

DELIVERABLE D.T4.1.2 ANALYSIS OF LEGAL FRAMEWORK

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EXECUTIVE SUMMARY

The CE Responsible project's aim is to connect altru-preneurs (i.e. for-profit businesses that also follow social/ecological goals in some ways) and social enterprises and promote meaningful collaboration forms between them.

This analysis provides an insight and a deeper overview of the legal frameworks for social entrepreneurship in countries across the Central Europe Interreg Program area covering: Austria, Croatia, Czech Republic, Germany, Hungary, Italy, Poland, Slovakia, and Slovenia.

The aim of this analysis is to have an overview of the legal frameworks for social enterprises and to investigate the legal implications that facilitate or bottle-neck social entrepreneurship in each of the CE countries. Thanks to the analysis contained in D.T4.1.2. of legal forms, social enterprise status, benefits of legal form and status, tax exemptions and incentives in the CE area, Deliverable D.T4.3.4 will be presenting Legal recommendation for supporting cooperation among social entrepreneurship and altruistic entrepreneurs.

Following up the results from DT4.1.2. recommendations on legal, and tax issues will be prepared to upscale the interest of altruistic entrepreneurs to join the movement supporting social entrepreneurship and social innovation.

WP4 output will finally be a Policy Recommendation that will be proposing tools and measures on how to contribute to the long-term development and sustainability of social entrepreneurship in the future.

METHODOLOGICAL APPROACH

This analysis, like many of the previous analyses conducted in this project, is co-developed by eleven project partners cooperating within the CE Responsible project and implemented within the programme Interreg Central Europe:

1. E-Institute, Institute for comprehensive development solutions
2. Metropolitan City of Bologna IT MCBo
3. Ikosom - Institute for communication and social media DE IKOSOM PP
4. Alma Mater Studiorum University of Bologna
5. BRODOTO HR
6. Slovak Centre of Scientific and Technical Information
7. Centre for Economic and Regional Studies, Hungarian Academy of Sciences
8. Municipality of Kielce/Kielce Technology Park,
9. South Bohemian Agency for Support to Innovative Enterprising
10. University of Applied Sciences Salzburg,
11. Budapest Chamber of Commerce and Industry

All the partners were engaged in a national level research on the legal framework. They have been used as research tools both desk analysis and interviews of their country's stakeholders. The national reports were developed using a common template provided by UNIBO, University of Bologna (annex 1). Project partners were asked to analyse the following topics within their research:

- A National definition of social enterprise
- The specific legislation addressing social entrepreneurship in each country
- Activities and other characteristics (e.g.: the internal democratic governance and decision-making process) that SEs must perform in order to be recognized as SEs.
- The legal forms recognized in every country concerning the social entrepreneurship
- Accessibility and relevance of legislation on social enterprises
- Specific benefits and/or obstacle for the social enterprise legal form and status
- Innovative case studies concerning the legal framework for SE at regional, provincial or local level

Project partners worked on the country analyses from November 2020 to January 2021.

The analysed countries involved in this paper are:

- Austria
- Croatia
- Czech Republic
- Germany
- Hungary
- Italy
- Poland
- Slovakia

SOCIAL ENTERPRISE LEGISLATION AND DEFINITION AT EU AND CENTRAL EU LEVEL

2.1 What is a social enterprise in the EU legislation?

Social enterprises (SE) are subject to ad hoc legislation in an increasing number of EU jurisdictions and legislative initiatives in this field are under consideration by EU institutions. In recent decades, the term “social enterprise” (SE) has been increasingly used to designate a particular type of private organization whose distinguishing features concern the purpose pursued, the activity conducted to pursue this purpose, and the structure of internal governance.

Based on the mapping study conducted by the European Commission¹ the social enterprise definitions that are most widely used across EU Member States (regardless of the ad hoc laws that define social enterprise) are:

- **organisational definitions**, focussing on the intrinsic features that social enterprises show;
- **sector-specific definitions**, looking only at specific types of organisations operating in the field of social inclusion, mainly by facilitating the integration of people excluded from the labour market (“work integration social enterprises”, or WISEs).

The first definition of SE at European level was contained in the European Commission “Social Business Initiative” (SBI) of October 2011, that had subsequently influenced EU legislation.²

The SBI definition incorporates the three key dimensions of a social enterprise that have been developed and refined over the last decade or so through a body of European academic and policy literature. The SBI social enterprise concept was in fact further operationalised and refined during the Mapping Study that the European Commission conducted and published in 2020. This methodological step was very important since it allows the application of a shared definition in all national contexts in a coherent way. Social enterprises may fulfil the three dimensions—entrepreneurial, social and inclusive ownership-governance—in different ways. It is the interplay among the three dimensions that determines whether an organisation may or may not qualify as a social enterprise.

- **An entrepreneurial dimension**, i.e. engagement in continuous economic activity, which distinguishes social enterprises from traditional non-profit organisations/social economy entities (pursuing a social aim and generating some form of self-financing, but not necessarily engaged in regular trading activity);
- **A social dimension**, i.e. a primary and explicit social purpose, which distinguishes social enterprises from mainstream (for-profit) enterprises; The social dimension is defined by the

¹ European Commission (2020) Social enterprises and their ecosystems in Europe. Comparative synthesis report. Authors: Carlo Borzaga, Giulia Galera, Barbara Franchini, Stefania Chiomento, Rocío Nogales and Chiara Carini. Luxembourg: Publications Office of the European Union. Available at <https://europa.eu/IOq64ny>

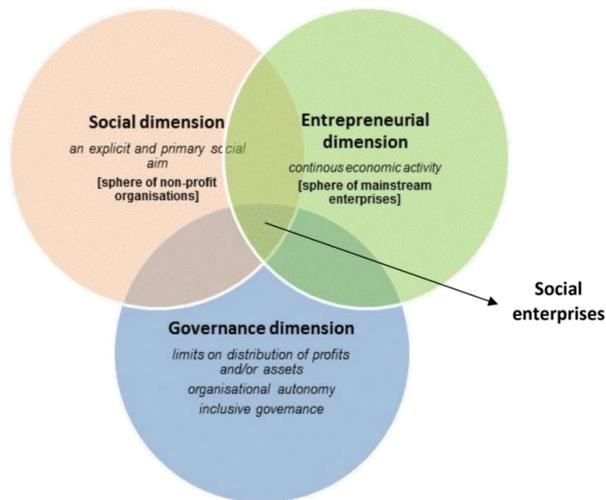
² A European Statute for Social and Solidarity-Based Enterprise, Prof. Antonio FICLI, University of Molise (Italy), Manuscript completed in February, 2017 © European Union, 2017. This document is available on the internet at: <http://www.europarl.europa.eu/supporting-analyses> pp.6

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aim and/or products delivered. SEs pursue the **explicit social aim of serving the community or a specific group of people that shares a specific need**. "Social" shall be intended in a broad sense so as to include the provision of cultural, health, educational and environmental services. By **promoting the general-interest**, SEs overcome the traditional owner-orientation that typically distinguishes traditional cooperatives. When not specifically aimed at facilitating social and work integration of disadvantaged people, **SEs must deliver goods/services that have a social connotation**.

- **Inclusive governance-ownership dimension**, distinguishes social enterprises even more sharply from mainstream enterprises and traditional non-profit organisations/social economy entities.³ To identify needs and involve the stakeholders concerned in designing adequate solutions, SEs require specific ownership structures and governance models that are meant to enhance to various extents the participation of stakeholders affected by the enterprise. SEs explicitly limit the distribution of profits to ensure that the general-interest is safeguarded. The non-profit distribution constraint can be operationalized in different ways.⁴

Figure ES1.1 The three dimensions of a social enterprise (European Commission, 2015)



³EUROPEAN COMMISSION, Directorate-General for Employment, Social Affairs and Inclusion. "A map of social enterprises and their eco-systems in Europe", 2015 Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwiP-ZbDrv3IAhW_QUEAHWFGBioQFjAAegQIBhAC&url=https%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D12987%26langId%3Den&usg=AOvaw0zDCAohUz7bdCbHUz6nXN9

⁴ European Commission (2020) Social enterprises and their ecosystems in Europe. Comparative synthesis report. Authors: Carlo Borzaga, Giulia Galera, Barbara Franchini, Stefania Chiomento, Rocío Nogales and Chiara Carini. Luxembourg: Publications Office of the European Union. Available at <https://europa.eu/IQq64ny> pp. 160

2.2 National definition of SE

A growing number of EU Member States have recently adopted national strategies, policy schemes and legal acts that define social enterprise at the national level. National definitions of social enterprise articulate the social, entrepreneurial and governance dimensions of social enterprise in different ways.

