

BRIEFER ON CUTTING EDGE TRENDS IN SOCIAL ENTERPRISE REGULATION



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I. INTRODUCTION

Social enterprises combine societal goals with an entrepreneurial spirit. They focus on achieving wider social, environmental or community goals while engaging in income-generating activities. Even though the concept of social entrepreneurship has a longer tradition in Europe than in other regions of the world, the attention of the European Union and its member states continues to grow, with new laws being adopted each year. Social enterprises provide an inclusive and sustainable solution to multiple challenges of the past decade. They fill the gap in services that cannot be provided by the public or private sectors. Also, they develop innovative technologies and solutions to protect the environment and fight climate change.

The present briefer, developed by the European Center for Not-for-Profit Law (ECNL)¹, describes current regulatory trends of social entrepreneurship in Europe demonstrated by examples from countries diverse in size, economic development, and other characteristics. It aims to support the discussions around the development of a regulatory framework for social enterprises in Jamaica. The briefer is organized around the following three pre-selected issues that are of relevance in the development of social enterprise regulation in Jamaica: 1) different regulatory approaches and their advantages and disadvantages; 2) co-existence of social enterprise and charity status;² and 3) registration and supervisory bodies, their composition and competences. The briefer provides a set of conclusions based on the identified trends, good practices and lessons learned.

The paper was developed based on desktop research of relevant country laws and regulations from Europe, selected to represent diverse regulatory approaches to social entrepreneurship in the continent. ECNL also reviewed several comparative studies and reached out to local experts to obtain additional input on practical functioning of social enterprise regulation in the selected countries.

II. DEFINITION OF SOCIAL ENTERPRISE

There is no universal definition of social enterprises used throughout European countries. In the broadest sense, the term “social enterprise” is used to describe an organization, either for-profit or non-profit, active in the delivery of socially beneficial economic activities. According to the definition adopted by the European Commission, social enterprise is “an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.”³

1 The material is prepared by Ivana Rosenzweigova and Eszter Hartay of European Center for Not-for-Profit Law (ECNL). ECNL is grateful to Jocelyn Nieva of International Center for Not-for-Profit Law for her guidance and contribution to the development of the briefer. Copyright © European Center for Not-for-Profit Law 2019.

2 For the purposes of this document, the term “charity status” refers also to public benefit, public utility, general interest and other statuses with similar concept and purpose.

3 European Commission: *Social Enterprises*, available at: http://ec.europa.eu/growth/sectors/social-economy/enterprises_en.

The definition adopted by the European Commission incorporates three key dimensions that define social enterprises: 1) governance dimension, 2) economic dimension and 3) social dimension; it goes beyond a simple work integration concept. Each of the dimensions is operationalized through a set of criteria. The European Center for Not-for-Profit Law in its Comparative Report on social economy⁴ further describes the criteria in the following way:

- 1. Governance criteria:** The governance criteria regulate the management of the internal matters of a social enterprise. They describe social enterprises as independent, private legal entities, with participatory and democratic decision-making processes. Decision-making power is not based on the share of capital or assets of the organization and is typically governed by the one member, one vote principle. Social enterprises that operate as membership organizations are traditionally collectively governed through co-operative or non-profit structures. Companies may be also considered as social enterprises, as long as they prioritize the social aim over profit-making.
- 2. Economic criteria:** Economic criteria bring the aspect of trade to the definition of social enterprises. Social enterprises shall be engaged in an economic activity producing goods and/or selling services.
- 3. Social criteria:** Social criteria emphasize the primacy of the social purpose of social enterprises over the distribution of surplus income. The laws also typically provide a non-distribution constraint or limit the distribution of surplus income to certain percentage of annual turnover/income.

For the purposes of this paper, we will use the wider definition of social enterprises adopted by the European Commission and further operationalized through a set of criteria as described above.

