



Social Enterprise in Europe

Developing Legal
Systems which
Support Social
Enterprise Growth

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Acknowledgement

This publication is a summary and interpretation of some of the themes and findings which emerge from the country reports of the following legal experts, as part of the Mapping Study:



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Foreword

There is growing recognition across the EU of the importance of social enterprise as an important business model that can support economic growth and social progress.

Since 2012, the European Commission has been promoting a series of policies on social enterprise under the Social Business Initiative, focused on creating the right eco-systems of support to drive the growth of social entrepreneurship. In 2014, over 2000 social entrepreneurs and stakeholders from across Europe came together in Strasbourg to take stock and agree some key actions for the future.

Delegates concluded that:

“There is no part of Europe that cannot benefit from social entrepreneurship. At this time of economic crisis and with the challenges of an ageing population, youth unemployment, climate change and increasing inequalities, Europe needs more social enterprises”.

A key recommendation was:

“In partnership with the social enterprise sector, Member States, regional and local authorities must fully support the growth of social enterprises and help them build capacity. For example through legal frameworks, access to finance, business start-up and development support, training and education and public procurement”.

Legal frameworks play a fundamental part in any ecosystem for social entrepreneurship. They can help to make it relatively straight forward to start-up and grow a social enterprise and raise the visibility of this way of doing business or they can hold people back, forcing entrepreneurs to spend time and effort looking for ways around barriers imposed by the legal system. This research report marks an excellent starting point in understanding the complex diversity of legal frameworks for social enterprise across the EU and makes some important recommendations about future action.

EDUCATION

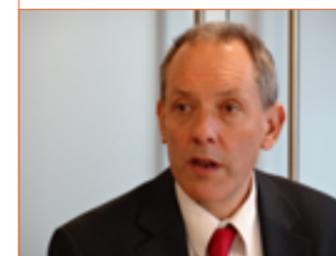
An exciting additional result of this research is that it has led to the creation of a new European network of social enterprise lawyers, legal experts and others with a strong interest in the relationship between law and social enterprise: the European Social Enterprise Law Association. This new association has the potential to be an important source of knowledge and expertise that can highlight and share good practice, help Member States learn from each other and make recommendations about the effect of EU wide laws and policies on social enterprises.

I would urge anyone with an interest in the growth of social enterprise in Europe to read this report carefully, register interest in ESELA at info@esela.eu and join ESELA as a member.



Jonathan Bland

Managing Director, Social Business International Ltd
Member of GECES, The European Commission's Expert Group
on Social Entrepreneurship



DEVELOPING

Introduction

To carry out the legal and regulatory elements of the Mapping Study, we assembled a network of social enterprise legal experts across Europe. The legal experts in turn produced over 850 pages of analysis about the legal structures used by social enterprises and about the way law and regulation across Europe are used to shape and support social enterprise.

The legal research and analysis underlying the Mapping Study is a unique and unprecedented treasure trove of information about the relationship between law and social enterprise. It contains profound insights of importance to anyone interested in finding ways to support and grow social enterprise in Europe. It is particularly useful for governments, officials, policymakers and others who want to design legal systems which support the growth and development of social enterprise.

Whilst the ideas and insights found in the reports of the legal experts pervade the Mapping Study produced by ICF, there is virtue in isolating and distilling some of the key legal aspects of the mapping. This is the aim of this publication, which seeks to ensure that the insights from this treasure trove of data and analysis are known and made accessible to anyone who is interested.

This social enterprise legal expert network set-up for the Mapping Study includes at least one expert for each Member State and Switzerland. It is the first network of its kind and brings together legal experts who are able to explain and comment upon the variety of Legal Forms – and, in some cases, Legal Statuses – which are used by and relevant to social enterprise in each jurisdiction. I wish to thank all of the legal experts for supporting the Mapping Study and making this report possible.

I am happy to say that we are building upon this legal expert network to create a new association of lawyers, legal experts and others with an interest in social enterprise, with a view to promoting a better understanding of how legal systems help or hinder social enterprise growth. Please see the following link for more details of the European Social Enterprise Law Association: www.esela.eu

MAPPING STUDY

This paper is written as an interpretation of some of the ideas and themes emerging from the legal aspects of the Mapping Study for a general readership. It is not intended to be comprehensive or to conform to academic methodological expectations – anyone looking for such a publication should read the Mapping Study produced by ICF. In particular, as the legal expert reports were provided over an extended time and because law, policy and practice are constantly changing, we welcome feedback from readers about how this paper and the analysis set out in it may be improved and enhanced, particularly in light of new and future developments. Please feedback to info@esela.eu

The recommendations set out in this paper are those of the European Social Enterprise Law Association only and do not represent the views of its members, the legal experts who contributed to the Mapping Study, the consultancy ICF who led the Mapping Study or the European Commission. These recommendations are intended solely to provoke thought and debate – locally and internationally – and to stimulate discussion about how the law might support social enterprise growth.

I hope you enjoy reading and learning about the relationship between law and social enterprise.



Luke Fletcher

Partner, Bates Wells Braithwaite

Chair, European Social Enterprise Law Association



THOUGHT

DISCUSSION

Executive Summary

(A) THE STATE OF PLAY

The legal and regulatory aspects of the Mapping Study – including over 850 pages of expert analysis on the law and regulation of Social Enterprise – has provided a rich and multi-dimensional picture of the law, regulation and tax treatment of Social Enterprise in the different Member States of the European Union and Switzerland.

Sixteen European countries have some form of legislation that recognises and regulates Social Enterprise activity. However, in most jurisdictions, the vast majority of Social Enterprises tend to use and adapt Legal Forms which are not specifically designed for Social Enterprises.

An important distinction needs to be drawn between Legal Forms – which relate to the fundamental legal structure of an organisation – and Legal Statuses – which attach to a number of Legal Forms meeting certain characteristics and affect the treatment of those Legal Forms. Legal Forms are the primary legal building-blocks of Social Enterprise.

In some jurisdictions, such as the UK, France and Italy, there are ‘Social Enterprise Forms’, which are exclusively designed for Social Enterprises through the tailoring or adaptation of existing Legal Forms. The presence of these forms reduces transaction costs and risks for Social Enterprises starting-up, increases the visibility of Social Enterprises and makes it easier to identify and support Social Enterprise and its growth.

In some jurisdictions – such as Italy and Belgium – there are ‘Social Enterprise Statuses’, which can be obtained by a number of different Legal Forms, which comply with a number of prescribed criteria designed to identify and define Social

EUROPE

IDENTIFY

Enterprise. These Legal Statuses are designed for Social Enterprises meeting the pre-defined criteria emerging from the SBI definition.

The precise characteristics of the different Legal Forms and Legal Statuses differ between Member States. However, the commonalities are sufficiently clear and strong for Legal Forms and Legal Statuses to be formed into Social Enterprise types with shared characteristics. We have identified three main ‘types’ of Legal Forms used by Social Enterprises, namely:

1. Non-Profit Organisations;
2. Co-operatives; and
3. Share Companies.

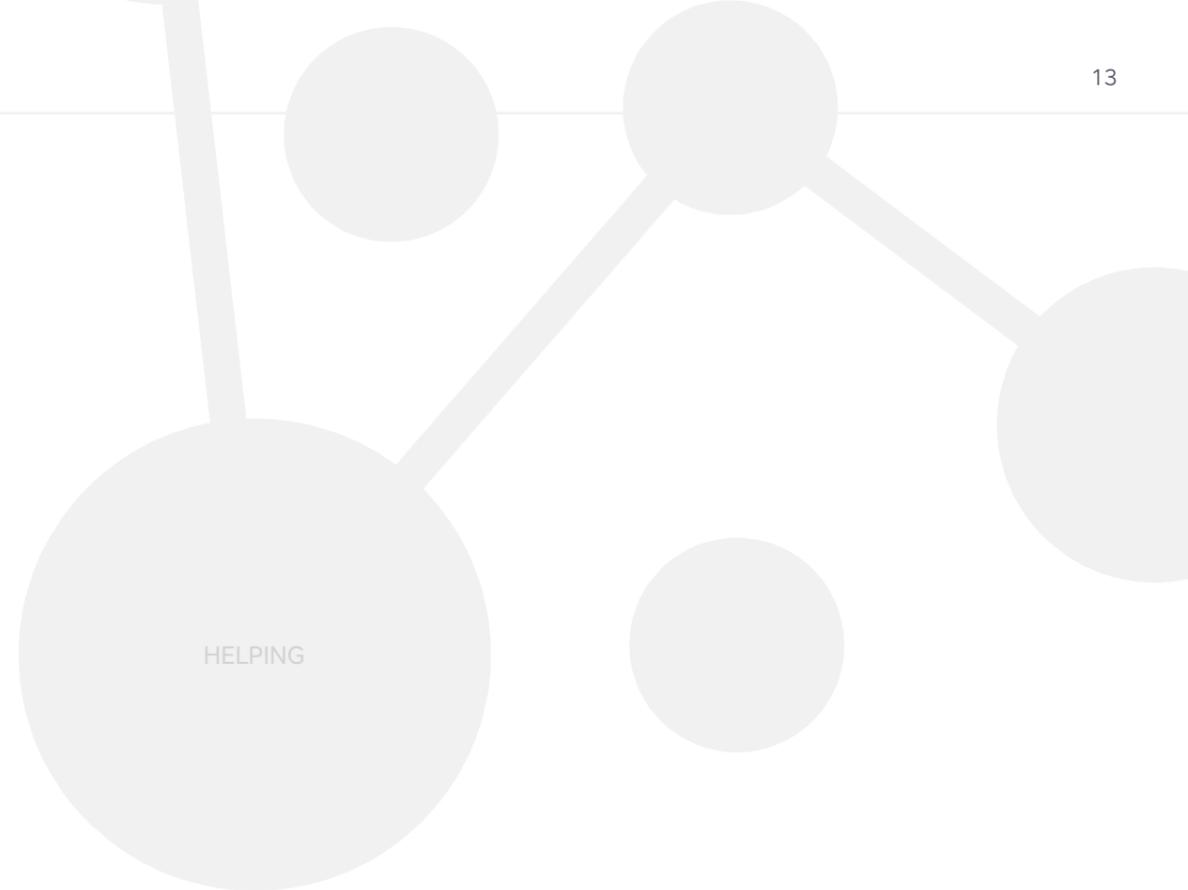
The overlapping legal and quasi-legal concepts which are used in relation to Social Enterprise often complicate and confuse discussions about Social Enterprise, particularly where discussions are taking place across borders between people with different disciplines and backgrounds, including legal practitioners and others. We have mapped the relationships between these different concepts for the first time using a unique Venn diagram, as set out in Annex 1.