Differences across countries concern the types of activities defined as social (i.e., work integration and/or the delivery of social services), the share of incomes that must be generated by market activities, and the degree to which and modalities whereby concerned stakeholders are expected to participate in decision-making processes.

The following table shows the different definitions of social enterprise shared by the project partners from each CE country.

Country	SE definition
Austria	There is no legal definition for social business or social enterprises in Austria (Vandor et al. 2015, 10; EC 2020, 58). The latest government program however first mentioned social entrepreneurship by stating: “The Federal Government is committed to increasing legal certainty for EPUs and KMUs and also to significantly reduce the burden on them. [...] The role of “social entrepreneurs”, who face new challenges with innovative business models, should be given special consideration.” (Regierungsprogramm 2020-2024, 94). However, “social entrepreneurship” is not closer described or detailed in the further cause.
Croatia	The Strategy for the Development of Social Entrepreneurship adopted in Croatia from 2015 to 2020 defines social entrepreneurship as “business based on the principles of social, environmental and economic sustainability, in which the generated profit/surplus income is invested in whole or in part for the benefit of the community.”
Czech Republic	There is no overarching policy framework nor legal definition of social enterprise. The only references are the TESSEA (Thematic Network of the Social Economy) indicators and definitions that served as guidance when identifying social enterprises in Czech Republic. TESSEA has developed a set of indicators that provide measurable characteristics to identify social enterprises. These include, among others, the following criteria: <ul style="list-style-type: none"> - Both a social enterprise and a WISE must derive at least 30% of income from its own economic activity; - Both a social enterprise and a WISE must reinvest at least 51% of profit into development of the social enterprise and /or into implementation of socially beneficial aims; - Social enterprises must employ at least 10% of paid employees involved in its operations and activities;

Germany	<p>The German Social Entrepreneurship association (SEND ev) has proposed the following definition, which is part of the debate in the German parliament: “The primary goal of social entrepreneurship is to solve social challenges. This is achieved through the continuous use of entrepreneurial means and results in new and innovative solutions. Steering and controlling mechanisms ensure that the social goals are lived out internally and externally.”</p>
Hungary	<p>In 2016 the first definition was assumed in Hungary priority project in the framework of the Economic Development and Innovation Operational Programme included its own definition: “non-profit and civil society organisations can be considered social enterprise that have business objectives besides their social objectives, reinvest their profit in order to achieve their social goals, and prioritize the principle of participatory decision-making in their budget and organisational operation” (NGM 2015:6).</p> <p>In addition to the definitions used in the calls, a Strategic Working Group was also established in 2016 aiming to create a definition for use. Their definition is the following: “social enterprises are mission-driven organisations: they aim to solve social problems with business activities in many cases using innovative ideas Their financial sustainability is achieved to a significant degree through the provision and sale of socially responsible and marketable products and services.” (OFA 2017:3)</p>
Italy	<p>The Reform of the Third Sector (specifically L.D. n.112/2017, as amended by L.D. n. 95/2018) provides a clear definition of social enterprise and defines that:</p> <ul style="list-style-type: none"> • All private entities (including corporate companies) that carry out a business of general interest, nonprofit and for civic, solidarity and social utility purposes, can acquire the qualification of social enterprise, adopting responsible and transparent management methods and favouring the wider involvement of workers, users and other interested parties in their activities. • Companies constituted by a single shareholder, natural person, public administrations and entities whose articles of incorporation limit, even indirectly, the supply of goods and services to members or associates cannot acquire the qualification of social enterprise. • Social cooperatives and their consortia (as regulated by Law n. 381/1991) acquire the right to qualify as social enterprises. The provisions of L.D. n. 112/2017 are applied in compliance with the specific legislation of cooperatives and as compatible. • To civilly recognized religious bodies the rules of L.D. n. 112/2017 apply to particular conditions.
Poland	<p>The concept of social enterprise is currently not defined in any way at the level of national legislation. This category of social economy entities was introduced to the activities of Social Economy Support Centers on the basis of the "Guidelines for the implementation of projects in the field of social inclusion and combating poverty with the use of the European Social Fund and the European Regional Development Fund for 2014-2020" of January 9, 2018.</p>

	<p>According to the Guidelines, the SE must meet the following criteria:</p> <p>a) is an entity separated in terms of organization and accounting</p> <p>b) is an entity that does not distribute profit or balance sheet surplus among shareholders, shareholders or employees, but allocates it to strengthen the company's potential as indivisible capital and to a certain extent for professional and social reintegration or for public benefit activities for the local community, which the company operates;</p> <p>c) it is managed on a democratic basis, which means that the governance structure of the SE or their ownership structure is based on co-management in the case of a cooperative, employee shareholding or employee participation rules, as specified by the entity in its articles of association or other document of incorporation;</p> <p>d) remuneration of all employees, including management staff, are limited by limits, if they do not exceed the value referred to in Art. 9 paragraph 1 point 2 of the Act of April 24, 2003 on Public Benefit and Volunteer Work;</p> <p>e) employs at least three people on the basis of a contract of employment, a cooperative employment contract or a civil law contract (excluding persons employed under civil law contracts who conduct business activity) at least ¼ of a full-time job, and in the case of civil law contracts for a period of not less than 3 months and including not less than 120 hours of work in total for all months, while maintaining the proportion of employment specified in point (a). and.</p>
Slovakia	<p>According to Act 112/2018, a social enterprise is an entity of the social economy:</p> <ul style="list-style-type: none"> - who carries out an economic activity on a continuous basis, independently, on his own behalf, under his own responsibility, - whose main goal is to achieve a measurable positive social impact, - in which the goods or services which it produces, supplies, provides or distributes, or the way in which they are produced or provided, contribute to attainment of a positive social impact, which, if: <ol style="list-style-type: none"> 1. makes a profit from its activities, uses more than 50% of the profit after tax to achieve the main objective under point (b), 2. a part of the profit is distributed according to the Commercial Code, it is distributed according to procedures and rules that do not interfere with the main goal according to letter b), which involves stakeholders in the management of its economic activity. - A social enterprise which has been granted the status of a registered social enterprise is a “registered social enterprise”.

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Slovenia	By Slovenian law, a social enterprise is a non-profit legal entity that acquires social enterprise status and can be a society, institute, company, cooperative, European cooperative or other legal person of private law, which is not established solely for the purpose of profit, nor divides, the revenue surplus generated over expenditure.
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LEGAL FORMS OF SE AT NATIONAL LEVEL AND AT CENTRAL EUROPE

As we can understand from the different definitions of social enterprise reported by project partners from different CE countries, **at the national level there are different degrees of recognition, size and type of social enterprise but SEs are present in all the CE states**, regardless of the type of welfare system and whether or not there is a well-developed non-profit sector, cooperative tradition or specific legislation that recognises and regulates them.

All country contributions confirm in fact that the political and legal recognition of social enterprises has increased in relevance over the past decade in EU Member States both where social enterprises have a longstanding tradition and where social enterprise is instead a relatively recent trend. Nevertheless, some countries still have no legal recognition (Austria) or a very unclear framework.

In the figure below we can see which legal references for each Central European country determine and direct the legal framework. Subsequently, we will try to outline in more detail the situation in each country, on a country-by-country basis.