III. POLICY ISSUES

III./1. Key regulatory models and their advantages and disadvantages

Regulatory models

There are various preconditions that shape the discussions on how to design a regulation for social enterprises. Besides the economic, social and cultural traditions of the country or region, different regulatory traditions, existing legal frameworks and needs of the sector have to be taken into account. Based on the analysis of different regulatory approaches of social enterprises, we have identified the following key models used throughout Europe:

1. Separate legal form

Social enterprises may typically operate in multitude of legal forms. However, some countries introduced tailor-made legal forms to institutionalize the concept of social entrepreneurship. For example, in **Spain**, there are three institutionalized forms of social enterprises: Social Initiative

⁴ European Center for Not-for-Profit Law: Legal Framework for Social Economy and Social Enterprises: A Comparative Report, 2012. Available at: http://ecnl.org/dindocuments/442_ECNL%20UNDP%20Social%20Economy%20Report.pdf.

Cooperatives⁵, Sheltered Employment Centers⁶ and Work Integration Social Enterprises.⁷ In the **Czech Republic**, there is an institutionalized form of social enterprise called social co-operative. This legal form is used for carrying out activities for public benefit in the areas of job creation, social services and health care, education, housing and sustainable development.⁸ In the United Kingdom there is a special legal form created for non-charitable social enterprises called Community Interest Company.⁹

2. Distinct legal status

Depending on the country's legal framework, all or several selected legal forms may apply for a distinct legal status of a social enterprise. The status is granted to an organization that complies with the pre-determined legal requirements. For example in **Slovenia**, the Social Entrepreneurship Act allows a *society, institute, foundation, company, cooperative society, European cooperative society or other legal entity governed by private law not established for the sole purpose of generating profit, which does not distribute assets or the generated profit or excess revenue* to apply for a social enterprise status.¹⁰ The Act recognizes two different types of social enterprise status: Type A: which carries out one or several "social entrepreneurship activities" as laid out in Article 5 of the Act or as defined in the Regulation on Determination of Activities of Social Entrepreneurship; and Type B: a work-integration social enterprise (employing people from vulnerable groups).¹¹ Similarly, in **Romania**, the Framework Law on Social Economy operationalizes two types of social enterprises. The first type is any legal entity of private law carrying out activities of social economy, according to the principles of social economy set by the law.¹² The second type, social insertion enterprise, refers to legal entities with at least 30% of staff belonging to a vulnerable group and with the objective to combat marginalization, exclusion, discrimination and unemployment among disadvantaged groups.¹³ The law also sets requirements for granting the status of a social enterprise, while the eligible legal forms include credit cooperatives, co-operative societies, associations and foundations, employees and pensioners' mutual funds, agricultural companies and any other legal entities which comply with the definition and principles of social economy.¹⁴

In some countries, a selected group of legal forms that comply with the legal requirements can apply for social enterprise status. For example, according to the new Code on Companies and Associations (CAC) in **Belgium**, companies and associations may acquire a social enterprise status.¹⁵

5 Spain: National law 27/1999 and regional laws.

6 Spain: Law No. 13/1982.

7 Spain: Law No. 44/2007.

8 Czech Republic: Act no. 90/2012, on Commercial Companies and Cooperatives (Business Corporations Act), available at: <http://obcanskyzakonik.justice.cz/images/pdf/Business-Corporations-Act.pdf>.

9 UK: Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act 2004, available at: <https://www.legislation.gov.uk/ukpga/2004/27/part/2>.

10 Slovenia: Art. 2 of the Social Entrepreneurship Act, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/zaposlovanje/Act_SE_rev_clear.pdf.

11 Slovenia: Art. 5 and 6 of the Social Entrepreneurship Act.

12 Romania: Art. 8 of the Law no. 219/2015 on the social economy, available at: <https://lege5.ro/Gratuit/g4ztombzqg/legea-nr-219-2015-privind-economia-sociala>.

13 Romania: Art. 10 of the Law no. 219/2015 on the social economy.

14 Romania: Art. 3 of the Law no. 219/2015 on the social economy.

15 Belgium: CMS Law: *Belgium passes code that reforms cooperatives and abolishes social purpose companies*, 8.4.2019, available at: <http://www.cms-lawnow.com/ealerts/2019/04/belgium-passes-code-that-reforms-cooperatives-and-abolish->

