

ANNEX 1

HELPING MEMBER STATES TO CREATE A LEGAL AND REGULATORY FRAMEWORK FOR SOCIAL ENTERPRISES

Today, there is a growing importance of the role of enterprises (so called "social enterprises") which combine a social objective and an entrepreneurial dimension and whose functions may be carried out in a wide range of traditional forms: co-operatives, associations, foundations, non-profit entities and even bodies set up as commercial enterprises.

The Commission (or the Council) should play a pro-active and inspiring role and prepare a dedicated strategy in that field. The strategy to be proposed should take the form of a **recommendation**¹, which is a non-binding regulation in order to help MS build an adequate and appropriate ecosystem for social economy as to unleash the full potential of social enterprises.

Standards, guidelines and principles, comparative reports or best practices may be included in the recommendation as adequate instruments to be used when developing possible national frameworks.

Examples highlighted in the Annex come from "Laws on Social Economy" or "Law on Social Enterprises" that are currently in place in Member States. These examples were discussed and presented during the different working group sessions held in 2015 and 2016.

The Recommendation should **first** invite MS, if they wish, to include the following in the **general object of any legal framework**:

- to recognize the specific contribution of social economy and social enterprises in particular to the socioeconomic development of a Member State, in numerous sectors of activity;
- to recall of the guiding principles and values of social economy ;
- to highlight the fact that setting up public policies should be marked by the cooperation between economic actors, civil society actors, and Member States at different level of territorial governance to develop (co-construct) and operationalize (co-produce) policies centered on the general interest.

These practices provide a major opportunity for democratizing "public-policies making" by introducing forms of governance based on the participation of different parties in the scheme.

- to mention that by establishing such a framework, policy makers adopt a systemic vision of the contribution that they can make to growth, competitiveness and social cohesion.

¹ A category of legal measures explicitly provided for in the Treaties is recommendations and opinions. They enable the Union institutions to express a view to Member States, and in some cases to individual citizens, which is not binding and does not place any legal obligation on the addressee. In providing for legal acts of this kind, the drafters of the Treaties anticipated that, given the authority of the Union institutions and their broader view and wide knowledge of conditions beyond the narrower national framework, those concerned would voluntarily comply with recommendations addressed to them and would react appropriately to the Union institutions' assessment of a particular situation.

Secondly, the recommendation should refer to the three following core elements:

- legal forms to be contained in the framework (1).
- policy measures initiated at different levels of national, regional and local administration to stimulate the development of social economy and social enterprises (2)
- instruments to structure a favourable and coherent institutional context for the development of social economy and social enterprises (3)

1. On legal form(s) and particular elements contained in the legal forms

In Italy, **Law n. 381 of 1991** establishes a unique legal framework for social cooperatives, which are categorized in two types. The first type of social cooperatives operates in the areas of recreation, health, social assistance and education. The second category of social cooperatives are primarily engaged in programmes, activities, and services related to labour force integration, providing stable work and remuneration to disadvantaged and marginalized persons in the labour market.

The Law n. 155 of 2006 introduced a new type of economic actor, the Social enterprise. The Law establishes the requirements that a particular enterprise must meet in order to be labelled as a Social enterprise. Eligibility criteria introduced by the law are: private nature of the organisation; the performance of an entrepreneurial activity directed at the production of social utility goods and services; the absence of profit as a primary goal; the objective to promote common interests. It has to be noted that social enterprise is neither a new legal form nor a new type of organisation. Regardless of their internal structure, all organisations that meet the eligibility criteria set by the 155/2006 Law may be included within this new legal category. Under the current Italian legislative framework, organisations recognised as “social enterprises” can present different legal forms and institutional settings. Provided that they comply with the eligibility criteria and formal registration requirements set forth by the 155/2006 Law, social enterprises can be structured and operate as **Cooperatives - Business corporations - Traditional non-profit firms** - (i.e. associations and foundations)

In all the above mentioned cases, the applicable Italian law is a general law and not a particular law applicable to a specific (or unique) form of social enterprise. Specific sets of legislation apply, among others, to “social cooperatives” (Law, 8 November 1991, no. 381); “voluntary organisations” (Law 11 August 1991, no. 266), and “social promotion associations” (Law 7 December 2000, no. 383)

In Spain, **Law n. 5 of 2011 on social economy (Economía Social)** lays down the legal definition of social economy and defines the guiding principles and common values of enterprises and organisations in the social economy that confer them distinct and specific character with regard to other types of commercial companies and organisations.

Cooperatives, mutual benefit societies, foundations and associations engaged in an economic activity, worker-owned societies, integration enterprises, sheltered employment centres for disabled people and fishermen’s associations are part of the Social Economy.

Law n. 5 of 2001 does not interfere in the particular normative framework ruling each legal form in the social economy.

