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Comparative Analysis of the Regulatory Framework for Social Enterprises



European Center for Not-for-Profit Law



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1. Introduction

Social entrepreneurship is becoming more widespread in Europe with an increasing economic value it brings to the national markets. Social enterprises can play a key role in tackling societal and environmental challenges and supporting inclusive growth. In addition, they may create new employment opportunities, particularly for disabled and marginalized jobseekers. Recently, the measurement of the social impact made by social enterprises has come to the forefront of the discussions in Europe.¹

Social enterprises combine the tools and strategies of a business with social values and goals. To ensure the lasting social impact social enterprise has to generate profit. Hence, it has to compete under the same market logic in terms of price and quality of its goods and services like any other conventional business.² One of the enabling factors for social enterprises is the presence of a supportive legal and tax environment encouraging new social entrepreneurship initiatives.

European Center for Not-for-Profit Law (ECNL) developed the present comparative paper in response to ongoing discussions in Moldova on legal regulation of and the need to ensure a more conducive environment for social enterprises. The brief was prepared within the *Moldova Partnerships for Sustainable Civil Society Program (MPSCS)* implemented by FHI 360 and ECNL.

The paper, firstly, describes the concept of social entrepreneurship, including the governance, economic and social criteria of social enterprises. The following chapter provides examples of different country approaches in regulating social enterprises, definitions, eligible legal forms and operational conditions for social enterprises. In Chapter 3, the paper describes benefits available for social enterprises and other policy measures related to the social entrepreneurship such as institutional support and public procurement of services. In the end, the paper provides a set of conclusions based on country examples.

The paper was developed based on the desktop research of relevant country laws and regulations, including France, Lithuania, Slovakia, Slovenia, Spain and the United Kingdom. These countries were selected to represent diverse regulatory approaches of social entrepreneurship in Europe. In addition, ECNL reviewed several comparative studies to identify other issues that may be subject to legal regulation.

2. Concept of Social Enterprise/Social Entrepreneurship

There is no single concept applied for social entrepreneurship. 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 NESsT, social enterprise is “*a business created to further a social purpose in a financially sustainable way.*”³ The scope of activities performed by social enterprises is becoming broader. Their engagement goes beyond the **narrow concept** of work integration social enterprises (“WISE”) employing marginalized and/or

¹ For example, European Commission developed in 2014 a separate study on the measurement of impact of social enterprises: European Commission: *Proposed Approaches to Social Impact Measurement*, 2014. Available at: <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7735&type=2&furtherPubs=yes>.

² NESsT: *Shared Value: Doing Business with social enterprise*, 2015. Available at: http://issuu.com/nesster/docs/0-shared_value_ing_-_web_ok.

³ For more information visit NESsT’s website: <http://www.nesst.org/>

disadvantaged jobseekers and organizations providing social services of general interest. According to the sectorial classification used by the recent study of the European Commission, social enterprises may perform a **wide range of activities**, including:

- Social and economic integration of the disadvantaged and marginalized groups, such as work integration of people with mental disabilities;
- Social services of public interest, such as operation of a house for elderly people, provision of health care and medical services for people with cancer;
- Other public services, such as operation of a public transportation, maintenance of public spaces;
- Strengthening democracy and civil rights, such as for example fight against corruption;
- Environmental activities, such as reduction of emissions, promotion of alternative and renewable energy;
- Practicing solidarity with developing countries, such as promotion of fair trade products.⁴

Typically, social enterprises may operate in both for-profit and non-profit legal forms as long as they cumulatively abide by certain governance, economic and social criteria. In its Comparative Report on Social Economy, ECNL developed the following list of criteria for operation of social enterprises:⁵

1. Governance criteria:

- Autonomy: Social enterprises are voluntarily established, independent, private legal entities that operate without any direct or indirect influence of public authorities. When they provide services on behalf of the state, they may financially depend on public funds. However, they shall not be directly or indirectly managed by state authorities;
- Participatory and democratic decision-making processes: Decision-making power is not based on the share of capital or assets of the organization and is usually governed in accordance with the democratic principle of one member having one vote;
- Ownership: Social enterprises that operate as membership organizations are traditionally collectively owned through co-operative or non-profit structures. However, private businesses may be also considered as social enterprises, as long as they prioritize the social aim over profit making.