Figure 3.1 Legal frameworks or statuses for social enterprises in the different CE Countries



3.1 Legal forms at national level: a country-by-country overview

Austria

According to the European Commission there is no (legal) definition in Austria of what constitutes an SE in its broad sense (including Social Businesses allocated to the third sector) (EC 2020, 56ff). The EC report indicates that Austrian policy makers understand SEs merely in regards to work integration. Hence Work Integration Social Enterprises (WISE) are the only institutionalized forms of SEs in Austria (EC, 2014, 3). There are three statelily recognized and supported special designations for WISE'S, with the abbreviated names Socio-economic Enterprise (SÖB), Non-profit employment project/company (GBP) and Integrative enterprise (IB). However, these company types are also organised in common legal forms (like GmbH, Associatio, etc.) but receive governmental funds in addition (EC 2020, 59).

The lack of a separate legal form and precise definition of the term SE in Austria (EC 2020, 56) enables conclusions to be drawn about the possibilities of SE in Austria, especially linked to the possibilities that come with different legal forms that SE can chose in Austria (and therefore varying business models according to the legal form). The legal framework however does not (since there is no legal definition for SE) directly name any activities that SE are supposed to follow. An exception is of course the §34 BAO, which demands the already mentioned purposes from companies in order to get tax reliefs. The classification according to the tax-law is also the smallest common denominator in Austria that could be used to describe social entrepreneurs. Nevertheless, this classification does not cover the entire spectrum, as SEs that are profit-oriented and still generate social added value through the business model are not included. Companies need to “exclusively” and “directly” support the aforementioned purposes (§34 BAO) in order to gain the tax related advantages, what clearly doesn't apply to all SE's.

Croatia

There is currently no specific law regulating SE in Croatia. SEs can be established using a variety of legal forms, including the social cooperative form (in March 2011, a new Act on Cooperatives was passed: Article 66 defines the legal form of a social cooperative). *Zakon o zadrugama* (Law on Cooperatives) recognizes the cooperative as an important actor in SE.

Existing administrative, investment and promotional support pillars that should, according to the general objectives of the Strategy for the Development of Social Entrepreneurship, support SE, do not function. The Strategy was adopted for the 2015 to 2020 period; it will be evaluated by August 2021. Its criteria were copied from the EU's **Growth and Employment/ Europe 2020** strategy. However, the criteria are not in line with development opportunities for SE in Croatia, and are actually in conflict with laws relevant for SE: Law on Cooperatives; Law on CSOs; Law on Philanthropic Foundations; Law on Public Institutions; Enterprise Law; Law on Vocational Rehabilitation and Employment of Persons with Disabilities; Public Procurement Law; Small Business Development Act and the Law on the Rights of Croatian War Veterans.

The Strategy for the Development of Social Entrepreneurship in the Republic of Croatia for the period of 2014 - 2020 is a legally non-binding recommendation document adopted by the Government of the RoC as a prerequisite to further access EU's ESF funds. It nominally aimed:

- To establish and improve the legislative and institutional framework for the development of social entrepreneurship;
- To establish a financial framework for social entrepreneurship;
- To promote the importance of and the role of social entrepreneurship through formal and informal forms of education;
- To ensure the visibility of the role and possibilities of social entrepreneurship in Croatia and provide information to the general public.

Social enterprises can be established using a variety of legal forms, including the newly created social cooperative form. According to the current legal framework in the Republic of Croatia, social entrepreneurship can be organized through an association, foundation, registered personal trade, cooperative, company or institution. The dominant form of social entrepreneurship is via association.

Czech Republic

Social enterprises are subject to regulations introduced by a number of laws; however, none of them defines the term social entrepreneurship.

Clearly defined principles and expressions in the field of social economy and social entrepreneurship are missing. Legal acts that regulate the area of social entrepreneurship are the Civil Code, the Labour Code, the Accounting Act or the Commercial Corporations Act.

It is obvious that the specific legislation addressing social entrepreneurship in the Czech Republic is insufficient. However, it should be mentioned, that the legal framework does not prevent the creation and development of social enterprises, but it does not encourage their creation.

The legal framework governing responsible public procurement in the Czech Republic is based upon and corresponds to the European legislation. Despite absence of legal barriers, the Czech Republic contracting authorities mostly do not make use of the opportunity to address social or societal issues as part of their public procurement. Bids are mostly evaluated solely based upon the lowest price.

In Czech Republic, social enterprises can acquire the legal form of commercial companies, which is regulated by Act No. 90/2012 Coll. about corporate corporations. The Law on Commercial Corporations distinguishes joint stock companies, limited liability companies, limited partnerships and public companies. The Law on Commercial Corporations includes cooperatives, housing cooperatives and social cooperatives. (Act No. 90/2012 Coll., Commercial Companies and Cooperatives).

Non-profit organizations may acquire the legal form of societies which are governed by Act No. 80/2012 Coll., The new Civil Code, with effect from 2014. Formerly beneficial companies, established by Act No. 248/1995 Coll. about community-based companies, have been regulated by the new Civil Code since 2014. Generally beneficial societies could also transform themselves into foundations that take on legal forms - a constitution or a foundation and a foundation fund. Another way of developing a social business is the form of a self-employed person regulated by Act No. 155/1995 Coll. on pension insurance.

Co-operatives include not only cooperatives themselves but also their associations and unions, national headquarters, including their financial, transnational and continental associations, and a worldwide cooperative organization.

The major difference between cooperatives and social cooperatives is that traditional cooperatives are primarily oriented to provide services only to their members, while social cooperatives have the prerequisite to create social or public benefits for the entire community or specific target group.

Another reason and specific feature of why social companies and cooperatives cannot be compared with existing firms and cooperatives is that companies and other traditional cooperatives do not attempt to replace or integrate public sector functions, even when also social cooperatives do not even fall between government bodies, government-led organizations or traditional profitable businesses.

The aim of the social cooperative is labour and social integration of disadvantaged people into society with the maximum use of local and community resources. The company must include the name "social cooperative" in its name. It is forbidden for the social cooperative to change the subject of business that would be contrary to the definition of a social cooperative and to change the form of business.

On 1 December 2020, a partial amendment to Act No. 134/2016 Coll., on Public procurement, was approved and will acquire with the efficiency 1. 1. 2021, de facto introduces the obligation of socially and environmentally responsible public procurement. Article 4 has been added into Paragraph 6 (ACT No. 134/2016 Coll. on Public Procurement) to give contracting authorities an obligation to comply with the principles of socially responsible procurement, environmentally responsible procurement and innovation, where it is possible in the sense of this Act. The contracting authority is obliged to fully justify its procedure.

There is a risk that the approved text will bring complications, which could have been eliminated if the wording of the amendment had undergone a wider discussion. The will of legislators must be respected and a clear vision should be aimed at much more intensive implementation of sustainability in public procurement.

Germany

No specific legislation on social entrepreneurship exists in Germany, not even a formal definition.

Social enterprises have a relatively wide choice of legal forms under which to operate. Most social entrepreneurs are incorporated as limited liability company (GmbH Gesellschaft mit beschränkter Haftung), a small limited liability company (UG Unternehmergeellschaft), a partnership under the German Civil Code (GbR).

Non-profit social entrepreneurs are sometimes also registered as non-profit organisations or non-profit associations (Verein). Some social entrepreneurs are registered as co-operatives (Genossenschaften) or foundations (Stiftungen). All of these types of organisation are allowed to have a commercial unit, which sells products and/or services either to its members or to external customers.

Due to the wide range of incorporations used by the social entrepreneurs, there is no harmonized legal framework for social entrepreneurs. Regulation on internal governance, supervision and taxes vary wildly. Some social enterprises, especially welfare organisations are organised as a limited liability company with public-benefit status or non-profit GmbH (Gemeinnützigkeitsstatus, gGmbH).

In Germany, the tax law regulates that the non-profit GmbH (gGmbH) is a limited liability company whose income is used for non-profit purposes. A non-profit GmbH is exempt from corporation tax and trade tax.