3. Non-binding policy

In some countries there is no statutory regulation of social enterprises. Still, there are de-facto social enterprises that may operate under diverse legal forms provided those forms are allowed to perform economic activities. State support may be provided through non-binding policy documents and may target organizations pursuing a social goal. For example, in **Croatia**, the Strategy for the Development of Social Entrepreneurship in the Republic of Croatia for the period of 2015 – 2020 was adopted in April 2015. The Strategy was developed by a partnership of multiple stakeholders, including a network of civil society organizations (“CSOs”), social enterprises and the government and is largely founded on the concept of social entrepreneurship defined by the European Commission. It aims to develop and improve the legislative, institutional and financial frameworks, promote social entrepreneurship through education and increase its visibility.¹⁶

Even though there are several state level documents that mention the concept of a social enterprise, there is no specific legal framework for social enterprises in **Estonia**. The policy documents acknowledging the social enterprise concept with the aim to support it include: The National Development Plan for Civil Society 2015-2020 by the Ministry of the Interior and the Well-Being Development Plan by the Ministry of Social Affairs 2016-2023.

4. Combination of a distinct status and legal form

In addition, some countries have a combination of a distinct status and legal form. For example, in **Italy** there is a special legal form called “social co-operative”.¹⁷ The law distinguishes between two types of social co-operative: those delivering social, health and educational services and those providing work integration for disadvantaged people.¹⁸ In addition, there is a so called “legal brand” of social enterprise¹⁹ that was recently reformed through a Legislative Decree no. 112/2017 that provides more flexibility for newly incorporated social enterprises.²⁰ Similarly, in France, there have traditionally been social cooperative legal forms available for social enterprises. With the adoption of the Law on Social and Solidarity Economy in 2014, a new social enterprise status has been introduced to the French legal system. The status is available to all legal forms enumerated in the law, provided the governance, economic and social criteria are met.²¹

[es-social-purpose-companies?cc_lang=de.](#)

16 OECD: *Boosting Social Enterprise Development Good Practice Compendium, Chapter 4: The National Strategy for the Development of Social Entrepreneurship in Croatia*, 2017, available at: <https://www.oecd-ilibrary.org/docserver/9789264268500-7-en.pdf?expires=1555396518&id=id&accname=guest&checksum=2A585D5F790679290EC9D8B2808384A7>.

17 Italy: Law of 8 November 1991, no. 381, on social cooperatives, available at: http://base.socioeco.org/docs/1_381_91.pdf.

18 EMES European Research Network: *Social Enterprise in Europe*.

19 Initially introduced by Law of 13 June 2005, no. 118, Delegation to the Government concerning the regulation of social enterprises, published in *the Official Journal* n. 153 of 4 July 2005, available at: <http://www.camera.it/parlam/leggi/051181.htm>.

20 Italy: Legislative Decree of 3 July 2017, n. 112, Revision of the regulation on social enterprise, pursuant to Article 2, paragraph 2, letter c) of the law of 6 June 2016, n. 106, available at: <https://www.gazzettaufficiale.it/eli/id/2017/07/19/17G00124/sg>.

21 France: Art. 1 of the Law No. 2014□856 from July 31, 2014 on Social and Solidarity Economy, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029313296&categorieLien=id>.

Advantages and disadvantages

Each regulatory approach described above has its own advantages and disadvantages, although these are typically closely related to the specific country context. For example, countries with a tradition of de-regulation may benefit from non-binding policies, while those that have already functional per se social enterprises and wish to legally recognize them may prefer to adopt a separate law introducing a social enterprise status. Following are several advantages that are rather “objective” and apply regardless of the country context:

1. Legal framework vs. non-binding policies

A typical reasoning for the adoption of a legal regulation of social enterprises is its potential to help with their **recognition**. A legal definition that reflects the reality of de facto social enterprises may support the general recognition and provision of more **favorable treatment** for social enterprises. At the same time, when the definition is too narrow, it **may limit or exclude certain types** of social enterprises. Therefore, it is always essential to map out the existing de facto social enterprises and their fields of operation, and also allow for modification of the definition in the future.

Sometimes, the existing legal regulation does not inhibit social entrepreneurial activity and all that is needed is financial and policy support for social enterprises. In such situations, it may be easier to adopt a policy document that provides necessary support and does not impose any additional obligations on social enterprises. Further, if there are any constraints for the operation of social enterprises, it may be possible to remove them by means other than through the adoption of a complex framework social enterprise law. This can be done, for example, by amending the respective laws that inhibit social enterprises in their activities.