2. Economic criteria:

- An economic activity producing goods and/or selling services: Social enterprises are typically engaged in continuous production and sale of goods and/or services rather than advocacy issues or distribution of funds;
- A trend towards paid work: Even though social enterprises may accept volunteers, an organization shall have at least one paid employee in order to be considered as a social enterprise.

⁴ ICF Consulting: *A map of social enterprises and their eco-systems in Europe, study commissioned by the European Commission*, 2014. Available at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149>.

⁵ European Center for Not-for-Profit Law: *Legal Framework for Social Economy and Social Enterprises: A Comparative Report*, 2012. Available at: http://ecnl.org/hu/dindocuments/442_ECNL%20UNDP%20Social%20Economy%20Report.pdf

3. Social criteria:

- An explicit and primary social aim: The primary purpose of social enterprises' activities is to pursue certain social goal rather than to generate profit;
- Limited distribution of profits and/or assets: Social enterprises may be established both in a non-profit and for-profit form, bounded by the principle of non-distribution. The distribution of profits is limited also for social enterprises that operate in for-profit legal form, where majority of financial revenues shall be reinvested to further its statutory goals.

3. Regulatory models of Social Enterprises

3.1. Jurisdiction

The concept of social entrepreneurship may be introduced to the national legal systems in various ways, depending on the domestic practices and regulatory traditions:

- Some countries enacted a **law on social economy** that defines the concept of profit generating entrepreneurial activities which aim to achieve certain collective or social goal. Laws on social economy are broader in scope. Besides establishing general legal framework for social enterprises, they regulate related policy issues, such as promotion and development of social economy in the country;
- In other countries, the social entrepreneurship concept is introduced through a **separate law on social entrepreneurship/social enterprise**. These typically describe organizations that operate as SE or introduce special status/legal form for social enterprises. Besides that, some laws may also touch upon promotion of social enterprises;
- Another possibility to regulate social entrepreneurship is through adoption of **amendments to the existing laws**.

A. Law on Social Economy

The Law on Social Economy exists, *inter alia*, in Spain and France. The scope of the recently adopted **French Law on Social and Solidarity Economy** from 2014 is very broad. It encompasses various regulatory issues and national policies pertinent to social entrepreneurship, including the definition, internal governance and promotion of social and solidarity economy. In terms of promotion, the Law introduces a Supreme Council and national and local chambers as separate expert bodies. Among other responsibilities, they shall ensure a close cooperation and dialogue between social and solidarity economy actors and public authorities. In addition, the Law defines national policies related to social economy. The Law also separately regulates different legal forms allowed to operate as social enterprises and the conditions for their operation.⁶ Similarly, in **Spain the Law on Social Economy** is very broad. It provides general legal framework for social economy and creates the Council for the Promotion of Social Economy. According to the wording of the Law, the Council "*is set up as the institution that provides visibility to the various entities of the social economy.*"⁷

⁶ Article 1 of the Law on Social and Solidarity Economy No. 2014-856 from July 31, 2014.

⁷ Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011.

B. Separate law on social enterprises

Some countries adopted special laws that regulate social enterprises as a separate legal form or introduce a distinct legal status that may be obtained by broad range of legal forms provided they comply with pre-determined criteria. Such laws exist, *inter alia*, in Slovenia and Lithuania. In **Lithuania, the Law on Social Enterprise** regulates the requirements to obtain a distinct legal status of WISE and describes available benefits for such organizations.⁸ In **Slovenia, the Law on Social Entrepreneurship** defines activities of social enterprises, regulates the registration and operation of social enterprises and includes provisions on development of social entrepreneurship.⁹

C. Amendments to the existing laws

Regulation on social enterprises may be introduced also through amendments to the existing laws. For example, in **Slovakia** the regulation on WISE as a **narrow concept** of social entrepreneurship, was introduced through the amendments to the **Law on Employment Services**. Slovakia also considered to have a separate law on social entrepreneurship, but later on decided to simply adopt the amendments to relevant laws.