(B) SUPPORTING SOCIAL ENTERPRISE GROWTH

- OUR RECOMMENDATIONS

Based on our findings and in the interest of fostering the development of enabling Social Enterprise ecosystems in Member States across Europe, we recommend the following:

1. That no effort be expended to develop a pan-European Social Enterprise Form
2. That efforts be focused on fostering Member State ecosystems for Social Enterprise, including:
 - 2.1 Creating guidance on Social Enterprise Forms and Social Enterprise Statuses
 - 2.2 Creating and supporting networks of professional and other experts on Social Enterprise Forms and Statuses to improve understanding and advice
 - 2.3 Developing model constitutions for Social Enterprises using the key Legal Forms and Statuses in Member States and which are tailored to national law requirements
 - 2.4 Developing a website to provide guidance and constitutions for social entrepreneurs who are seeking to set-up Social Enterprises
 - 2.5 Removing common barriers to Social Enterprise growth, including:
 - 2.5.1 removing any unnecessary restrictions on the social purposes which Legal Forms used by Social Enterprises are able to advance;
 - 2.5.2 removing any unnecessary restrictions on the ability of Non-Profit Organisations to carry out trading activity and, where Non-Profit Organisations benefit from tax exemptions, remove any related legal or tax uncertainties which surround such trading activity;
 - 2.5.3 removing any unnecessary restrictions on the ability of Non-Profit Organisations from establishing trading subsidiaries and any related legal or tax uncertainties surrounding such structures;
 - 2.5.4 removing any unnecessary restrictions on the ability of directors of Non-Profit Organisations to receive compensation;
 - 2.5.5 removing any unnecessary restrictions on the ability for Non-Profit Organisations to compete with for-profit companies; and



HELPING

- 2.5.6 removing any unnecessary taxes on Social Enterprise Share Companies.
- 2.6 Helping Member States to develop Social Enterprise Forms and Statuses
- 2.7 Conduct research to evaluate Social Enterprise Forms and Statuses in Europe
- 2.8 Publish research and up-to-date guidance on innovative uses of public procurement in different Member States to support Social Enterprise
- 2.9 Clarify the extent to which tax and other incentives for enterprises or for investors in Social Enterprise or financial intermediaries might be used to grow and develop Social Enterprise consistently with EU competition law
- 2.10 Systematically assess the impact of all new laws and policies on Social Enterprise
- 2.11 Use advertising and trade mark law to protect the Social Enterprise brand
- 2.12 Ensure any future European Social Enterprise mark recognises and attaches to the diverse range of Legal Forms and Legal Statuses used by Social Enterprises

Social Business Initiative

Social enterprises – which exist primarily to have a positive impact on society or the environment – have been identified by the European Commission to contribute to smart, inclusive and sustainable growth and to be catalysts for social innovation. Social enterprises are key to the social and economic transformation sought by the Europe 2020 Strategy.

The Social Business Initiative (SBI) was launched by the European Commission in 2011. One of the strands of action to support the growth of Social Enterprise is to optimise the legal environment. The legal aspects of the Mapping Study which was produced by ICF for the European Commission are highly relevant to this aim.

“Social business can be indeed a very powerful agenda for change. To deliver better outcomes for the common good. To show that it is possible to do things more responsibly and more fairly, whilst still being a success on the market. And to become a real engine of growth in the EU. Europe must not only be part of these changes. Europe should be in the lead.”

José Manuel Barroso

President of the European Commission 2004-2014, José Manuel Barroso

Mapping Study

In April 2013, the European Commission launched a Social Enterprise mapping study (“the Mapping Study”) as a follow-up to its 2011 Communication on the SBI which was entitled “A map of social enterprises and their eco-systems in Europe”. The first-of-its-kind study maps Social Enterprise activity and eco-systems in 29 countries using a common definition and approach. The Mapping Study also maps the national policy and legal framework for Social Enterprise in each country.

One of the principal findings of the Mapping Study is that the lack of legal recognition of Social Enterprise in many countries makes it difficult for Governments to design and target specialist support or fiscal incentives for Social Enterprises, inhibiting the development of Social Enterprise. We explore in this paper some of the ways in which the law can be used to recognise and, in some cases, support the development of Social Enterprise.

INCENTIVES

NATIONAL

Definition of Social Enterprise

The Mapping Study did not develop a new definition of Social Enterprise. Instead, it 'operationalised' the existing and widely accepted notion of Social Enterprise as articulated in the European Commission's SBI communication. The SBI definition incorporates the three key dimensions of a Social Enterprise that have been developed and refined over the last decade or so through a body of European academic and policy literature:

- an **entrepreneurial dimension**: engagement in continuous economic activity;
- a **social dimension**: a primary and explicit social purpose; and,
- a **governance dimension**: the existence of governance mechanisms to ensure prioritisation of the social purpose and which demonstrate sensitivity to different stakeholder interests.

Each of the above dimensions was operationalised by developing a set of core criteria – reflecting the minimum conditions that an organisation must meet in order to be categorised as a Social Enterprise under the EU definition. The following core criteria were established:

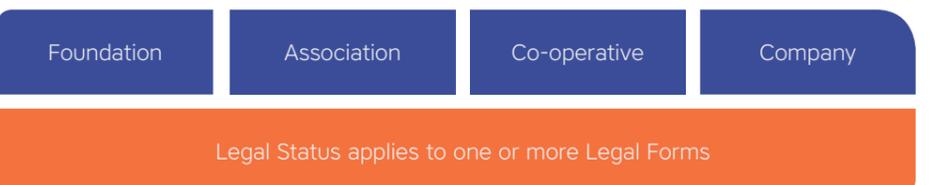
- the organisation must engage in economic activity
- it must pursue an explicit and primary social aim that benefits society;
- it must have limits on distribution of profits or assets to prioritise the social aim;
- it must be independent from the State or other for-profit organisations; and
- It must have inclusive governance i.e. characterised by participatory and/ or democratic decision-making processes.

Legal Forms and Legal Statuses

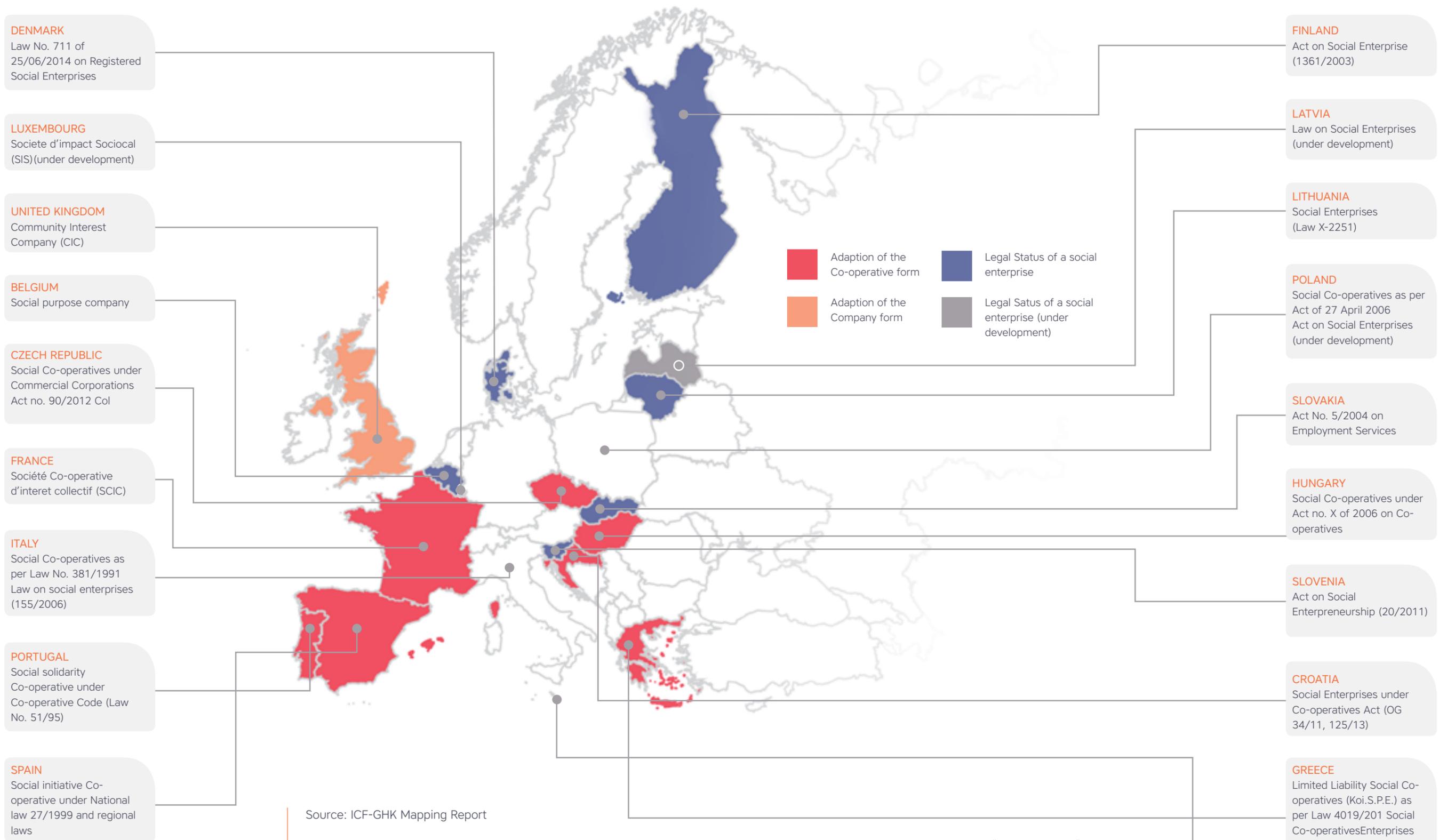
An important distinction needs to be drawn between Legal Forms – which relate to the fundamental legal structure of an organisation – and Legal Statuses – which attach to a number of Legal Forms meeting certain characteristics and affect the treatment of those Legal Forms.

The Mapping Study reveals that Social Enterprises adopt a variety of Legal Forms and statuses:

1. **Existing Legal Forms**: such as Associations, Foundations, Co-operatives; Companies
2. **Social Enterprise Legal Forms**: which are exclusively designed for Social Enterprises through the tailoring or adaptation of existing Legal Forms; and
3. **Social Enterprise Legal Statuses**: which can be obtained by a number of different Legal Forms, which comply with a number of pre-defined criteria.



Sixteen European countries have some form of legislation that recognises and regulates Social Enterprise activity, either by creating Social Enterprise Forms or Social Enterprise Legal Statuses, in a variety of different ways. However, in most jurisdictions, the vast majority of Social Enterprises tend to use and adapt Legal Forms which are not specifically designed for Social Enterprises and which enjoy no legal recognition as a Social Enterprise.