Since 2013, the last reform, these public-benefit-status limited liability companies have more flexibility when spending their revenues and have to be accredited every third year to receive the public-benefit status. The accreditation depends on the purpose of their activities, not the legal form.

Since 2006, the German Cooperatives Act (Genossenschaftsgesetz, or GenG) allows new-style cooperatives with a social or cultural mission (Sozialgenossenschaften, Kulturgenossenschaften) and these forms are used for instance in the creative industries or in social affairs.

The latest drive to popularise social enterprise came from the Federal Ministry of Economic Affairs and Energy (BMWi). An issue of its periodical publication for entrepreneurs, “GründerZeiten”, dedicated to social entrepreneurship in 2016 is one document which regards the definition of the concept (Bundesministerium für Wirtschaft und Energie [BMWi] 2016).

It highlights (1) the pursuit of a social mission, (2) enterprising for sustainability, and (3) a contribution to social cohesion as important defining elements of social entrepreneurship. It also distinguishes social enterprise from CSR and “corporate citizenship”.⁵

Because of the disparity of possible incorporations, the social entrepreneurs have advocated for a more harmonized legal regime. The German Social Entrepreneurship association (SEND eV) and the Foundation Purpose Ownership (Stiftung Verantwortungseigentum) are advocating to create a specific legal form for social entrepreneurs, called VE limited liability company (Verantwortungseigentumsgesellschaft). This new legal form would work like a limited liability company which would have restrictions on the disbursements of profits.

Hungary

There is no explicit legal form for social enterprises in Hungary and no specific law for social enterprises, so they can operate in all kinds of legal forms. Foundations, associations, non-profit organisations and social cooperatives are the main possible legal forms of social enterprises, however other - traditional - forms of cooperatives, certain church organisations and conventional enterprises can constitute as legal forms for social enterprises.

Acts affecting social enterprises are the following:

- on foundations and associations: Act V /2013 on Civil Code
- other operational conditions of non-profit organisations: Act CLXXV /2011 on on the right of association, the legal status of public benefit organizations and the operation and support of civil organizations
- on non-profit business organizations: Act V. /2006 on company publicity, court proceedings and bankruptcy
- on cooperatives: Act X /2006 on cooperatives and Act V /2013 on Civil Code

The current state funding programmes only accept applications by the following legal forms: foundations, associations, non-profit company (non-profit limited liability company, non-profit joint stock company, non-profit unlimited partnership, non-profit limited partnership), and social cooperative. But social enterprises can operate in all kinds of legal forms.

⁵ SOCIAL ENTERPRISES AND THEIR ECOSYSTEMS IN EUROPE, Country report GERMANY, Nicole Göler von Ravensburg, Gorgi Krlev, Georg Mildenberger.
[\(PDF\) SOCIAL ENTERPRISES AND THEIR ECOSYSTEMS IN EUROPE Country report GERMANY](#)

Italy

The Italian non-profit sector (as of October 2017, there were 16,918 social cooperatives, 1,874 social enterprises and 11,940 market-oriented non-profit organisations: Venturi 2017) long awaited a comprehensive reform. In particular, Italian non-profits called for a legal framework allowing them to be more upfront in organising, managing and delivering SGIs. The legislative response to this demand came with the passing of the **2017 Social Enterprises Reform Act that resulted from the comprehensive 2016 Third Sector Organisations Reform Act**. The 2017 Act (L.D. n.117/2017, as amended) provides for non-profit organisations to pursue social aims, such as the delivery of welfare and community services among others, by carrying out steady and clear-cut economic activities.

The **2017 Act** sets out a clear legal framework for the definition of social enterprises, which now incorporate both companies and associations/foundations pursuing a social mission in a wide variety of social fields. The Third Sector Code arranged for the reorganization and overall revision of the current regulations on the matter, both civil and fiscal, defining, for the first time, the scope of the so-called Third Sector and, in a homogeneous and organic way, the entities that are part of it. Social enterprises are also requested to adopt a democratic and multi-stakeholder governance towards workers, financiers, volunteers, private companies and public authorities, as well as to disclose a social balance-sheet and to be willing to undertake a social impact assessment.

Poland

Poland has three types of SE recognised from different legal acts:

- **Foundations**, recognised from LAW of April 6, 1984 about foundations, the most important legal act regulating the operation of foundations is the **Act on Foundations**. This act contains relatively few provisions and gives a great deal of freedom in the construction of the statute, i.e. the document on which the foundation operates. The statutes describe the most important information about the foundation - incl. about the foundation's governing bodies, how many people must be in these bodies, what is the matter of exercising power and deciding who chooses the people sitting in the foundation's governing bodies. As a rule, the statute is established by the founder, which gives the founder a great influence on how the foundation will function.
- **Associations** that are recognised from the ACT of April 7, 1989 Law on associations. An association, like a foundation, is a non-governmental organization as defined in **Art. 3 sec. 2 of the Act on Public Benefit and Volunteer Work**. As a non-governmental organization, it is subject to the provisions of the **Act on Beneficial Activities**, which in practice means, for example, the possibility of applying for the status of a public benefit organization or using subsidies from public administration. The most important legal act regulating the operation of an association is the **Act - Law on Associations**. The association enables the exercise of the right to association and guarantees equal rights "irrespective of beliefs, the right to actively participate in public life and express different views and to pursue individual interests" (preamble to the Act - Law on Associations).
- **Social Cooperatives** recognised and regularised from the act of 27 April 2006 on social cooperatives, the Ordinance of the Minister of Labor and Social Policy of 23 April 2012 on

granting funds for commencement of activities on the terms specified for social cooperatives; and the Regulation of the Minister of Labor and Social Policy of 3 August 2007 on specifying the specimen certificates attached to the application for entry of a social cooperative into the National Court Register. A particular criteria that identify social cooperatives in Poland, is that at least 50% of persons at risk of social exclusion must be members of it to be recognised as a social cooperative. The statutory goal of the cooperative is to return to regulated social life and activity on the labour market of its members. A social cooperative, as a type of work cooperative, is based on the principle of personal work performed by its members.

Slovakia

In Slovakia, social entrepreneurship has got a legal framework governed by Act 112/2018 on social economy and social enterprises⁶. This Act has been in place since March 2018. Companies which apply for the statue of a social enterprise and are approved, are then listed in a specific registry for social entrepreneurs, coordinated by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, and can receive incentives listed in the above mentioned Act. A very common form of social entrepreneurship in SK is a sheltered workshop that can have any business form (e.g. Ltd). In general, there are more companies with a present social aspect than those available in the Registry regulated by the Act. The main incentives for the entities officially listed as social businesses are the following: investments, subventions, and direct transfers of funds from the government.

For the purposes of Act 112/2018 a positive social impact has to be fulfilled, be it a public or community interest. This can be done via socially beneficial services which are listed in the Act as it follows: provision of health care, social assistance, humanitarian care; creation, development, protection, restoration and presentation of spiritual and cultural values; protection of human rights; education and development of physical culture; research, development, scientific, technical, information services; creation and protection of the environment and of public health; services to support regional development; providing housing, administration, maintenance and renewal of the housing stock.

Slovenia

Slovenia has a Social Entrepreneurship Act, available since 2011 (Zakon o socialnem podjetništvu -ZSocP, updates of the legal framework in 2014 and 2018) and an official Slovenian social businesses register, established and monitored by Ministry of Economic Development and Technology.

Social enterprise has a special legal abbreviation: “socialno podjetje” (social company) or abbreviation “so.p.”.The legal forms allowed are: society, institute, cooperative, European cooperative or other legal person of private law (Limited liability company, Unlimited liability company, Limited partnership).