LEGAL FRAMEWORK	NON-BINDING POLICIES
√ General legal recognition	√ Legal framework may not be necessary
√ Favorable statutory treatment	√ Favorable treatment via policy changes



SE LEGAL FORM	SE STATUS
Tailor-made to the needs of the sector. Free from restrictions (for example):	√ Easy to attain for existing de facto social enterprises
√ on the ability to carry out economic activities;	√ Freedom to choose suitable legal form
√ ability of directors to receive compensation;	√ Eliminates the costs inherent in switching legal forms
√ regarding the competition rules for public tenders;	√ Easy to monitor and revoke in case of non-compliance
√ for obtaining tax benefits.	

2. If legal framework – social enterprise status vs legal form

If legal regulation is a more suitable solution for Jamaica, there are two available regulatory approaches (as described above): adoption of a social enterprise status or a separate legal form. The **main advantage of the entirely new separate legal form** is that it can respond to all specificities of social enterprise operation and characteristics and can be tailored to the needs of the sector. This includes elimination of barriers that may apply to certain legal forms, such as limitations to the ability to conduct economic activities, obtain tax benefits or provide compensation to the directors, to name a few.²²

In some circumstances, it can be argued that the most suitable solution is to simply introduce a new legal form where existing legal forms are inadequate for a whole new concept of social enterprise operation. However, in reality many countries have found it challenging to design a legal form suitable for all forms of social entrepreneurial activities. As a result, individuals and organizations continue to found their social enterprises in the myriad of other legal forms and operate as de facto social enterprises. This was the case for example in Italy, until legislators finally decided to adopt a law that introduced social enterprise status.²³

There are numerous advantages of the social enterprise status, including:

- ✓ limitation of bureaucratic and administrative costs of its introduction, provided the legislators design a simple registration and oversight mechanism;
- ✓ elimination of costs for the organizations that wish to be recognized as social enterprises, as they do not have to switch legal forms but simply apply for a new status;
- ✓ freedom to choose a suitable legal form. As mentioned above, one form does not fit all so even if a separate legal form is introduced, there is no guarantee that it will be suitable for all social entrepreneurial activities. *In practice, countries with specific social enterprise legal forms have started to shift towards social enterprise status.* This was the case for example in Italy and France, where social cooperatives were supplemented by a distinct social enterprise status.²⁴

Moreover, in practice, supervision of social enterprises is considered easier in countries that have established a social enterprise status. Monitoring compliance with social enterprise requirements is an ongoing process and requires at least annual evaluations. In cases of non-compliance, revoking the status or imposing sanctions limiting eligibility for the status proves to be easier than prohibiting an organization registered under a special legal form to continue its operation.²⁵

22 ESELA: *Social Enterprise in Europe: Developing Legal Systems which Support Social Enterprise Growth*, available at: https://esela.eu/wp-content/uploads/2015/11/legal_mapping_publication_051015_web.pdf.

23 EMES European Research Network: *Social Enterprise in Europe: Recent trends and developments*, available at: http://www.emes.net/site/wp-content/uploads/WP_08_01_SE_WEB.pdf.

24 For more information, please see the information under “Combination of a distinct status and a legal form”.

25 For more information about the advantages and disadvantages of different models, please consult also:

Tomas Lavisius: *Social enterprises: Does the legal form matter?*, *Social Transformation in Contemporary Society*, 2016, available at: http://stics.mruni.eu/wp-content/uploads/2016/07/STICS_2016_4_132-141.pdf.

III./2. Intersection between charity and social enterprise statuses

Charity and social enterprise status may overlap in various instances, including the scope of organizations and activities eligible for the status, supervision, related benefits and more. One of the issues that needs to be resolved prior the adoption of a new social enterprise law is how these statuses will co-exist. Therefore, we looked into the experiences of European countries that have both charity and social enterprise status in place.