Source: ICF-GHK Mapping Report

Since the country reports for the Mapping Study were produced, a new law has been passed in France. The "ESS Law" (law n. 2014-856 of 31 July 2014 regarding the social economy (économie social et solidaire - ESS) created a new Social Enterprise Form and a Social Enterprise Status.

More specifically, the law created a "Enterprise ESS" which is a Social Enterprise Form in the form of a Share Company, as well as the "ESUS" which is a Social Enterprise Status used by different Legal Forms. Therefore, France now has an adaptation of both the Co-operative and the Company form.

Comparing Legal Forms

The following table illustrates the typical characteristics of different Legal Forms, mapped against the different criteria of the operational definition given by the Mapping Study, in line with the Social Business Initiative definition. It also indicates where it may often be possible for Social Enterprises to adapt Legal Forms. Of course, Legal Forms are subject to variation in different Member States and so the table is illustrative only.

Criteria of the "EU operational definition"	Non-Profit Organisations			Co-operative	Share Company
	Association	Foundation	Non-Profit Company		
Engagement in Economic Activity	Usually able to trade to advance its purpose	Often able to trade to advance its purpose	Usually able to trade to advance its purpose	Yes	Yes
Social Purpose	Sometimes but usually member oriented	Almost always	Usually but may not be for public benefit	Sometimes but usually member oriented	Sometimes but usually shareholder oriented
Limited Profit Distribution	Non-Profit distributing	Non-Profit distributing	Non-Profit distributing	Often in practice	Sometimes but usually not
Existence of Asset Lock	Usually yes if for public benefit and tax advantaged	Usually yes if for public benefit and tax advantaged	Usually yes if for public benefit and tax advantaged	Sometimes possible to create asset lock	Sometimes possible to create asset lock
Democratic Decision-making	Yes - usually one member one vote	No - usually managed by trustees	May be democratic or managed by trustees	Yes - usually one member one vote	Sometimes but usually voting by shareholding pro rata
Participatory Governance	Yes	Sometimes	Sometimes	Yes	Sometimes
Independence from the state	Yes	Yes	Yes	Yes	Yes

Categorising Legal Forms into 'Types'

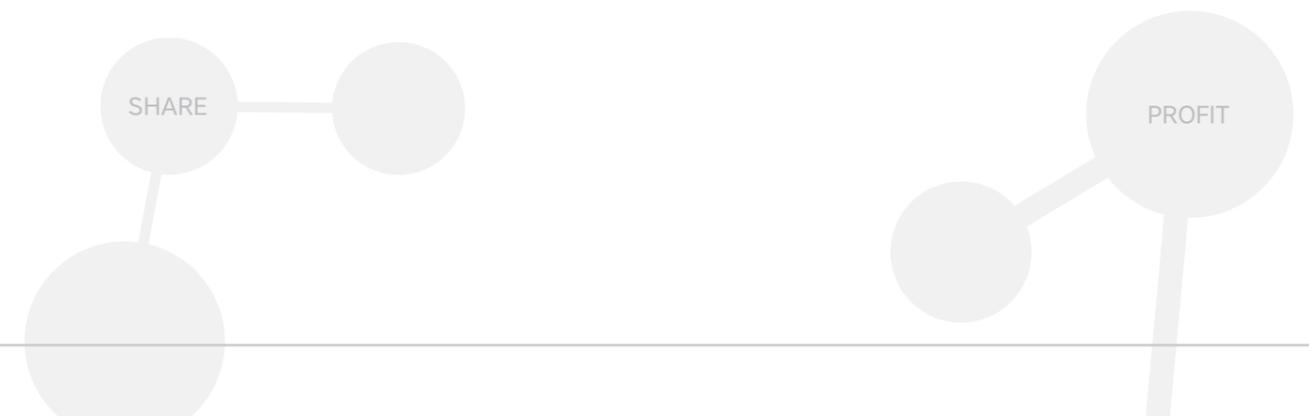
The precise characteristics of the different Legal Forms and Legal Statuses differ between Member States. However, as shown above, the commonalities are sufficiently clear and strong for Legal Forms and Legal Statuses to be formed into types with shared characteristics.

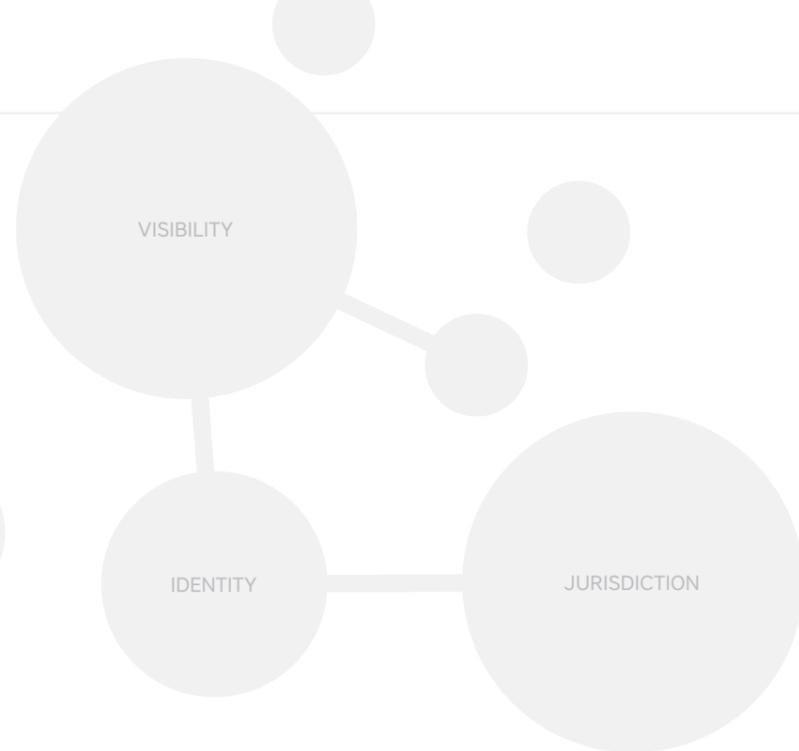
We therefore identify three main 'types' of Legal Forms used by Social Enterprises, namely:

- **Type 1: Non-Profit Organisations** – which may be democratic or controlled by managers, do not distribute profit and trade in furtherance of a social purpose;
- **Type 2: Co-operatives** – which are generally owned and controlled on a democratic basis by members, distribute profit from trading activities to members and may have a social purpose beyond benefitting members written into the constitution or carry out a service of general interest; and
- **Type 3: Share Companies** – which are generally owned and controlled by shareholders on a pro rata basis and which may trade in furtherance of a social purpose and may have other governance features to subordinate profit to purpose.



- **Note:** The same colour coding for the different types of Legal Forms is also used in Annex 2.





Social Enterprise Forms

Where a Legal Form is adapted by Member State legislation to create a bespoke social enterprise Legal Form, we describe such a Legal Form as a Social Enterprise Form.

The following are examples of Social Enterprise Forms:

- Société cooperative d'intérêt collectif in France
- Entreprise de l'Economie Sociale et Solidaire (Entreprise ESS) in France
- Social Co-operatives in Italy (see opposite)

Only five examples were given of Social Enterprise Forms from all the legal expert country reports. Other examples included the Greek Social Co-operatives and the Polish Social Co-operatives. The vast majority of jurisdictions do not therefore have tailor made Social Enterprise Forms. This means that social entrepreneurs will usually have to use or adapt Legal Forms which are not designed for Social Enterprise, often increasing the costs and risks of start-up, as well as reducing the visibility of Social Enterprise and making it harder to identify and support Social Enterprise.

Société Cooperative d'Interest Collectif (SCIC) - France

An SCIC is a form of Social Enterprise Co-operative.

An SCIC must pursue both an efficient commercial purpose and social purpose ("caractère d'utilité sociale") which benefits the community. The definition of "utilité sociale" is focused primarily on providing assistance to vulnerable persons or activities which remedy discrimination or inequalities within society. This definition is narrower than the European definition of a "social benefit" as it does not include environmental activities. It must therefore show that its economic activities relate to its social purpose. It is governed in a democratic fashion, as it operates on a one member, one vote principle and must publish its environmental and social impact in its management report.

Entreprise de l'Economie Sociale et Solidaire (Entreprise de l'ESS) - France

An "Entreprise de l'ESS" is a form of share company.

An Entreprise de l'ESS must pursue a social purpose ("but d'utilité sociale"), have a democratic and participative governance structure, and must re-insert the majority of its profit into the activity of the company. As with an SCIC, the definition of "utilité sociale" is focused primarily on providing assistance to vulnerable persons or activities which remedy discrimination or inequalities within society. This definition is much narrower than the European definition of a "social benefit" as it does not include environmental activities or other forms of socially beneficial activities.

Social Co-operatives – Italy

Social Co-operatives are Social Enterprise Forms. These are formal adaptations of the cooperative Legal Form that legally provide that, to qualify as a Social Co-operative, the Co-operative must further a defined social purpose (as opposed to simply the mutual interest of its members).

The Italian law, for example, provides for two types of Social Co-operatives: 1) type "A", which provide social, health and educational services; and 2) type "B" that can engage in any other type of economic activity that is not listed in type "A" which furthers the work integration of defined disadvantaged groups.

Social Enterprise Legal Statuses

A number of jurisdictions have a 'Legal Status' or Legal Statuses which are related to the SBI concept of a Social Enterprise or to other related concepts. These Legal Statuses are understood and applied differently in different Member States and are sometimes described in terms of 'social enterprise' but are often closer to a more traditional concept of the 'social economy'.

The following jurisdictions have a Social Enterprise Legal Status, in the SBI sense of the term:

- Social purpose company in Belgium
- Social enterprise 'ex lege' in Italy
- The ESUS enterprise in France
- The Community Interest Company in the UK

COMMUNITY

SOCIAL

ENTERPRISE

The Social Purpose Company (SPC) - Belgium

Any form of Company or Co-operative may become an SPC. An SPC must have an altruistic purpose, being a social objective that the shareholders wish to realise and that is the decisive motive for the incorporation of the SPC and not the enrichment of its members.

The Companies Code in Belgium requires details of the social purpose to be set out in the SPC's bylaws. There are no formal restrictions on the activities an SPC is able to carry out, it being understood that a classical company can take on the status of an SPC provided it carries out its social purpose through trading.

The SPC has certain rules which reflect inclusive governance, such as a right for employees to have shares and a limit on any person having more than 10% of the voting rights in an SPC.

MOTIVE

Social Co-operatives – Italy

Social Co-operatives are Social Enterprise Forms. These are formal adaptations of the cooperative Legal Form that legally provide that, to qualify as a social cooperative, the Co-operative must further a defined social purpose (as opposed to simply the mutual interest of its members).

