



Social Enterprises and their Eco-systems:

Methodological material

- **Research Tools and Templates, used by ICF for the 2014 mapping study (p.1 to 53)**
- **Operational Social Enterprise Definition as used for the 2016 social enterprise mapping update by EMES and EURICSE (p.54)**

A map of social enterprises and their eco-systems in Europe

DG Employment , Social Affairs and Inclusion

Part II: Research Tools and Templates

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A report submitted by [ICF GHK](#)

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1 Introduction

This is the Inception Report for the following study: *A map of social enterprises and their eco-systems in Europe*. The study was launched by the European Commission’s Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL) in April 2013. The work is being undertaken by ICF GHK with inputs from Bates Wells & Braithwaite London LLP (BWB) and a network of thematic country experts.

This section of the Inception Report presents drafts of the research instruments that will be used throughout the remainder of the study.

1.1 Research tools and templates

The core analytic instrument will be the national template, which will be completed for all 29 countries, and will synthesise all of the information and data collected as part of the desk review and stakeholder interviews. A draft of this template has been developed, but note that the exact content will vary somewhat depending on the extent and depth of the data available for individual countries.

One of the key inputs to the national template will be the mapping of the legal position in each country. This mapping will be based on a standard template. We have provided a copy of this template, together with a draft of a completed template – for the UK – to illustrate the anticipated output of the mapping exercise.

Over 500 stakeholder interviews are planned, to be carried out with a wide range of individuals/ organisations. These interviews be carried out using a mixture of telephone and online surveys, as appropriate. Six topic guides have been developed for use with these stakeholders (Table 1.1).

Table 1.1 Research instruments for use with different stakeholders

	Social enterprise networks & associations	Policy makers	Academics	Business support providers	Finance intermediaries	Social enterprises
Social enterprise topic guide						X
Social enterprise stakeholder topic guide	X	X	X	X		
Social enterprise investor survey instrument					X	

1.2 The remainder of this report

The following material is presented in this report:

- Section 2 presents a copy of the national template that will be used by the country research teams;
- Section 3 presents a copy of the template that will be used to complete the legal mapping exercise in each country;
- Section 4 presents an example of a completed legal mapping template, provided for the UK;
- Section 5 provides a copy of the topic guide that will be used as part of interviews with social enterprises;

- Section 6 presents a copy of the topic guide that will be used for interviews with social enterprise stakeholders (networks and associations, policy-makers, and academics);
- Section 7 sets out the survey instrument that will be used with Social Investment Finance Intermediaries.

2 The national template

The following template will be populated on the basis of desk research, stakeholder interviews and interviews with social enterprises. It provides a standard format for collecting and analysing data, and reporting the results of the research.

2.1 Introduction

The origins, development dynamics and balance of organisational types that have been referred to, labelled or defined as 'social enterprise'.

Application of operational definition to identify social enterprise spectrum

Table 2.1 Social Enterprise Spectrum for [country]

Spectrum	Organisational labels
Fully IN	
Partially IN	
OUT	
Boundary cases	

2.2 Characteristics of social enterprises in [COUNTRY]

2.2.1 The collection of data on social enterprises

Provide a brief summary of how data on the social enterprise sector are collected in your country:

- *Who is responsible for collecting data?*
- *How often is it done?*
- *What methodology is used?*
- *How are social enterprises defined for this data collection (is this the same as the definition outlined in Table 4.1 above?)*
- *How comprehensive are these data? If a survey is used to collect data then what is the sample/ population?*
- *Are there any debates about the accuracy of data on the social enterprise sector? If so what is known about those social enterprises who may not be included within the data?*

2.2.2 The size of the social enterprise sector

Introduce with any available research on the origins of the social enterprise sector in your country. How long has the sector been around? When/ why did it start?

If data on the size of the social enterprise sector are available, summarise headline data on the size of the sector, and how it has changed over the past few years (for as many years back as data are available).

Use the definition that you outlined in Section 1.1. If multiple definitions are used, present data and indicate which definition this has been based on.

Populate the following table as far as possible. Note any points around the definition of social enterprises, and if this changed over time (which might affect numbers of social enterprises)

Table 2.2 The scale of the social enterprise sector

Year	Number of social enterprises	Number of people employed by social enterprises	Total business population (i.e. not just social enterprises)	Total number of people employed	Social enterprises as a % of the total business population
2013					
2012					
2011					
2010					
Etc.					

Provide source(s) and indicate the definition of a social enterprise

Present a headline analysis of change over time in the numbers of social enterprises, including rates of start-up and closure (and how these differ to those of the business population as a whole).

Provide survival rates for social enterprises if these are available, and indicate if/how they differ from survival rates for the business population as a whole.

2.2.2.2 **The size of the social enterprise sector using the European Commission's definition of a social enterprise**

Using the standard operational definition of a social enterprise that was set out in Table 4.1, indicate the size of the social enterprise sector in your country. This may need to be based on primary research with the sector in your country, or could be based on an extrapolation of data to the business population in your country

Table 2.3 The scale of the social enterprise sector (based on the European Commission's definition of a social enterprise)

Year	Number of social enterprises	Number of people employed by social enterprises	Total business population (i.e. not just social enterprises)	Total number of people employed	Social enterprises as a % of the total business population
2013					
2012					
2011					
2010					
Etc.					

2.2.3 **Key characteristics of the social enterprise sector**

Summarise key data on the characteristics of the sector, including time series analysis where possible. Cover as much of the following as possible, and where possible compare this against the characteristics of the total business population to provide context.

Where these data are not available, confirm that this is the case.

- *Size bands of social enterprises¹: proportion who are micro (employ 0-9 people); small (employ 10-49 people); medium (employ 50-249 people); or large (employ 250+ people)*

¹ <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

- *Regional geography of social enterprises*
- *Sectors in which social enterprises are active, and in which not, and the reasons for it, including relevant historical and cultural aspects*
- *Annual turnover of social enterprises*
- *Contribution of social enterprise sector to national Gross Value Added (GVA) or Gross Domestic Product (GDP)*
- *Characteristics of employees of social enterprises: proportion of employees who are women, proportion by age etc.*
- *Legal form of social enterprises*
- *Other categorisations of social enterprises (not legal terms, could include self-defined terms)*
- *Ownership/ governance patterns*
- *Networks of social enterprises: consortia and umbrella groupings (e.g. for procurement purposes) set up by social enterprises*

Use tables/ graphs if necessary to summarise the data

Review documents/ data on the causes of these patterns of social enterprises. For example, why are social enterprises more active in some sectors than others? What might explain the geographical distribution of social enterprises? What has driven any observed changes over time?

2.2.4 Creation of social enterprises: main patterns and determinants

Please describe the main forms of creation of social enterprises, i.e. those created ex novo, and those created by transforming already existing (sub) entities (e.g. through extending economic activities of a civil society initiative; re-engineering and re-orienting an existing mainstream enterprise towards social objectives; public service transformation), or by introducing key features of a social enterprise into an existing organisation or activity.

Please explain the patterns and determinants of social enterprise creation

2.2.5 The social enterprise eco-system in [COUNTRY]

Eco-system is a term used to describe the environment within which social enterprises operate². It reflects the fact that social enterprises evolve with and develop relationships with their customers, lead producers, suppliers, stakeholders, governments, and even competitors.

Please summarise the social enterprise ecosystem within your country. This involves identification of the key actors/ agencies within the following groups:

- *Governmental departments or institutions designing or implementing policy, support instruments and measures for social enterprises and infrastructures*
- *Authorities designing and enforcing public procurement legislation, or putting these in practice*
- *Authorities designing and enforcing legal, fiscal and regulatory frameworks*
- *Organisations promoting, certifying and awarding social business labels, social business prizes, social reporting systems and other mechanisms to generate awareness and acknowledge the social value of the products, services or ways of production of social enterprises*

² http://europa.eu/rapid/press-release_SPEECH-11-779_en.htm?locale=en

- *Institutions, civil society initiatives or other social enterprises promoting social entrepreneurship education and training, and presenting role models*
- *Organisations that have the capacity act as an observatory and to monitor the development and to assess needs and opportunities of social entrepreneurs/social enterprises*
- *Providers of social enterprise start up and development support services and facilities (such as incubators)*
- *Facilitators of learning and exchange platforms for social enterprises regarding business models, management tools and practices, and participatory approaches in driving social innovation*
- *Organisers of social enterprise (support) networks, associations and pacts that engage in advocacy, mutual learning and facilitating joint action*
- *Organisers/managers of business links (trading, subcontracting) between social enterprises and with mainstream enterprises (SMEs and corporations)*
- *Organisers/managers of collaborative action with (incumbent) institutions and organisations delivering key social or community services or social security benefits as part of the welfare system*
- *Providers of social finance (social impact investors or funds, philanthropic investors, social finance intermediaries, social business angels, crowd funding platforms etc.) for social enterprises and support infrastructures*
- *Organisations providing assistance to enhance the investment and contract readiness of social enterprises*

For all such actors/ agencies, analyse their roles/ responsibilities in respect of social enterprises.

2.2.6 The role of the national eco-system in enabling/ constraining factors in the creation, growth and development of social enterprises

Review data/ documentary evidence on the factors that: 1) enable; and 2) constrain the start-up and scaling up of social enterprises. Investigate:

- *Surveys of social enterprises, and*
- *Government/ academic research*

Aim to identify the relative importance of the various factors, which might include the following:

- *Access to finance*
- *Government policy*
- *Legal and tax regime*
- *Access to support networks*
- *Access to talent*
- *Market conditions*
- *Access to public markets*
- *Cooperation with foundations and big companies*
- *Socio-cultural factors and eco-system conditions*
- *Contextual factors such as the state of the economy*

Identify whether these factors affect certain types of social enterprise: for instance does the importance/ impact of these factors vary depending on the sector, size, age, geography of social enterprises?

2.3 Mapping of legislation affecting social enterprises in [COUNTRY]

2.3.1 Inventory of national legislation affecting social enterprises

Identify and analyse all national legislation which affects social enterprises. Populate the table below. Note that in many cases there will be multiple legal forms that can be applied to social enterprises, and so this table will need to be completed for all legal forms.

If research is available, analyse the impacts that this legislative framework has had on social enterprises in your country. To what extent does this framework assist or restrict the start-up and growth of social enterprises?

Table 2.4 National legislation affecting social enterprises

Aspects of social enterprises' operations	Overview of national legislative position (legal form number 1)	Legal form number 2 etc.
Legal forms of a social enterprise	Types of legal form permitted	
Legal requirements for the creation of a social enterprise	Procedures, applications, registers, eligibility criteria etc.	
Management and corporate governance	Rules regarding boards, rules regarding decision-making, conflicts of interest	
Members rights and voting at general meetings	Rights of members, voting rights	
Shares, refunds and reserves	Use of shares, payment of dividends, refunds of surplus capital, reserve funds	
Economic activity	Legal restrictions on economic activities	
Non-member investors	Internal and external investment	
Transparency and publicity requirements	Publication of accounts, reports and audits	
Employee involvement	Employee share of profits	
Business Closure	Wind-up processes, rescue and insolvency procedures	
Conversion to another legal form	Conversion procedures, asset transfer	

2.3.2 Inventory of social enterprise marks, labels, and certification schemes, and social impact measurement/ reporting systems

Identify and analyse all schemes which seek to provide some form of formal identification – a mark, label or certification – for social enterprises that distinguishes them from other types of business. Note that this is not the same as legal definitions of social enterprises (see above): we are interested in non-legislative, potentially voluntary, schemes (e.g. membership of an accreditation scheme).

Also include any system for measuring and reporting the social impacts of social enterprises

Populate the following table as far as possible:

Table 2.5 Inventory of social enterprise marks, labels, and certification schemes, and social impact measurement/ reporting systems

Inventory topic	Scheme 1	Scheme 2, 3 etc.
Name of scheme	Name of the scheme and link to a website that provides a summary	
Managing and delivering authorities	Who designed and implemented the scheme? Who is the certifying body (if any)?	

Inventory topic	Scheme 1	Scheme 2, 3 etc.
Years of operation	<i>Start and if relevant end date</i>	
Geographical scope of the scheme	<i>Regional (where), national</i>	
Aims and objectives of the scheme	<i>Why was the scheme started? What is its stated purpose?</i>	
Criteria for participation	<i>Who can participate? Are there restrictions by size, sector, organisational form etc.?</i>	
Financing of the scheme	<i>How is the scheme financed? Do participants pay, and if so how much (annually etc.)? Do any other organisations contribute funding (e.g. government)?</i>	
Content of the scheme	<i>How does the scheme work? What support (if any) is provided to participants?</i>	
Scale of participation	<i>How many social enterprises participate in the scheme? Is there any evidence on the penetration of the scheme within the social enterprise population?</i>	
Achievements of the scheme	<i>Summarise any data on the achievements of the scheme, which will vary depending on the activities/objectives. For example, this might include the impacts on the performance of participants (e.g. effects on turnover)</i>	
Evaluative evidence	<i>Identify and provide links to any evaluations, or other independent pieces of research on the effectiveness of the scheme, including levels of satisfaction</i>	

2.3.3 Inventory of non-selective support measures

Identify non-selective support measures:

- *Tax treatment of each of the different legal forms of social enterprises (see “Inventory of national legislation affecting social enterprises”*
- *Any other legal exemptions or privileges that social enterprises enjoy*

If research is available, discuss the significance of these support measures, and the extent to which they assist or restrict the start-up and growth of social enterprises.