Co-existence of both statuses

When analyzing the compatibility of the two statuses, it is necessary to look into the specificities of both statuses as well as to the intersection between them. Social enterprise status is typically but not exclusively dedicated to legal entities conducting for-profit entrepreneurial activities with social impact goals. Charity status is mainly obtained by entities that aim to bring a positive impact through engagement primarily in non-profit public benefit activities. While in some instances, the statuses may address different type of endeavors, in others, they are used to regulate the same type of engagements. Therefore, when designing the new policies and/or regulations for social enterprises, it is necessary to look into the existing legal framework to ensure the compatibility of the legislation. Other factors that need to be taken into consideration include the economic, social and cultural traditions of the country or region and needs of the sector. Below, we will illustrate commonalities and differences in the regulation of social enterprise and charity status based on the country examples.

Country experiences in regulating social enterprise and charity status

According to the information provided by country experts from Slovenia and Bulgaria, there was never really a debate about the co-existence of the statuses during the legislative processes. According to the expert from Slovenia, the statuses **never really “competed,”** as they were available for all applicants, including those already possessing one of the statuses, provided they comply with the set requirements. In Bulgaria, associations and foundations with charity status are one of the most common types of legal entities operating as social enterprises eligible for a social enterprise status.²⁶ The Social and Solidarity –based Enterprises Act specifically notes that one of the subjects of social and solidarity economy are not-for-profit legal person operating for public benefit.²⁷ This does not, however, mean that organizations operating for public benefit without charity status cannot apply for a social enterprise status. The Act further states that any legal entity can apply for social enterprise status of any class, regardless of its legal form.²⁸

The charity and social enterprise status are typically subject to separate regulation contained in two (or more) different legal acts. The scope of **eligible legal entities as well as their primary activities may differ based on the country context and regulatory traditions.** While in some countries the charity status is reserved for non-profit organizations (such as Romania, Slovenia or Poland), in other countries, it may be open to other legal entities, including for-profit ones

²⁶ Ideannovaship: *Current situation of social entrepreneurship in Bulgaria*, available at: <http://ideannovaship.eu/wp-content/uploads/Bulgaria.pdf>.

²⁷ Bulgaria: Art. 5 of the Social and Solidarity based Enterprises Act.

²⁸ Bulgaria: Chapter 2 of the Social and Solidarity based Enterprises Act.

(such as UK or Ireland). Social enterprise status is typically available for both non-profit and for-profit entities. For example, in Romania, the social enterprise status is available to any other legal forms, including cooperative enterprises, credit unions, and mutual companies.²⁹ In Slovenia, the social enterprise status is available to societies, institutes, foundations, companies, cooperative societies, European cooperative societies or other legal entities.³⁰

One of the common preconditions for both statuses is that legal entities holding them shall **create certain positive impact**. For social enterprises, the measured impact of their activities is called “social impact”, while charities are typically required to engage in activities that are of “public benefit”. **There is typically an overlap in the fields of activities considered as “having social impact” and being of “public benefit.”** However, some countries may make some distinctions when defining these two terms. For example in Slovenia, the “public benefit” areas of engagement are broader than “social entrepreneurship activities” and include also advocacy fields such as protection of human rights, development of democracy or development of civil society.³¹ In Romania, all associations and foundations that serve objectives in the “general interest” or “collective interest” may apply for the charity status, provided they comply with other requirements. On the other hand, social enterprise status is reserved for legal entities pursuing one of the specified objectives, including strengthening the economic and social cohesion, development of social services and others.³²

As to the types of activities, it is important that both organizations with social enterprise status and charity status **can engage in economic activities, regardless of their legal form**. This is particularly relevant for non-profit legal forms, as non-profit activities are sometimes being confused with no income-generating activities. In fact, certain economic activities can directly accomplish an organization’s non-profit mission. For example, the sale of books for courses on environmental education does not only serve the economic benefit of the organization but it also serves the public benefit of promoting environmental protection. Good regulatory practices on economic activities include the examples of France and Germany. In both cases there is no limitation on non-profit legal entities to engage in economic activities as long as they do not distribute the surplus income.³³ Relatedness of these activities to the primary purpose of the organization becomes relevant in France only when there are concerns of unfair competition with private enterprises.³⁴ In Germany, the relatedness is relevant only for tax purposes, otherwise there is no restriction on pursuing any type of economic activity.³⁵

Another common requirement for obtaining the statuses typically involves **a commitment to non-distribution of surplus income**. For example, social enterprises established in a for-profit form are bound by caps on redistribution of surplus income, that can amount to 90% as in

29 Romania: Art. 3 of the Law no. 219/2015 on social economy and Art. 15 of the Government Ordinance no. 26/2000, available at: <http://www.icnl.org/research/library/files/Romania/ordinanceeng.pdf>.