The Italian law, for example, provides for two types of social co-operatives: 1) Type "A", which provide social, health and educational services; and 2) Type "B" that can engage in any other type of economic activity that is not listed in Type "A" which furthers the work integration of defined disadvantaged groups.

Enterprise Solidaire d'Utilité Sociale (ESUS) – France

Any form of private organisation (e.g. Company, Co-operative, Non-Profit, Association, Foundation or Integration Enterprise) may receive the ESUS status provided certain conditions are met.

According to the law 2014-856 of 31 July 2014, only a social economy organisation (Association, Co-operative, Foundation, or Mutual) or an ESS Enterprise can apply for ESUS status. In addition, these organisations must satisfy the following three criteria:

- The primary aim of the organisation must be a social purpose (d'utilité social).
- The social purpose (d'utilité social) must have a significant impact on its business. In other words, over the last three fiscal years: a) at least 66% of the operating expenses were spent on activities related to the social purpose OR b) the ratio between the cost of dividends and financial products over equity and financial products is less than the average rate of yield of bonds in private companies (TMOP) increased by 5%.
- The average amount (salary and bonuses included) paid to the five highest paid employees or executives cannot not exceed seven times the legal minimum wage ("SMIC") (122,431 € in 2015), AND the highest paid employee or executive cannot exceed ten times the legal minimum wage (174,902 € in 2015).
- Shares are not traded on a regulated market (not a public company).
- The above criteria must be integrated in the organisation's Articles of Association (statuts).
- Please note that all Integration Enterprises automatically receive the ESUS legal status. Moreover, a social economy organisation (Mutual, Co-operative, Association, Foundation) may receive the ESUS legal status without being required to engage in economic activity or have an inclusive governance as per the Social Enterprise definition)

PRIVATE

INTEREST

ACTIVITIES

The Community Interest Company (CIC) – UK

A CIC comes in two principal legal forms:

- as a share company, which can be public or private; and
- as a Non-Profit entity without shares.

A CIC must have a purpose for the benefit of the community and its objects will often specify the community which is intended to benefit. A CIC must show that its activities will benefit the community by submitting a 'community interest statement' on application to the CIC Regulator. The test which the CIC Regulator applies is whether a "reasonable person" would consider that the activities of the CIC will be carried out for the benefit of the community.

The board members of a CIC generally have the same governance and decision-making responsibilities as the directors in any other company, but the directors of a CIC 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. For example, a CIC will not qualify if its activities are carried on only for the benefit of the shareholders or the employees of a particular employer.

The CIC is required to report to the CIC Regulator each year on how it has carried out its purpose and delivered benefits to the community, which is part of its ongoing community interest requirement.

Other Relevant Legal Statuses

Other Legal Statuses which are relevant to social enterprise can be described as follows:

- **Public benefit statuses:** which exist in the vast majority of Member States and involve a range of tax breaks, usually including corporation tax relief and tax deductions for donations, for Non-Profit Organisations which exist for public benefit;
- **Integration Enterprise statuses:** which relate to the employment of people who are disadvantaged, generally as a specific incentive to encourage such employment; and
- **Social Economy statuses:** which relate to a more traditional concept of the social economy and usually support Co-operative or other Mutual Legal Forms.

In the case of each of these other Legal Statuses, there will usually be some Social Enterprises who have the status, whether that is a Non-Profit trading Social Enterprise, a work-integration Social Enterprise or a Co-operative or Mutual providing services which are of general interest and which are therefore serving a social purpose through trading. However, in each case, these other Legal Statuses are not specifically designed to support Social Enterprise and will only apply to some types of Social Enterprise within the jurisdiction.

For example, a Public Benefit status will not usually include any requirement that Legal Forms which benefit from the status need to be trading or carrying out any form of economic activity. Often, Legal Forms which benefit from Public Benefit status are dependent in practice on grants, gifts and voluntary income.

The concept of an Integration Enterprise may be understood in different Member States as a Legal Status or a Legal Form. Where Integration Enterprise is understood as a Legal Status, in theory, any Legal Form could be characterised as an Integration

PARTICIPATION

INSURANCE

HEALTH

FINANCIAL

Enterprise. However, in practice, Integration Enterprises are often limited to a single Legal Form, such as a Co-operative, a Share Company or Association, or a relatively small number of Legal Forms in each Member State. Integration Enterprises also specifically focus on hiring disadvantaged workers rather than wider social purposes.

Social Economy statuses tend to be focused on specific Legal Forms which are associated with the traditional social economy, such as Co-operatives, Mutuals, Foundations and Associations. These statuses do not permit the possibility that newer models of enterprise, such as those which use the Legal Forms of Share Companies or other Legal Forms, may also prioritise social purpose above profit.

There are laws which are often described as 'social enterprise' laws in Finland, Lithuania, Sweden and Slovakia but these laws focus narrowly on work integration Social Enterprises and not to the SBI concept of a Social Enterprise, which is a much wider and inclusive concept.

There are also laws in relation to social Co-operatives or the social economy in a number of jurisdictions but these laws do not generally relate to the SBI concept of a Social Enterprise, including in the following: Croatia, Czech Republic, Hungary, Portugal and Spain.

A number of jurisdictions, such as Latvia, Luxembourg, Malta and Poland are developing some form of Social Enterprise Legal Status.

A New Social Enterprise Status – Denmark

Legislation to set up a specific registration system for social enterprises has been introduced in Denmark. A national 'Committee on Social Enterprise' recommended an administrative registration scheme for social enterprises taking on a variety of different Legal Forms. The registration system is built on the assessment that the absence of regulation in some instances may cause problems for social enterprises in terms of legitimising their business and developing a form of common identity. This challenge is seen as being particularly apparent when it comes to marketing and communication with customers, authorities, partners and other stakeholders that may not be able to distinguish social enterprises from other enterprises.

Mutuals

The European Commission defines Mutuals as “voluntary groups of persons (natural or legal) whose purpose is primarily to meet the needs of their members rather than achieve a return on investment. These kinds of enterprise operate according to the principles of solidarity between members, and their participation in the governance of the business”.¹

The term Mutual is not therefore, a reference to a Legal Form, as such, but rather to organisations which are based on the mutuality principle. As confirmed by a European Commission study, entitled *'The role of Mutual Societies in the 21st Century'* published in 2011, most mutual-type organisations tend to be a special kind of Association, Co-operative or Company, although there are other examples of Mutual Legal Forms in certain countries and in certain sectors, such as health, insurance and financial services.

As Mutuals are primarily oriented towards their members' interests, these cannot necessarily be regarded as Social Enterprises according to the SBI definition, as serving members' interests is not typically considered to be a 'social aim'. However, there are Mutuals across Europe that serve general or collective interests or can potentially be regarded as pursuing a social aim by virtue of the socio-demographic characteristics of their members and the nature of the services provided. Such Mutuals would potentially fulfil the core criteria of the EU operational definition and classify as de facto Social Enterprises and may take various underlying Legal Forms.

¹ European Commission (2003) Mutual Societies in an enlarged Europe, Consultation Document, 03 October 2003

Understanding and Mapping Legal Concepts

As we have seen, there are a number of overlapping legal concepts in relation to Social Enterprise which can be difficult to understand and to distinguish.

Overlapping Legal and Quasi-Legal Concepts

The relationships between the following legal concepts are not always easy or simple to understand: Legal Form, Legal Status, Social Enterprise, Association, Co-operative, Foundation, Share Company, Non-Profit Organisation, Integration Enterprise and Social Economy.

European Commission (2003) Mutual Societies in an enlarged Europe, Consultation Document, 3rd October 2003

These overlapping legal concepts can complicate and confuse discussions about Social Enterprise, particularly where discussions are taking place across borders between people with different disciplines and backgrounds, including legal practitioners and others. We have therefore sought to map the relationships between these different legal and quasi-legal concepts by using a form of Venn diagram, as shown and explained in the Legal Concept Maps set out in Annex 1.

These Legal Concept maps provide a visual picture of how these different concepts relate and, especially, how different Legal Forms and Legal Statuses in different countries are related to each other and, importantly, to the Social Business Initiative definition. Our hope is to be able to maintain and update Legal Concept Maps for each European country, to enable more accurate and informed dialogue and policy to support the legal development of Social Enterprise in Europe.

Key Findings

INTERPRETATION OF SOCIAL ENTERPRISE

In legal and regulatory terms, Social Enterprise, as used in the context of the Social Business Initiative, is primarily a policy concept and not, generally, a legal or regulatory concept.

The primary legal and regulatory means of understanding and 'interpreting' the concept of a Social Enterprise in different Member States is by reference to the underlying Legal Forms which are available for different forms of economic activity and are used by Social Enterprises.

In this sense, Social Enterprise is interpreted differently in different Member States. Different Member States make available different Legal Forms for and therefore for use by Social Enterprises. Whilst most Member States make available a wide range of Legal Forms, the Legal Forms most suitable for use by and most used by Social Enterprises differ greatly.

All Social Enterprises will use some Legal Form or another. Some Social Enterprises will benefit from some other Legal Status, such as a Non-Profit tax status or a work Integration Enterprise status. However, only a relatively small number of social enterprises will currently use a Social Enterprise Form or benefit from a Social Enterprise Legal Status and, where there is a Legal Status, its success will still depend on the relevant underlying Legal Forms being suitable for social enterprises.

DISCUSSIONS

INTEGRATION

DIVERSITY OF LEGAL FORMS AND MODELS

One of the principal findings from the legal and regulatory mapping process is the sheer diversity of Legal Forms used by social enterprises in different Member States.

Over 30 Legal Forms are used by social enterprises in the Member States studied. Respondents described 10 commonly used Legal Forms used by social enterprises, as shown in Annex 2.

It is clear that Legal Forms – such as, for example, the Co-operative, the Company or the Association – have developed in different directions in domestic Member State contexts over time and so, in addition to the range of Legal Forms available to social enterprises, there is significant variation with respect to and within each Legal Form.

There is no single 'model' of Social Enterprise but many different 'models' of Social Enterprise, including models which favour democratic and inclusive Legal Forms and business approaches and those which include more managerial Legal Forms and business approaches in which managers exercise control and seek independently to solve social problems.

To reflect this divergence of practice with respect to inclusive governance, the Mapping Study notes a growing convergence of opinion towards a general definition of Social Enterprise as "an autonomous organisation that combines a social purpose with entrepreneurial activity".