2.4 Public policy support to social enterprises in [COUNTRY]

This section of the country template should summarise public policy initiatives which provide support to enable social enterprises to start up and grow. Note that this should include:

- *Initiatives which specifically target social enterprises, and*
- *Initiatives which are aimed at the whole business population, but which also provide support to social enterprises*

Identify the most significant initiatives – i.e. those initiatives with the largest reach, or most significant impact on social enterprises. The scope of this exercise should include:

- *Initiatives by national government,*
- *Initiatives by regional government (only in AT, BE, DE, ES, FR, IT, PL & UK), and*
- *Initiatives by non-governmental networks and groups, for instance any support schemes established by industry associations, charitable groups etc.*

The review should include:

- *Ongoing initiatives, and*

- *Previous initiatives which were considered to have had a major impact*

2.4.1 Inventory of initiatives in support of social enterprises

For each of the initiatives identified, populate the following table as far as possible:

Table 2.6 Inventory of social enterprise support initiatives

Inventory topic	Initiative 1	Initiative 2, 3 etc.
Name of initiative	<i>Name of the initiative and link to a website that provides a summary</i>	
Main sponsor	<i>Which organisation is the main sponsor of the initiative</i>	
Years of operation	<i>Start and if relevant end date</i>	
Geographical scope of the initiative	<i>Regional (where), national</i>	
Target population	<i>Who can receive support? Are there restrictions by size, sector, organisational form etc.?</i>	
Aims and objectives of the initiative	<i>Why was the initiative started? What is the stated purpose of the initiative? Is it designed to tackle any specific market failures or constraints to the start-up/growth of social enterprises?</i>	
Financing of the initiative	<i>What was the total budget? What was the annual budget? Where was this budget sourced? Did beneficiaries have to pay or was it provided for free?</i>	
Role of EU funding (if any)	<i>Were Structural Funds used? If so in what way (grants, financial instruments etc.). Were any other EU financial instruments used?</i>	
Form of support	<i>What forms of support were provided to social enterprises? Were any of the following included:</i> <ul style="list-style-type: none"> ■ <i>Pre-start support, awareness raising, entrepreneurship education</i> ■ <i>Provision of business support (e.g. start-up support, business planning, management skills, investment readiness etc.)</i> ■ <i>Financial support (e.g. grants, equity, loans, guarantee schemes)</i> ■ <i>Networking, knowledge sharing, mutual learning</i> ■ <i>Other, if relevant</i> 	
Delivery/ implementation mechanism	<i>What are the delivery arrangements? How is the intervention implemented?</i> <i>Which body is in charge of day to day delivery?</i> <i>Describe any intermediary structures</i>	
Examples of innovation	<i>Has the initiative been particularly innovative in any way? This could include design and/or delivery</i>	
Achievements of the initiative	<i>Summarise any data on the achievements of the initiative, which will vary depending on the activities/objectives. For example, this might include:</i> <ul style="list-style-type: none"> ■ <i>The number of social enterprises supported</i> ■ <i>The number of social enterprise start-ups</i> ■ <i>The amount of finance provided to social enterprises</i> ■ <i>The number of social enterprises reporting growth</i> 	
Evaluative evidence	<i>Identify and provide links to any evaluations, or other independent pieces of research on the effectiveness of the initiative</i>	

2.4.2 Good practice in the support of social enterprises

On the basis of the inventory of initiatives, identify any potential examples of good practice in the provision of support to social enterprises. This might include initiatives that:

- *Can demonstrate a significant impact on social enterprises*
- *Are highly regarded by social enterprises*
- *Are long-running*
- *Are particularly innovative*

2.4.3 The social investment market in [COUNTRY]

This section of the country report should present analysis of the supply of finance to social enterprises, and demand for finance from social enterprises. It should then consider whether supply and demand are matched, and if not highlight the scale and impact of any mismatch(es).

2.4.3.1 The supply of finance to social enterprises

Present analysis of the supply of finance to social enterprises. Present data/ analysis for the most recent year for which data are available, and analyse time series data if they are available, in order to show if/how the supply of finance has changed over time.

Note that finance may be provided by specialist investors in social enterprises, and it may also be provided by generalists, such as 'mainstream' banks who invest in any viable business proposition.

Specifically, present data/ analysis for the following:

- *The number of investors, and the types of organisation that invest in social enterprises (e.g. social banks, microfinance providers, foundations, family offices etc, social investment funds etc.)*
- *The investment strategies of investors: who do they invest in and on what basis do they make this decision? How do they balance a need for a return with a social mission (if at all?)*
- *The scale of investment: the value of the annual investment in social enterprises, and the number of enterprises invested in*
- *The types of investment provided: analysis of the products provided (secured/ unsecured loans, equity, grants etc.), together with the terms (e.g. interest rates) and the maximum/ minimum size of investments*
- *Sources of capital accessed by investors: where do investors get their capital from, and are these sources sufficient? What terms and conditions are attached to this finance, and does this affect the terms and conditions they offer to social enterprises?*
- *What barriers do investors face in investing in social enterprises? How investment-ready are social enterprises?*

2.4.3.2 The demand for finance from social enterprises

Present analysis of the demand for finance from social enterprises. Present data/ analysis for the most recent year for which data are available, and analyse time series data if they are available, in order to show if/how this demand finance has changed over time.

Specifically, present data/ analysis for the following:

- *The amount of finance required/ sought by social enterprises*

- The types of investment product required (e.g. secured/ unsecured loans, equity, grants etc.)
- Any other characteristics of the finance that social enterprises require (e.g. size of investment, terms etc.)
- Who social enterprises try to access finance from, and the outcome:
 - Do they try to access finance from ‘mainstream’ banks, and what happens when they do? If they are rejected, why is this?
 - Do they try to use specialist providers of finance to social enterprises? If so who are these organisations, and what is the outcome?
- What is the impact of successfully accessing finance on social enterprises? What happens in terms of growth if social enterprises are able to access finance?
- What is the impact of not being able to access finance?

2.4.3.3 Market deficiencies – social investment markets

Synthesise the data on the supply and demand for finance in order to investigate whether there is a gap between the two.

Populate the table below as far as possible, and present analysis of:

- The size of the gap, in terms of the value of finance and if possible the number of social enterprises who are unable to access finance
- Characteristics of the finance gap: are certain types of social enterprise more or less likely to be able to access finance? Are certain types of finance more accessible than others (e.g. loans versus equity, large loans versus small loans)?
- Is there any research on the causes of the access to finance gap? To what extent is the problem:
 - A supply-side issue: are investors willing/able to invest in social enterprises? Are they able to access sufficient capital to invest in social enterprises?
 - A demand-side issue: are social enterprises ready to access investment? Are they suitable investment propositions?
- Is there any research on the impacts of the access to finance gap? E.g. are social enterprises unable to start-up or grow?

Table 2.7 The access to finance gap

Annual supply of finance (EUR)	Annual demand for finance (EUR)	Size of gap (EUR)
Best estimate of the value of supply	Best estimate of the value of demand	Difference between the two

Annex 1: References

Please reference all documents and data sources accessed in the Harvard style

Annex 2: List of Consultees

Please list all stakeholders consulted and social enterprises interviewed

Name of the person interviewed	Organisation/ Role	Stakeholder category

3 Legal mapping research instrument

3.1 Guidance Note

3.1.1 Introduction

The Social Business Initiative is a European Commission programme to support the creation and development of social businesses.

In essence, social businesses try to achieve social goals by using business means. Social businesses can also be known as social enterprises. Across the member states of the European Union, the term 'social business' may be understood in a variety of ways. However, a social business is defined for the purposes of the Social Business Initiative as an undertaking:

- whose primary objective is to achieve social impact rather than generating profit for owners and shareholders,
- which uses surpluses mainly to achieve these goals,
- which is managed by social entrepreneurs, in an accountable transparent and innovative way, in particular by involving workers, customers and stakeholders affected by its business activity.

For the purposes of the Social Business Initiative, a social business's main objective, in accordance with its governing document, is to generate a significant positive impact on society or the environment through the way in which it produces goods and services or the nature of the goods and services it produces.

According to this understanding, a key feature which distinguishes social businesses from other businesses is predefined procedures and rules for any circumstances in which profits may be distributed to shareholders and owners, to ensure that any distribution of profits does not undermine the primary social objective of the social business.

Social businesses take a number of different legal forms in different member states. For example, a foundation or an association can be a social business if it is trading and generating income through the production of goods and services. However, many member states will restrict the ability of foundations to engage in trading activity and therefore to operate as a social business. Similarly, an ordinary for profit company may be able to adapt its governing document to reflect a primary social objective and ensure profits are mainly reinvested, and so become a social business. Many co-operatives will be social businesses, with exceptions where the co-operative cannot reasonably be said to have a primary social purpose. In some member states, there may be legal forms designed exclusively for social businesses.

3.1.2 The Questionnaire

As part of the Social Business Initiative, the European Commission is seeking to develop its understanding of social businesses in each member state.

In some member states, like the UK, social businesses are relatively well developed as a sector of the economy and there are specific types of legal form which are exclusively for social businesses. In other member states, there may not be specific legal forms exclusively for social businesses and other legal forms may need to be adapted to enable a business to adopt the features of a social business.

The questionnaire is intended to capture information about both legal forms which are exclusively for social businesses in member states and how other legal forms are adapted to enable a business to adopt the features of a social business.

The responses to the questionnaire will form a legal and regulatory profile for social business in each member state. The profiles will be used for the basis of an evaluative study of the

legal frameworks for social businesses across the European Union, with a view to informing the future direction of the Social Business Initiative.

3.1.3 Guidance in relation to the questionnaire

The questionnaire is divided into three sections.

1. Section A seeks to identify the types of legal forms in the member state which can be used for social businesses and to elicit an overview of the legal and regulatory barriers which may prevent or inhibit the development of social businesses.
 - 1.1 Please list all legal forms which could be used for a social business (A1) in the member state, and for each form identify whether the legal form is exclusively for social businesses or otherwise (A2). By “exclusively for social businesses” we mean legal forms which are by definition social businesses according to the description set out in the Introduction to this guidance. However, if other types of businesses which are not social businesses can also use the legal form, then it will not be available exclusively for social businesses.
 - 1.2 Please refer to the example completed questionnaire for the UK for guidance on your response to A2. For example, the example Section A response identifies a company limited by shares as a legal form which could be used in the UK for a social business. A company limited by shares is the type of legal form that an ordinary commercial business would use, so it is not a legal form that is exclusively for social businesses but it is capable of adaptation by a social business.
 - 1.3 In your response to A3, please identify and describe legal and regulatory barriers that entrepreneurs face when establishing developing or expanding social enterprise. Your response should refer to the legal forms set out in your response to A1 and can cross-refer to your responses to section B.
 - 1.4 In your response to A3(a) please describe any legal and regulatory barriers obstacles and barriers related to each of the bullet points.
 - 1.5 Please describe any rules which you consider to be of interest, considering a purpose of this is to identify legal and regulatory barriers (A3(b)) to the development of social business. Particularly describe any rules which, by not taking into account the features of a social business, hinder their development (for example, access to EU or national funding schemes, obstacles in public procurement, tax rules which are detrimental to social businesses).
 - 1.6 In your response to A3(c) and A3(d), please describe any barriers to cross-border activities, such as offering cross-border services, establishing as social enterprises in a country other than the one of the registered office of the main subsidiary, or creating a local subsidiary. If you can, please give examples of existing cross-border co-operations and their legal forms and/or examples of expansion across frontiers of social businesses.
 - 1.7 Please provide an overview of the direction of the development of the law and regulation of social businesses in response to A4.
 - 1.8 In your response to A5 please provide an overview of any support measures to encourage the development of social businesses in the member state. In your response to A5(a) please set out any tax incentives or fiscal exemptions available to social businesses as well as any other exemptions or privileges in A5(b).
 - 1.9 In your response to A6, please set out any case law which has considered any of the support measures you identified in A5 in a competition law context.
2. Section B seeks to elicit information about each type of legal form that is capable of use by a social business. Please answer the questions set out in section B for the three most popular legal forms identified in Section A which are used by social businesses.
 - 2.1 Please refer to the example completed questionnaire for the UK for guidance. Example Section B responses have been provided for:

- a community interest company (a legal form exclusively for social business);
 - a company limited by shares (a legal form for profit distributing businesses);
 - a company limited by guarantee (a legal form similar in certain respects to the association' legal form in many member states); and
 - a co-operative society.
 - These are all types of legal form which are used by social businesses in the UK and have been identified in Section A. The questions in Section B have been completed separately for each of these legal forms. Please note that some of the questions may not be directly applicable or relevant to every legal form.
 - You may wish to use the example completed forms as a starting point or model.
3. Section C asks for supplementary information about useful contacts in the member state and in other member states (C1 and C2), the author(s) of the responses (C3) and useful legal texts and other references (C4 and C5).
- 3.1 The purpose of Section C is to enable reviewers of your responses to verify the information you provide by reference to publicly available third party sources.
 - 3.2 Please only name those social business legal experts in your member state or in other member states which you already know. There is no expectation that you will conduct any research to identify any legal experts other than those you already know.
 - 3.3 Please only complete Section C once in relation to all legal forms which you summarise but include useful legal texts and other references which, if possible, cover all of the legal forms and issues identified in your response to section A.

