gradually evolved from an optional "complementary" insurance to an essential insurance for access to healthcare.

Since then, a dual movement has developed:

Firstly, there has been increasing regulation of the supplementary health insurance business, with the definition of "baskets of care" common to all organizations, and several attempts to control rates.

One of the major prerogatives of the general meeting of mutuals, namely the definition of guarantees, is now strongly regulated by public law.

In addition, the phenomenon of concentration and the development of group contracts have multiplied the number of contracts offered by mutual insurers. This number can reach several hundred for the largest mutuals.

In this context, it becomes materially impossible to set membership fees at the Annual General Meeting.

This is in addition to another practical problem. Mutuals are obliged to hold their general meetings during the 1st half-year of the following year. It is then too early to set premiums for the following year. This meant that a second general meeting had to be held at the end of the year just to set premiums, which could prove very costly. In 1985³⁹, the General Meeting was authorized to delegate the power to set membership fees to the Board of Directors. This practice quickly became widespread.

In the case of group contracts, since 2014, the power to set premiums has even been directly entrusted to the Board of Directors⁴⁰ with the option for the latter to delegate this power to the Chairman of the Board of Directors or to the effective manager of the mutual.

Two major aspects of the mutual's policy, namely the setting of contributions and benefits, were therefore not decided by the General Meeting.

At the same time, compliance with the Solvency 2 directives has created new obligations, with the need to adopt a number of highly technical reports for the mutual's various governing bodies.

Concentration has also had a major impact on the way general meetings are held. While local mutuals have traditionally held general meetings for all their members, this has become impossible as mutuals have grown in size. All

³⁹ Code de la mutualité, Art. L125-2, version as of January 25, 1985.

⁴⁰ Code de la mutualité, Art. L114-17 of the Mutual Code amended by art. 53 of Law no. 2014-856 of July 31, 2014 on the social and solidarity economy (<https://www.legifrance.gouv.fr/jorf/id/JORFARTI000029313391>).

the more so as the rules governing quorum and majority require a minimum number of participants to enable the general meeting to deliberate validly, particularly for the most important decisions.

The creation of a general meeting of delegates, previously the preserve of the largest mutuals, and in particular civil servant mutuals, has now become the norm.

On the other hand, public authorities have tended to view mutuals as benefiting from a "rent economy", based on their low membership turnover. Where mutualists see a need for lifelong solidarity mechanisms, public authorities see a lack of competitive dynamism. We'll see later what impact this can have on member involvement in the democratic life of the mutual.

In recent years, mutuals have been the target of what has been called "*mutual bashing*"⁴¹ but their compliance with democratic rules has rarely been criticized. This may mean that mutual critics have not identified any major problems, or that the subject appears to be so secondary that it does not merit any particular attention.

One element of this democratic crisis is the issue of representativeness.

Unlike in political life, the problem is not the percentage of votes cast in elections, but the number of participants. Candidates for the various mutual elections often score very comfortably, if not unanimously, but participation rates are often very low. These data are not public, but rarely do they exceed 20% of members⁴².

Pierre Rosanvallon⁴³ considers the principle of "*the part being valid for the whole*" to be one of the presuppositions on which democratic legitimacy is based (the second being "*the electoral moment being valid for the duration of the mandate*"). However, the quantitative gap between "*the part*" and "*the whole*" must not be too great.

⁴¹ A term used in particular by the Fédération des Mutuelles de France (FMF) in an article published on February 21, 2022: *Attacking mutual solidarity means attacking national solidarity*. <https://www.placedelasante.fr/attaquer-la-solidarite-mutualiste-cest-attaquer-la-solidarite-nationale/>

⁴² CESE (2021), *Renforcement de la participation aux élections des instances à gouvernance démocratique*, CESE Opinion, p. 26.

⁴³ Pierre Rosanvallon (2008), *Histoire moderne et contemporaine du politique*, Annuaire du Collège de France 2007-2008, p. 459-468.

The second problem of representativeness concerns the "*lack of social inclusiveness of representative institutions*"⁴⁴, in other words, the fact that elected representatives do not represent the diversity of their constituents in terms of gender, social category or origin. Mutuals are also affected by this phenomenon. Boards of directors have traditionally been over-represented by men over 50, with virtually no young people or people from immigrant backgrounds.

In addition to the proactive policies pursued by mutuals to change the composition of their boards of directors, the law has imposed more equal representation.

The order of July 31, 2015⁴⁵ thus stipulates that "*the bylaws provide for the conditions under which its members are elected in order to guarantee within the board of directors a minimum share of seats for people of each gender at least equal to 40%.*"

A study published by Mutualité Française in January 2022 and covering the year 2021⁴⁶ shows an increase in the percentage of women on boards of directors, from 23% in 2015 to 31% in 2021. However, this increase still falls short of the legal requirement (40%), let alone true parity.