Article 50 b and c of the Law regulates the requirements for obtaining the status of WISE organization and describes benefits available for status holders.¹⁰ In addition, the Income Tax Law regulates the tax treatment of social enterprises.

3.2. Definition

Many European countries provide a **legal definition of social enterprise or social economy** in their national laws or legal regulations. According to the EC study on social enterprises, twenty out of twenty nine EU member states have a national definition of social enterprise in their legal frameworks.¹¹

In **Lithuania** the Law on Social Enterprises and the Order of the Minister of Economy implementing the social entrepreneurship (also called the Concept of the Social Entrepreneurship) provide definition of a social enterprise. Ministerial Concept was adopted in April 2015 to further promote the development of social entrepreneurship. According to Article 3 of the Law on Social Enterprises, *"Social enterprise is a legal person in any legal form, which has acquired the status of a social enterprise in accordance with the Law and the legal acts implementing it."*¹² The Governmental Concept of the Social Entrepreneurship defines social enterprise as *"a business model according to which profit maximization is related to social goals and priorities using market mechanism, taking into account public-private sector partnership principles and applying social innovations."*¹³

⁸ Law on Social Enterprise No. IX-2251, 1 June, 2004.

⁹ Law on Social Entrepreneurship No. 20/2011.

¹⁰ Law No. 5/2004 Coll. On Employment Services.

¹¹ ICF Consulting: *A map of social enterprises and their eco-systems in Europe, Executive Summary, study commissioned by the European Commission*, 2014.

¹² Article 3 of the Law on Social Enterprise No. IX-2251, 1 June, 2004.

¹³ Article 8 of the order of the Minister of Economy 'Concept of Social Entrepreneurship' No 4-207, 3 April, 2015.

The Law on Social Enterprises regulates the distinct legal status and focuses on work integration social enterprises that employ disabled or marginalized jobseekers. While it is not evident from the wording of this definition, Lithuania applies the **narrow interpretation** of social entrepreneurship. The legal definition excludes enterprises otherwise pursuing social mission, if part of the employees are not disadvantaged or marginalized jobseekers. Such concept of social enterprises exists also in Slovakia and Poland.

There is no legal definition of social enterprises in the **United Kingdom**. However, the Guide to Legal Forms for Social Enterprise issued by the UK Government Department for Business, Innovation and Skills says that social enterprise is *"a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximize profit for shareholders and owners"*.¹⁴ Therefore, **the notion of social enterprises in UK is not concerned with the legal form in which they operate, but rather the organizations' activities.**

In **Spain**, there is no definition of a social enterprise, but of a **social economy** as a broader concept that defines economic activities pursuing social goals. The Law on Social Economy stipulates that *"social economy is the designation for the set of economic and entrepreneurial activities that are carried out in the private scope by those entities that pursue the collective interest of their members, whether the general economic or social interest or both."*¹⁵

The situation is similar in **France**, where the Law on Social and Solidarity Economy defines social economy as *"a way of undertaking an economic development suited to all areas of human activity through legal entities which fulfil an enumerated list of criteria, further elaborated under the section 3.4."*¹⁶ Social enterprise is, hence, an organizational form pursuing the objectives of social and solidarity economy.

3.3. Eligible organizations

Social enterprises may generally operate in multitude of legal forms. In addition to general for profit and non-profit legal forms, some countries introduced distinct institutional forms and/or special status for social enterprises. Legal recognition through a status or a special institutional form may be a precondition to obtain direct and indirect state benefits. While separate legal form or status of a social enterprise grasps the legally or institutionally recognized social enterprises, it does not capture so called "de facto" social enterprises, "hidden" among existing legal forms. These are, for example, associations and foundations actively engaged in economic activities or mainstream enterprises pursuing primary social goals.¹⁷

¹⁴ UK Government Department for Business, Innovation and Skills (2011) A Guide to Legal Forms for Social Enterprise.

¹⁵ Part I. of the Preamble of the Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011.

¹⁶ Article 1 of the Law on Social and Solidarity Economy No. 2014-856 from July 31, 2014.