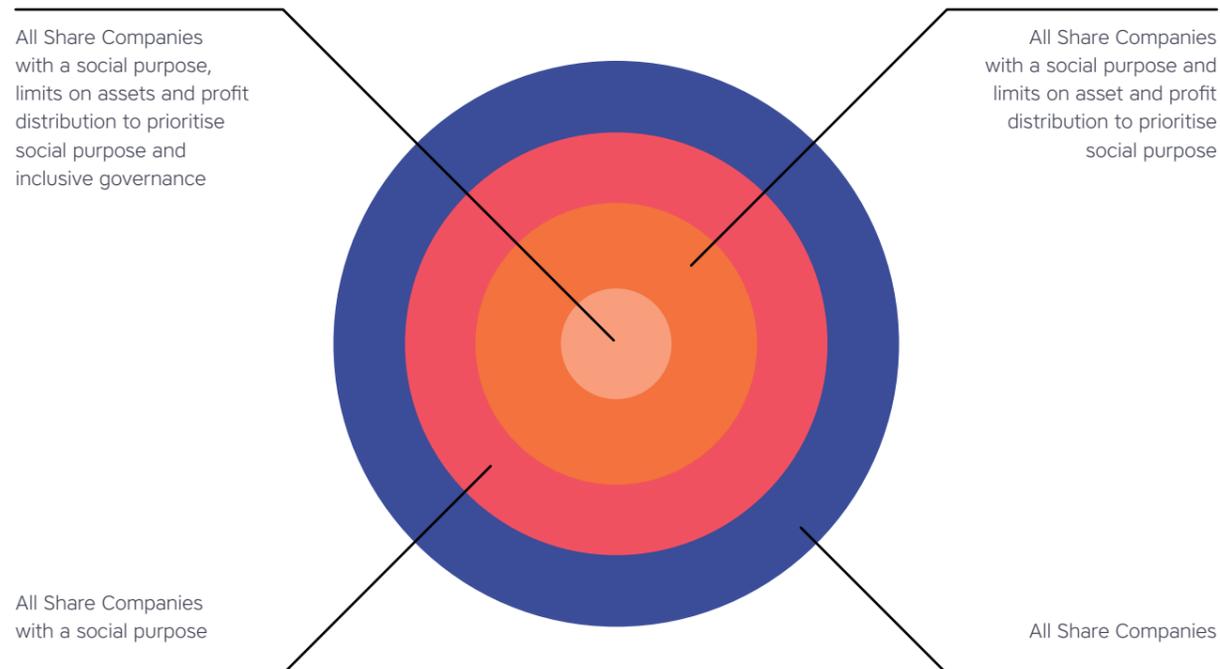
ADAPTATION OF LEGAL FORMS

Even when looking solely at a single Legal Form in a single Member State, there can be wide variation with respect to how the constitution of the Legal Form is drafted – for example, with respect to the variety of social purposes which might be pursued, which stakeholders have an influence with respect to governance and decision-making and how profits are distributed.

In most countries, it is possible to 'adapt' or 'tailor' a Legal Form specifically for use by a social enterprise, for example, by specifying a social purpose, limiting the means by which profits and surplus assets may be distributed and by specifying other 'social' characteristics. However, equally, this is not always possible and, even where it is possible, it is also often possible to remove or change such adaptations.

Share Company Adaptation

The following diagram illustrates by means of concentric circles how, in the universe of Share Companies, the Share Company Legal Form might be adapted in a number of different ways with increasing convergence towards the SBI definition and understanding of a social enterprise.



In a small number of Member States, there are Legal Forms which have been adapted for Social Enterprise purposes by formal legislative means. Examples of these Social Enterprise Forms include Social Co-operatives and Social Share Companies. Social Enterprise Forms provide established starting points for social entrepreneurs who need to choose a legal structure.

However, in the majority of Member States there are no Social Enterprise Forms. Indeed, most Member States which have sought to take a legislative approach to Social Enterprise have tended to develop Legal Statutes in relation to Social Enterprise, such as France and Italy. Significant variation exists between Member States, such as in relation to how the concept of 'social purpose' is understood and interpreted.

LACK OF UNDERSTANDING

There is a widespread lack of understanding on the part of social entrepreneurs and advisers about the nature of the different Legal Forms which are capable of use by social enterprises.

In many Member States, social entrepreneurs use the available Legal Forms, often without any adaptation, even where such forms are not completely suitable or may not fully express the social identity of the enterprise or may involve tax risks with respect to trading activity. At times, this may unnecessarily require social entrepreneurs to develop complicated group structures, such as relationships between a Non-Profit Organisation and related trading entities.

In some Member States, there are no Social Enterprise Forms, Social Enterprise Statutes or established and widely-recognised best practice adaptations of Legal Forms for use by social enterprises. This means that social enterprises are often not very visible, are not easy to identify and are very difficult to seek to support with specific policy, tax or fiscal incentives.

COMMON BARRIERS

The majority of Member States do not have many express barriers to the growth of Social Enterprise. However, the lack of recognition of Social Enterprise within law and regulation can be an indirect barrier by preventing the creation of incentives or by creating uncertainty.

The following were the most commonly cited express legal and regulatory barriers:

- limits to the range of social purposes a Social Enterprise can conduct, as in many cases Legal Forms are limited for use in certain sectors or with respect to certain activities, such as education, healthcare, social care or other qualifying forms of activity rather than focusing on having a positive social impact in more general terms;

- a lack of clarity about the degree to which certain Legal Forms can engage in trading activity, which can create the risk of tax liabilities for Social Enterprises which are tax exempt Non-Profit Organisations and risk operating outside their tax exempt status;
- restrictions on the ability of Non-Profit Organisations from establishing trading subsidiaries;
- restrictions on the ability of directors of Non-Profit Organisations to receive compensation;
- restrictions on the ability for Non-Profit Organisations to compete with for-profit companies; and
- restrictions on the ability of companies to enjoy Public Benefit Status.

TAX ADVANTAGES AND INCENTIVES

A large number of Member States do not have an express policy commitment to grow Social Enterprises and so there is often an absence of incentives for Social Enterprise development.

There are no examples of established tax reliefs for Social Enterprises generally, although France and the UK have tax reliefs for investors into certain forms of Social Enterprise.

The tax advantages in the different Member States which are most relevant to Social Enterprise tend to fall into the following categories:

- tax advantages which relate to the underlying legal form;
- tax advantages which relate to the charitable or Public Benefit status of certain Non-Profit Organisation Legal Forms, including relief on income tax and donations; and
- tax advantages which are available to Integration Enterprises employing people who are disadvantaged, as a specific incentive to encourage employment.

SOCIAL ENTERPRISE AND INTEGRATION ENTERPRISES

Almost half of Member States have established legal and regulatory statuses with respect to:

- Integration Enterprise;

- Social Enterprise; or
- The Social Economy.

These statuses overlap and in some Member States the local concepts of Social Enterprise and the social economy are closely related. Even where one or more of these statuses exist, the status will necessarily attach to underlying Legal Forms and so Legal Forms remain the primary and generally the most significant legal structure and vehicle for Social Enterprise activity.

SOCIAL ENTERPRISE AND COMPETITION LAW

There are isolated examples of public procurement being used in innovative ways in different Member States with the aim of growing and developing Social Enterprises, such as Lithuania, Switzerland, France and the UK, which all highlight measures in place to encourage the consideration of societal factors when awarding public contracts, which appear to be used in practice. However, the examples are relatively few and far between and there seems to be relatively little awareness of the different approaches taken in different Member States.

In some Member States, competition law was cited as a reason why Non-Profit Organisations are not able to engage in trading activity and still receive charitable tax breaks. A majority of responses received suggest competition law and public procurement are often seen, rightly or wrongly, as barriers to the growth of Social Enterprise. In many Member States, Social Enterprises struggle to compete with corporates and win contracts in public service markets.

THE SOCIAL ENTERPRISE BRAND

The level of recognition of Social Enterprise across Europe is low. The Social Enterprise brand is developing at different paces and in different directions in different Member States.

As a concept, Social Enterprise is understood differently in different Member States in large part as a result of the Legal Forms which are most commonly used and depending on the nature of the Legal Statuses which are available and attach to Social Enterprises.

There appears to be very little or no specific legal protection for the emerging Social Enterprise brand within Member States or at a European level.

Key Recommendations

Based on our findings and in the interest of fostering the development of enabling Social Enterprise ecosystems in Member States across Europe, we recommend the following:

FOSTER SOCIAL ENTERPRISE FORMS AND REMOVE BARRIERS

- **No Pan-European Social Enterprise Form:** given the diversity of Social Enterprise Legal Forms and Statuses across Europe and the complex and multi-dimensional relationship between Social Enterprises and Member State legal, regulatory and tax systems, we doubt the feasibility of developing a pan-European Legal Form(s) for Social Enterprise and do not recommend this be attempted.
- **Foster Member State Ecosystems:** we recommend that policymakers encourage and assist Member States to develop enabling ecosystems for the development of Social Enterprise in each Member State, including the following:
 - **Develop Social Enterprise Forms and Statuses:** assist Member States to understand and, where appropriate, develop effective and sound Social Enterprise Forms and Statuses, as bespoke Legal Forms and Legal Statuses for Social Enterprise, with a view to increasing the start-up, growth, profile and visibility of Social Enterprises within Member States and of ensuring that, as far as possible, suitable Legal Forms and statuses are available for Social Enterprise:
 - **Guidance on Social Enterprise Forms and Statuses:** encourage the publication of guidance on the characteristics of Social Enterprise Forms and Statuses, with a view to promoting a better understanding of Social Enterprise Forms and Statuses across Europe and assisting those Member States who wish to do so, to develop Social Enterprise Forms and Statuses which are integrated fully within the existing domestic legal environment;
 - **Networks of Experts on Social Enterprise:** encourage the formation of Europe-wide networks and associations of professionals with specific expertise in Social Enterprise, with a view to deepening and harnessing collective knowledge in relation to different Social Enterprise Forms and statuses,

ENCOURAGE

UNDERSTAND

ABILITY

especially networks and associations which do not advocate particular Legal Forms, statuses or models;

- **Develop Model Documents:** support the development of a suite of model constitutional documents for Social Enterprises using different Legal Forms in each Member State, which are based on the domestic law of each Member State, so that social entrepreneurs are able to adapt existing Legal Forms for Social Enterprise purposes easily and without the need for professional advice and without needing to wait for the introduction of Social Enterprise Forms, including options for 'entrenchment' of social purpose and 'asset locks', including for Non-Profit Organisations, Co-operatives and Share Companies;
- **Develop a Social Enterprise Legal Structure Website:** fund the development of a website which provides information, guidance and a 'decision-tree' for social entrepreneurs in different Member States to understand how to choose and adapt Legal Forms for Social Enterprise purposes, which reflects the basic Legal Form typology of Non-Profit Organisations, Co-operatives and Share Companies and which accounts for the possibility of local variation in different Member States or which, even better, is tailored for use by entrepreneurs in each Member State. The website would also help entrepreneurs to navigate different Legal Statuses;
- **Remove Common Barriers to Social Enterprise:** assist Member States to understand, identify and remove barriers to Social Enterprise, including, where appropriate, the removal of the following commonly stated barriers:
 - remove any unnecessary restrictions on the ability of Non-Profit Organisations to carry out trading activity and, where Non-Profit Organisations benefit from tax exemptions, remove any related legal or tax uncertainties which surround such trading activity; and
 - remove any unnecessary restrictions on the ability of Non-Profit Organisations from establishing trading subsidiaries and any related legal or tax uncertainties which might discourage such structures.
 - remove any unnecessary restrictions on the ability of directors of Non-Profit Organisations to receive compensation;
 - remove any unnecessary restrictions on the ability for Non-Profit Organisations to compete with for-profit companies; and
 - remove any unnecessary taxes requirements for a Social Enterprise Share Company.