3.2 Member State Profile Questionnaire

3.2.1 Section A: Overview of legal forms for social businesses and legal and regulatory barriers to establishing, developing or expanding a social business

- A1. Please list the types of legal forms used for social businesses in the member state.
- A2. For each type of legal form, please state whether it is a legal form that is exclusively for social businesses or not.
- A3. Please provide an overview of the legal, regulatory and other barriers that entrepreneurs face when establishing, developing or expanding a social business in the member state.
- A3(a). Is there any legislation, regulation or sets of rules in the member state which hinders the development of social businesses?
- A3(b). Are there any particular barriers to social businesses conducting cross-border activities?
- A3(c). Can a social business which has a registered office in another country establish an office, agency or branch in the member state or create a subsidiary in the member state?
- A4. Please provide an overview of the direction of the development of the law and regulation of social enterprise
- A5. Please provide an overview of any support measures to encourage the development of social businesses. Please provide examples of support measures which address social businesses' particular needs.
- A5(a). Do social businesses benefit from any tax incentives or fiscal exemptions? Please give examples of where a social business' use of volunteers or ability to receive donations has tax implications.
- A5(b). Do social businesses benefit from any other exemptions or privileges?

A6. Is there any case law (national or European) in the area of competition concerning any of the advantages set out in your responses to question A5?

3.2.2 Section B: Characteristics of legal forms available

Please complete Section B for the three most popular types of legal form identified in Section A.

B1. Name of legal form and short summary description. If the legal form is not exclusively for social businesses, please explain how the legal form may be adapted to make it appropriate for a social business.

B2. Legislation and regulation

B2(a). Identify the key national legislation and regulation which governs the legal form

B2(b). Does the Member State's constitution refer to the legal form?

B2(c). Is any new legislation for the legal form proposed?

3.2.2.1 Purposes

B3. What purposes can the legal form advance?

3.2.2.2 Methods of creation

B4. What are the requirements to set up the legal form?

B4(a). What is the procedure?

B4(b). What application documents are required?

B5. Is the legal form required to register?

B5(a). Are there any specific criteria for registration?

3.2.2.3 Required capital base or assets

B6. Is there any requirement for the legal form to hold a minimum level of capital or assets?

3.2.2.4 Management and corporate governance

B7. What are the governance requirements set out in law?

B7(a). Is it a requirement to have a board which oversees the management and affairs of the legal form?

B7(b). What are the requirements concerning board members? Is there a required minimum or maximum number of board members?

B7(c). How are board members appointed / removed?

B7(d). What are the legal duties of board members?

B8. Can staff participate in decision making? If yes, how and to what extent?

B9. Is there a legal definition of conflict of interest in the jurisdiction? Is there a legal requirement to manage or avoid conflicts of interests? What procedures might be put in place to do so?

3.2.2.5 Members rights and voting at general meetings

B10. Does the legal form have members?

B11. What is the role of members in the legal form's governance? What rights do members have?

B12. When and how are members represented?

3.2.2.6 Shares, refunds and reserves

B13. Does the legal form have shares?

- B14. Do the shares carry voting rights?
- B15. Are dividends distributed on paid-up share capital?
- B15(a). If so, are there specific requirements which must be met before dividends can be paid?
- B15(b). Are there any limits on the amount of profit that can be distributed to shareholders?
- B16. Are there any limits on when and how shares can be transferred or otherwise disposed of?
- B17. Are 'refunds' of surplus capital capable of being made?
- B17(a). If so, are there specific requirements which must be met before 'refunds' can be made?
- B18. Is there a distinction between the distribution of dividends and refunds?
- B18(a). If yes, on what basis is this distinction made?
- B19. Is the legal form required to allocate surpluses to compulsory legal reserve funds?
- B19(a). Are there restrictions on how reserves may be used?

3.2.2.7 Economic activity

- B20. Are there any limits on the economic activity the legal form can undertake (for example, any limits on the legal form's ability to trade)?
- B21. Are there ways in which any limits on how the legal form can trade can be overcome (for example, by establishing a subsidiary or parallel legal form)?

3.2.2.8 Non-member investors

- B22. Can the legal form attract internal investment? If so, how?
- B23. Can the legal form attract external investment? If so, how?
- B23(a). Is an investor required to become a member of the legal form?

3.2.2.9 Transparency and publicity requirements

- B24. Do annual returns and/or accounts need to be made publicly available?
If so, where are they published?
- B25. Do any other types of report have to be submitted to a regulator (report on activities, public benefit, community benefit, tax return)? Are these reports made publicly available? If so, where are they published?
- B26. What are the legal requirements concerning external audits?

3.2.2.10 Employee involvement

- B27. Can employees receive a proportion of the legal form's profits (if any)? If so, how?

3.2.2.11 Business Closure

- B28. When and how is the legal form wound up?
- B29. How are surplus assets and capital applied on a winding up, dissolution or liquidation?
- B30. Are there any limits or caps on the distribution of profits or reserves on a winding up, dissolution or liquidation? In particular, is there an "asset lock" which prevents surplus assets and capital from being used for purposes other than the social business's social purpose?
- B31. What are the main rescue and insolvency procedures?
- B31(a). Which stakeholders have the most significant role in the outcome of a restructuring or insolvency procedure?

B31(b). Where do creditors and shareholders rank on an insolvency?

B32. In what circumstances can the legal form continue to carry on business during insolvency or rescue proceedings? In particular, who has the authority to supervise or carry on the legal form's business and what restrictions apply?

3.2.2.12 Conversion to another legal form

B33. Can the legal form “convert” to a different type of legal form?

B33(a). Are there any specific requirements for conversion?

B33(b). What is the procedure? What documents are required?

B34. How are the social business's assets treated on the conversion of the social business to another legal form?

3.2.3 Section C: Supplementary information

C1. Please name up to 5 legal experts on social business in the member state

C2. Please name up to 10 legal experts on social business in other member states

C3. Author biography

C4(a). Name

C4(b). Contact details

C4(c). Areas of practice

C4(d). Examples of recent work

C4. Selected bibliography for the purposes of enabling verification

C5. Selected legal texts for the purposes of enabling verification

4 Example of a completed legal mapping template: The UK

4.1 Section A: Overview of legal forms for social businesses and legal and regulatory barriers to establishing, developing or expanding a social business

4.1.1 Types of legal forms used by social businesses

A1. Please list the types of legal forms used by social businesses in the member state.

Please note that the United Kingdom is formed of the jurisdictions of England and Wales, Scotland and Northern Ireland. The legal forms listed below are available in each of those jurisdictions but there may be variations in the legal framework in which they operate.

- *Company limited by shares*
- *Company limited by guarantee*
- *Community interest company*
- *Industrial and provident society (co-operative or community benefit society)*
- *Credit union*
- *Charitable company limited by guarantee*
- *Charitable incorporated organisation*
- *Charitable trust*
- *Unincorporated association*
- *Partnership*
- *Limited liability partnership*
- *Sole trader*

A2. For each type of legal form, please state whether it is a legal form that is exclusively for social businesses or not.

- *Company limited by shares – not exclusively for social businesses*
- *Company limited by guarantee – not exclusively for social businesses*
- *Community interest company – exclusively for social businesses*
- *Industrial and provident society – not exclusively for social businesses*
- *Credit union – exclusively for social businesses*
- *Charitable company limited by guarantee – not exclusively for social businesses*
- *Charitable incorporated organisation – not exclusively for social businesses*
- *Charitable trust – not exclusively for social businesses*
- *Unincorporated association – not exclusively for social businesses*
- *Partnership – not exclusively for social businesses*
- *Limited liability partnership – not exclusively for social businesses*
- *Sole trader – not exclusively for social businesses*

4.1.2 Legal and regulatory barriers

A3. Please provide an overview of the legal, regulatory and other barriers that entrepreneurs face when establishing, developing or expanding a social business in the member state.

There is a lack of knowledge on the part of social entrepreneurs setting up new businesses about the possibility and process of setting up a social business. The traditional company incorporation process at Companies House, for example, does not inform would be entrepreneurs about the social business possibilities. It does not in any meaningful way encourage social business formation.

There are also a number of legal forms which are available for social businesses and some entrepreneurs are confused about the differences between different types of legal forms, which many believe inhibits the rate of take up of legal forms, as some entrepreneurs are deterred by the perceived complexity of certain forms, such as the community interest company and the various caps on dividends and distributions.

There is a lack of expertise about social business in the professional and advisory groups which advise entrepreneurs and start-ups, which compounds the issue. In addition, there is an absence of incentives to encourage social business formation, as there are currently no fiscal benefits attached to the majority of legal forms used by social businesses, with the exception of charities (which enjoy many fiscal benefits) and to a lesser degree co-operative societies (which enjoy some fiscal benefits).

A3(a). Are there any legislative and regulatory obstacles and barriers related to:

- **developing relations with investors, customers, stakeholders and mainstream enterprises;**

Investors

As social businesses limit the degree to which profits may be distributed to investors, many investors are deterred from investing in social enterprises. This is not necessarily a bad thing, as it means that investors purposes are often aligned with the purposes of the social enterprises in which they invest. However, as a practical matter, it does mean that many social enterprises currently find it difficult to raise capital from mainstream sources. This may, from a legal and regulatory point of view, be, to some extent, unavoidable.

Customers

There is a lack of awareness on the part of customers and investors that social enterprises operate differently and create tangible benefits to society. There is a sense in which this is a branding problem, as there is no well-known social enterprise brand. Attempts to create brand awareness, such as the 'Social Enterprise Mark', have not developed the recognition many would have hoped.

There are also well known cases involving businesses which are not social businesses using language which suggests that they are social businesses. One case involved the misuse of the term "social purpose business" and the other case involved an attempted trade mark of the term "social business" in both cases by fully for profit companies. The law currently fails to adequately protect or reserve such words or phrases for social businesses which fit the description used for the purposes of the Social Business Initiative.

Stakeholders

There are no obvious legal and regulatory barriers preventing social businesses from developing relations with mainstream enterprises. However, there are no fiscal or other incentives for major mainstream enterprises to incorporate social businesses in their supply chains.

- **the nature of the business or particular activities that social businesses may wish to pursue (for example, providing health or social care, childcare, financial services, health insurance activities etc.);**

It is well recognised that social businesses find it difficult to compete in public services markets for a variety of reasons, including the fact that aspects of procurement processes arguably discriminate against social businesses, such as the large contract sizes of many Government contracts, the absence of rules about how prime contractors engage with subcontractors and pre-qualification and specification requirements which inhibit competition

by requiring long track records or very strong financial positions, which make it difficult for new market entrants, such as social businesses, to compete.

Another area where social businesses have had particular difficulty is in meeting regulatory capital requirements for banking purposes. An inability to meet regulatory capital rules has required certain social businesses, such as Charity Bank, to completely reorganise their corporate structures. It seems that regulatory capital rules for banks and financial institutions have been designed without reference to the corporate structures of social businesses.

- **the quality of the awards of contracts in a public procurement context.**

The Government has passed the Public Service (Social Value) Act 2012, which now requires commissioning public bodies to consider the 'social value' of services which are procured in advance of the procurement process, where those services are subject to the Public Contract Regulations 2006. Social value is understood as that which contributes to the social, economic and environmental wellbeing of the area for which the public body is responsible.

Under the Public Contract Regulations 2006, public bodies are required to purchase goods or services either on the basis of price or on the basis of which tender is the most 'economically advantageous', which is essentially an evaluation of the quality promised by the tender in accordance with the proposed tender award criteria. Public bodies are also under an obligation under the Local Government Act 1999 to obtain 'best value', which is a combination of economy, efficiency and effectiveness.

All this means that, prior to the Public Services (Social Value) Act 2012, public bodies were able to consider social value but, following the 2012 Act, are now required to consider social value before purchasing services.

However, as a matter of practice, many public bodies are increasingly focusing on price as the differential, as opposed to quality. To some extent, this is a function of austerity and limited public budgets but it is likely to be self-defeating as a medium or long term approach to commissioning, as it will mean that highly innovative and efficient services may find it difficult to receive the initial investment needed to prove new models and achieve scale.

A3(b). Is there any legislation, regulation or sets of rules in the member state which hinders the development of social businesses?

There are no obvious examples of legislation or regulation which expressly hinder or limit the development of social business. However, law and regulation very often fails to consider the particular features and characteristics of social business, which often acts as a practical impediment to the development of social business.

For example, the law which regulates financial services, much of which (such as the rules on the suitability of financial advice) is derived from European law, does not clearly acknowledge that many investors wishing to invest into social businesses wish to do so for social reasons as well as financial reasons. In practice, the emphasis on financial reasons for investment deters regulators and advisers from properly acknowledging the social aspects of investment, which in turn means that the regulatory framework discourages and inhibits the development of social investment.

Similarly, although social businesses exist to provide positive social benefits to society, European competition law, such as the law in relation to procurement and state aid, makes it much more difficult for the Government to expressly support the development of social business by legal and regulatory means. Government may wish to use the legal and regulatory framework to actively support businesses which are seeking to create positive benefits for society but unfortunately, in practice, European competition law often either actively prevents the Government from doing so or at least practically discourages the Government from doing so.