¹⁷ ICF Consulting: *A map of social enterprises and their eco-systems in Europe, Executive Summary, study commissioned by the European Commission*, 2014. Available at: <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149>.

With regard to the legal recognition of social enterprises, we can identify the following three regulatory approaches:

A. Special legal form

As mentioned above, social enterprises may typically operate in multitude of legal forms. In addition to already existing legal forms, some countries introduced tailor made legal forms to institutionalize the concept of social enterprise. For example in **Spain**, there are three institutionalized forms of social enterprises: Social Initiative Cooperatives¹⁸, Sheltered Employment Centers¹⁹ and Work Integration Social Enterprises.²⁰ The remaining, *de facto* social enterprises, include worker-owned companies and some non-profit organizations performing economic activities.²¹

In the **UK**, there is a special legal form created for non-charitable social enterprises called Community Interest Company. The Community Interest Company has the same structure as a company limited by shares and company limited by guarantees, but is bounded by some additional requirements. These include an obligation to act only in the community interest, an asset lock and cap on the distribution of dividends.²²

B. Special status

All or selected group of legal forms may obtain distinct legal status of a social enterprise, provided they comply with the pre-determined legal requirements. For example in **Lithuania**, all businesses aiming for social value and non-profit organizations applying business models may operate as a social enterprise. However, to be legally recognized as a social enterprise and eligible for public financing and other state benefits, the SE has to obtain a distinct WISE status. The same situation is in **Slovakia**, where the work integration social enterprises eligible for state benefits are subject to registration under the Law on Employment Services. Any physical persons or legal entities may be registered as WISE in Slovakia, as far as they comply with the criteria prescribed by Law.

C. No distinct legal recognition of social enterprises

In some countries, such as for example **Romania** and **Finland**, there is no institutionalized concept of social enterprises. Still, there are de-facto social enterprises that may operate under diverse legal forms provided they are allowed to perform economic activities. State support to social enterprises

¹⁸ National law 27/1999 and regional laws.

¹⁹ Law No. 13/1982.

²⁰ Law No. 44/2007.

²¹ ICF Consulting: *A map of social enterprises and their eco-systems in Europe: Country Case study Spain*, study commissioned by the European Commission, 2014. Available at: <http://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=socentcntryrepts&mode=advancedSubmit&langl d=en&policyArea=&type=0&country=0&year=0&orderBy=docOrder>.

²² ICF Consulting: *A map of social enterprises and their eco-systems in Europe: Country Case study United Kingdom*, study commissioned by the European Commission, 2014. Available at: <http://ec.europa.eu/social/keyDocuments.jsp?advSearchKey=socentcntryrepts&mode=advancedSubmit&langl d=en&policyArea=&type=0&country=0&year=0&orderBy=docOrder>.

may be provided indirectly and target, for example, non-governmental organizations or organizations pursuing a social goal.

3.4. Criteria

National laws and regulations on social enterprises typically introduce distinct criteria for social enterprises to distinguish them from general for-profit or non-profit organizations. As discussed in Chapter 2 of this paper, the criteria may be organized around three main areas: governance, economic and social.

Governance criteria:

Countries typically require that **decision-making within social enterprises is democratic** and not based on capital share:

- For example in **France**, the Law stipulates that social and solidarity enterprises “*must have a democratic and participative governance.*”²³
- The Concept of Social Entrepreneurship in **Lithuania** requires that the management of the social enterprises involve the stakeholders from target group of the WISE itself.²⁴

In addition, national regulations may introduce explicit requirement related to the **autonomy** of the social enterprise. These are typically emphasizing independence of the social enterprise from public authorities:

- For example, in **Lithuania** “*social enterprise shall be independent from public sector organizations, e.g. state and municipality institutions and agencies.*”²⁵
- The Law in **Spain** also stipulates the principle of independence of social enterprises from public authorities.²⁶

Economic criteria:

Social enterprises are typically bounded by special conditions related to the **utilization of the profit**:

- For example, in **Slovakia a social enterprise with WISE status** has to reinvest at least 30% of financial resources gained from its own activities reduced by their costs, into creation of new job positions or into improving working conditions.²⁷
- **Social cooperatives of general interest in France** have to abide by special conditions for management: 20% of the profit made within the fiscal year have to be allocated to the creation of a mandatory statutory reserve, called “development funds”; 50% of the profit made within the fiscal year shall be allocated to retained earnings and the reserve requirements. In addition, they are prohibited to amortize the capital and to carry out a

²³ Law No. 2014-856 from July 31, 2014 on Social and Solidarity Economy.