⁶ Available at:

<https://www.aspi.sk/products/lawText/1/90081/1/2/zakon-c-112-2018-zz-o-socialnej-ekonomike-a-socialnych-podnikov-h-a-o-zmene-a-doplneni-niektorych-zakonov> (approached on December 19th, 2020)

- Society is an association of at least three physical or legal persons who want to pursue a common interest. The purpose of the establishment and operation of the society is not to make a profit. If the latter occurs, the society may not distribute it among its members.
- Institute: An institute is a legal entity of public or private law established for the purpose of performing non-profit activity. It is similar to a limited company or unlimited company, but we find quite a few specifics in the institute: there is no planned initial capital, in a way the institute resembles a society.
- Limited liability company: is a legal entity and is an independent holder of rights and obligations in legal transactions, guaranteeing the assumed obligations only up to the amount of its own assets. The share capital of a limited liability company consists of share contributions of shareholders, on the basis of which the latter acquire their business share, expressed as a percentage, with its value in the share capital. The company can be established by one or several domestic or foreign legal and natural persons. The most important feature of a limited liability company is that the partners are not liable for the obligations of the company with their assets.
- European Cooperative and cooperative: a cooperative is an organization of a predetermined number of members, which aims to promote the economic benefits and develop economic or social activities of its members and is based on a voluntary approach, free exit, equal participation and management of members.
- Unlimited liability company: an unlimited liability company is a personal partnership of two or more persons who are liable for the obligations of the company with all its assets. A company with unlimited liability must thus be established by at least two domestic or foreign physical or legal persons who decide to pursue an economic activity together. All partners are responsible for the obligations of an unlimited liability company with all their assets, so it is recommended that the latter really trust each other.
- Limited partnership: A limited partnership is a company of two or more persons in which at least one partner is liable for the company's obligations with all its assets (general partner), while at least one of the partners is not liable for the company's obligations (limited partner). Thus, as already mentioned, for the establishment, at least two partners are required, one of whom must be liable for the obligations of the company with all the assets and the other only up to the amount of his/her contribution to the company.

3.2 A Central Europe perspective

As we can understand from the paragraphs above, in **Europe the regulation of social enterprises is the direct result of a dual supporting legal framework combining EU law and member state competences**. European Union has adopted both cross-border financial programmes and directives to promote the growth of social enterprises, however, as we can see from the analysis of what emerges among Central European countries, **member states have incorporated these directives into their legal systems in different ways and at different levels and they have also independently enacted specific statutes to promote the development of social enterprises** (Nicholls 2010), since it is member states that retain regulatory power over private organisations, including social enterprises (Santuari 2020).

It is possible to highlight a lack of systematic national level evidence on the type and scale of activity and of related policy frameworks that makes it extremely difficult to identify common patterns of development across Central Europe as well in all EU.

Central Europe presents a multiple scale of situation that goes from the absence of legal frameworks to the presence of articulated specific laws governing social entrepreneurship.

Austria, that does not have a legal framework that addresses SEs for example, and the legal framework does not (since there is no legal definition for SE) directly name any activities that SE are supposed to follow; in **Germany** as well no specific legislation on social enterprise exists and there are eight different types of organisations that might be considered as social enterprise and public agencies still diverge in their understanding of the concept; **Hungary too, doesn't have an explicit legal form** for social enterprises and a specific law for social enterprises or a long-term strategy either, resulting in a confusing legal and policy environment. According to Etchart et al. (2014: 10), the unpredictability of the regulatory environment is a factor that has a negative impact on social enterprises.

A mixed and undefined situation is present instead in **Croatia** where there is currently no specific law regulating SE but where it has been implemented from 2014 to 2020 a Strategy for the Development of Social Entrepreneurship that was a legally non-binding recommendation document adopted by the Government of the RoC as a prerequisite to further access EU's ESF funds. Even if non-binding, this recommendation had an important role since there is a growing need for diversifying available sources of finance for social entrepreneurs in the Country.

Uncertain is as well the situation in **Czech Republic**, where the legal framework does not prevent the creation and development of social enterprises, but it does not encourage their creation either. This because is missing a clearly defined principles and expressions in the field of social economy and social entrepreneurship and there are multiple legal acts that regulate the area of social entrepreneurship: Civil Code, Labour Code, Accounting Act and the Commercial Corporations Act that makes the legislation addressing social entrepreneurship in the Czech Republic confused and so insufficient.

Finally, **Slovakia, Slovenia and Italy** have the most advanced regulatory situations regarding social entrepreneurship. In **Slovakia**, social entrepreneurship has got a legal framework governed by Act 112/2018 on social economy and social enterprises⁷. Companies which apply for the statue of a social enterprise and are approved, are then listed in a specific registry for social entrepreneurs, coordinated by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, and can receive incentives listed in the above mentioned Act. In **Slovenia** thanks to the Social Entrepreneurship Act, available since 2011 (Zakon o socialnem podjetništvu -ZSocP, updates of the legal framework in 2014 and 2018) there is an official Slovenian social businesses register, established and monitored by Ministry of Economic Development and Technology.

Finally we have **Italy**, where we have probably the most advanced situation. The 2017 Act sets out a clear legal framework by which both companies and associations/foundations can be incorporated under the legal form of social enterprises to pursue a social mission while performing a wide range of activities of general interest. Pursuant to EU law, the 2017 Social Enterprises Reform Act intends to empower and, accordingly, to entrust social enterprises with the accomplishment of all those activities

⁷ Available at:

<https://www.aspi.sk/products/lawText/1/90081/1/2/zakon-c-112-2018-zz-o-socialnej-ekonomike-a-socialnych-podnikov-h-a-o-zmene-a-doplneni-niektorych-zakonov> (approached on December 19th, 2020)

that may have a significant impact on local communities (European Commission 2011). The 2017 Act favours the development of social enterprises and nudges their performances as economic and social operators. In this respect, the **2017 Social Enterprises Reform Act** definitely marks an important step on the progressive legal recognition of the role and functions of entrepreneurial non-profit organisations sharing with public authorities the responsibility to accomplish social and community goals (Santuari 2020).

BENEFITS, GAPS AND OBSTACLE DUE TO SE LEGAL FORM AND STATUS

4.1 Accessibility and relevance of legislation on social enterprises

With regards to the accessibility and usability of legislation on social entrepreneurship, what emerges from a country-by-country analysis is the correspondence between the lack of specific legislation and the difficulty in accessing and understanding the regulatory framework.

Among the Central European countries considered, a dual condition can therefore be identified: in **Italy, Poland, Slovakia and Germany**, the content of the Law is clear and easily accessible or very well supported from a network of public bodies and private consultants. In Germany for example the legislation on social enterprises is not easy to understand at first glance but it is accessible to entrepreneurs thanks to initiatives such as the Social Enterprise Network Germany, the Social Enterprise Academy, Ashoka Germany, the Do School, the Social Impact Hubs, the Social Impact Corporation, the Chambers of Commerce, the Incubators of Universities and many other projects in Germany, which are supporting social entrepreneurs to make the right choices from a legal perspective.

On the other hands, in **Croatia, Austria, Slovenia, Czech Republic and Hungary** SE complains in the best scenario an extremely complex and highly bureaucratic process to access the information and in the other cases a real lack of information and support in the phase of candidature for and obtaining the status of social enterprise and on the eligibility criterias as well as the lack of literature, data and databases of social entrepreneurs. In Slovenia where the existing legislation is quite complicated, the access requires a lot of bureaucracy and demands a lot of specific knowledge and skills.

On the other hand however, in Austria for example, even if there isn't a specific law and this makes it impossible to access specific information, if a company that intends to operate according to the principles of social business is founded, it is relatively easy to find information about tax-breaks. Usually tax-consultants as well as public services or incubators for startups offer advice regarding legal-form-related tax issues which proves to be the most regulated and outlined aspect even where there is no comprehensive law on social entrepreneurship.

