

Prof. ANTONIO FICI, *A European statute for social and solidarity-based enterprise*, Policy Department for Citizens' Rights and Constitutional Affairs, 2017

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The document purpose is to explain why the existence of a legal framework dedicated to social enterprises (SE) is essential for their development at European level. Thus, this research analyses and rearranges the SE types from European Union within an exhaustive set of typologies, presenting their advantages and disadvantages, by comparison method. The document is structured in five main chapters, as follows:

The chapter "*The Fundamental Role of the Law on Social Enterprise*" presents the advantages of specific legislation existence. Lacking the clear norms, an organisation aspiring to be like SE may be exposed further to arbitrary decision of those who control it (i.e. the statute modification and altering the social mission) or, in an unfair competition context, it cannot benefit exclusively of using the social label right. An additional argument is offered by the permeation of specific regulation, providing enough evidence related to how the legislation helps the social entrepreneurs.

The prime reason for creating the suitable forms for new emerged organisation models is protecting one of the functions or objectives (i.e. profit non-distribution constraint), conducting further to a precise identity and saving the main features. Also, securing the members and founders' interests is a precondition for good existence of these organisations, but it needs an exact legal definition. The distinct identity benefits shall be a consistent treatment related to fiscal legislation, public procurement or competition law, specific public policies, setting a clear boundary to other concepts or categories, avoiding false SE operation and raising the sector visibility by collecting accurate statistical data.

The chapter "*Models of Social Enterprise Regulation and the Legal Nature of a Social Enterprise*" introduces the main criteria of legal classification:

a) The Social Enterprise as a legal form of incorporation, namely the community interest companies (United Kingdom) or social solidarity cooperatives (Italy);

The social cooperative (the Italian model) has the "aim to pursue the general interest of the community in the human promotion and social integration of citizens" either through providing socio-health or educational services (type A cooperatives) or through economic activities involving the employment of disadvantaged people (type B cooperatives).

The social enterprise took the cooperative structure, due to social function recognition and public support, allowing the match between cooperative's social relevance as organisational form and general interest objectives' social relevance of social enterprise.

The community interest company (the British model) is a particular type of entity which follows the community benefit instead of maximizing the shares value, even if it is a capital – oriented organisation and lead by shareholders. This type has a weaker identity as SE and involves risk if the control is held by a single member and if the ownership is not clearly statutory set.

b) The social enterprise as a social actor category, qualifying for a legal status (but it can be disqualified), upon recognition of accomplishment of requirements set – no matter the legal form (company, cooperative, association etc.)

The author marks down that the second option brings more advantages, further detailed, which entails the rise of its propagation (the most recent national laws are set on this pattern, including Romania) and even shifting from the first model to the second one. Between main advantages displayed, we retain:

- It allows any existing organisation to become SE, without reorganisation or re-establishment;
- Losing the SE status does not cause the modification or the dissolution of the legal person;
- It allows to use any kind of organisation for the activities' business efficiency – capital-based or employment-based, but also depending on different factors as founders situation, cultural or historical heritage;
- The common status creates a common identity for the whole SE diversity;
- Meeting the requirements for this kind of category is easier than incorporation process;
- It settles the dilemma between the company model and the cooperative model, and the associations and foundations may enjoy the own nature advantage.

The chapter “*The Legal Identity of a Social Enterprise and the Main Related Issues of Regulation*” draws some sector’s specific features.

Firstly, the legal person must be private and not controlled by the public entities. But even if the individuals cannot fit within this concept, there are cases where an entrepreneur or a unique owner may obtain the SE status, because the national legislation does not interdict explicitly.

Secondly, the purpose of the general or community interest by the SE makes the difference against the companies or cooperatives, because the “institutional purpose” limits the decisions and the discretionary power, in behalf of social mission.

Also, the non-distribution constraint and profit allocation is explained as a protecting tool of institutional mission, including avoiding the payment of unjustified remunerations (compared to market levels) to the employees or managers through “indirect profit distribution”. However, the author comes into notice about the controversy between total ban of profit distribution that can maximize the community interest and the partial distribution that can attract more investors.

The social utility of the entrepreneurial work is demonstrated by the social enterprise performance, in any of those two models: both as work insertion social enterprise for persons from vulnerable groups (WISE), and under other organisational forms undertaking any kind of useful activity from social point of view.

Further, there are presented the governance requirements stated by existing laws, like the duty to issue an expository report regarding the benefit brought to the community throughout the activities performed and use of organisation resources and profit, whose purpose is to exhibit the varied involvement within the society and constantly supervising the social impact.

Not least, the author emphasizes that the efficiency of the law depends on the coercion mechanisms, in this case, the right of using the SE label shall be allowed only to those observing the provisions in force. Furthermore, according to the national authorities’ structure and competencies, a public control may occur both before registration / certification but throughout the existence of organisations, and the penalties may be form fines to revocation of the certification or entity dissolution.

The chapter “*Defining the Boundaries between Social Enterprise and Other Concepts*” presents another argument in favour of *ad-hoc* legislation, setting clearer boundaries against adjacent concepts: social economy, third sector, corporate social responsibility (CSR), because the confusion may endanger the sector development. Regarding CSR, the author underlines here that this kind of organisations only *integrate* social features within the business model, “*on a voluntary basis*”, which does not mean they shall be considered as social enterprises, even if this can generate benefits for community.

The chapter “*Recommendations about Possible EU Legislative Initiatives on Social Enterprise*” concludes this study, pleading for the harmonising of this framework at European level, through an EU legal statute, whose goal will be the adequate treatment in the field of public procurement, tax and competition legislation for SE.

Recalling the previous experience of EU harmonising process for private companies legislation, the author foresees as obstacles the lack of specific legislation in some Member States (and where the

law exists, it regulates either the incorporating model, or the statute model) or only the insertion enterprises are recognised, but also the cultural singularities which determine the differences between the national regulations.

As an echo to the EC communication “*the need for ... a possible common European statute for social enterprises*”, a unitary legal status may provide as advantages the facilitation of cross border activities and a better closeness and association of SE.

In the end, we retain the following main **recommendations**:

1. Adopting a legal statute at EU level will enhance the development of SE entities in the EU.
2. The statute should establish the category “European Social Enterprise”, together with the label of “ESE”, regardless of the legal form.
3. The criteria to be fulfilled shall be: private entity organisation, community or general interest purpose, partial or total constraint of profit distribution, valuable activity at social level, issuing a social report, members and stakeholders involvement in management, fair treatment of workers, public control for label protection.

European Parliament, Directorate General for Internal Policies (2017).

A European Statute for Social and Solidarity-Based Enterprise, Brussels.

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