The Spanish Law leaves the door open to new other forms of social economy that must be governed by the guiding principles set forth in the Law.

There is no legal recognition of “social enterprises” in the Spanish national laws system. The existing legal forms of enterprises that comply with the criteria of “social enterprises” as stated by the European Commission, are Social Economy enterprises; these are the integration enterprises, sheltered employment centres and social initiative cooperatives.

The Law also recognizes the importance of Social Economy to the socio-economic development in terms of job creation and the maintaining of employment that characterizes social economy. Therefore the Law provides the commitment of Public authorities with the development of measures in favour of social economy as a task of general interest.

The implementation of the Law by the Government has given rise to different measures in favour of the promotion, development and visibility of social economy and its operators. The Spanish Government adopted in June 2015 a Social Economy Development Plan. This Plan breaks down the initiative into 32 measures with a specific budget in favour of the ensemble of the social economy and of each one of social economy components.

The Law defines the dialogue between social economy representative organizations and public administrations. The inter-sectoral presence of social economy in all economic sectors requires the participation of their representative organizations as a social partner in all fora or committees where public policies are designed and debated

In France, one can mention the 2014 law on Social and Solidarity Economy. Apart from organizations traditionally considered part of the social and solidarity economy due to their legal status (associations, mutual, cooperatives, foundations), the law is also includes non-statutory organizations operating under a commercial status which have adopted operating rules like democratic governance, search of social utility, limited distribution of profit by statutory rules, existence of collective reserves, etc. Social utility, as defined in the law, is not a legal definition that could be understood on a general level but is related to a set of criteria to assess whether a firm can or cannot be considered as serving a social purpose and therefore be included into the realm of SSE as a non-statutory member.

On 23 November 2016, the **Luxembourg** Parliament passed draft law n° 6831 introducing a new type of company, the *Société d'Impact Sociétal* (“SIS”). The purpose of this new law is to set up an appropriate legal framework for companies with a social or societal objective in Luxembourg, creating a favourable environment for their business development.

This new legal framework intends to fill a legal gap in particular for non-profit organisations (“ASBL”) engaged in economic activities and that currently operate out of the scope of the law of 21 April 1928 on ASBL.

2. On policy measures initiated at different levels of national, regional and local administration:

- stimulate a policy that facilitates different sources of funding:

In the UK, the government set up the world’s first social investment wholesaler – Big Society Capital (BSC). Big Society Capital is an independent financial institution with the social mission to help grow the social investment market. Big Society Capital act both: as an investor, to have a transformative impact on the social investment market in the UK by supporting social

investment finance intermediaries to become financially robust and able to attract greater and more diverse sources of investment; as an advocate, increasing awareness of and confidence in social investment, promote best practice, sharing information, improving links between the social investment and mainstream financial markets, and working with other investors to embed social impact assessment into the investment decision-making process. Big Society Capital has already seen over GBP 180 millions of investments to the frontline, and this allowed to support over 100 SE ventures across the UK. Moreover, BSC has GBP 600 millions to invest through a network of social lenders.

In France, the 2014 Law on SSE provides a clear definition of the legal regime on subsidies, in order to avoid confusion or abuse and to limit the use of calls for tenders which hinder the initiative of not-for-profit organisations. It also implements a range of funding instruments for social economy organisations in order to create alternatives to bank loans and to secure their development: it improves the attractiveness of loan notes issued by associations (*titres associatifs*) and creates *certificats mutualistes et paritaires*, which are mid-way between shares and bonds, and which mutual funds can issue to get financed.

Portugal has seen two major initiatives taking a leadership role in developing the social investment market: the Portuguese Social Investment Taskforce and *Portugal Inovação Social*. The latter is a catalyst entity for social investment through the use of structural funds. Endowed with € 150 Million from ESF, it has a mandate to drive the development of the social market over the next 5 years (development of a social innovation fund, a social impact bond programme, a capacity programme and a venture philanthropy programme).

- promote public tenders with social clauses.

- might consider fiscal exemptions where and if needed.

- where appropriate, organise and coordinate a set of coherent information around the possible national tax advantages. Member States are also invited to strengthen the channels between different level of legislative powers and competent authorities especially when competences related to corporate law and tax law are split.

Without this, there is a risk of ambiguity which could lead to legal uncertainties.

In **Lithuania**, in addition to state support schemes in the form of subsidies (state aid), social enterprises have a right to receive public support under other legal acts, including those establishing support of small- and medium-sized enterprises (SMEs), as well as the social programmes financed from the State budget and monetary funds. Under Article 5 of the Lithuanian Law on Corporate Income Tax (adopted in 2001, amended in 2013), social enterprises benefit from a zero tax rate.

- correctly implement state aid rules

3. Development of a favourable institutional context that:

- promote the image of social enterprises by highlighting the importance of the activities carried out (awareness-raising/visibility).