What's more, when it comes to positions of responsibility within governance, women represent only 16% of mutual presidents and 22% of treasurers, and these rates are showing little change. The situation is better for general secretaries (41%), but this still falls short of parity.

As Jean-Pierre Davant, former President of the Mutualité Française, reminds us, the issue of women's place in mutual societies is a long-standing one: "*For too long, mutuality was a men's business: mutual aid societies accepted women only at the cost of great difficulty. They excluded them on the fallacious grounds*

⁴⁴ Laura Morales and Claire Vincent-Mory (2022), *Comprendre les écarts de représentation visible dans les parlements démocratiques*, Entretien, Notes et Analyses du LIEPP, Sciences-Po Paris.

<https://www.sciencespo.fr/liepp/fr/content/comprendre-les-ecarts-de-representation-visible-dans-les-parlements-democratiques.html#top>

⁴⁵ Ordinance no. 2015-950 of July 31, 2015 on equal access for women and men to the boards of directors of mutual insurance companies,

<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030960089>

⁴⁶ Mutualité Française (2022), *Etude sur le taux de féminisation des instances mutualistes à fin 2021*, Unpublished document.

*that they would have entailed too heavy a financial burden"*⁴⁷. Beyond the possibility of joining a mutual, access to administrative functions was even more delayed: *"it was not until the early 1980s that a greater number of women began to exercise responsibilities"*.⁴⁸

We note that while parity has improved on boards of directors, it is more difficult to achieve at management level (board members and chairmen).

Many mutuals, particularly the larger ones, have taken up this issue and have been proactive on the subject of parity, often with convincing results. However, little progress has been made in representing young people or people from immigrant backgrounds.

The combination of these factors will have a major impact on the democratic dimension of mutuals.

Firstly, as a player in democratic life. The decrease in the number of mutuals automatically reduces the number of the most involved militants, i.e. the directors. If we consider that a mutual has an average of 25 directors, the number of directors is generally 25, down from 38,000 to less than 8,000, and all the more so as the number of directors within each mutual tends to shrink. This means that there are fewer *"local solidarity activists"* (⁴⁹) on the ground, representing mutuality in all civil society initiatives.

This decline contributes to the weakening of democracy in society.

As an effector of democracy, the impact is also important.

In the space of one or two generations, mutualist members who used to take an active part in all management decisions at the General Meeting, and directly elected directors, are now only occasionally called upon to participate in the appointment of delegates to the General Meeting.

For Maurice Duverger, *"democracy consists above all in the power of the electorate to choose the actual head of government, and to remove him or her if necessary at the end of the term"*⁵⁰. Transposed to the mutualist field, this would mean that members should be able to choose the President. This is often no longer the case.

⁴⁷ Michel Dreyfus (2006), *Les femmes en Mutualité : plus de deux siècles de combat*, Editions Pascal Paris, preface by Jean-Pierre Davant.

⁴⁸ Ibid.

⁴⁹ Expression taken from the Mutualité Française 2017 activity report p. 29.

⁵⁰ Maurice Duverger (1996), "Les monarchies républicaines", *Pouvoirs* n°78 - Les monarchies - septembre 1996 - p. 107-120.

Members are often unfamiliar with how delegates are elected. The mechanisms for appointing officers are often complex, involving several levels or procedures that do not encourage candidacy. In the case of a list election, for example, it is difficult to put together a list when there is no place for members to meet.

As a result, representatives are often appointed by militants in a process more akin to co-optation than election.

What's more, members don't always understand what's at stake in the appointment of delegates, as generally there is either no competition with only one list in the field, or the process is carried out without any specific direction in terms of the mutual's management. When "professions de foi" exist⁵¹, they often refer to the general principles of defending "members' interests" or "mutualist values", without being very specific.

However, as Pierre Rosanvallon points out, in the "*classical*" age of democracy, an election was tantamount to an indisputable mandate "*because future policies were included in the terms of the electoral choice, simply by virtue of the fact that the latter was part of a predictable universe structured by disciplined organizations, with well-defined programs and clearly defined cleavages*"⁵². This is rarely the case in mutualist elections, where it is very difficult to see programmatic proposals emerge, partly because the essential decisions - namely contributions and benefits - are largely governed by legal constraints.

Both individual and collective candidacies often refer to generic principles and values that differ little from one candidate to the next. It is therefore very difficult to identify the issues at stake in the election, unless you give the outgoing team a clean bill of health by voting for the candidates they present or support.