4.2 Specific benefits for the social enterprise legal form and status

When it comes to looking at the specific benefits deriving from regulations concerning social entrepreneurship, what we can certainly see is the predominance as the main and 'basic' benefit of different types of tax exemptions and tax breaks. Beside Croatia, where there are no specific benefits, nor a projection of an estimated time in the next year(s) when any such benefits might be introduced and actually implemented, in the other countries, countries, even if there is no specific legal form for SE, there are still some possibilities for tax - breaks. **The fiscal framework for SEs is anyway really fragmented and different benefits and exemptions apply for the different legal forms.** Some examples are:

1. For associations and foundations
 - specific tax and duties benefits
 - exemptions (.e.g, exemption from paying VAT for some activities; contribution exemption)
 - "duties exempt status" by subjective right
 - exemption from local business tax
2. Social cooperatives
 - subject to certain tax benefits and exemptions
 - VAT exemption; corporate tax exemption after non-business-related income
 - social cooperatives can set up a fund from their profit to cover costs of payments (members and their families)
 - a member can establish a sui generis type of employment relationship in specific cases
3. Non-profit companies
 - have certain tax benefits and exemptions
 - VAT exemption based on activity
 - public benefit provisions (if they have the public benefit status, some of the legal forms do not need to pay taxes after their public benefit activities)
 - Deduction of a donation to an association from the tax

Other types of benefits resulting from social entrepreneurship regulations are found in those countries where they are obviously more structured. In **Slovenia**, for example there are **financial incentives for employment of disabled persons and vulnerable groups** (social taxes and pension charges are paid by the state) and financial incentives for education of management in the first two years of company's operation, related to work with vulnerable groups. In Hungary instead, public benefit status can be awarded to organizations that perform public benefit tasks. Several legal forms can apply for this status. In **Slovakia**, in addition to a great potential offered in facing labour market challenges, the development of activities in the areas of housing, culture, education, health care and various other areas of public policy has been introduced in the law. The support of enterprises in a wider area of social economy provides:

- **investment aid** that may be provided in form of financial instrument in the implementation of which funds are provided in form of repayable assistance, a combination of repayable and non-repayable form, conditionally repayable contribution, non-repayable financial

contribution, subsidies for a registered social enterprise, sale of real estate at lower price than the general value of the property or in form of a lease of real estate at a lower price than its real value, and income tax relief according to a special regulation.

- **Compensatory aid** that can be provided to an enterprise in a wider area of the social economy if, as a result of achieving a positive social impact, it is disadvantaged compared to entrepreneurs who carry out a similar activity for the purpose of making profit.
- **Aid to support demand** that is implemented in the form of purchase of a service voucher from a registered social enterprise that has provided a home and garden care service.

In Italy the 2017 Social Enterprises Reform Act provides:

- a “no-tax” area for any profit that is reinvested in the organisation’s activities and a 30% return on investors’ revenue
- significant innovation which consists of the possibility for social enterprises to distribute profits among their shareholders up to a limited cap.
- Recognises freedom of private enterprises, which is included in Article 41 of the Italian Constitution and provides that private enterprises can also be engaged to pursue the public interest. Due to their social mission and internal organisation, social enterprises contribute to the social achievement that Article 2 provides for.
- Social bonus: Legislative Decree 117/2017, Art. 81, a tax credit equal to 65 percent of the liberal cash disbursements made by individuals and 50 per cent if made by entities or companies in favour of Third Sector entities, which have submitted to the Ministry of Labour and Social Policies a project to support the recovery of unused public real estate and movable and immovable property confiscated from organised crime assigned to the aforementioned Third Sector entities and used by them exclusively for carrying out activities referred to in Article 5 in a non-commercial manner.

No special fiscal benefits apply for social enterprises in the **Czech Republic**, above all due to the lack of their legal recognition. Neither do any codified fiscal benefits fit start-up activities. Generally, fiscal arrangements and benefits relevant for social enterprises are those available to “publicly beneficial tax-payers;” those related to donations to nonprofit entities; and those related to active employment policies, especially employment of people with disabilities.)

4.3 Specific obstacles for the social enterprise legal form and status

Croatia, Slovenia, Slovakia and Austria, for opposite reasons (favourable legislation as in the case of Slovakia or no legislation at all as in the case of Austria) do not present any particular legal obstacles to setting up a social enterprise. For the same reason in Czech Republic is exactly the non-existence of the social entrepreneurship Act, the main obstacle for social enterprises.

However in most countries besides Slovakia we can talk about a lack of wider support or motivation to conduct business in the form of a SE.

Some general obstacles we can encounter in CE countries are:

- **Administrative obstacle:** entrepreneur needs to place extraordinary effort in seeking incentive for the establishment or development of a social enterprise; problems with meeting payment deadlines by customers, therefore the entrepreneur often has problems with the solvency of his suppliers; Social enterprises are not sufficiently supported by public processes - such as socially responsible public procurement;
- **Organizational and financial obstacle :** difficult access to the information to accede to the grants calls; problems in cooperation with offices, often including different interpretations of the same provisions by different administrative bodies; high salary expectations of employees with a simultaneous lack of qualified staff on the labor market; too high taxes; safeguarding stable flows of resources to ensure adequate coverage of citizens' needs; too short payment terms with suppliers; To the SE it is forbidden to distribute, even indirectly, profits and operating surplus funds and reserves, however called, to founders, partners or associates, workers and collaborators, directors and other and collaborators, directors and other members of the corporate bodies, even in the case of withdrawal even in the event of withdrawal or any other case of individual termination of the relationship.
- **Informative obstacles:** lack of literature, data and databases of social entrepreneurs; lack of knowledge about the concept of SE or incomplete definition of the term in terms of equating SE exclusively with the employment of marginalized groups; complex legal regulations, legal aspects of running a business are not clear; social enterprises often encounter difficulties in accessing bank loans due to their still-limited presence and structuring as well as to insufficient knowledge of the peculiarities of social enterprises on the part of the banking system.

In **Hungary** a specific and interesting obstacle emerged concerning the feeling that Social Entrepreneurs have that existing legal forms are associated with a number of negative connotations that hinder them from achieving better results. For instance, the existence of cooperatives is considered useful, but the earlier unfavorable use of grants and funds portrays these organizations in a negative light to society.

INNOVATIVE CASE STUDIES OF LEGAL SUPPORT

Even in countries where there is no specific legislation, there are grassroots forms and models of social entrepreneurship emerging. Being "unregulated" opens up in fact to elements of innovation and creativity. In the majority of the CE countries indeed no specific innovative case related to the legal framework where identified but in mostly all of them we can encounter some relevant and interesting SE innovative experience.

Nevertheless, there are two interesting cases with respect to possible innovative scenarios in the legal and legislative framework for social enterprises that we will present below as food for thought for future legal recommendations on what can facilitate and incentivise the work of SEs in the Central Europe countries: one is the Regulatory Sandboxes in Germany, a national level innovative case; and the other is the Torino Social impact, a local growing ecosystem to address social needs (Italy).

These two cases are interesting to observe because they show us two possible innovations in legislation that in both cases can be considered good practices from which other European countries can also draw inspiration.

5.1 An alternative search engine, Ecosia: environmentalism with a business mindset. (Germany)

An interesting innovative example is the one of the *steward-ownership* based on an example of a very well-known social entrepreneur organisation in Germany: Ecosia.⁸

Ecosia is an alternative search engine founded by Christian Kroll in 2009. It uses its profits from search queries to plant trees in areas that are most impacted by deforestation. It has successfully planted more than 60 million trees in 15 countries, according to a case study by the Purpose Foundation.

Ecosia is incorporated as a limited liability company (GmbH). The German law does not prohibit the owners from the sale of the company, the change of purpose of the company, or the business activities. The only requirement is that the owners have to decide by majority to proceed - and certain rules of minority owners are respected. But in order to make a clear statement about the long-term purpose of the company, the ecosia GmbH has decided to become a company under steward-ownership. The rationale for doing so is described as follows:

“What would become of Ecosia if something happened to one of us? How do we ensure that the company, which would theoretically be worth millions of dollars on the market, is never sold? How do we protect its mission and independence for the long-term?”

Several alternative ownership solutions were sought. For instance, it was discussed to convert the business to a German non-profit or establishing a foundation. As discussed above, these alternatives did not have the same benefits as being incorporated as a company

In 2018, the two owners, Christian Kroll and Tim Schumacher, moved Ecosia to steward-ownership-model, supported by the Purpose Foundation.