²⁴ The order of the Minister of Economy 'Concept of Social Entrepreneurship' No 4-207, 3 April, 2015.

²⁵ Ibid.

²⁶ Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011.

²⁷ Law No. 5/2004 Coll. On Employment Services

capital reduction not motivated by losses, unless the transaction provides continuity of its activity, under conditions laid down by a decree.²⁸

- In **UK**, a **Community Interest Company** is bound by an asset lock. The assets and profits must be permanently kept by the CIC and used solely for community benefit, or transferred to another organization with an asset lock, such as a charity, or another CIC.²⁹

Social criteria:

Social enterprises are characteristic by the **primacy of the social and/or solidary goal** that prevails over the income-generating economic activities:

- For example, in **Spain** the Law expressly emphasizes the principle of “*primacy of social purpose over capital*” applicable to **Social Initiative Cooperatives, Sheltered Employment Centers and WISE**. In addition, the Law introduces a principle of “*promotion of solidarity internally and with society, promoting commitment with local development, equal opportunities between men and women, social cohesion, the insertion of persons with the risk of social exclusion, the generation of stable and quality jobs, the conciliation of private, family and work life and sustainability.*”³⁰
- In **Lithuania**, the statutory purpose of the **legally recognized WISE** should have a measurable positive impact.³¹

Other criteria:

- **Transparency and accountability:** For example, the Concept in Lithuania and Law in Spain emphasize the importance of transparent and accountable management of a social enterprise. This applies to **organizations with WISE status in Lithuania and Social Initiative Cooperatives, Sheltered Employment Centers and WISE in Spain;**
- **Employees:** WISE are, due to their nature, obliged to employ certain percentage of disadvantaged and/or marginalized jobseekers. For example, in **Slovakia WISE** must employ at least 30% of workers that were disadvantaged jobseekers prior to the employment. In addition, WISEs shall support and help employees that were previously disadvantaged jobseekers to find an employment in free labor market.

4. Available benefits for social enterprises

There are various state and non-state benefits that may be available for organizations recognized as social enterprises. These include direct (financial and non-financial aid), indirect state benefits (fiscal benefits), and grants provided by international donors.

²⁸ Article 1 of the Law No. 2014-856 from July 31, 2014 on Social and Solidarity Economy.

²⁹ More information about Community Interest Company:
<http://www.communitycompanies.co.uk/community-interest-companies>.

³⁰ Article 4 of the Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011

³¹ The order of the Minister of Economy 'Concept of Social Entrepreneurship' No 4-207, 3 April, 2015.

4.1. Direct state support

Many countries, such as for example France, Lithuania, Slovenia, Spain and UK, introduced direct support schemes specifically designed for the social enterprises. These public financial schemes may take various forms, including provision of grants, subsidies, loans, financial compensations and others. Sometimes, the support schemes are limited to social enterprises that have a distinct legal status or operate in special legal form for social enterprises.

For example, in **Lithuania** there are two types of state support available for social enterprises. Article 13 of the Law on Social Enterprises distinguishes between state support to all types of work integration social enterprises and those that are employing persons with disabilities.

Following state support is available for **all legally recognized WISE**:

- partial compensation for wages and state social insurance contributions;
- grants for creation of jobs, adaptation of workplaces for the disabled, and acquisition/adaptation of means of work for the disabled;
- grants for training of target groups.

Following financial support is available for **WISE employing persons with disabilities**:

- grants for the adaptation of the work environment for disabled employees and production/rest premises;
- grants for compensating additional administrative and transport costs;
- grants for compensating costs of an assistant (gesture language interpreter).