30 Slovenia: Art. 2 of the Social Entrepreneurship Act.

31 Slovenia: Article 5 of the Social Entrepreneurship Act and Article 6 of the Law on non-governmental organizations.

32 Romania: Art. 5 and 6 of the Law no. 219/2015 on social economy and Art. 15 of the Government Ordinance no. 26/2000.

33 European Center for Not-for-Profit Law: *Legal regulation of economic activities of civil society organizations*, February 2015, available at: <http://ecnl.org/wp-content/uploads/2015/07/ECNL-Economic-Activities.pdf>.

34 France: Council on Foundations: Country profile France, available at: <https://www.cof.org/country-notes/nonprofit-law-france>.

35 Germany: Art. 64 of the Fiscal Code, available at: https://www.gesetze-im-internet.de/englisch_ao/englisch_ao.html#p0545.

Romania,³⁶ or 40% after the second calendar year of its operation and 50% after the third and all subsequent years in Slovenia.³⁷ Naturally, non-profit legal entities having a social enterprise status are also bound by the redistribution constraint arising from the CSO framework laws, so the caps regulated in the social enterprise laws do not apply. Organizations with charitable status are typically bound by a non-distribution constraint that does not allow them to distribute any surplus income, provided some has been generated.

Associated benefits

Besides the recognition that both statuses bring to the organizations, there are **other benefits** typically connected with the statuses. These include, for example:

- **dedicated public support exclusively for legal entities with charity or social enterprise status,**
- **tax benefits,**
- **institutional support** and others.

For example, in Bulgaria, legal entities with both statuses are eligible to obtain tax-deductible donations from companies. In Slovenia, organizations with social enterprise status may obtain dedicated grants for the development of social entrepreneurship,³⁸ while organizations with charity status shall receive preferential treatment when competing in public tenders of local communities.³⁹ As these forms of public support are typically in the competence of different ministries, they are periodically reviewed and different types of incentives are offered instead. In addition, both are entitled to rent some state-owned office space for free or discounted price for a determined period of time. The institutional support for social enterprises is described further under section 3.3.

Use of the statuses in practice

Based on the data received from the country experts, charity status is currently more widely used among legal entities in Bulgaria, Romania and Slovenia than the social enterprise status. However, it is important to note that the social enterprise status is a fairly new phenomenon in these countries compared to the charity status that has been more established and used for many years.

Besides, the social economy sector is wider and goes beyond the scope of organizations holding a social enterprise status. According to our research, countries regularly monitoring the impact of the whole sector do not limit the scope to organizations that applied for the social enterprise status. For example in Slovenia, the Ministry of Economic Development and Technology's analy-

36 Romania: Art. 8 of the Law no. 219/2015 on the social economy.

37 Slovenia: Art. 8 of the Social Entrepreneurship Act.

38 For more information about available grants, please visit the official website of the Ministry of economic development and technology at: http://www.mgrt.gov.si/si/kako_do_sredstev/aktualni_razpisi/.

39 Slovenia: Art. 16 of the Law on non-governmental organizations.

sis used all available public data on social enterprises to determine the impact of the sector and number of employees engaged, including public registers and data on different types of support obtained.⁴⁰ In Czech Republic, where there are currently only debates about the adoption of the social enterprise status, the sector is identified and measured through a self-regulatory initiative. An umbrella organization for social enterprises that regularly cooperates on the development of reports and background analyses for the government developed a list of social enterprises that is regularly updated.⁴¹ In Bulgaria, the Social and Solidarity –based Enterprises Act that regulates the conditions for obtaining social enterprise status specifically recognizes that the term “social economy” is broader and shall include cooperatives, not-for-profit legal persons operating for public benefit and social enterprises.⁴²

III./3. Registration and supervision of social enterprises

Registration: bodies involved and their competencies

The **registration** of a social enterprise status can be vested in the **same authorities as those that are responsible for the registration** of the legal entity itself. For example, in Slovenia, same authority that registers a certain legal form decides on the social enterprise status. There are therefore several approving bodies – for associations: administrative units; for private institutes, cooperatives and companies: courts; and for foundations: ministries.⁴³ In Denmark, the Danish Business Authority manages the registration of legal forms, as well as the registration of a social enterprise status.⁴⁴ In other countries, **a designated ministry or other public authority** is in charge of registration of a social enterprise status. For example, in Italy, the Ministry of Labor and Social Affairs is responsible for the registration of social enterprise status, while local authorities are in charge of registration of the respective legal entities.