The ownership structure can be found below. Christian Knoll owns 50% of the voting rights of the ecosia GmbH, Tim Schumacher 40% of the voting rights. The remaining 1% is held by the Purpose Foundation, which does not receive any rights to a dividend, but can block the sale of the company.

The benefit of this approach is that the Purpose foundation cannot block entrepreneurial decisions, for instance the agreement on the tax statement of the company, but at the same time the long-term perspective is ensured.

Based on this approach, several social entrepreneurs and large entrepreneurs have lobbied the parliament to develop a new purpose-based limited liability company, where steward-ownership as discussed above could be easily set-up, and which would also allow corporates to allow other stakeholders, such as employees to become decision-makers in the future development of a company. This approach has been supported by almost all political parties in the German parliament.

⁸ <https://info.ecosia.org/what>

This approach is not without controversies. The German Ministry of Justice has been very sceptical towards the suggestion but has confirmed to review the proposed law changes. Other associations have indicated that it would be better to make it easier to create foundations which would act as owners of companies (so-called Familien-Stiftungen).

The debate most likely will continue after the parliamentary elections in September 2021.

5.2 Torino social impact: a growing ecosystem to address social needs combining (Italy)

In a global context of increasing complexity and interdependence between economic systems, marked by constant technological progress and unprecedented social and ecological challenges, the new generation of social impact enterprises could offer a convincing response to the expanding inequalities that are affecting Italy. This hypothesis becomes even more relevant for the Metropolitan City of Turin and for the reconfiguration of the strategic development axes of the urban and mountain territories that are now part of it.

Torino is the **first Italian city to adopt a local development strategy based on the construction of its own ecosystem of social entrepreneurship through an alliance between public and private institutions.** In an ecosystem perspective, the **interactions between the various organisations that are part of it are fundamental for the effectiveness of innovative processes and guide their dynamic and in this context has been developed the Torino Social Impact initiative:** an open platform already gathering over one-hundred companies, institutions, financial operators, charities, foundation and third sector enterprises. They joined the project by subscribing to a MoU aimed at sharing ideas, experiences, projects and resources in order to catalyze and attract investments and activities which aspire to solve emerging social problems through economically sustainable business models.⁹

What the initiative mainly promotes and supports is the building of the ecosystem, letting companies find the best conditions to do business with a social impact through services, skills, impact finance tools, innovative projects; and promote the Identity through enhancing the visibility and attract investments for SE through a collective brand aimed at positioning the territory on the global map of social impact.

The case of Torino Social Impact shows **how support for the evolutionary processes of the third sector and traditional enterprise, creating local ecosystems in which businesses and investors can find the best possible conditions for experimenting with new models,** can represent a highly interesting local development policy option for transforming the city into an internationally attractive pole for entrepreneurial and social initiatives and making Torino the European capital of the impact economy.

⁹ <https://www.torinosocialimpact.it/en/who-we-are/>

5.3 "Cooperation agreements" to share responsibility for the care and regeneration of the city (Italy)

Since 2014, citizens and the administration have been able to enter into "cooperation agreements" to share responsibility for the care and regeneration of the city.¹⁰

The city of Bologna was the first in Italy to adopt the Regulation on collaboration between citizens and the Administration for the care and regeneration of the urban commons: a tool, which has since spread throughout the country, created to support and enhance the autonomous initiative of citizens, whether individuals or associations, for purposes of general interest.

This tool opened a process of change aimed at encouraging the sharing of responsibilities in the care and regeneration of the city, allowing citizens to do their part by signing 'cooperation agreements'.

Bologna responded, as is its history, with numerous projects, some of which were very different from each other and involved different areas, from the centre to the suburbs.

In the first two years (2014-2016), 245 collaboration pacts were signed in the city.

Proposals for collaboration can be submitted via the digital platform Community of the Civic Network Iperbole, in the Common Goods section, where information on the process, how to participate and current initiatives are available.

Everyone, both associations and individual citizens, can send in a proposal.

If the proposal is deemed admissible in the light of the recent public notice, it will be published online for 15 days, during which anyone can comment on it. At the end of the publication period, the co-design phase will begin.

What areas can be covered by a pact?

Collaboration pacts can concern proposals for the care and regeneration of tangible, intangible and digital urban commons, which citizens and the Administration, also through participatory and deliberative procedures, recognise to be functional to individual and collective wellbeing.

By way of example, tangible assets are meant e.g. streets, squares, arcades, flowerbeds, parks and green areas, school areas, buildings, etc.; intangible assets are e.g. social inclusion and cohesion, education, training, culture, civic awareness, environmental sustainability, reuse and sharing, etc.; digital assets are e.g. websites, applications, social networks, computer literacy, etc.

Collaboration between active citizens and the administration can take place at different levels: occasional care, constant and continuous care, shared management and regeneration.

Interventions can include: care, regeneration and shared management of public spaces; care, regeneration and shared management of buildings; promotion of social innovation and collaborative services; promotion of urban creativity; digital innovation.

¹⁰ <https://www.fondazioneinnovazioneurbana.it/pattidicollaborazione>

CONCLUSION REMARKS

The definition adopted by the “Social Business Initiative ” (SBI) of October 2011, that had subsequently influenced EU legislation organises social enterprise key features along three dimensions:

- an entrepreneurial dimension;
- a social dimension;
- a dimension relative to the governance structure.

Provided that the pursuit of explicit social aims is prioritised through economic activities, these three dimensions can combine in different ways, and their balanced combination matters most when identifying the boundaries of the social enterprise.

What we can observe from this CE countries overview is that “there is no one-size-fits-all answer to the question of the right legal form for social enterprises” and this confirms that there are many obstacles on the path of the harmonization of SE law at the EU level via EU directives as the European Commission¹¹ as well identified as follow:

- not all MSs have specific laws on SE, and therefore there is a lack in material to be harmonized;
- where SE is a matter specifically regulated by law, two different models of SE legislation exist (SE as a legal form of incorporation and SE as a legal qualification or status);
- regardless of the model of SE legislation, differences in the national regulation of SEs remain significant, for example regarding the scope of an SE’s activity
- the national movements representing SEs might not be in favor of harmonization, given the different cultural approaches to SE that are reflected in the existing legislation;
- EU institutions might not wish to harmonize SE law if harmonization is opposed by SEs or their representatives.

As we can see harmonization of SE law via EU directives is not a recommended strategy and primarily because it appears unInfeasible but what it is possible and interesting is to start from observation of the local legal framework to imagine a bottom up strategy of harmonization in the object of improve and strength SEs and their role.

In the light of what we have been observing, there are some interesting aspects of the German and the Italian legal framework, expressed as well in the innovative cases, that deserve to be underlined in these conclusions remarks.

The italian case is very interesting because the 2017 Social Enterprises Reform Act definitely marks an important step on the progressive legal recognition of the role and functions of entrepreneurial non-profit organisations sharing with public authorities the responsibility to accomplish social and community goals (Santuari 2020).

¹¹ Directorate General for Internal Policies, Policy Department C: Citizens Right and constitutional Affairs (2017) A European Statute for Social and Solidarity-Based Enterprise .

Is it then reasonable to question whether the 2017 Social Enterprises Reform Act constitutes a benchmark for other jurisdictions? Thanks to the work done by professor Santuari of the University of Bologna, and combined with the comparison of the different case studies of the CE countries, we can answer that it is for sure a legitimate question we should keep into consideration for the legal recommendation work we will have ahead.

The main reasons bring us to this evaluation are the following.