In the **UK**, Social Enterprise organises **annual social enterprise awards** to recognise organisations for their business excellence and contribution to society. This is a good way to increase recognition of the sector but also an opportunity to acknowledge and identify best practices in the social enterprise market.

In June 2014, the **Danish Parliament** passed the "*Act on Registered Social Enterprises*". The Act allows interested enterprises to receive an official seal of approval as a "registered social enterprise" from the Danish authorities. The Act is the first of its kind in the European Union. The purpose of the registration scheme is to make it easier for customers, investors and others to find social enterprises. In addition, the scheme paves the way for monitoring the development of social enterprises in Denmark and targeting specific legislation at registered enterprises. In order to register, an enterprise must meet five criteria applying to social enterprises. Since 2015, registered social enterprises are published on the website of the National Centre for Social Enterprises. The Danish Business Authority manages the registrations.

- stimulate specific skills and education schemes (eg: social entrepreneurship training in primary - secondary and university degrees);

In **Ireland**, the Spark National Social Enterprise award is a competition that involves student social entrepreneurs identifying a social issue and, facilitated by their lecturers, exploring and critiquing current responses and offering new ideas to address these issues. Creating a space for students to imagine, think, apply and act as social entrepreneurs is a valuable learning experience for them and could possibly result in a society-changing innovation. The Awards are intended to facilitate, recognize and reward creativity and innovation among students working on a diverse range of social issues that may lead to the creation of a social enterprise.

In **Belgium**, HEC-ULg sets itself as a pioneer among French-language Belgian universities by proposing, from the 2010-2011 academic year onward, a **special orientation on the "Social Enterprises Management"** within its Master programme in Management Sciences. This special orientation gives students the *analysis and management capacity, operational tools and a network* for their future career in a social economy enterprise.

- improve data and knowledge about social economy and social enterprises (statistics, research...)

In **Portugal**, in order to gain a better understanding of the social economy, reliable and adequate statistics are needed. Art. 6 of the *LBES* establishes that "it is the competence of the Government to set up, publish, and keep an updated record in a specific online site of the permanent database of the social economy" (No. 1) and that "it shall also ensure the creation and maintenance of a satellite account for the social economy, developed within the national statistical system (No. 2).

In **Spain**, the Ministry of Employment and Social Security supports and finances the annual publication of the FAEDEI "*Memoria Social*" giving data on WISEs and their social and economic impact around Spain.

- establish appropriate partnerships between public authorities and social enterprises.

In **Sweden**, Coompanion is a development agency focused in particular on creation *of* and/or on the assistance *to* cooperatives (in Sweden: cooperative economic associations). It operates all over Sweden and has offices in 25 different places. In Gothenburg and the Västra Götaland region, Coompanion plays a role as catalyst and works hand in hand with both the City, the ten districts of Gothenburg and the Region of Västra Götaland. The ongoing partnership has given Coompanion resources to develop advisory and support services for entrepreneurship in the social economy. In 2012, 67 companies started with the assistance of Coompanion, including more than 50% cooperatives and seven work integration social enterprises. Together, Coompanion and local authorities took the initiative to establish a global agreement between the social economy and the city of Gothenburg which consists of seventeen commitments. One of these commitments is to develop new financial solutions for social enterprises. This gives the existing Kreditgarantiförening, a cooperative association providing finance to social enterprise, the opportunity to grow. The association was set up by Coompanion in cooperation with other social economy actors in Västra Götaland and the Region of Västra Götaland. The city of Gothenburg has just decided to allocate 10M SEK (approx. 1M EUR) to finance social enterprises. Finally, the existing partnership between Coompanion, Gothenburg city and the region of Västra Götaland has resulted in the creation of an incubator for work integration social enterprises.

- develop business support & capacity-building support

In **France**, I. – The "*Pôles territoriaux de coopération économique*" (PTCE)² are groups of enterprises from the social and solidarity economy located in the same territory, that are associated with enterprises having ties with regional public authorities, research centres, universities and training organisations. These PTCE aim at creating and boosting innovative and social projects that are locally sustainable by mutualising their strengths. Their selection is carried out by the French government via call for proposals.

- promote the emergence of associations/federations or elected bodies to promote interest to public authorities.

In **Finland**, the **Arvo-liitto** association was established in December 2014 with 12 founder enterprises. It is a member of the Confederation of Finnish Industries, which gives social enterprises a voice in the tripartite social dialogue.

² It could be interesting to recognize at European level the « PTCE » in order to allow their development with cross border operations.

The new **French** Law of 2014 aims to make it easier to recognise all social economy organisations, and to structure the various networks of the National Council of Social Economy Regional Chambers (CNCRES – Conseil National des Chambres Régionales de l’Economie Sociale) and the regional chambers (CRESS).