Some countries have established **mixed committees or boards** that play a role in the process of granting social enterprise status. For example, in Latvia, there is a Commission for Social Enterprises which was established to advise the Ministry of Welfare, as the registration authority, on the compliance of applicants with the requirements for obtaining social enterprise status. A decision to grant the status of social enterprise is made by the Ministry of Welfare. The Commission is a collegiate advisory body which consists of 10 members: 5 members are authorized public officials and 5 members are selected representatives of associations and foundations.⁴⁵

As to the **competencies of the bodies involved in social enterprise registration**, the main one is related to evaluation of applications for social enterprise status. For example, in Slovenia, the

40 Ministry of Economic Development and Technology: Annex 1 to the Analysis of the data from the evidence of social enterprises, 2017, available at: http://www.mgrt.gov.si/fileadmin/user_upload/Priloge_k_analizi.pdf

41 Marek Vyskocil (Center for the research of non-profit sector at the Masaryk University): Background material for the concept of the government policy towards non-governmental organization until 2020, 2014, available at: https://www.vlada.cz/assets/ppov/rnno/dokumenty/studie_vyskocil_pro_web.pdf.

42 Bulgaria: Art. 5 of the Social and Solidarity - based Enterprises Act.

43 Združenje Socialna Ekonomija Slovenije: *How to obtain the status of a social enterprise?*, available at: <http://social-naekonomija.si/6286-2/>.

44 Social Entrepreneurs in Denmark: *Registration scheme for social economy enterprises*, available at: <http://xn--sociale-entreprenrer-rc.dk/registreringsordningen-for-socialokonomiske-virksomheder.html>.

45 Latvia: Regulation regarding the social enterprise commission no. 101 from 20 February 2018, available at: <https://likumi.lv/ta/en/en/id/297301-regulations-regarding-the-social-enterprise-commission>.

registration authorities are responsible, among other things, for analysis and evaluation of applications, issuing the decisions and reporting successful applicants to the registrar.⁴⁶ In countries where the registration and supervisory bodies overlap, the scope of competences is much wider and includes supervision, advising on policy and regulatory issues and more.

Supervision: bodies involved and their competencies

In some countries, **the registration and oversight bodies overlap**. For example, in Latvia, the Ministry of Welfare is responsible for both registration and monitoring compliance with the applicable regulation.⁴⁷ In Romania, the dedicated social economy departments within the local labor offices are responsible for granting as well as suspending social enterprise status.⁴⁸

In some countries, the responsibilities for registration and supervision of social enterprises are clearly divided. For example, in Slovenia, local authorities are responsible for registration of social enterprise status, while supervision is unified in the hands of the Ministry of Economic Development and Technology. Implementing authorities that grant funds to social enterprises assist the Ministry with supervision and report any observed non-compliance with requirements.⁴⁹

As to the **competences of the oversight bodies**, these can go well beyond simple monitoring and supervision of social enterprise activities. For example in Italy, the Directorate General of the Third Sector and of Corporate Social Responsibility promotes and supports the activities of social enterprises in collaboration with local authorities, private companies and research institutions; supports development of related legislation and policies; distributes financial support; etc. The Directorate is divided into three subdivisions, each with a separate set of competencies and responsible for implementation of a different set of activities.⁵⁰ In Romania, the local labor offices granting social enterprise status to applicants are also responsible, for example, for reporting on the activities of social enterprises to the National Labor Office and proposing measures for improvement and development of the social economy to the Ministry of Labor, Family, Social Protection and Elderly People.⁵¹

Additional bodies

Some countries have introduced **additional bodies with primarily advocacy or advisory roles to promote social enterprises**. In Slovenia, there is multi-stakeholder policy and advocacy body called the Council for Social Entrepreneurship. It is composed of representatives of all ministries (except the Ministry of Foreign Affairs), two representatives of social enterprises, one representative of social partners and one expert. In France, there is a special body that reports to the Prime

46 Slovenia: Art. 17 and following of the Social Entrepreneurship Act.

47 Latvia: Art. 4 of the Social Enterprise Law, available at: <https://likumi.lv/ta/en/en/id/294484-social-enterprise-law>.