For example, there are sensitive areas of public policy, such as education, health and social care, where the state often decides to deliver services directly. As these are sensitive areas, often with vulnerable beneficiaries, it would be appropriate for the state to be able to determine who can compete in a market to provide services and to determine that certain

areas of provision are too sensitive for providers which are mainly motivated by the ability to generate value for shareholders. However, whilst the Sodemare C-75/96 case recognises the ability of the state to restrict provision to certain types of providers where there is a statutory basis for doing so, EU law does not generally encourage the creation of markets in sensitive policy areas which are restricted to social businesses. It is not certain when the Government is able to reserve sensitive markets to social businesses, which prevents it from doing so.

One of the problems with state aid law in practice is that there is essentially a presumption that subsidies to economic undertakings may distort competition between member states. This presumption is not well founded in the case of social businesses, the majority of which operate locally and provide services in markets where there is very little, if any, international competition or inter-state trade.

A3(c). Are there any particular barriers to social businesses conducting cross-border activities?

There are no specific barriers to social businesses conducting cross-border activities which do not apply to ordinary businesses. However, the reality of the social business market in the UK is that very few social businesses have developed to a size where competition in international markets is a realistic aim. Most social businesses are addressing local and community based needs, often providing services as opposed to producing goods for export, and so in practice cross-border activity is rare.

A3(d). Can a social business which has a registered office in another country establish an office, agency or branch in the member state or create a subsidiary in the member state?

One of the options for companies wishing to trade in the UK is to register a UK establishment³. This means that, for social businesses operating as companies, the company must comply with the Overseas Companies Regulations 2009 (“OCR 2009”) which includes a requirement to register any establishment the company has in the UK and it also imposes certain accounting requirements and requirements to deliver returns. An establishment is defined broadly in OCR 2009 as a branch within the meaning of The Eleventh Company Law Directive (89/666/EEC) (Directive), or any place of business that is not such a branch. The Directive does not define the term branch however, a place of business would be anywhere that a company regularly conducts business or premises that indicate that a company may be contacted there. The UK establishment is not a separate legal entity but rather the same legal entity as the overseas company it is derived from.

To register a UK establishment with Companies House, form OSIN01 is required. This includes details of incorporation, the company's name (which can be a name other than the company's corporate name (s. 1048, CA 2006)) and directors of the company, and details of the UK establishment. The return should also include constitutional documents and in some cases account information. Registration is required only for companies wishing to open an establishment in the UK and the rules do not extend to partnerships or other unincorporated bodies. This option is only one alternative, and a company can consider whether one of the following options is more suitable to its particular needs:

- *Appointing an agent.* A company that chooses to appoint an agent will avoid the regulatory burden of having to register a UK establishment or incorporating a company. However, an agent may not meet the requirements of the company if it wants to establish a greater presence.
- *A company can choose to set up a subsidiary (i.e. a UK company that is wholly owned by the social business established in another country), however, this may increase the regulatory burden. If the company has no other subsidiaries it may trigger the requirement to produce group accounts. The company also has to go through the process of incorporation.*

³ The duty of an overseas company to register its particulars is set out in s. 1046 Companies Act 2006

- *Appoint a distributor or franchisee.*
- *Enter into a partnership agreement.*

4.1.3 Development of the law and regulation of social businesses

A4. Please provide an overview of the direction of the development of the law and regulation of social businesses

There is considerable political commitment to the development of social business in the UK, which is co-ordinated at the highest levels of Government, by the Cabinet Office.

The Government has recently passed the Public Services (Social Value) Act 2012, which requires public bodies in the UK to consider the social and economic value which providers of services to the state are likely to provide in addition to the price and quality of services. It is expected that this piece of legislation will encourage commissioners to recognise the added social value which many social business provide, such as jobs for those who are far from the labour market or a sustainable business which is sensitive to environmental protection.

The Government has recently conducted a formal review of the law, regulation and tax environment for social business. This has led to a number of positive outcomes, for example:

- *the Government amended the Financial Services Act 2012 to recognise the different objectives of different forms of investors and the different objectives of different types of businesses, which provides a mandate to the financial regulators in the UK to take account of the particular features of social businesses and social investment;*
- *the Government is consulting on a tax relief for investors into social enterprises, to ensure that the incentives for investment into social enterprises are aligned with the incentives for investment into small and medium sized enterprises;*
- *the Regulator of Community Interest Companies is expected to issue a formal consultation in relation to the dividend caps of community interest companies in the Autumn of 2013, with a view to ensuring that the caps do not deter investors;*
- *the Law Commission, an independent body responsible for legal reform, is reviewing the investment duties of fiduciaries and pension fund trustees, to ensure that trustees and fiduciaries are able to consider social value in investment decision-making; and*
- *the Government is exploring the possibility of a 'social investor exemption' to rules which limit the promotion of social businesses as investment opportunities to ordinary retail investors, with a view to increasing investment in social businesses.*

4.1.4 Support measures

A5. Please provide an overview of any support measures to encourage the development of social businesses. Please provide examples of support measures which address social businesses' particular needs.

The UK Government has created a wealth of non-selective support measures with the intention to grow the social businesses market and facilitate access to capital and pots of public funding for social entrepreneurs, with the intention of addressing the specific needs of social businesses. The aim has been to increase the supply of finance to these ventures.

The majority of measures take the form of subsidies. Big Society Capital, which has been operational since April 2012, invests in social investment finance intermediaries and had, during its first nine months, committed £56m investment.

The Bridges Social Entrepreneurs Fund was set up in August 2009 and has raised nearly £12m for investment in social enterprises seeking to expand. In 2007, the Social Enterprise Investment Fund was established to stimulate the role of social enterprise in health and social care. Since its inception, the Social Enterprise Investment Fund has invested a total of over £110m in over 650 social enterprises.

The Cabinet Office has also founded two further funds for specific purposes: the Investment and Contract Readiness Fund and the Social Incubator Fund, both of which are three year funds, worth £10m each. The former Fund was established to assist a network of social ventures, to ensure that they would be well equipped to secure new forms of investment or compete for public service contracts. The latter fund, aims to assist a group of ventures in the social investment market by increasing focus on support by “social incubators”: organisations that offer a period of intensive support to social enterprise start-ups. A further source of funding is the £20m Social Outcomes Fund launched in November 2012, a central top-up fund for Social Impact Bonds, which improve the social outcomes of publicly funded services by making funding conditional on achieving results.

The Department of Business, Innovation and Skills has also created the Regional Growth Fund, with the aim of stimulating long-term economic growth. This fund has awarded a £30m grant over three years (matched by £30m of finance from the Unity Trust and Cooperative banks) to the Community Development Finance Association (“CDFA”).

Other sector specific public funds are made available to social businesses from time to time, for example, in the arts or related to the promotion of sports.

A5(a). Do social businesses benefit from any tax incentives or fiscal exemptions? Please give examples of where a social business’ use of volunteers or ability to receive donations has tax implications.

Community Investment Tax Relief

The CITR scheme encourages investment in disadvantaged communities by giving tax relief to investors who back businesses and other enterprises in less advantaged areas. The tax incentive is targeted at investors in accredited intermediary organisations (“CDFIs”), which then invest (directly or indirectly) in enterprises in or serving disadvantaged communities. CDFIs specialise in providing funding to businesses, social and community enterprises within under-invested areas.

Subject to certain conditions, CITR is available to an individual or company who invests (by way of loan, securities or share capital) in an accredited CDFI.

CDFIs may take a range of forms including:

- *community loan funds, which make capital available to community regeneration initiatives and businesses*
- *micro-finance funds, which make very small loans, usually at near-market rates of interest, to the smallest businesses, e.g. sole traders, and*
- *social banks - profit-seeking financial service providers or subsidiaries, dedicated to social or environmental objectives.*

But not all bodies within these categories would necessarily satisfy the criteria for accreditation under the CITR scheme. The tax relief is worth up to 25% of the value of the investment in the CDFI and is spread over five years, starting with the year in which the investment is made.

There is no limit to the amount of investment on which a single investor may claim relief under the CITR scheme. However, there are limits on the amount of investment that can be raised by any single CDFI.

Co-operatives

Unlike dividends on shares in an ordinary company limited by shares, share and loan interest paid by a registered co-operative society are not treated as distributions for corporation tax purposes.

The conditions are that the society is a bona fide co-operative society, or in view of the fact that the business of the society is being, or is intended to be, conducted for the benefit of the community, there are special reasons why the society should be registered under the Industrial and Provident Societies Act 1965

Charitable company limited by guarantee

A company limited by guarantee does not benefit from any particular financial advantages, unless it has charitable status. The responses set out below are in respect of a charitable company limited by guarantee only.

Charitable companies are eligible for a variety of tax reliefs:

- Exemption from income tax, capital gains tax and corporation tax on profits (these profits may only be used to achieve the charity's purposes);
- Exemption from paying Stamp Duty Land Tax on properties purchased. Note that the Stamp Duty Land Tax rate for commercial properties over £500,000 is 4%;
- 80% mandatory business rates relief (for properties that are completely or mainly used for charitable purposes) and additional 20% relief at the local authority's discretion;
- Charities are not exempt from paying VAT but certain goods or services provided or bought by the charity may be exempted or zero-rated including zero-rated VAT on constructing new build buildings for a 'relevant charitable purpose' (i.e. non-business activities provided by a charity for no or a small fee to cover costs);
- Tax relief on income from renting property.

Charitable companies are also eligible for Gift Aid on donations:

- charities can reclaim the basic rate of income tax that the individual has paid on the donation, providing the individual supplies the charity with a 'Gift Aid declaration'. This boosts the value of the donation to the charity by 25%; and
- a higher or additional rate tax payer can claim higher or additional rate relief on their donation and, if desired, carry this relief back to the previous tax year, providing a further incentive to give.

Charities can also receive legacies which are free of inheritance tax for the donor.

There are other specific exemptions which apply to charities undertaking certain activities. For example, certain specified energy saving materials and equipment installed on buildings used solely for a relevant charitable purpose in the UK may attract a lower rate of VAT than normal.

Company limited by shares

The tax reliefs set out below are tax reliefs which are generally available to companies limited by shares, and are **not** specific to social businesses. Some social businesses will be excluded from benefitting from the Enterprise Investment Scheme and the Seed Enterprise Investment Scheme because they do not carry out a qualifying trade or do not issue shares. For example, social businesses which operate care homes or undertake forestry or agricultural activities will not be undertaking qualifying trading and accordingly the schemes will not apply.

Enterprise Investment Scheme (EIS)

EIS is designed to help smaller higher-risk trading companies limited by shares to raise finance by offering a range of tax reliefs to investors who purchase new shares in those companies. In order for its investors to be able to claim, and keep, the EIS tax reliefs relating to their shares, the company which issues the shares has to meet a number of rules regarding the kind of company it is, the amount of money it can raise, how and when that money must be employed for the purposes of the trade, and the trading activities carried on. The company must satisfy HM Revenue & Customs that it meets these requirements, and is therefore a qualifying company.

Individuals who subscribe for shares in an EIS can qualify for income tax relief. Relief is at 30 per cent of the cost of the shares, to be set against the individual's Income Tax liability for the tax year in which the investment was made. Relief can be claimed up to a maximum of £1,000,000 invested in such shares, giving a maximum tax reduction in any one year of £300,000 providing the investor has sufficient Income Tax liability to cover it. There is a

'carry back' facility which allows the all or part of the cost of shares acquired in one tax year, to be treated as though those shares had been acquired in the preceding tax year. The shares must be held for a certain period or Income Tax relief will be withdrawn. Generally, this is three years from the date the shares were issued.

If an investor has received Income Tax relief on the cost of the shares, and the shares are disposed of after they have been held for the period referred to above, any gain is free from Capital Gains Tax.

If the shares are disposed of at a loss, the investor can elect that the amount of the loss, less any Income Tax relief given, can be set against income of the year in which they were disposed of, or any income of the previous year, instead of being set off against any capital gains.

Seed Enterprise Investment Scheme (SEIS)

SEIS is designed to help small, early-stage companies limited by shares to raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in those companies. It complements the EIS. SEIS is intended to recognise the particular difficulties which very early stage companies face in attracting investment, by offering tax relief at a higher rate than that offered by the existing EIS.

SEIS applies for shares issued on or after 6 April 2012. The rules have been designed to mirror those of EIS as it is anticipated that companies may want to go on to use EIS after an initial investment under SEIS.

Income Tax relief is available to individuals who subscribe for qualifying shares in a company which meets the SEIS requirements, and who have UK tax liability against which to set the relief. Investors need not be UK resident.

The shares must be held for a period of three years from date of issue for relief to be retained. If they are disposed of within that three year period, or if any of the qualifying conditions cease to be met during that period, relief will be withdrawn or reduced. Relief is available at 50 per cent of the cost of the shares, on a maximum annual investment of £100,000. The relief is given by way of a reduction of tax liability, providing there is sufficient tax liability against which to set it.

Capital Gains Tax re-investment relief is available for the tax year 2012-13 only. If an investor disposes of an asset which would give rise to a chargeable gain in 2012-13, and reinvests all or part of the amount of the gain in shares which also qualify for SEIS income tax relief, the amount reinvested will be exempt from Capital Gains Tax. The £100,000 investment limit which applies for income tax relief also applies for re-investment relief. The 'carry-back' facility applies for capital gains re-investment relief as it does for income tax relief. The asset does not have to be disposed of first; the investment in SEIS shares can take place before disposal of the asset, providing that both disposal and investment take place in 2012-13.