In France, there are several public support systems that target social enterprises. They are often complemented by the support from EU funds and social investment measures taken by the government. Following are a few examples:

- **Caisse des Dépôts and its branches**– a group of long term public investors supporting general interest and economic development. Caisse constitutes the most important fund in France (regroups 30% of available public funds). It offers two support measures to social investment: (1) Fund of funds: these funds invest in other funds, with a focus on social entrepreneurship; (2) long term leases available to social enterprises in the total amount of 500 million euros.³²
- 100 million euros from the **Future Investments Programme** (*Programme d'Investissements d'Avenir*) has been allocated to fund social enterprises. This national investment program established in 2010 by the French Government aims to support the research and diverse innovative projects.

³² Official website of Caisse des Dépôts: <http://www.caissedesdepots.fr/en/home.html>.

- Launch of a **Public Investment Bank (BPI)** – part of the investment made by the BPI will be channeled to social economy organizations. In addition, BPI will provide loans to SEs, in particular to the WISE that struggle to secure loans.³³

4.2. Indirect state benefits

Besides direct financial support, states may encourage social entrepreneurship also through **tax breaks, income tax exemptions, exemptions from payment of social contributions and other indirect benefits.** Tax benefits are typically connected with the legal form/status of an organization. Some tax benefits may be available to all non-governmental organizations without any additional requirements. Other benefits may be admitted solely to the social enterprises that operate in a special legal form/have distinct social enterprise status.

For example, in Spain social enterprises that operate in a form of **mutual benefit cooperatives with special status of protected cooperatives (“*expecialmente protegidas*”)** enjoy preferential tax treatment, including a lower income tax rate. In addition, they enjoy preferential treatment with regard to the amortization of their equipment. Organizations with such status are listed in Article 7 of the Law on Tax Regime of Cooperatives and include worker cooperatives, agricultural cooperatives, etc.³⁴

In Lithuania, social enterprises with distinct legal status, may benefit from additional tax benefits compared to other non-profit legal forms. According to the Article 5 of the **Lithuanian Law on Corporate Income Tax, social enterprises may benefit from the income tax exemption** if following conditions are met cumulatively:

- over the tax period the number of marginalized and disadvantaged employees listed in Article 4 of the Law on Social Enterprises accounts for at least 40% (annual average);
- over the tax period the organization does not perform activities listed by the Government as non-supported for SEs or the income received from such activities does not exceed 20%;
- on the last day of the tax period, entities have the status of a social enterprise.³⁵

4.3. Other types of support

Social entrepreneurship is also encouraged by private actors and international and European mechanisms.

For example, **French** companies that employ more than 50 people are obliged to design a **socially/solidary-oriented pension schemes** for their employees, in addition to the collective and entrepreneurial pension schemes. Social/solidary oriented schemes (*FCPES – Fonds Commun de*

³³ ICF Consulting: *A map of social enterprises and their eco-systems in Europe: Country Case study France, study commissioned by the European Commission, 2014.*

³⁴ Article 7 and Article 33 of the Law 20/1990 on the Fiscal Regime for Cooperatives, published in the Official Journal of 20th December 1990

³⁵ Law on Corporate Income Tax. 20 December 2001 No. IX-675 (last amended on 12 December 2013 – No. IX-675).

Placement d'Entreprise Solidaire) are so called 90/10 pension schemes which means they invest from 5 - 10% of their funds in social enterprises or social funds from the overall retirement savings.³⁶

In UK, there are several **independent financial institutions/mechanisms**, supporting the creation and operation of social enterprises. These include, for example, Big Society Capital, Social Incubator Fund, Investment and Contract Readiness Fund and the Social Outcomes Fund. All the institutions/mechanisms are providing funding schemes for organizations that operate as social enterprises and/or promote the social investment among other investors.

The **European Commission** is active in supporting development of social enterprises on the EU level. Programme for Employment and Social Innovation 2014- 2020 offers grants, investments and guarantees to social enterprises that can demonstrate “measurable social impact”. In addition, EC envisaged a creation of **Social Entrepreneurship Funds** that will be redistributed according to the measured social impact of a social enterprise.³⁷

5. Other policy issues

There are other laws and policy documents that have direct or indirect effect on social enterprises, including the regulation of contracting out government tasks to non-state actors in areas where social enterprises are actively involved. In addition, some countries introduced institutional mechanisms to support social entrepreneurship.