Added to this are the regulatory requirements of the Solvency 2 directive. By strengthening the powers of the Board of Directors, we have bureaucratized the way it operates, with a large proportion of meetings devoted to examining highly technical and unattractive documents, which may put some people off.

⁵¹ On this subject, see the complaints made by the members of a large mutual who had to choose between different candidates for the position of delegate, without the candidates presenting a profession of faith (https://mgenetvous.mgen.fr/questions/2865311-profession-foi-elections-2022#answer_7420629).

⁵² Pierre Rosanvallon (2008), *Histoire moderne et contemporaine du politique*, Annuaire du Collège de France 2007-2008, pp. 459-468.

This is accentuated by the demands of regulators who have established the "fit and proper" rule, i.e. they require directors to have the technical skills necessary to understand management decisions.

Pushed to the extreme, this rule could have transformed the Board of Directors into an assembly of experts from which a large proportion of members would have been excluded.

Fortunately, discussions with the supervisory authorities when the directives were being transposed led to a relaxation of these principles.

First of all, the competence of directors can be assessed collectively. There is no need for all directors to master all the technical aspects of running a mutual, as long as these skills are collectively present on the Board of Directors.

In addition, it was accepted that competence could be acquired through training and experience, thus opening up the position of director to all members and not just technicians.

The four-eyes rule is also at the heart of democratic issues.

The four-eyes rule is designed to ensure that all important management decisions are validated by at least two people. Under the French Mutual Code, one of these two people must be the president of the mutual, which guarantees democratic control of all strategic decisions.

The reactions of the main mutual insurers when the possibility of abolishing this rule was raised showed the attachment of the mutualist world to this rule.

If this were not the case, the entire management of the mutual would be entrusted to non-elected officials, and therefore not directly subject to democratic control.

These demands on directors' skills can also have indirect consequences on democratic functioning. The level of technical expertise required, and the demands of training, mean that for some directors' duties represent a full-time activity. Mechanisms to compensate for loss of salary and compensation have been put in place to take account of this reality⁵³. As a result, for some, the role of director becomes a "profession", which is hardly conducive to the renewal of corporate governance.

Finally, and perhaps even more importantly, there is not always a "democratic desire" on the part of members. Some, especially those with group contracts, do not feel involved in the choice of a social economy operator, and no doubt feel less concerned than individual members by governance issues. This is all

⁵³ Code de la mutualité, Article L114-26.

the truer given that, by a simple decision of their employer, they can change insurer without having to participate in the choice.

More generally, we are witnessing the development of consumerist practices, with mutual members looking for "value for money" without considering getting involved in governance. Pressure from public authorities who, on the pretext of encouraging competition, facilitate nomadism only accentuates this phenomenon.

Similarly, the application of legal mechanisms originally designed for adhesion contracts negates specificity by implementing mechanisms common to all operators.

One example is the obligation to set up a mediation system, which definitively negates the notion of "insurer-policyholder" specific to the mutualist world.

We are therefore faced with a contradictory phenomenon where the French declare that they would like to see more democracy in the operation of⁵⁴ companies but are reluctant to participate in democratic governance when they have the opportunity to do so.

4. A democracy to renovate or reinvent?

These trends, combined with an increase in members' consumerist practices, mean that mutuals, like other organizations, are suffering from a "democratic crisis".⁵⁵

This democratic sluggishness undoubtedly has causes in common with the general democratic crisis: remoteness from decision-making centers, the feeling that voting is not the way to change politics...

We could partly transpose Gil Delannoi's analysis of modern democratic regimes: *"From an ancient point of view, modern democratic regimes are oligarchies with*

⁵⁴ Nearly 90% of French people questioned in a survey believe that it would be a good thing if a company's employees were involved through the distribution of a share of capital, and were better represented and consulted in decision-making (Harris Interactive poll for Challenges magazine, "Le rapport des français à la démocratie").

⁵⁵ In 2022, 55% of people questioned in a survey considered that democracy was not working well in France (Sondage Harris Interactive, *Le cœur des Français 2022*), poll carried out for Challenges magazine.

*democratic legitimacy based on an egalitarian culture accompanied by a policy decided by elected elites and implemented by technical elites.*⁵⁶

We find this formulation in almost identical terms in a report on mutual insurance companies⁵⁷ which, although their activities differ from those of mutual health insurers, share common principles: "*The fact that mutuals operate in a sector as complex and regulated as insurance means that operational management is delegated to a veritable technostructure, with the cohabitation of two poles of responsibility: the political (embodied by member-policyholders) and the technical (entrusted to employees)*".