If an investor has received Income Tax relief (which has not subsequently been withdrawn) on the cost of the shares, and the shares are disposed of after they have been held for at least three years, any gain is free from Capital Gains Tax.

Venture Capital Trusts (VCT) scheme

The VCT scheme is designed to encourage individuals to invest indirectly in a range of small higher-risk trading companies whose shares and securities are not listed on a recognised stock exchange, by investing through Venture Capital Trusts. So, if an investor invests in a VCT, the investor spreads the investment risk over a number of companies.

VCTs are similar to investment trusts. They are run by fund managers who are usually members of larger investment groups. Investors can subscribe for, or buy, shares in a VCT, which invests in trading companies, providing them with funds to help them develop and grow. VCTs realise their investments and make new ones from time to time. VCTs must be approved by HMRC for the purpose of the scheme.

HMRC's approval of a VCT means that it currently satisfies their requirements enabling investors to qualify for certain tax reliefs. It does not guarantee the safety or success of any investments you make in a VCT. HMRC strongly advise you to get advice from a professional adviser before you decide whether or not to invest in a VCT.

Income Tax reliefs:

- Exemption from Income Tax on dividends from ordinary shares in VCTs (dividend relief).
- 'Income Tax relief' at the rate of 30 per cent of the amount subscribed for shares issued in the tax year 2006-07 and onwards (for subscriptions for shares issued in previous tax years the rate is 40 per cent). The shares must be new ordinary shares and must not carry any preferential rights or rights of redemption at any time in the period of five years beginning with their date of issue. Investors can receive this relief for the tax year in which these 'eligible shares' were issued, provided that the investor subscribed for the shares on his or her own behalf, the shares were issued to the investor, and the investor holds them for at least five years.
- The Income Tax relief at 30 per cent is available to be set against any Income Tax liability that is due, whether at the lower, basic or higher rate.

Capital Gains Tax reliefs:

- The investor may not have to pay Capital Gains Tax on any gain made on disposal of the investor's VCT shares.
- Investors can benefit from dividend relief and Capital Gains Tax exemption, for both newly issued shares and second-hand shares acquired, for example, through the Stock Exchange.

A5(b). Do social businesses benefit from any other exemptions or privileges?

Deposit taking by co-operative societies is exempt from regulation under the Financial Services and Markets Act, and there is a limited exemption for financial promotions pursuant to the FSMA 2000 (Financial Promotion) Order 2005.

4.1.5 Competition

A6. Is there any case law (national or European) in the area of competition concerning any of the advantages set out in your responses to question A5?

The European Court of Justice Hein Persche case led to changes to tax legislation so that the tax advantages usually enjoyed by UK taxpayers on gifts made to charities based in the UK now apply to donations made by UK taxpayers to organisations established elsewhere in the European Union which would be charitable if they were established in the UK.

In practice, it seems to be proving difficult for UK taxpayers to benefit from tax relief on donation to non-UK charities. To be eligible, non-UK charities must satisfy four stringent conditions and HMRC seems in practice to be taking a relatively restrictive approach to recognising foreign charities for tax purposes. We understand that similar issues exist in other member states across the EU and it is unclear therefore if Hein Persche has had any practical impact to aid cross-border tax deductible giving.

4.2 Section B: Characteristics of legal forms available: Community Interest Company

B1. Name of legal form and short summary description. If the legal form is not exclusively for social businesses, please explain how the legal form may be adapted to make it appropriate for a social business.

Community Interest Company ("CIC"). A CIC can take one of three company forms:

- company limited by guarantee without a share capital,
- private company limited by shares, or

- *public company limited by shares.*

A CIC limited by guarantee has a two tier structure of directors and members like a CIC limited by shares but rather than shareholders, its members are guarantors who agree to contribute a nominal amount, usually £1, in the event that the CIC is wound up. A CIC limited by guarantee does not have share capital and is not profit distributing. In contrast, a CIC limited by shares is capable of distributing profits.

Questions which relate to the distribution of profits or surpluses have therefore been answered by reference to a profit distributing CIC limited by shares.

The CIC legal form is available exclusively for social businesses.

B2. Legislation and regulation

B2(a). Identify the key national legislation and regulation which governs the legal form

- Companies Act 2006 (“CA 2006”)
- Companies (Audit, Investigations and Community Enterprise) Act 2004 (“CAICE Act”)
- Community Interest Company Regulations 2005 (“CICR”)

B2(b). Does the Member State’s constitution refer to the legal form?

No.

B2(c). Is any new legislation for the legal form proposed?

No, however the CIC regulator will be conducting a review of the CIC form in the autumn of 2013.

4.2.1 Purposes

B3. What purposes can the legal form advance?

A CIC’s activities must satisfy the ‘community interest test’ (see response to question B5).

It is best practice to clearly define in the CICs objects (the section of the CIC constitution which relates to the CIC’s purposes) the nature of the proposed activities and the community, which it intends to benefit. For example, “to provide day care and transport facilities for the elderly and physically disadvantaged in North Essex”.

A CIC’s is not required to specify objects in its Articles of Association. The CIC Regulator considers that if a CIC choses unrestricted objects, then the activities of the CIC must result in the delivery of real and tangible benefit to a community and the way in which the community will benefit should be clearly defined in the ‘community interest statement’ to be submitted to the CIC Regulator.

4.2.2 Methods of creation

B4. What are the requirements to set up the legal form?

B4(a). What is the procedure?

An application must be made to Companies House. This should state which form the CIC will take (see response to question B1).

B4(b). What application documents are required?

- A completed application to Companies House to register a new company (IN01 form);
- A Memorandum of Association;
- Articles of Association compliant with CA 2006, the CAICE Act and CICR;
- A ‘community interest statement’ that describes the benefit to the community of the CIC (form CIC36). This enables the CIC Regulator to decide whether the CIC satisfies the ‘community interest test’; and

- A company formation fee.

B5. Is the legal form required to register?

To be incorporated, and therefore have legal personality, the CIC must be registered at Companies House.

B5(a). Are there any specific criteria for registration?

- *Adoption of a suitable constitution in the form of Articles that comply with the CAICE Act and CICR (for existing companies this will involve making changes to their articles and a change of name).*
- *Make a community interest statement declaring that its activities will be carried on for the benefit of the community and how this will be achieved.*
- *Create an asset lock - a legal promise set out in its Articles stating that the company's assets will only be used for its social objectives, and setting limits to the money it can pay to shareholders.*
- *Satisfy the CIC Regulator that a reasonable person might consider that the CIC's activities are or will be carried on for the benefit of the community. This is known as the "community interest test". The CIC will have to continue to meet this test throughout its life. A CIC will not satisfy the test if it carries on certain political activities, or if a reasonable person might consider that its activities are carried on only for the benefit of the members of a particular body or the employees of a particular employer.*
- *Make a declaration that it will not be an excluded company (which essentially means that it must not be a charity or owned or controlled by a political party or a political campaigning organisation).*

4.2.3 Required capital base or assets

B6. Is there any requirement for the legal form to hold a minimum level of capital or assets?

A CIC limited by shares must have minimum of one share with a nominal share value of at least 1 pence, though £1 is common.

A CIC limited by guarantee does not have share capital (see B1).

4.2.4 Management and corporate governance

B7. What are the governance requirements set out in law?

B7(a). Is it a requirement to have a board which oversees the management and affairs of the legal form?

Yes it is a requirement to have such a board, although it may be only one person.

The board members of a CIC have the same governance and decision-making role as in any other company, but they are under a stronger obligation to have regard to the wider community which the CIC serves than would be the case for an ordinary company.

B7(b). What are the requirements concerning board members? Is there a required minimum or maximum number of board members?

A minimum of one board member is required under CA 2006 for a private CIC. For a public CIC, 2 board members are required. There is no maximum.

B7(c). How are board members appointed / removed?

Board members are usually appointed by resolution of the other board members or the members. The power to appoint new directors cannot be given to persons who are not members of the CIC if this could result in a majority of the CIC's directors having been appointed by persons who are not members of the CIC. Similar restrictions apply to the power to remove directors.

Appointments of new directors must be notified to Companies House on form AP01, retirements/resignations on form TM01 and changes of address or other personal details on form CH01. The forms must be filed within 14 days of the relevant event. Details must also be entered in the CIC's company books, which are retained by the CIC and include a register of directors.

B7(d). What are the legal duties of board members?

The legal duties of directors are set out in sections 171 – 177 CA 2006.

Board members' legal duties include:

- to promote the success of the company for the benefit of the members as a whole, having regard to:
 - the likely consequence of any decision in the long term;
 - the interests of the company's employees;
 - the need to foster business relationships with customers and suppliers;
 - the impact of the company's actions on the community and environment;
 - the desirability of the company maintaining a reputation for high standards of business conduct; and
 - the need to act fairly as between the members of the company.
 - to exercise independent judgement;
 - to exercise reasonable care, skill and diligence;
 - to avoid conflicts of interest;
 - not to accept benefits from third parties; and
 - to declare an interest in proposed transactions or arrangements.

To the extent that the company exists for a social purpose, as set out in the Articles, the obligation of the directors is to advance the social purpose rather than to promote the success of the company for the benefit of members.

B8. Can staff participate in decision making? If yes, how and to what extent?

It is possible for paid members of staff of a CIC to sit on its board.

CICs can involve their staff in other ways, such as establishing consultative boards or encouraging a staff representative to join the board, but there is no legal requirement for a CIC to do so.

B9. Is there a legal definition of conflict of interest in the jurisdiction? Is there a legal requirement to manage or avoid conflicts of interests? What procedures might be put in place to do so?

The CA 2006 defines a conflict of interest as a situation in which a board member/director has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.

Section 175(a) CA 2006 imposes a duty upon directors to avoid such situations, which in practice means managing conflicts according to good practice.

If a conflict of interest arises, the conflicted director must declare that interest and the conflicts of interest procedure set out in the Articles of Association must be followed. This will usually mean that the conflicted director is not able to participate in the discussion or vote on the matter which gives rise to the conflict of interest.

4.2.5 Members rights and voting at general meetings

B10. Does the legal form have members?

The first members (often called “shareholders” where the CIC is limited by shares) are those people who sign the Memorandum and Articles of Association. Subsequent members are those who are admitted in accordance with the Articles.

In a company limited by guarantee the members are usually the guarantors on incorporation and others admitted to membership according to the Articles of Association.

B11. What is the role of members in the legal form’s governance? What rights do members have?

The responsibility for administration and management of the CIC is delegated to the directors by the members, subject to company law and the Articles of Association of the CIC.

However, the ultimate control of the CIC rests with the members because of their rights to attend, speak and vote at general meetings. They can pass resolutions which change the Articles of Association. They also have power to appoint directors, unless the Articles of Association state otherwise, and have a statutory power to remove directors.

The members have the right to receive the annual accounts, including the directors’ and auditors’ reports, and a report on how the community interest has been advanced.

B12. When and how are members represented?

Companies are not required to hold an annual general meeting (an “AGM”) although they must do so if required by the Articles of Association. All other members’ meetings are called “general meetings” and may be called at any time by the directors. The period of notice required is usually 14 days unless a longer period is stated in the Articles of Association. Meetings can be held on shorter notice if a certain percentage of members consent. Members can also require the directors to call a general meeting.

All members can appoint a proxy to attend, speak and vote at a members’ meeting. The proxy does not have to be another member. Proxies can vote on a show of hands or a poll, if members have more than one vote depending on shareholding.

Members’ resolutions are either ordinary resolutions which are passed by a simple majority (51% or more) of members eligible to vote and voting, or special resolutions which are passed by 75% or more members eligible to vote and voting. Certain decisions, such as amendments to the Articles of Association, can only be made by special resolution.

4.2.6 Shares and reserves

B13. Does the legal form have shares?

Yes, unless it is limited by guarantee.

(See response to question B1 for the difference between a community interest company limited by shares and a community interest company limited by guarantee).

B14. Do the shares carry voting rights?

Shares usually carry voting rights but this is not always the case. The rights attaching to the shares are set out in the Articles of Association.

B15. Are dividends distributed on paid-up share capital?

Yes dividends are distributed on paid-up share capital but subject to a dual cap. The first cap limits aggregate distributions and the second cap limits the return per share. These caps may be varied by the CIC Regulator. At present the first cap limits the total dividend in any year to 35% of the CIC’s distributable profit.

The second cap limits the amount of any dividend that may be paid on a given share which for shares issued on or after 6 April 2010 is 20 per cent of the paid up value of a share.

Any dividends paid by the CIC to the asset locked body specified Articles of Association or to another asset locked body (with the consent of the Regulator) are exempt from any cap.

B15(a). If so, are there specific requirements which must be met before dividends can be paid?

CICs can only pay dividends out of 'distributable profits', which are basically determined as accumulated realised profits less accumulated realised losses.

Unlike ordinary companies, CICs may only declare a dividend by ordinary or special resolution of the members. This means the directors cannot declare a dividend without consulting the members and gaining their support.

B15(b). Are there any limits on the amount of profit that can be distributed to shareholders?

Yes, see the answer to B15 above.