RESEARCH SOCIAL ENTERPRISE FORMS AND STATUSES

- **Further Research:** we recommend that further research be conducted to evaluate the success or otherwise of existing and newly developed Social Enterprise Forms and Social Enterprise Statutes, with a view to identifying and disseminating knowledge and understanding of what works, given the relatively early-stage and novel nature of many such Social Enterprise Forms and Social Enterprise Statutes.

COMPETITION LAW AND PUBLIC PROCUREMENT

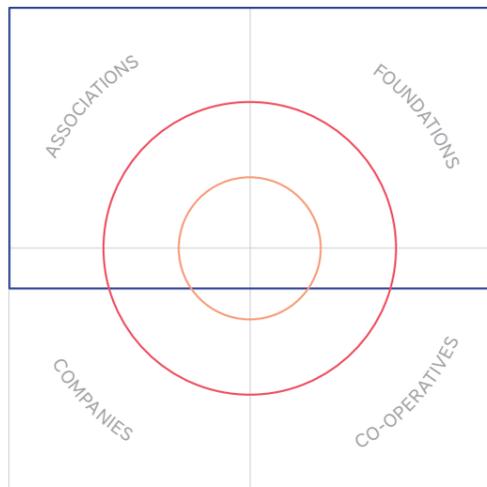
- **Research Innovative Uses of Public Procurement:** research should be conducted to create guidance for Member States, commissioners, Social Enterprises and advisers on ways in which different Member States are using and are able to use public procurement to grow and develop Social Enterprises in particular, building on the 'Buying Social' guidance which already exists for commissioners.
- **Clarify Relationship with Competition Law:** the relationship between Social Enterprise and competition law needs clarification, in particular the ways in which Member States may use tax and other incentives to grow and develop Social Enterprises as compared to for-profit enterprises, with a view to encouraging the development and implementation of such reliefs and incentives.
- **Assess Impact of New Laws on Social Enterprise:** given that competition and public procurement law are perceived as barriers to the growth of Social Enterprise, policymakers at all levels should consider introducing 'social enterprise impact assessment' tests to assess the expected impact of new competition or public procurement laws and policy initiatives on Social Enterprises across Europe.



THE SOCIAL ENTERPRISE BRAND

- **Protect the 'Social Enterprise' brand:** policymakers should explore the feasibility and desirability of taking steps to protect the terms 'social enterprise' and 'social business' – and other terms which are significant to the Social Enterprise movement – at a European level, from misleading and confusing use by corporates and other organisations, for example, in the areas of advertising and trade marks law.
- **Compatibility of any Franchise or Mark:** should policymakers explore the development of a Europe-wide Social Enterprise mark franchising system consistent with the Social Business Initiative definition, policymakers should seek to develop a system which recognises and attaches to the established yet diverse Legal Forms and Legal Statutes used by Social Enterprises operating in Member States.

Annex 1: Legal Concept Maps



This is the Venn diagram which forms the basis of the Legal Concept Maps.

Inside the square is the universe of the four key Legal Forms, which comprises four separate quadrants: Associations (the top left quadrant), Foundations (the top right quadrant), Co-operatives (the bottom right quadrant) and Companies (the bottom left quadrant).

In the maps which follow, it is possible to see in more detail how the different legal and quasi-legal concepts explored in this paper relate to the different Legal Forms and Legal Statuses. It is also possible to see how certain countries interpret social enterprise legally.

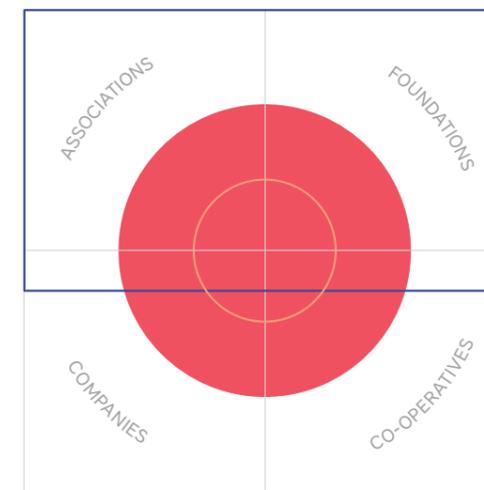
The maps provide a conceptual framework for the purposes of easy comparison only and are not intended to represent a comprehensive understanding of these different legal concepts.

In compiling the Legal Concept Maps for different countries, a number of judgements have been made about how best to complete the maps, which in some cases is a matter of interpretation. These Legal Concept Maps should therefore be regarded as a useful starting point. Further work is needed to comprehensively map the differences between different countries.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

Social Enterprises per SBI definition

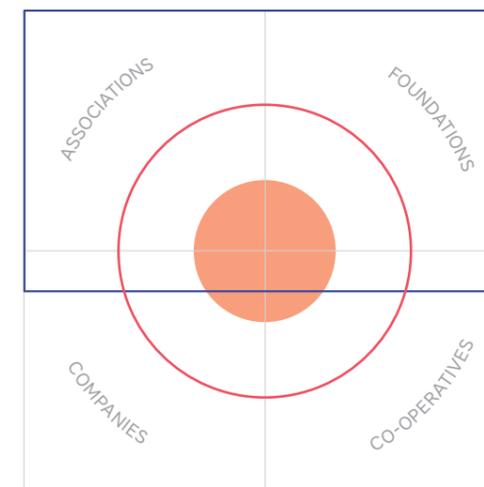


The space inside the red circle represents the universe of those social enterprises which conform to the SBI definition of a Social Enterprise. This circle overlaps and intersects with each of the four quadrants for the four different Legal Forms.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

Integration Enterprises

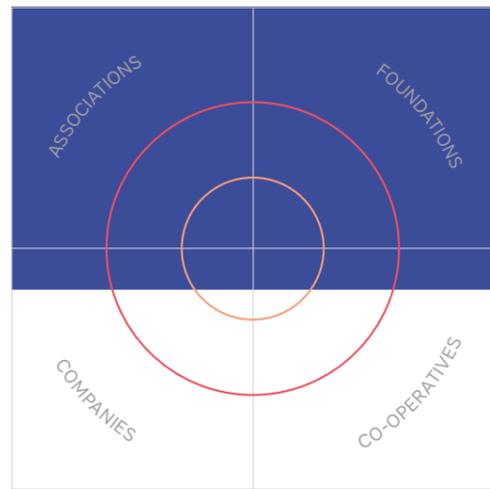


The space inside the orange circle represents the universe of Integration Enterprises, which overlaps and intersects with each of the four quadrants for the four different Legal Forms. The universe of Integration Enterprises is included within the red circle, as Integration Enterprises are a subset of the Social Enterprises which conform to the SBI definition.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

Non-Profit

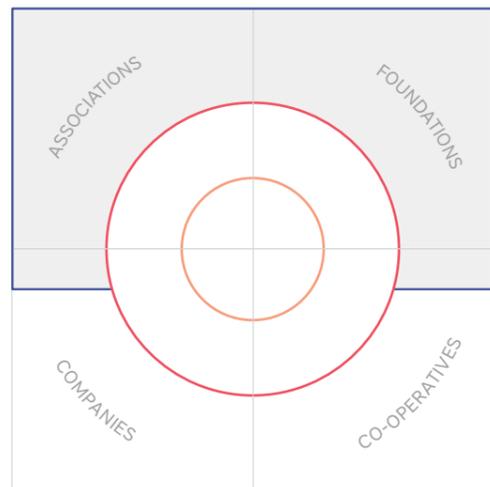


The space inside the blue box represents the universe of Non-Profit Organisations, which includes all Associations and Foundations and a small number of Co-operatives and Companies, including some Social Enterprises and some Integration Enterprises.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

Non-Profit which does not trade

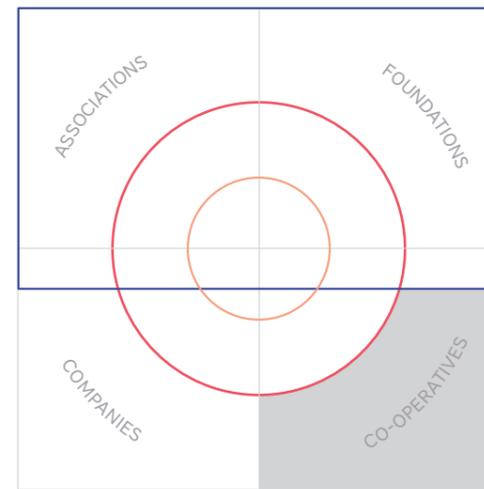


A Non-Profit Organisation which does not trade falls within the grey shaded area, as an organisation must trade to be included within the SBI definition of a Social Enterprise.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

A Co-operative without a social purpose

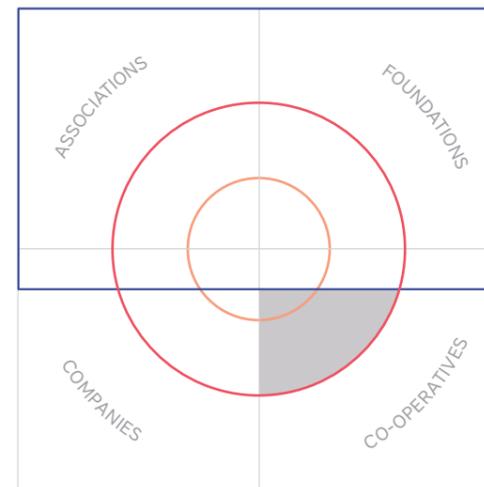


A Co-operative *without* a social purpose falls in this area shaded grey, as the SBI definition of Social Enterprise requires a social purpose.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