48 Romania: Art. 24 – 25 of the Law no. 219/2015 on the social economy.

49 Slovenia: Art. 21 of the Social Entrepreneurship Act.

50 For more information about the Directorate General of the Third Sector and of corporate social responsibility, its division and competencies, please consult the official website of Ministry of Labor and Social Affairs at: <https://www.lavoro.gov.it/ministro-e-ministero/Il-ministero/Organizzazione/Pagine/DG-del-terzo-settore-e-della-responsabilita-sociale-delle-imprese.aspx>.

51 Romania: Art. 25 of the Law no. 219/2015 on the social economy.

Minister and is chaired by the Minister of Social Economy called The High Council of the Social and Solidary Economy. The Council is composed of diverse representatives, including representatives designated by the National Assembly; Senate and Economic, Social and Environmental Council; representatives of public services (such as public servants responsible for social and solidarity economy policies, representatives of national and regional chambers of social and solidarity economy, representatives of other national consultative bodies competent to treat issues related to cooperatives, associations, foundations etc.); and also employees of social enterprises (including representatives of different legal forms of social enterprises). The High Council is consulted on legislative plans related to the social economy and contributes to the development of national strategies on the development of the social and solidarity economy.⁵²

VI. KEY CONCLUSIONS

Based on the presented country examples, we have identified following trends, good practices and lessons learned:

- **Growing recognition of social enterprises:** The economic and social value of social enterprises is undoubtedly significant, with a growing recognition of their key role in tackling societal and environmental challenges. In the past few years, countries in Europe have continued to adopt new laws supporting the development of social entrepreneurship.
- **No universal definition of social enterprises:** There is no universal definition of social enterprises used throughout Europe, although the European Union attempted to introduce a general EU definition of social entrepreneurship in its Social Business Initiative. The definitions used throughout the European countries incorporate common criteria for social enterprises, including governance (e.g. democratic decision-making power, autonomy), economic (e.g. limited distribution of profits, provision of goods/services) and social criteria (primary social aim).
- **Diversity in regulatory approaches –one does not fit all:** There is no unified approach in the regulation of social enterprises. Typically, various local preconditions and other factors shape the discussions on how to design a regulation for social enterprises. Besides the economic, social and cultural traditions of the country or region, different regulatory traditions, the existing legal framework and the needs of the sector must be taken into account. Based on that, some countries tend to adopt laws introducing a distinct legal status for social enterprises, while others create a separate legal form. In addition, some countries adopt non-binding policies that provide a general framework for development of social entrepreneurship.
- **Charity vs. social enterprise status and their compatibility:** Charity and social enterprise status may overlap in various instances, including the scope of organizations and activities eligible for obtaining the status, connected benefits and others. However, as the experiences of several European countries having both statutes show, they typically do not compete but rather complement each other. Therefore, when the regulation removes any potential restric-

⁵² France: Art. 4 of the Law No. 2014-856 from July 31, 2014 on Social and Solidarity Economy.

tions, including to obtain both statuses, if applicable and provides tangible benefits to the status holders, they may co-exist well and bring the expected positive impact.

- **Support over supervision:** Countries have different approaches in determining the authorities of the bodies that grant social enterprise status and supervise the entities. While some countries leave determination of social enterprise status in the hands of registration authorities, others designate a separate authority or establish a mixed board or committee. Similarly, supervisory authorities may be identical to those that grant social enterprise status, while some countries separate these two roles and appoint a different authority to monitor social enterprises. As to the competences of the authorities, these can go well beyond granting the status and monitoring activities. It is a good practice when such bodies are also responsible for promoting and facilitating the development of the social enterprise sector.