B16. Are there any limits on when and how shares can be transferred or otherwise disposed of?

The CIC can issue shares which may be bought and sold in the market in the same way as any normal company. There are however certain restrictions on the payment of dividends on those shares – see B15(b).

There are no restrictions on the price at which an investor may sell shares in a CIC to third parties. This allows for the possibility of the investor making a capital gain on the shares depending on the value of the shares. This in turn will depend on the projected value of the dividend stream and any other non-financial benefits of ownership, such as the desire to own a socially beneficial asset.

B17. Are refunds of surplus capital capable of being made?

The concept of refunds is not applicable to CICs.

B17(a). If so, are there specific requirements which must be met before 'refunds' can be made?

Not applicable.

B18. Is there a distinction between the distribution of dividends and refunds?

Not applicable.

B18(a). If yes, on what basis is this distinction made?

Not applicable.

B19. Is the legal form required to allocate surpluses to compulsory legal reserve funds?

There is no such requirement.

B19(a). Are there restrictions on how reserves may be used?

See B.19.

4.2.7 Economic activity

B20. Are there any limits on the economic activity the legal form can undertake (for example, any limits on the legal form's ability to trade)?

A CIC is a limited company with the freedom to trade. The 'asset lock' is not a bar to the CIC using its assets and reserves for trading or ordinary business activities.

For example, a CIC may take on a commercial venture with the purpose of generating profits to support its objects. If the venture fails and makes losses the CIC must still meet its contractual obligations in regard to the venture even if this means depleting its assets or selling some of them to meet its debts.

B21. Are there ways in which any limits on how the legal form can trade can be overcome (for example, by establishing a subsidiary or parallel legal form)?

4.2.8 Financing

B22. Can the legal form raise funds from its members? If so, how?

A CIC limited by shares can allot or issue shares to its members to raise capital.

Subject to a limited number of exceptions, the directors of a company must not allot shares unless they have the authority to do so under sections 550 or 551 of the CA 2006 (section 549(1), CA 2006).

The restriction in section 549(1) applies in relation to both the:

- *Allotment of shares.*
- *Grant of rights to subscribe for or to convert any security into shares. This would include, for example, the issue of options, warrants or convertible bonds or loan stock.*

An authority to allot shares pursuant to section 551 can be granted by either:

- *A provision in the articles of association of the company.*
- *A resolution of the members.*

An authority to allot given under section 551 (whether included in a company's articles or a members' resolution) must set out the extent of the authority and its duration.

B23. Can the legal form attract external investment? If so, how?

A CIC can be financed by equity investment by issuing shares to external investors. The dividends paid on any shares will be subject to the caps set out in the response to question B15.

A CIC can also be financed by loans or other forms of debt, such as bonds. However, there are limits on the amount of interest that can be paid if the CIC agrees to pay interest at a rate linked to the CIC's financial performance, which is known as 'performance related interest' – this is currently set at 10% of the average amount of a CIC's debt in the preceding 12 months.

B23(a). Is an investor required to become a member of the legal form?

An investor who makes an equity investment into the CIC by purchasing shares, will become a member of the company.

If the investor is solely providing a loan or purchasing bonds, an investor will not become a member.

4.2.9 Transparency and publicity requirements

B24. Do annual returns and/or accounts need to be made publicly available? If so, where are they published?

The company must file at Companies House an original copy of its annual accounts, signed by a director or the secretary, together with the directors' report and, if its annual income is above the audit threshold, an auditors' report. There are fines for late filing and the directors are also open to criminal prosecution.

B25. Do any other types of report have to be submitted to a regulator (report on activities, public benefit, community benefit, tax return)? Are these reports made publicly available? If so, where are they published?

All CICs have to make an annual CIC report to the CIC Regulator containing, in particular, a fair and accurate description of the way the CIC's activities during the financial year have benefited the community and, if applicable, give details of payments to directors and any dividends paid.

B26. What are the legal requirements concerning external audits?

A CIC will be required to engage an external auditor unless it qualifies as a "small company" or falls into another exemption. To qualify as a small company in its first financial year a CIC needs to meet at least two out of three of the following conditions:

- turnover not more than £6.5m
- balance sheet total not more than £3.26m
- number of employees not more than 50.

In respect of subsequent years the CIC will only incur a change in its status, e.g. from medium to small or from small to medium, if it respectively meets or fails two out of the three above conditions for both the current and the preceding financial year.

Auditors must be appointed for each financial year. The directors can in some limited circumstances appoint the auditors but it is more commonly a decision made by an ordinary resolution of the members.

4.2.10 Employee involvement

B27. Can employees receive a proportion of the legal form's profits (if any)? If so, how?

Yes, if the employees are also shareholders in the CIC.

A CIC can structure its internal affairs to incentivise staff as it wishes. A range of options are available from share option schemes to ownership by an employee benefit trust where the employees as a group may have indirect ownership of a substantial part of the CIC.

4.2.11 Business Closure

B28. When and how is the legal form wound up?

If a solvent company wishes to wind up its affairs, the directors may make a statutory declaration that the company is able to pay its debts in full within 12 months. The members can then pass resolutions putting the company into voluntary liquidation and appointing an insolvency practitioner as liquidator. The liquidator will then usually realise the assets and distribute the proceeds according to law.

A CIC "ceases to exist" when its legal personality has been terminated by dissolving the corporation and striking it off at Companies House.

B29. How are surplus assets and capital applied on a winding up, dissolution or liquidation?

If an asset locked body is specified in the CIC's Memorandum and Articles of Association, on winding up/dissolution any surplus assets will be distributed to that body rather than being distributed to the CIC's members.

B30. Are there any limits or caps on the distribution of profits or reserves on a winding up, dissolution or liquidation? In particular, is there an "asset lock" which prevents surplus assets and capital from being used for purposes other than the social business's social purpose?

See B29 above. If however:

- an asset locked body is not specified in the CIC's Memorandum and Articles of Association;*
- the specified asset locked body is known to have been wound up itself; or*
- the directors of the specified asset locked today object to the transfer of assets to that body,*

The CIC Regulator has the power to decide how the assets should be distributed on winding up. The CIC Regulator is obliged to consult the directors and members of the CIC and to take into account the desirability of complying with the CIC's Memorandum and Articles of Association, including its objects.

B31. What are the main rescue and insolvency procedures?

There are a number of ways of dealing with companies which are unable (or likely to become unable) to pay their debts, which reflect the main forms of insolvency procedure under the general law for ordinary companies:

- Administration - the directors, members or creditors of the company can apply to the court for the appointment of an administrator to manage the company's affairs if the company is unable (or likely to become unable) to pay its debts. The appointment effectively stops other proceedings against the company with a view to saving it as a going concern in whole or part. This gives the company time to introduce a voluntary arrangement, or some other compromise or arrangement with creditors or get a better price for its assets than would be likely in a liquidation.
- Members Voluntary Liquidation - depending upon circumstances the administrator, or liquidator, of a company, or its directors can propose a voluntary arrangement for approval by the creditors. This may consist of a compromise whereby the creditors receive less than the full amount of their debts.
- Creditors Voluntary Liquidation - This is similar to Members Voluntary Liquidation (above) except that the liquidator is appointed at a meeting of the creditors.
- Compulsory Liquidation - The creditors may apply to the Court for the company to be wound up on the ground that it is unable to pay its debts. On the making of a winding up order the 'Official Receiver' becomes liquidator of the company and has a duty to investigate the CIC's affairs and the cause of the failure. An Insolvency Practitioner may subsequently be appointed liquidator in place of the Official Receiver. The liquidator will usually realise the assets and distribute the proceeds according to law.

B31(a). Where do creditors and shareholders rank on an insolvency?

Holders of fixed charges and parties with proprietary claims to assets held by the insolvent company rank first. Expenses of the insolvent estate rank second, followed by preferential creditors. Holders of floating charges rank next, followed by unsecured creditors. Shareholders rank last.

Where some of the CIC's property remains after satisfaction of the company's liabilities (including the cost of proceedings), regulation 23 of the CICR limits distribution to members, who cannot receive more than the paid up value of their shares (i.e. what was paid to the company in respect of their shares, including both the nominal value of the share and any premium paid to the company).

Once any distribution to members has been made in accordance with this rule, any remaining residual assets of a CIC are to be distributed per B.29 & B.30, above.

B32. In what circumstances can the legal form continue to carry on business during insolvency or rescue proceedings? In particular, who has the authority to supervise or carry on the legal form's business and what restrictions apply?

See B.31

4.2.12 Conversion to another legal form

B33. Can the legal form "convert" to a different type of legal form?

*Under regulation 6A of CICR, a CIC may **convert** itself into a charity or a permitted industrial and provident society, which must have an equivalent form of asset lock.*

*A CIC is only allowed to **cease** being a CIC by dissolution or by **converting** to a charity or a permitted industrial and provident society, which means that once a company has become a CIC it cannot become an ordinary company.*

B33(a). Are there any specific requirements for conversion?

To convert to a charity or a permitted industrial and provident society, a CIC is required remove the statement that the company is a community interest company; change its name to

one that does not have a CIC designation. The CIC's constitution will need to be amended so it is consistent with the requirements of charity law.

B33(b). What is the procedure? What documents are required?

To convert to a permitted industrial and provident society, the CIC needs to send to the Registrar of Companies

- a copy of a special resolution, to convert into a registered society which has a restriction on use of assets in accordance with the provisions of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006;
- a copy of the rules of the society;
- a statement by authorised member of the company that, in its opinion, if those rules take effect, the company will become a registered society which has a restriction on use of assets in accordance with the provisions of the Community Benefit Societies (Restriction on Use of Assets) Regulations 2006.

To convert to a charity, a CIC is required to file special resolutions stating that it is to cease to be a community interest company and altering its Articles of Association in line with the requirements of charity law. It is also required to provide a statement by the Charity Commission, that in its opinion, if the proposed changes take effect the company will be an English charity and will not be an exempt charity, and/or a statement from The Commissioners of Her Majesty's Revenue and Customs that the company has claimed exemption under section 505(1) of the Income and Corporation Taxes Act 1988.

B34. How are the social business's assets treated on the conversion of the social business to another legal form?

The CIC's assets must continue to be used in a way that is consistent with the community interest test and may be subject to additional restrictions depending on the objects of the industrial and provident society or charity after the conversion.

4.2.13 Support measures

B35. Financial advantages of the legal form

B35(a). Does the legal form benefit from any tax exemptions or tax privileges?

CIC's will not enjoy any special tax status as such. They will generally be in the same position as any other organisation in obtaining any tax concessions or grants otherwise available, for example due to their type of activity or location. The CIC is liable to Corporation Tax on its profits and gains with no relief for general non trading expenditure, including expenditure for community purposes.

There is no general exemption from VAT for social enterprises such as CICs that undertake trading activities. VAT is a tax on turnover, and is based on the nature of the good or service supplied. Enterprises operating without a profit motive are still liable to pay VAT, however, those engaged in provision of education, health or welfare may find exemptions

B35(b). What are the requirements to receive the advantages set out in your response to question B35(a)?

N/A

B35(c). Does the legal form benefit from any other financial advantages such as subsidies or public grants?

In some circumstances local authorities may be able to offer 'Discretionary Rate Relief' to CICs but, as the name suggests, it is at the discretion of the individual local council and their decisions are made on a case by case basis.

B35(d). What are the requirements to receive the advantages set out in your response to question B35(c)?

As B35(c) states, rate relief is discretionary, decided on a case by case basis and subject to no fixed criteria.

B35(e). Is there any case law (national or European) in the area of competition concerning any of the advantages set out in your response to question B35(a) and B35(c)?

Not applicable.

B35(f). Does the legal form's use of volunteers or ability to receive donations have any tax implications?

None.

B36. Does the legal form benefit from any other exemptions or privileges?

None.

4.3 Section C: Supplementary information

C1. Please name up to 5 legal experts on social business in the member state

[To be inserted]

C2. Please name up to 10 legal experts on social business in other member states

[To be inserted]

C3. Author biography

C4(a). Name

Luke Fletcher, Partner at Bates Wells & Braithwaite London LLP

C4(b). Contact details

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C4(c). Areas of practice

- Charity and Social Enterprise
- Social Finance

C4(d). Examples of recent work

- Advising on the structure and establishment of the Big Society Capital group
- Advising the Cabinet Office on the development of legal templates for social impact bonds
- Advising the City of London on social investment and regulatory reform
- Forming new investments funds for investment into charities and social enterprises
- Structuring and managing the development of social impact bonds
- Advising on the establishment and operations of credit unions and CDFIs
- Advising on the formation and activities of crowdfunding and peer-to-peer platforms
- Advising on equity and debt capital raising by social enterprises and community groups
- Advising charitable foundations on investment activity

C4. Selected bibliography for the purposes of enabling verification

- Get Legal (<http://www.getlegal.org.uk/>)

- CIC Regulator's guidance (<http://www.bis.gov.uk/cicregulator>)
 - Industrial and Provident Societies, Practical Law Company
 - Simply Governance, Co-operatives UK (<http://www.uk.coop/simplygovernance>)
 - Getting It Right Legally: Status and Structure for Community Organisations
- C5. Selected legal texts for the purposes of enabling verification**
- Snaith, Ian (2005) Handbook of Industrial and Provident Society Law, Holyoake Books, Manchester
 - Warburton, Jean (2003) Tudor on Charities, Sweet & Maxwell, London
 - Picarda, Hubert (2010) The Law and Practice relating to Charities, Bloomsbury Professional Ltd, Haywards Heath

5 Topic guide for use with social enterprises

This semi-structured questionnaire has been designed to facilitate interviews with social enterprises. The purpose of these interviews is to get a better understanding of (a) the characteristics of social enterprises; (b) factors affecting their start-up, development and growth.