A Co-operative with a social purpose

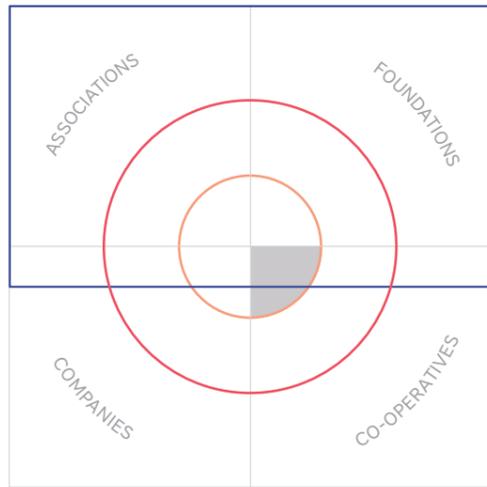


A Co-operative *with* a social purpose would fall within this area, as it is likely to fulfil the SBI definition of social enterprise.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

An Integration Enterprise with Co-operative Legal Form

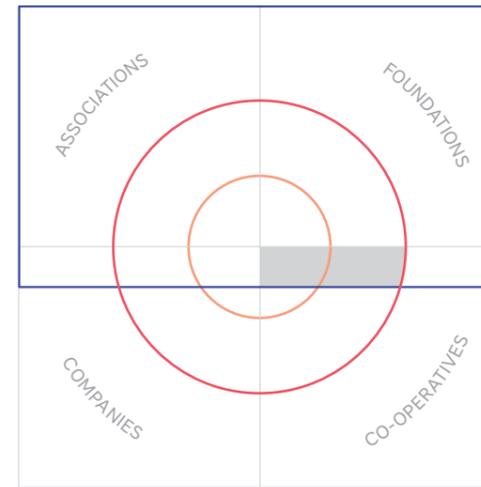


The grey area shows an Integration Enterprise with a Co-operative Legal Form.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

A Non-Profit trading, social co-operative

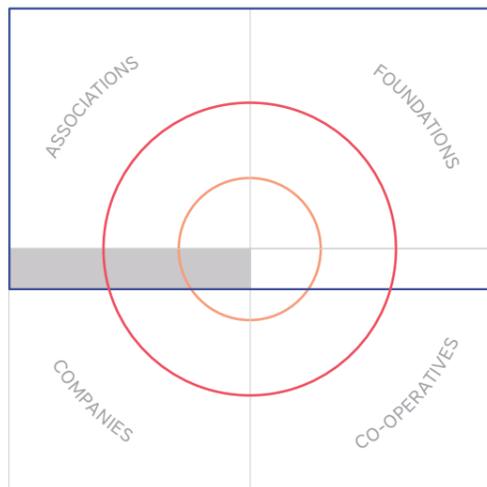


A Non-Profit, trading, social Co-operative however, would fulfil the definition of Social Enterprise and is represented by the grey shaded area.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

A trading Non-Profit Company

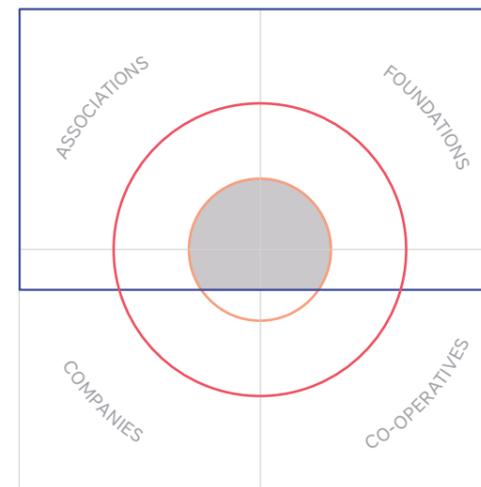


A Non-Profit Company which trades would fall somewhere within the grey shaded area. As you can see, it may fulfil the definition of 'Social Enterprise' but not necessarily - this depends on whether it has a social purpose.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

Non-Profit trading Integration Enterprises

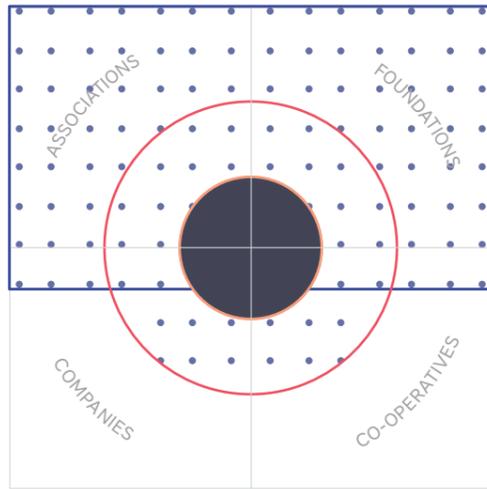


A Non-Profit, trading, Integration Enterprises could fall anywhere within the grey shaded area.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit

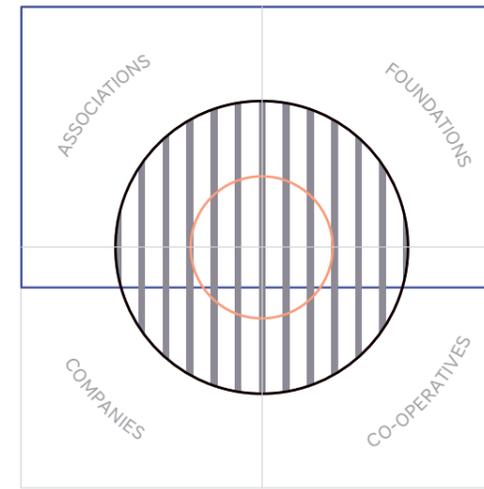
Slovenia



A Type A Social Enterprise is an enterprise that is not an Integration Enterprise but can be an Association, Foundation, Company or Co-operative. If a Type A Social Enterprise is a Company or Co-operative it must fit within the SBI definition of social enterprise. A Type B social enterprise can be an Association, Foundation, Company or Co-operative and must be an Integration Enterprise.

- Legal Status**
- = Social Enterprise per SBI definition
 - = Integration Enterprises
 - = Non-Profit
 - Type A Social Enterprise
 - Type B Social Enterprise

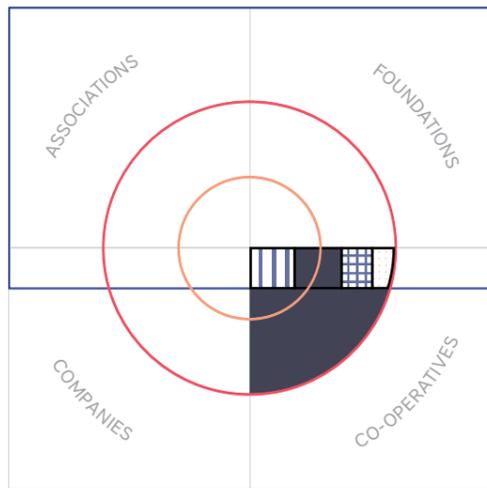
UK



To qualify for 'social investment tax relief' in the UK, an organisation must be an Association, Foundation, Company or Co-operative carrying out a qualifying trade.

- Legal Status**
- = Social Enterprise per SBI definition
 - = Integration Enterprises
 - = Non-Profit
 - Legal forms qualifying for Social Investment Tax Relief

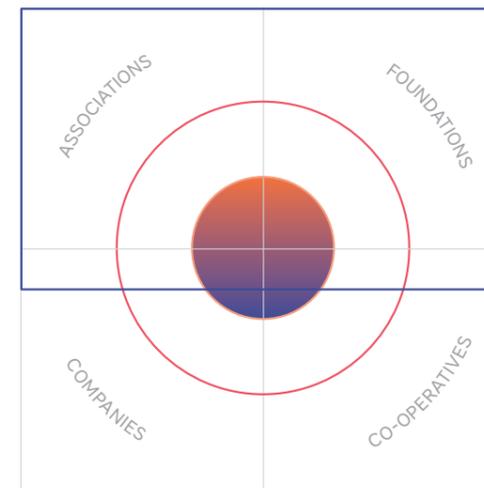
Greece



An inclusion KINSEP is a Non-Profit Co-operative which is an Integration Enterprise. A KINSEP for collective and product purpose is a Non-Profit Co-operative which fits within the SBI definition of a social enterprise. A social care KINSEP is also a Non-Profit Co-operative which fits within the SBI definition of a social enterprise. A KISPE is a Co-operative which can be either for-profit or Non-Profit and fits within the SBI definition of a social enterprise. a KISPE can be an Integration Enterprise.

- Legal Status**
- = Social Enterprise per SBI definition
 - = Integration Enterprises
 - = Non-Profit
 - Inclusion KINSEP
 - KISPE
 - KINSEP for collective & product purpose
 - Social care KINSEP

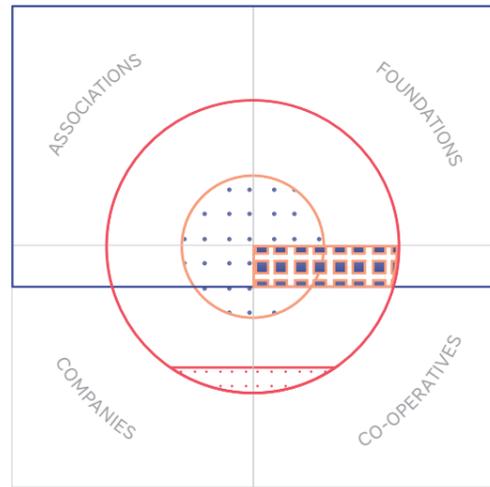
Slovakia



Social Enterprise Status can apply to Integration Enterprises which are Associations, Foundations, for-profit or Non-Profit Companies and for-profit or Non-Profit Co-operatives.