5.1. Contracting of government tasks to non-state actors

Social enterprises often carry out public services on behalf of the government. There are different procedures for contracting depending on the country and the area. In many countries the leading law dealing with „purchasing” services is the public procurement law. Some of these include social criteria based on EC Communication and EU public procurement rules. Others develop a separate mechanism for social contracting that better reflects the nature of these services.

A. Social criteria in public procurement rules

Public procurement is one of the policy areas of the European Union Single Market. Hence, the member states are bounded by several EU Directives regulating public procurement. European Commission in one of its Communications outlined the possibility of inserting well defined **social considerations** in the

³⁶ More about solidary financing in France: <http://www.lafinancepourtous.com/Decryptages/Dossiers/Finance-durable/Finance-solidaire/Les-outils-de-la-finance-solidaire>.

³⁷ European Commission: *Proposed Approaches to Social Impact Measurement*, 2014. Available at: <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7735&type=2&furtherPubs=yes>.

contracts. In addition, the Communication emphasizes a **possibility to apply contract criteria other than the best value for money**, such as for example environmental criteria or already mentioned social ones.³⁸

State authorities dispose with a wide range of tools for determining the **contractual clauses on social considerations**. They may include:

- An obligation to employ certain number or percentage of long-term unemployed or apprentices;
- An obligation to implement the measures that are designed to promote gender or ethnic equality while executing the contract;
- An obligation to recruit certain number of the disabled persons while executing the contract.

The EU rules apply only to certain public procurement contracts, particularly those whose value equals or exceeds certain threshold set by the EU directives.

National regulations may also introduce rules on public procurement with social considerations. For example, in **Slovenia** Law on Social Entrepreneurship provides that at least 30% of public tenders for goods and services related to work integration and training must be reserved to WISE (so called “**reserved public tenders**”). In **Lithuania**, 5% of simplified public procurements should be awarded to social enterprises with WISE status.³⁹

B. Separate mechanisms/rules for social contracting

Some countries adopt separate rules and mechanisms for contracting out social services to non-state actors. As an example in **Bulgaria**, the Social Assistance Act allows a separate procedure for contracting of social service providers. In **Poland** the area of public tasks and the procedure for contracting out these tasks to non-state actor are regulated in the Act on Public Benefit and Volunteer Work. According to the Law, public administration authorities shall perform public tasks prescribed in the Law in co-operation with non-governmental organizations and other entities. Through the adoption of the Law the state operationalized the principle of “subsidiarity” which was introduced in the Polish Constitution.

In **France**, social services are most commonly contracted out on the local level. In the early 1980s, France adopted several decentralizing reforms, which gave local authorities more significant responsibility for provision of public services. The ways of contracting out services are twofold: delegation of public service

³⁸ Interpretative communication of the Commission on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement, COM (2001).

³⁹ Article 91 of the Law on Public Procurement No. XI- 1491. Simplified public procurements include procurements with value below certain threshold, local and regional procurement and procurement of specific services such as for example health care and social services.

(*délégations de service public*) and public procurement (*marchés publics*). While in the latter case public authority buys certain service from a private provider, in the first one public authority delegates provision of specific public task to a non-state actor. In addition, there is a so-called tariffication system, where a state body authorizes a non-state actor to provide certain public service and the provider is then entitled to ask for a fixed service fee from the beneficiary.⁴⁰

5.2. Institutional support and networking platforms for social enterprises

National laws and regulations may introduce institutional mechanisms, such as advisory councils, support agencies and national registries for social enterprises. In addition, some countries have national networking platforms that allow social enterprises to advocate for their interests more effectively and facilitate the implementation of national policy measures on social entrepreneurship.