The interview process will consist of the following steps:

- A member of the research team will contact social enterprises by email, introducing the study and securing their willingness to participate;
- Each interviewee will be sent an email identifying the data that they need to have available (e.g. turnover data for the most recent financial year), and providing a copy of the interview guide. A suitable date and time for a telephone interview will be arranged;
- The interview will be completed by telephone (in the native language of the interviewee, or in English, depending on their preference), and written up by the research team.

The interviews will be conducted by experienced researchers.

5.1 General information on your organisation

5.1.1 When was your organisation established?

5.1.2 What is the legal form of your organisation? Tick one:

- Company limited by shares
- Company limited by guarantee
- Community interest company
- Industrial and provident society (co-operative or community benefit society)
- Credit union
- Charity
- Unincorporated association
- Partnership
- Limited liability partnership
- Sole trader
- A trust
- Other (please specify)

Note to interviewer: these categories will vary depending on the country. Country-specific categories may be available from the legal review; if not, code according to how the interviewee describes their organisation.

5.1.3 Thinking back to when your organisation was set up, what was its background? Tick one:

- Established as a social enterprise
- The organisation was formerly:
 - An individual/ group of people
 - A housing association
 - A social enterprise
 - A co-operative
 - A private business
 - A public sector body
 - A community group
 - A charity

- Other (please specify)

5.1.4 How many people currently work in your organisation? Please provide the number for each category:

- Full time paid employees (they work more than 30 hours per week on average)
- Part time employees (they work less than 30 hours a week on average)
- Volunteers

5.1.5 What was your organisation’s annual turnover for 2012?

Note for interviewer: clarify what calendar year the interviewee is using (i.e. from when to when). Also clarify the currency in question.

5.1.6 In 2012, what proportion of your organisation’s annual turnover was derived from market and non-market sources?

Note for interviewer: clarify what calendar year the interviewee is using (i.e. from when to when). Express information as a percentage of total annual income.

Source of income	As a % of income/ revenue
Market income (e.g. earned income, income from delivery of public contracts, revenue from investments or assets, such as rental income)	
Non-market income (e.g. grants from government, philanthropic donations, contributions from partner organisations/ sponsors, contributions from members)	

5.1.7 Did your organisation generate a profit/ surplus in 2012?

Note for interviewer: clarify what calendar year the interviewee is using (i.e. from when to when). A yes or no answer is sufficient

5.1.8 What best describes the geographic focus of your operations? Tick one:

- Local
- Regional
- National
- EU-wide
- Global

5.2 The activities of your organisation

5.2.1 Which of the following is your organisation’s primary objective (i.e. the reason for its existence)? Tick one:

- To deliver a public benefit (i.e. a social or societal aim)
- To generate financial returns for owners/ shareholders
- To generate financial returns for members
- Other (please specify)

5.2.2 Which, if any, of the following public benefits does your organisation deliver? Tick all that apply:

This list will be refined following the pilot in 10 countries.

- Assistance to enable disadvantaged workers to enter the labour market (e.g. training, employment, “work integration”)

- Activities to improve the quality of the environment (e.g. reducing emissions and waste, using natural resources more efficiently, renewable energy)
- Improving solidarity with developing countries (e.g. by promoting fair trade)
- Delivering social assistance and care services (including childcare)
- Delivering healthcare and medical services
- Providing social housing
- Providing workspace for other businesses and/or social enterprises
- Producing and/or distributing healthy and/or affordable food
- Facilitating access to and delivering education/ lifelong learning or training
- Nurturing the culture and arts
- Providing inclusive and sustainable services and facilities for tourism, sport, recreation and well-being
- Providing public and/or community services (transport, shop, post)
- Organising and/or financing community development
- Strengthening democracy, civil rights and/or gender equality
- Enabling participation in the digital society (IT, telecommunications)
- Other (please specify)

5.2.3 What, if any, particular groups of people in the community do you serve? Tick all that apply

- People with alcohol, drug or substance issues
- Young people
- Older people
- Individuals with a disability
- Homeless individuals
- Migrants, refugees or asylum seekers
- Prisoners or ex-offenders
- Individuals with mental illness
- Individuals residing in rural/ remote communities
- Unemployed individuals
- Other (please specify)

5.2.4 Which of the following activities does your organisation regularly carry out? Tick all that apply:

- To produce goods for sale
- To provide services for a fee (including, for example, social, cultural, educational or environmental services)
- To provide the use of capital assets for a fee (e.g. hire of office space, equipment etc.)
- To provide a mechanism for producers to sell their goods
- To provide a mechanism for members to trade with each other
- To gain business through open tenders for government or other contracts
- None of the above

5.2.5 Does your organisation measure its social impacts (i.e. the delivery of public benefits?)

If yes, what metrics do you use to measure these impacts?

5.2.6 Which of the following statement best describes what your organisation does with any profit/ surplus (or plan to, if you have not yet generated any profits/ surplus) (tick one):

- We reinvest at least 50% of our profits/ surplus in the delivery of a public benefit (social aims)
- We donate at least 50% of our profits/ surplus to charities or other organisations that are aligned with our mission
- We distribute at least 50% of our profits/ surplus to our members
- We distribute at least 50% of our profits/ surplus to our owners or shareholders

5.2.7 If you distribute profits/ surplus to members, owners or shareholders, does your organisation have written rules and/or procedures for the distribution of these profits/ surpluses?

- Members
- Owners
- Shareholders

5.2.8 Are there any limits on the percentages of the profits/ surplus that your organisation may distribute to members, owners or shareholders? If so what are these limits?

- Members
- Owners
- Shareholders

5.3 Ownership and governance

5.3.1 Which of the following best describes the ownership status of your organisation? Tick one:

- Completely independent
- Part-owned by another organisation
- Wholly-owned subsidiary/ trading arm of another organisation
- Other (please specify)

5.3.2 If your organisation are part- or fully-owned by another organisation, which of the following categories best describes this organisation?

- A public sector organisation
- A private enterprise
- Another social enterprise
- A charity
- Other (please specify)

5.3.3 How is the enterprise owned? Tick one:

- The owner has sole equity ownership
- Directors/ partners have equity
- Employee owned

- External ownership
- Other (please specify)

5.3.4 Does your organisation have formal decision-making processes?

Note to interviewer: formal includes codified policies and procedures, councils, committees, annual general meetings etc.)

5.3.5 Which of the following groups have inputs into the decision-making processes of your organisation? In each case, is this a formal input or an informal input?

- Board of trustees/ Directors
- Executive or non-executive management committee(s)
- General Assembly
- Workers
- Members
- Customers
- The local community
- Other public sector organisations
- Other private sector organisations
- Other social enterprises and/or charities
- Other (please specify)

5.4 The environment within which your organisation operates

Note to interviewer: these questions concern the 'eco-system' within which social enterprises operate.

5.4.1 In your experience, what have been the main barriers to starting and scaling up your organisation? Tick all that apply:

Note to interviewer: probe which have been the most serious barriers, and at what stage within the lifecycle of the organisation. Provide examples of the impacts of the main barriers.

Barriers		Starting-up	Scaling up
Legal	The legal/ regulatory framework		
	Lack of a specific legal form for social enterprises		
Finance and business operations	Availability of grant funding		
	The terms and conditions attached to bank finance (e.g. personal guarantees on loans)		
	The amount of finance that banks are willing to provide		
	Your organisation's financial awareness ("investment readiness")		
	Your organisation's ability to plan strategically		
Markets	General economic conditions		
	Access to public procurement opportunities		
	Public procurement practices		
	Delays in receiving payment for services delivered		
Government	Insufficient government support for social enterprises		
Networks	Absence of networks of social enterprises		
Human capital	Availability of skilled workers (paid employees)		
	Availability of skilled volunteers		
	Management level skills		
Welfare	The extent to which your organisation is able to		

system	provide welfare services		
Cultural factors	Attitudes towards social enterprises		
Other	Please specify		

5.4.2 Thinking specifically about access to finance, has your organisation ever sought to access external finance on commercial terms? This includes bank loans and equity investments.

If yes, please describe the process: from what organisation? what was the type of finance (secured/ unsecured loan, equity)? What amount was sought? What was the outcome? If you were unsuccessful why was this?

5.4.3 What is the greatest challenge your organisation has faced?

Please briefly describe the nature of this challenge, when it was faced, and what the impact was on your organisation.

Please briefly describe how your organisation addressed this challenge, and whether you were able to access external support to assist you.

5.5 Closing question

5.5.1 What public support would benefit your organisation?

At the point at which you started up?

In order to enable you to scale up your organisation?

Thank you for completing this questionnaire. We very much appreciate your contribution

6 Topic guide for use with social enterprise stakeholders

This is a semi-structured interview guide for use during telephone interviews that are scheduled to be carried out with social enterprise stakeholders: networks, associations, policy-makers, support services, academics etc.

6.1 Background and context

- What is the significance of your organisation in relation to the social enterprise sector? In what way(s) do you engage with social enterprises?
- What are your objectives for the social enterprise sector (if any)?
- Have you produced any research or documents in relation to social enterprises? Probe:
 - Strategies/ policy documents. If policy-makers probe what impacts they hope to achieve by supporting the sector; probe objectives of networks and trade associations
 - Research. Probe key findings, particularly in relation to barriers and investment
 - Guides/ learning documents
- Please comment on the operational definition of social enterprises? Does this reflect your organisation's understanding of how to define the sector?
- If a network or trade association, how is membership defined?

6.2 Barriers to starting and growing social enterprises

6.2.1 Barriers to starting a social enterprise

- What are the main barriers faced by social enterprises to starting-up? Probe:
 - Accessing markets (probe: whether or not it is easy for social enterprises to access public procurement opportunities)
 - Legal barriers
 - Access to finance: but note this is covered in more detail later
 - Lack of external business support
 - Unable to employ suitably skilled staff
 - Lack of internal skills in how to start up a social enterprise (management etc.)
 - Other
- What is the impact of these barriers on start-ups of social enterprises?

6.2.2 Barriers to growing a social enterprise

- What are the main barriers faced by social enterprises to growing? Probe:
 - Accessing markets (probe: whether or not it is easy for social enterprises to access public procurement opportunities)
 - Legal barriers
 - Access to finance: but note this is covered in more detail later
 - Lack of external business support
 - Unable to employ suitably skilled staff
 - Lack of internal skills in how to grow a social enterprise (management etc.)
 - Other

- What is the impact of these barriers on the growth of social enterprises?

6.3 Accessing external support

- What support services are available to enable social enterprises to start-up and/or grow?
- Are there any external support services that social enterprises need but are unable to access? If so what? Probe:
 - Investment readiness support
 - Generic business support
 - Networking support
 - Finance (note covered below)
 - Other
- If these support services were available to social enterprises, what would be the impact?

6.4 Social investment markets

- Who invests in social enterprises in your country? Probe the number/ scale of investment by the following:
 - Mainstream banks
 - Non-bank providers of finance to social enterprises
 - Venture capital
 - Business angels
 - Savings, friends & family
 - Government grants/ loans
- Why are social enterprises unsuccessful in accessing investment from each of these providers? Probe: absence of a track record, a lack of collateral/ security, issues with legal form, issues with social enterprises, investment-readiness
- Overall, are social enterprises able to secure the finance they need in order to start-up and grow? If not what is the impact on the social enterprise sector?
- Can we measure the overall size of the 'gap' (if there is one) in the provision of finance to social enterprises?

Thank and close

7 Survey instrument for use with Social Investment Finance Intermediaries

This survey instrument has been prepared to collect data/ information from:

- Impact investors who invest in businesses/ ventures with the aim of achieving social impact and at the same time, expecting a financial return on their investment.
- Blended value investors seeking social impact whilst also wishing to see their capital recycled i.e. invested and then repaid. Some of these investors may aim to make a financial return on their investments in addition to achieving social impact.
- Venture philanthropists seeking a social return at the same time as attempting to achieve financial sustainability/viability.

The purpose of the survey is to better understand the scale and characteristics of the supply side of social investment markets.

In simple terms, social enterprises are businesses 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 maximise profit for shareholders and owners.

7.1 General information

7.1.1 Name of the organisation/ fund you represent:

7.1.2 Your role/ job title:

7.1.3 The year in which your organisation/ fund was established:

7.1.4 Which of the following categories best describes you/your organisation type:

- Independent investor
- Business Angel
- Commercial/ Retail Bank
- Social Bank
- Credit Union
- Other Cooperative
- Pension Fund
- Fund of Funds
- Private Investment/ Equity Fund
- Venture Capital Fund
- Venture Philanthropy Fund
- Private Foundation
- Public Foundation
- Other Foundation
- Insurance Company
- Other: please specify

7.1.5 Do you/ does your organisation make direct investments (loans and/or equity) in social ventures such as charities, social enterprises, co-operatives, etc?