- It identifies for SE a freedom of choice first of all which means that all non-profit organisations and companies can adopt the social enterprise model and even if probably some volunteers based organisations might not be ready for this step (and they can keep being association) this reform can incentivize many traditional non-profits to scale up contributing to improve local welfare systems.
- Another important reason to be observed and that can guide some thoughts also for other CE countries is that the Italian reform organises the support of the public authorities to overcome competitions between SE and to engage in legal and administrative techniques with whom evaluate properly the type and form of contribution and support to each reality.
- Finally, the very important aspect to keep into consideration is the introduction of a social impact assessment. They will be capable of measuring the actual benefits and outcomes that social enterprise activities produce for local communities. Such a measuring system is also expected to overcome the strict and often disproportionate public procurement procedures. The social impact assessment system may actually help contracting authorities in evaluating effectiveness, sustainability and efficiency, which usually cannot be assessed through the ordinary legal provisions included in public tenders.

The legal form depends on a variety of factors and in order to learn from and follow these developments, our CE-Responsible network could benefit from the adoption and the empowerment of a monitoring system of the particularities of national approaches and understanding of social enterprise as a basis for future national and European research and recommendation. From the mutual learning perspective, diversity can in fact be an opportunity: there is plenty of experience and knowledge at the Member State level to benefit from. The challenge is to match the learning needs and the relevant cases from which one could learn.

There is general consensus from stakeholders and available evidence that demonstrate that the concept of social enterprise will gain in strength in Europe and that current activity will expand, including the continued likelihood of the emergence of ever more new forms of social enterprise and more defined definitions and legislations, and the Regulatory sandboxes started in Germany could be a very interesting and innovative approach to test and to push forward new legislations and new legal framework for the development of SEs in our countries.

RESOURCES

Article/Law/Document	Publication Date
European Commission (2020): Social enterprises and their ecosystems in Europe. Comparative synthesis report. Luxembourg	2020
European Commission (2014): A map of social enterprises and their eco-systems in Europe. Country Report: Austria. https://www.kmuforschung.ac.at/wp-content/uploads/2014/07/SE-Mapping_Country-Report-Austria.pdf . Access on 19.10.2020	2014
European Parliament, Directorate General for Internal Policies, Policy Department C: Citizens Right and constitutional Affairs (2017) A European Statute for Social and Solidarity-Based Enterprise.	2017
Santuari A. (2020) Social enterprises in the European Union and the Italian 2017 Social Enterprises Reform Act: A legal framework for other jurisdictions?	2020
Nemzetgazdasági Minisztérium (NGM): Felhívás társadalmi vállalkozások ösztönzése - kiemelt projekt GINOP-5.1.2.	2015
Interpretation of the law on social economy and social enterprises with selected methodological guidelines, including specific examples (Ministry of Labour, Social Affairs and Family of the Slovak Republic, 2020); available at: https://www.employment.gov.sk/files/slovensky/praca-zamestnanost/soc-ekonomika/vyklad-zakona-112-2018-vybranymi-metodickymi-usmerneniami.pdf	2020
Social entrepreneurship in Slovakia in the context of current development potential of social economy (Slovak Business Agency, 2019); available at: http://monitoringmsp.sk/wp-content/uploads/2020/05/Soci%C3%A1lne-podnikanie-na-Slovensku-v-kontexte-s%C3%BA%C4%8Dasn%C3%A9ho-potenci%C3%A1lu-rozvoja....2pdf.pdf	2019
Act 112/2018 on social economy and social enterprises; available at: https://www.aspi.sk/products/lawText/1/90081/1/2/zakon-c-112-2018-zz-o-socialnej-ekonomike-a-socialnych-podnikoch-a-o-zmene-a-doplneni-niektorych-zakonov	2018
Act 343/2015 on public procurement; available at: https://www.zakonypreludi.sk/zz/2015-343	2015
OECD (2016) Boosting social entrepreneurship and social enterprise creation. Unlocking the potential of social enterprises in the Czech Republic. Available at: http://www.oecd.org/cfe/leed/Czech%20Republic%20Report%20%2006.03.17-FINAL.pdf	2019
TESSEA (2017) Definition and principles of social enterprise (only in Czech) http://tessea.cz/tessea-o-nas/definice-a-principy-socialniho-podnikani and http://tessea.cz/images/pdf/prehled_indikatoru_integracni_SP_2014.pdf	2017

Wildmannová, M. (2018) "Barriers and opportunities for the development of social entrepreneurship: Case Study of Czech Republic", Journal of Economic and Social Development	2018
OFA - Országos Foglalkoztatási Közhasznú Nonprofit Kft. (National Employment Public Benefit Ltd.) (2017) Módszertani Kézikönyv társadalmi vállalkozások részére, Budapest: OFA.	2017
NGM (2016): Felhívás társadalmi vállalkozások ösztönzése - GINOP-5.1.3.-16. https://www.palyazat.gov.hu/ginop-513-16-trsadalmi-cl-vllalkozsok-sztnzse (utolsó letöltés: 2017.10.08.)	2016
Németh L. „A szociális szövetkezetek jellemzői és tényyszerű adatai”, Szövetkezés, 33 (2012/1-2), pp. 136-45	2012
Kiss, J. - Mihály M. Social enterprises and their ecosystems in Europe. Country report, Hungary. European Union, Luxembourg.	2019
G. Fekete, É. - Hubai L. - Kiss, J. - Mihály, M. Társadalmi vállalkozások Magyarországon. In: G. Fekete, É. -Nagy, Z. - Lipták, K. - Kiss J. (szerk.) Szociális és szolidáris gazdaság a poszt szocialista perifériákon. Miskolc	2018
Strategija razvoja društvenog poduzetništva u Republici Hrvatskoj za razdoblje od 2015. do 2020. Godine. http://www.esf.hr/wordpress/wp-content/uploads/2015/02/Strategija-razvoja-dru%C5%A1tvenog-poduzetni%C5%A1tva-u-RH-za-razdoblje-2015-2020.pdf	2015
Regierungsprogramm (2020): Aus Verantwortung für Österreich: Regierungsprogramm 2020-2024. https://www.dieneuevolkspartei.at/Download/Regierungsprogramm_2020.pdf . Access on 16.12.20	2020
Vandor, P., Millner, R., Moder, C., Schneider, H., Meyer, M. (2015): Das Potential von Social Business in Österreich	2015
§5 KStG (2020): 2. Abschnitt: Befreiungen. https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004569 . Access 16.12.20	2020
§34-47 BAO (2020): 8. Gemeinnützige, mildtätige und kirchliche Zwecke. https://www.ris.bka.gv.at/NormDokument.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003940&Paragraf=34 . Access on 16.12.20	2020

Appendix 1. Common template used by the countries for the research

1. Does your country have a specific legislation addressing social entrepreneurship?

(max 800 characters including space)

Please: give a brief description, mentioning exactly which are the Laws and also provide a reference where it is possible to consult the text.

2. Legal framework and regulatory characteristics for SE: a general overview

(max. 1500 characters including space)

- *Does the legislation set out the activities that social enterprises can pursue?*
- *Does the legislation define activities and other characteristics (e.g.: the internal democratic governance and decision-making process) that SEs must perform in order to be recognized as SEs?*
- *Does SEs can operate through volunteers?*
- *Does the definition of activities to be performed impede their development and growth?*
- *Does the legislation effectively recognise, differentiates, and supports social enterprises?*

4. Legal forms recognized in your country concerning the social entrepreneurship

- *Is (are) there a specific legal form(s) dedicated to social enterprises? [please describe them in their key characteristics]*
- *Social enterprises can operate through a wide variety of legal forms?*

(max. 1500 characters including space)

5. Accessibility and relevance of legislation on social enterprises

- *Is the information for establishing a social enterprise easy to access?*
- *Is it easy to understand?*
- *Was the content of the legislation developed through an inclusive consultation process?*

(max. 800 characters including space)

6. Are there, and if yes please describe them, specific benefits for the social enterprise legal form and status? (es. tax exemptions, incentives, etc)

(max. 1500 characters including space)

7. Are there, and if yes please describe them, specific obstacles for the social enterprise legal form and status? (es. restrictions, taxes etc)

(max. 1500 characters including space)

8. Do you know, and if yes please describe them, some innovative case studies concerning the legal framework for SE at regional, provincial or local level in your country?

(max 1000 characters including space)