Does this mean that democratic life has disappeared from mutuals? Not at all, for a number of reasons.

First of all, the democratic debate has shifted.

While it's true that the mechanisms for electing delegates to the Annual General Meeting and even members of the Board of Directors are closer to a form of co-optation, democratic life today takes place within the company's governing bodies, particularly the Board of Directors. It is here that the main management decisions and strategic issues are discussed, and debates are often heated.

Unexpected changes in governance, usually in the form of the dismissal of the Chairman, or the rivalries that emerge when a new Chairman is elected, bear witness to power relations and the formation of majorities and minorities, and thus to real democratic life.

If we were to risk an analogy, we could consider that, for members, we have moved from a form of direct democracy devoted essentially to management decisions to a representative democracy⁵⁸ focused on the appointment of managers.

What's more, mutual managers, and board members in particular, are aware of the inadequacies of their democratic legitimacy, and so implement what Pierre Rosanvallon calls "*generalization operations*"⁵⁹, in particular by practicing a "*generality of attention to particularity*" to try and take into account the opinions of members who are not directly represented on the boards.

⁵⁶ Gil Delannoi (2010), *L'origine grecque de la démocratie*, in *La Démocratie, histoire, théories pratiques*, Editions sciences humaines.

⁵⁷ GEMA (2004), *La démocratie, principe de gouvernement des mutuelles du GEMA*, Rapport du GEMA établi sous la direction de M. Gérard ANDRECK, directeur général de la MACIF - octobre 2004.

⁵⁸ Bernard Manin (2007), *Principes du gouvernement représentatif*, Paris, Flammarion, 2007.

⁵⁹ Pierre Rosanvallon (2008), op. cit.

Mutuals are also aware of these difficulties, and of the need to encourage members to become more involved in the democratic running of their mutuals.

This means making participation in electoral processes more accessible, for example through awareness-raising meetings or information campaigns in mutual publications and social networks.

This democratic renewal is also part of a reappropriation of our relationship with our local communities.

The territorial fabric of mutuals has been greatly affected by grouping phenomena, causing the smallest mutuals to lose their direct relationships with members.

In this context, the search for territorial roots can help to renew the link between mutuals and their local communities, and to recreate a space for expression and democratic debate at territorial level⁶⁰. Mutuals have therefore set up territorial bodies outside the strictly statutory framework, whose name and geographical scope will vary from one mutual to another.

No longer able to participate in the general governance of the mutual, militants are generally involved in the management of local projects, generally in the form of grants or prizes that mobilize them for concrete projects close to home. Another example is the decentralization of social action schemes, which enable local committees to grant assistance to members facing difficulties in paying their membership fees or meeting unexpected medical expenses.

Even if these exchanges have only an indirect impact on the governance of mutuals, and are all too often confined to information sessions during which the decisions taken by governance are presented and little discussed, if they are taken into consideration they can help create a democratic renewal, notably by raising awareness among new mutualist "activists".

Another way of "recruiting" mutualist activists is to offer short-term commitments that are more likely to interest young people than a long-term commitment to the governance of a mutual. This approach is still in its infancy, but initiatives are multiplying⁶¹.

⁶⁰ See in particular the recommendations along these lines in the *Guide de gouvernance des coopératives et des mutuelles* published by the Institut Français des Administrateurs (IFA) in 2013 (p. 11).

⁶¹ For example, Harmonie Mutuelle offers its volunteers the chance to lend a "helping hand", <https://www.essentiel-sante-magazine.fr/mutuelle/harmonie-mutuelle-en-regions/bourgogne-franche-comte/article/sinvestir-pour-sa-mutuelle-cest-possible>

Another perceptible phenomenon is the shift in the mutual's focus from self-management to social responsibility.

Democracy is no longer conceived solely as the management of mutuals by their members, but rather as the inclusion of stakeholders in the management of mutuals, including those who are largely absent from "classic" democratic governance, i.e. employees and organizations present in the mutual ecosystem.

The work carried out by mutuals that have chosen to adopt a *raison d'être* has been hailed internally and externally as a successful democratic exercise, with strong member participation and interest from other stakeholders.

The challenge now is to maintain the momentum created on this occasion over the long term. The "raison d'être committee" seems insufficient to take on this mission, as it is made up of a very limited number of people, often chosen for their expertise rather than their representativeness of the membership.

The "*democratic crisis*" facing mutuals is multi-factorial, and the responses to this crisis must therefore be multiple, bearing in mind, beyond statutory procedures and rules, the very essence of democratic governance, i.e. the desire to prioritize the collective interests of members above all other considerations, by actively involving members in management decisions.

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