- Yes, I make/ my organisation makes direct investments in social ventures
- No, I do not make/ my organisation does not make direct investments

7.1.6 IF NO: Do you/does your organisation intend to make direct investments in social ventures in the next twelve months?

- Yes

- No

7.1.7 If NO to 1.1.5 and / or 1.1.6, what are your main reasons for not investing in this market segment?

- Unacceptable risk profile
- High transaction costs
- Returns are not commensurate with the risk profile
- Lack of investment opportunities/ deal flow
- Lack of a social investment market
- Other: please specify

End interview here. Thank and close

If YES, proceed further

7.2 Investment in social enterprises

7.2.1 How do you define a social enterprise?

7.2.2 Do you apply any screening criteria to the social enterprises that you support e.g.

- Social mission
- Ownership structure
- Commercial orientation e.g. minimum percentage of income derived from trading

7.2.3 Which of the following products and services does your organisation provide to social enterprises?

- Investment:
 - Loans (General)
 - Loans (secured)
 - Loans (unsecured)
 - Loans (subordinate)
 - Loans (below-market interest)
 - Lines of credit
 - Working capital
 - Leases
 - Guarantees
 - Bonds
 - Equity
 - Quasi equity/ revenue participation
 - Grants
 - Other (please specify)
- Other services (other than investment):
 - Pre-start business support/ assistance to entrepreneurs
 - Investment readiness support
 - Investment structuring
 - Specialist consultancy services
 - General advice and knowledge sharing
 - Bidding platforms
 - Crowd sourcing platform
 - Networks
 - Other (please specify)

7.2.4 Please specify which of the following are relevant as sources of funds that you have received to support your social investment activity in the last 3 years.

- European Investment Fund (EIF)
- Fund of Funds e.g. Deutsche Impact Fund
- Subsidised by other activity
- Reserves
- Endowment
- Individuals and Angels
- Trusts / Foundations
- Government programmes: please specify
- Banks
- Other commercial institutions
- Other social institutions
- Other public sector institutions

7.2.5 What best describes the geographic focus of your investment activity?

- Local
- Regional
- National
- EU-wide
- Global

7.2.6 Approximately what percentage of your investment activity is based in Europe (% of European social enterprises in your investment portfolio)

7.2.7 Approximately what proportion of your social investment is in each of the following markets? (Total should be 100%):

- Education and training
- Retail/wholesale
- Arts/culture/recreation/ sport
- Hospitals, medical and healthcare services
- Housing
- Residential care services
- Social assistance services (childcare, disability support)
- Transport, postal, warehousing
- Information, media, telecommunications
- Financial and insurance services
- Employment services
- Work integration services
- Environmental
- Other: please specify

7.2.8 As at the end of 2012, what was the total value of your organisation's investment (i.e. outstanding commitments/ portfolio) in social enterprises?

Type	Value of investment – please specify currency	Number of investments	As % of total portfolio/ funds under management
Loans			
Lines of credit/Working capital			
Leases			

Type	Value of investment – please specify currency	Number of investments	As % of total portfolio/ funds under management
Guarantees			
Bonds			
Equity			
Quasi equity/ revenue participation			
Grants			
Other (please specify)			

7.2.9 What are the standard terms for investing by product type

Type	Minimum size available	Maximum Size	Average interest rate charged	Average term (years)	Target financial return / expected IRR%	Expected investment period (years)
Loans						
Lines of credit/Working capital						
Leases						
Guarantees						
Bonds						
Equity						
Quasi equity/ revenue participation						
Grants						
Other (please specify)						

7.2.10 What was the write-off rate for investments in social enterprises in 2012?

7.2.11 Was it higher or lower than expected? Explore reasons.

7.2.12 In your view, how do social enterprises compare with mainstream businesses with respect to the following parameters?

	Very Low	Low	Moderate	High	Very High
Financial risk					
Financial returns					
Governance					
Revenue uncertainty					
Liquidity risk					
Business expertise					

If perceived as more risky than mainstream enterprises » what factors contribute to the higher risk profile of social enterprises?

e.g.

- Business model
- Management issues
- Governance issues

Explore

7.2.13 What social impacts are you seeking to achieve via your investments?

7.2.14 How do you measure the social impact of your investments

- Mathematically model non-financial returns
- Collect funder-created non-financial impact measurements
- Collect fundee. investee-created non-financial impact measurements
- Use Impact Reporting and Investment Standards (IRIS)
- Calculate Social Return on Investment
- Other (please specify)

7.3 Demand for finance

7.3.1 What are the typical amounts of external finance sought by social enterprises?

7.3.2 What are the main purposes for which external financing is typically sought by social enterprises e.g. working capital, fixed asset acquisition, scaling of operations etc.

7.3.3 Approximately, what proportion of all requests for finance from social enterprises are you able to meet?

- 0-10%
- 10-20%
- 20-30%
- 30-40%
- 40-50%
- 50-60%
- 60-70%
- 70-80%
- 80-90%
- 90-100%

7.3.4 Of the funding requests you were unable to meet in 2012, on what ground were these rejected?

Reason for rejection	% requests rejected
Lack of a viable business model	
Sector of activity was not compatible with our investment focus	
The social enterprise was located outside our geographic focus	
Social mission of the enterprise was not compatible with the impact we are seeking to achieve	
Issues with the governance structure	

Reason for rejection	% requests rejected
Other – please specify	

Alternatively, please indicate the % of funding requests from social enterprises that were rejected on grounds other than viability i.e. your organisation considered these applicants as ‘bankable’/‘investible’ but did not invest in these enterprises for other reasons

7.3.5 Would you say that the demand for (external) finance among social enterprises is growing/ falling? Have you seen an increase /decrease in demand for finance from social enterprises in recent years?

7.4 Ambitions and barriers

7.4.1 What has been your level of committed and actual social investment between 1 April 2012 and 31 March 2013? (Please state a range if the exact amount is unknown)

- Committed social investment: please specify currency
- Actual social investment: please specify currency

7.4.2 How much social investment are you planning for 2013 to 2014 (i.e. based on your business plan and/or any other projections)? (Please state a range if the exact amount is unknown)

7.4.3 Does your organisation plan to do any of the following over the next two to three years? (Please tick all that apply)

- Increase investments in social ventures/ enterprises
- Decrease investments in social ventures/ enterprises
- Maintain the level of investments in social ventures/ enterprises
- Develop and launch new products (please specify)
- None of the above
- Don't know

7.5 Current state of the market and trends

7.5.1 How would you describe the social investment market in (a) your country and (b) Europe? E.g. nascent, fast growing or immature etc.

7.5.2 Please state the extent to which you agree or disagree with the following statements (strongly disagree/ disagree/ agree/ strongly agree)

- There is a missing secondary market for equity capital as well as legal issues leading to a high proportion of debt-capital based investments
- Average investment sizes in social enterprises are rather small which leads to high fixed costs for each investment.
- Supply and demand are not sufficiently matched leading to a funding gap for social enterprises
- Generally speaking, social enterprises lack investment readiness in terms of business planning or internal structures.

- Social enterprises have problems of lifecycle financing which means that once they receive an investment they cannot rely on a refinancing opportunity at the end of the financing period.

7.5.3 In your opinion, what are the biggest constraints to the growth of the social investment market? Tick all that apply

e.g.

- Lack of attractive social enterprise to invest (please elaborate:)
- High transaction costs (please elaborate:)
- Lack of long term balance sheet funding
- Artificial suppression of demand through grant making
- Lack of information on social return
- Lack of understanding of risk and how to price it
- Inability to reach commercial scale for managed products
- The regulatory and legislative framework
- Economic climate / recession
- Other (please elaborate)

7.5.4 What is the role of Government in the social investment market in your country? Has the Government designed any policy measures to support the development of the market e.g. offer tax incentives, setting up a fund of funds or social bank etc.

7.5.5 What could be done by policy makers to support the development of social investment markets in Europe?

7.6 Closing questions

7.6.1 Are you aware of any other investors who might be investing in social enterprises? Please could you provide us with the names/ contact details of these investors.

Thank you for completing this questionnaire. We very much appreciate your contribution

Operational Social Enterprise Definition
used in 2016 social enterprise mapping
update by EMES and EURICSE

Main dimension	General definition	Relevant Indicators <i>(not exhaustive list)</i> (yes/no or range from low up to very high)	Initial minimum requirements (yes or no)	Examples/boundary cases comments
Entrepreneurial/ economic dimension	Social enterprises (SEs) are engaged in the carrying out of stable and continuous economic activities, and hence show the typical characteristics that are shared by all enterprises¹ .	<ul style="list-style-type: none"> - Whether the organization is or is not incorporated (it is included in specific registers) - Whether the organization is or is not autonomous (it is controlled or not by public authorities or other for-profit/non-profits) and the degree of such autonomy (total or partial) - Whether members/owners contribute with risk capital (how much) and whether the enterprise relies on paid workers - Whether there is an established procedure in case of SE bankruptcy - Incidence of income generated by private demand, public contracting, and grants (incidence over total sources of income) - Whether and to what extent SEs contribute to delivering new products and/or services that are not delivered by any other provider. - Whether and to what extent SEs contribute to developing new processes for producing or delivering products and/or services. 	SEs must be market-oriented (incidence of trading should be ideally above 25%).	- We suggest that attention is paid to the development dynamic of SEs (i.e. SEs at an embryonic stage of development may rely only on volunteers and mainly on grants)
Social dimension (social aim)	<p>The social dimension is defined by the aim and/or products delivered.</p> <p>Aim: SEs pursue the explicit social aim of serving the community or a specific group of people that shares a specific need. By promoting the general-interest, SEs overcome the traditional owner-orientation that typically distinguishes traditional cooperatives.</p> <p>Product: when not specifically aimed at integrating disadvantaged people to work, SEs must deliver goods/services that generate a beneficial societal impact.</p>	<ul style="list-style-type: none"> - Whether the explicit social aim is defined at statutory/legal level or voluntarily by the SE's members - Whether the product/ activity carried out by the SE is aimed at promoting the substantial recognition of rights enshrined in the national legislation/constitutions - Whether SEs' action has induced changes in legislation. - Whether the product delivered -while not contributing to fulfilling fundamental rights-contributes to improving societal wellbeing. 	Primacy of social aim must be clearly established by national legislations, by the statutes of SEs or other relevant documents.	<ul style="list-style-type: none"> - The goods/services to be supplied may include social and community services, services for the poor, environmental services up to public utilities depending on the specific needs emerging at the local level - In EU-15 countries (and especially in Italy, France and the UK) SEs have been traditionally engaged in the provision of welfare services; in new Member States, SEs have proved to play a key role in the provision of a much wider set of general-interest services (e.g. educational services)

¹ In accordance with Articles 48, 81 and 82 of the Treaty, as interpreted by the Court of Justice of the European Communities, "an enterprise should be considered to be any entity, regardless of its legal form, engaged in economic activities, including in particular entities engaged in a craft activity and other activities on an individual or family basis, partnerships or associations regularly engaged in economic activities."

				<p>up to water supply)</p> <ul style="list-style-type: none"> - What is conceived to be of meritorial/general-interest nature depends on contextual specificities. Each national expert should provide a definition of what “public benefit” means in her/his country.
<p>Inclusive governance-ownership dimension (social means)</p>	<p>To identify needs and involve the stakeholders concerned in designing adequate solutions, SEs require peculiar ownership structures and governance models that are meant to enhance at various extents the participation of stakeholders affected by the enterprise.</p> <p>SEs often limit the distribution of profits. The non-profit distribution constraint is meant to ensure that the general-interest is safeguarded. The non-profit distribution constraint can be operationalized in different ways.</p>	<ul style="list-style-type: none"> - Whether SEs are open to the participation and/or involvement of new stakeholders - Whether SEs are required by law or do adopt (in practice) decision-making processes that allow for a well-balanced representation of the various interests at play (if yes, through formal membership or informal channels -give voice to users and workers in special committees?). - Whether a multi-stakeholder ownership structure is imposed by law (e.g. France) - Whether SEs are required to adopt social accounting procedures by law or they do it in practice without being obliged to - Degree of social embeddedness (awareness of the local population of the key societal role played by the SE versus isolation of the SE) - Whether the non-profit distribution constraint is applied to owners or to stakeholders other than owners (workers and users): whether it is short-term (profits cannot/are not distributed or they are capped) or long-term (asset lock); or both short and long term. - Whether the cap is regulated externally (by law or defined by a regulator) or it is defined by the SE by-laws. - Whether limitations to workers’ and/or managers’ remunerations are also imposed (avoid indirect distribution of profits). 	<p>SEs must ensure that the interests of relevant stakeholders are duly represented in the decision-making processes implemented.</p>	<ul style="list-style-type: none"> - Ownership rights and control power can be assigned to one single category of stakeholders (users, workers or donors) or to more than one category at a time – hence giving ground to a multi-stakeholder ownership asset. - SE can be the result of collective dynamics or be created by a charismatic leader (in principle a sole owner is admitted by some national legislations provided that the participation of stakeholders is enhanced through inclusive governance) or public agency - Different combinations concerning limitations to profit distribution envisaged (e.g. most successful solution: capped dividends supported by total asset lock – Italian social coops, CIC, SCICs).

This report includes methodological material which has been used by researchers preparing the mapping of Social Enterprises and their eco-systems, published by the European Commission in 2014 and 2016.

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