As discussed in Chapter 3, laws in France and Spain established **councils for the promotion of social economy** that are directly linked to the government and other local and regional government representatives. The **High Council of the Social and Solidary Economy in France** is a special body placed before the Prime Minister and chaired by the Minister of Social Economy. The Council is consulted on legislative plans related to social economy and contributes to the development of the national strategies of the development of social and solidary economy. The Council is composed of diverse representatives, such as for example representatives delegated by the National Assembly, Senate, Economic, Social and Solidary Council, representatives of public services, but also employees of social enterprises.⁴¹ In **Spain, the Council for the Promotion of Social Economy** is an advisory and consultative body for activities related to social economy. It is integrated, through the Ministry of Labor and Immigration, within the Central Government. The Council acts as a body for collaboration, coordination and dialogue between the social economy actors and the Central Government.⁴²

In addition, some country laws introduced special **bodies to facilitate the establishment and operation of the social enterprises**. For example, in Spain there is a network of the “Points of Access and Start of Procedures” that helps with the administrative requirements for creation of new companies. In addition, the points provide consultancy services to disadvantaged/marginalized people, including young people and women, to set up a social enterprise.⁴³ In UK, there is a **national support agency** for specific subset of social enterprises, aiming to employ disadvantaged and marginalized from the labor market. The so called “Social Firms UK” carries out promotion, dissemination, research and lobbying in order to raise awareness and improve conditions for social firms. Similar bodies can be found in Scotland, Wales and Northern Ireland.⁴⁴

⁴⁰ ECNL, BCNL: Comparative Legal Analysis on Contracting out Government Tasks to Non-State Actors, 2014.

⁴¹ Article 4 of the Law No. 2014-856 from July 31, 2014 on Social and Solidarity Economy., available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52001DC0566>.

⁴² Article 9 of the Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011.

⁴³ ECNL: *Legal Framework for Social Economy and Social Enterprises: A Comparative Report*, UNDP, 2012.

⁴⁴ ICF Consulting: *A map of social enterprises and their eco-systems in Europe: Country Case study United Kingdom, study commissioned by the European Commission*, 2014.

Despite general absence of official data on the number of social enterprises, Spain is a good example of a country with **national registry** collecting data on social enterprises for statistical purposes. Spanish Law on Social Economy obliges the Government to establish a system of data gathering pertinent to social economy. The “catalogue of social economy entities” that facilitates the data collection is critical for the assessment of the already adopted policy measures related to the social enterprises. The catalogue is public and available online.⁴⁵

Some countries established **national networks** that serve as platforms for dialogue between social enterprises. For example, in the UK there is a national body for social enterprises called *Social Enterprise Coalition*. The Coalition runs advocacy campaigns supporting the interests of social enterprises, builds networks between social enterprises and aims to raise the profile of people and social enterprises in the sector.⁴⁶

6. Conclusions

Based on the presented European practices in regulation of social enterprises, the following conclusions are made:

- **Increasing value of the 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**. However, countries are still missing mechanisms to measure the impact of social entrepreneurship on national economies.
- **No unified concept of social entrepreneurship in Europe:** Social enterprises may operate in multitude of legal forms, including for profit, non-profit or special institutional legal forms for social enterprises. Some countries apply narrow concept of social entrepreneurship that includes only work integration social enterprises, while others have a broader approach and consider all enterprises with social mission and limited profit distribution as social enterprises. What distinguishes them from other legal entities is that they cumulatively abide by certain **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).
- **Diverse national regulatory approaches:** There is no unified regulatory approach of social enterprises. National regulations may vary with regards to how the social entrepreneurship is introduced to the legal framework; definition; eligible organization; criteria; available benefits and many other elements. Some countries tend to adopt a broad law on social economy, while others adopt a special law on social enterprises/entrepreneurship or amend the already existing laws. Also, some countries created distinct legal status or separate legal form for social enterprises, while other ones do not specifically recognize social enterprises in their legal frameworks.

⁴⁵ Article 6 of the Law 5/2011 on Social Economy, Official Journal n. 76, of 30th March 2011.

⁴⁶ More about Social Enterprise Coalition: <http://www.socialenterprise.org.uk/about/about-us>.



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- **Importance of enabling environment for operation of social enterprises:** Social entrepreneurship has an increasing economic and social value for the national markets. Governments around Europe recognized this trend and boost the development of social entrepreneurship through supportive laws that create enabling operational conditions for social enterprises. Besides that, countries may support the development of social entrepreneurship through direct and/or indirect state benefits or adoption of other policy measurers.