- Legal Status**
- = Social Enterprise per SBI definition
 - = Integration Enterprises
 - = Non-Profit
 - Social Enterprise Status

Spain

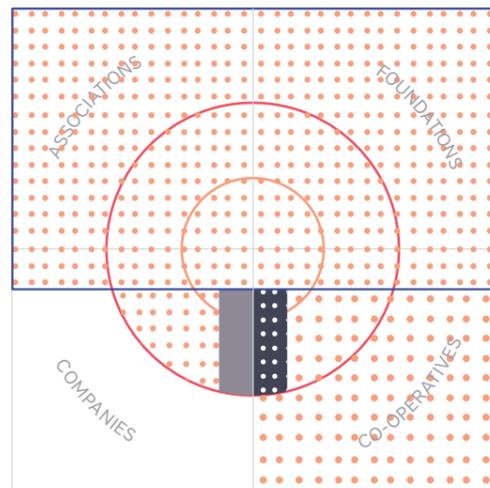


A Special Employment Centre can be an Association, Foundation, Company or Co-operative and fits within the definition of Integration Enterprise. A social Co-operative initiative is a Non-Profit Co-operative which fits within the SBI definition of Social Enterprise and can be an Integration Enterprise. A Social Integration Enterprise is an Integration Enterprise which can be either a for-profit Company or a Non-Profit Co-operative.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit
- Social Co-operative Initiative
- Special Employment Centre
- Social Integration Enterprise

France

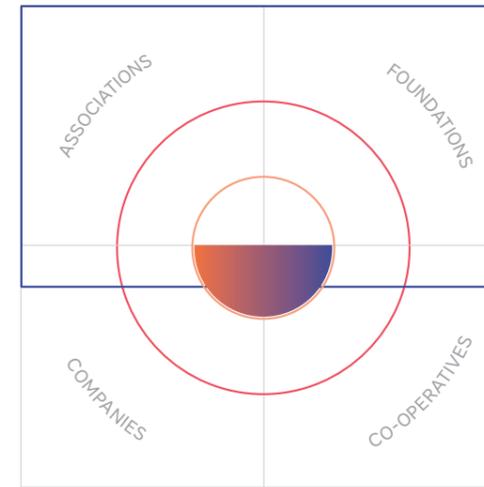


An "Entreprise de l'ESS" is a legally recognised adaptation of the for-profit Company Legal Form available to for-profit companies and Integration Enterprises who fit within the SBI definition of social enterprise. The "ESUS: (entreprise solidaire d'utilité sociale) is a Legal Status which is available to Co-operatives, Foundations, Associations and Companies which meet certain criteria. A SCIC is a legally recognised adaptation of the Co-operatives who fit within the SBI definition of social enterprise. The ESUS/ESS Enterprise Statuses becomes available on 1 January 2016 and its interpretation may be subject to debate and change.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit
- ESUS Status
- ESS Enterprise
- SCIC

Lithuania

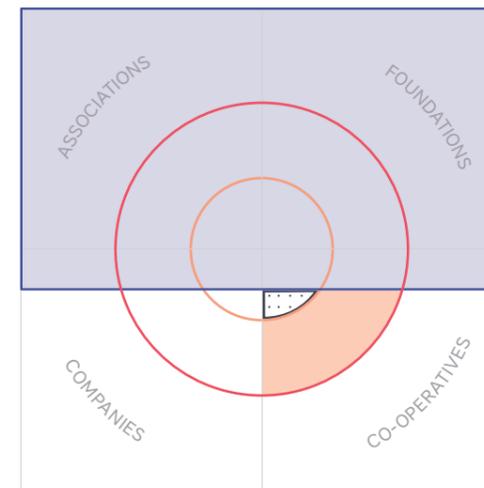


Social Enterprise Status can apply to Integration Enterprises which are for-profit or Non-Profit Companies or Co-operatives.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit
- Social Enterprise Status

Italy



A Social Enterprise ex-lege is a Legal Status which applies to Non-Profit organisations which are structured as an Association, a Foundation, a Company or a Co-operative. A legal form with this status may be an Integration Enterprise or fit within the SBI definition of a social enterprise but equally it may not. An A-Type social Co-operative is a Co-operative which is a for-profit Integration Enterprise which fits within the SBI definition of a social enterprise. A B-Type social Co-operative is a for-profit Co-operative which fits within the SBI definition of a Social Enterprise but is not an Integration Enterprise.

Legal Status

- = Social Enterprise per SBI definition
- = Integration Enterprises
- = Non-Profit
- Social Enterprise ex-Lege
- A-Type social co-operative
- B-type social co-operative

Annex 2: Legal Forms Identified

The following Legal Forms were identified by the legal experts as the Legal Forms most commonly used by Social Enterprises in each Member State.

Miscellaneous	Non-Profit	Co-operative	Share Company
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Member State	Legal Forms		
Austria	Association	Share Company	Sole Proprietor
Belgium	Association	Company with Social Purpose (SCF)	Foundation
Bulgaria	Non-Profit Legal Entity (Associations and Foundations)	Co-operative of People with Disabilities (CoF)	Specialised Enterprises For People With Disabilities (ALF)
Croatia	Share Company	Social Co-operative (CoF)	Association
Cyprus	Non-Profit Company	Association	Foundation
Czech Republic	Institute	Association	Social Co-operative (CoF)
Denmark	Association	Foundation	Share Company
Estonia	Association	Foundation	Share Company
*Finland	Share Company	Co-operative	Foundation
France	Association	Share Company (CoF)	Social Co-operative (CoF)
Germany	Sole Proprietor	Share Company	Entrepreneur (Limited Liability) Company
*Greece	Social Co-operative Enterprise (CoF)	Limited Liability Social Co-operative (CoF)	Third legal form not provided by Respondent
Hungary	Non-Profit Company	Foundation	Association
Ireland	Share Company	Non-Profit Company	Association

Member State	Legal Forms		
*Italy	Social Co-operative (CoF)	Social Enterprise (Legal status that can attached to a number of legal forms)	Foundation
Latvia	Association	Foundation	Share Company
*Lithuania	Public establishment	Share Company	Individual Entrepreneur (sole proprietor)
Luxembourg	Association	Share Company	Co-operative
Malta	Foundation	Association	Co-operative
Netherlands	Foundation	Association	Co-operative
Poland	Foundation	Association	Social Co-operative (CoF)
Portugal	Foundation	Association	Co-operative
Romania	Association	Mutual Help Associations for Employees (AsF)	Mutual Help Associations for Pensioners (AsF)
*Slovakia	Non-Profit Organisations providing Public Benefit	Association	Share Company
*Slovenia	Co-operative	Institutions	Share Company
Spain	Social Integration Enterprise (Co&CoF)	Social Co-operative Initiative (CoF)	Special Employment Centre
Sweden	Co-operative	Association	Share Company
Switzerland	Association	Co-operative	Share Company
*UK	Share Company (Community Interest Company adaptation)	Non-Profit company (Community Interest Company adaptation)	Co-operative

* Indicates countries where Integration Enterprise and other social enterprise related statuses are available. These are statuses which can attach to a number of legal forms provided certain prescribed conditions are met.

Annex 3: Glossary

Association: a Legal Form that is broadly characterised by the following features: a group of individuals or organisations organised on the basis of a written agreement to further a shared purpose; can be established to further a range of social purposes; profits are used for purposes stated in governing document and are not generally distributed to members or otherwise.

Co-operative: a Legal Form that is broadly characterised by the following features: jointly owned and democratically controlled by the people who work in it, trade through it or use its products or services; can pursue almost any purpose, subject to the requirement that there should be a common economic, social or cultural need or interest shared by members of the Co-operative; can distribute profits to members.

Foundation: a Legal Form that is broadly characterised by the following features: established by one or more "founders"; allocating assets to further a social purpose; can be established to further a range of social purposes (for example, philanthropic, artistic, cultural and religious purposes); assets and surpluses can only be used for social purposes stated in the governing document and are not distributed.

Integration Enterprise: a business that is established to integrate people who are disadvantaged or disabled into the workforce. Depending on the legal and regulatory framework which applies in the Member State where the Integration Enterprise operates, an Integration Enterprise can either (a) adopt a Legal Form that is specifically designed to promote the employment of people who are disadvantaged or disabled or (b) meet certain prescribed conditions which are related to promoting the employment of people who are disadvantaged or disabled, often in exchange for tax reliefs.

Legal Concept Maps: the legal concept maps in Annex 1, which provide a visual picture of how different legal concepts and the different Legal Forms and Legal Statuses in different countries are related to each other and to the Social Business Initiative concept of social enterprise.

ASSOCIATIONS

Legally form: the foundational legal structure adopted by a business, to which Member State law, regulation and tax treatment primarily attaches and relates. Examples include the Legal Forms of sole proprietorship, partnership, Foundations, Associations, Co-operatives and Company Legal Forms, which are present in the majority of Member States, subject to local variation. Typically, constitutional, statute and case law will treat each Legal Form as a different kind or type of legal structure.

Legal Status: a Legal Status attaches to a number of Legal Forms and is typically tax driven, such as in the case of the charitable tax reliefs on donations and income tax which are available for certain forms of Foundations, Associations and Non-Profit Companies and Integration Enterprise tax status, which exists in some Member States. There are also examples of Legal Statuses in Member States which attach to Legal Forms satisfying a local interpretation of 'social enterprise' or 'social economy'.

Member State: a country included in the study which means one of the 28 Member States that comprise the European Union and Switzerland.

Mutuals: voluntary groups of persons (natural or legal) whose purpose is primarily to meet the needs of their members rather than achieve a return on investment. These kinds of enterprise operate according to the principles of solidarity between members, and their participation in the governance of the business (Source: European Commission (2003) Mutual Societies in an enlarged Europe, Consultation Document, 03 October 2003).

Non-Profit Company: a Legal Form that is broadly characterised by the following features: a form of Company which is used for Non-Profit purposes, which may or may not be required to further a social purpose and which is unable to distribute profit by way of a dividend.

Non-Profit Organisation: An organisation which has a legal form which does not permit the distribution of profit and which is able to trade freely in furtherance of a social purpose. Examples include most Foundations, Associations and Non-Profit Companies.

Public Benefit Status: a type of Legal Status which attaches to Non-Profit Legal Forms in certain jurisdictions where the Legal Form carries out a social purpose of a specified kind and which usually involves tax breaks, such as relief from corporation tax and tax deductions for donations.

Share Company: a Legal Form that is broadly characterised by the following features: a form of Company that is usually used by for-profit organisations, typically established with commercial aims to distribute profits to shareholders, which is owned by its shareholders and which typically distributes profit to shareholders in proportion to shareholding.

Social Co-operative: legally recognised adaptation to the Co-operative Legal Form that is often characterised by: a requirement to pursue a social purpose; limitations on the extent to which profit can be distributed; annual reporting requirements.

Social Economy: includes Co-operatives, Mutual societies, Non-Profit Associations and Foundations. Social economy enterprises are characterised by the strong personal involvement of their members in the management of the enterprise (often on a “one man, one vote” principle) and the absence of seeking profits in order to generate a return on shareholders’ capital.

Social Enterprise: for the purposes of the Social Business Initiative, an enterprise with an entrepreneurial dimension (engagement in continuous economic activity), a social dimension (a primary and explicit social purpose) and a governance dimension (the existence of mechanisms to prioritise social purpose and sensitivity to different stakeholder interests).

Social Enterprise Forms: a Legal Form which is tailor made by means of Member State legislation for use by a Social Enterprise and which fits the Social Business Initiative Definition, including Non-Profit Organisations, Social Co-operatives and Social Share Companies. Social Enterprise Forms may or may not also be an Integration Enterprise.

Social Enterprise Status: a Legal Status which is tailored in such a way as to attach to Legal Forms which are Social Enterprises and which fits with the Social Business Definition.

Social Purpose: an aim that is set out in the governing document of a business, other than the pursuit of profit, that benefits society or the community. Member States interpret the nature of the social purpose that Legal Forms can pursue differently.

PURSUIT

DEFINITION

Sole Proprietor: a business which has no Legal Form or legal personality independent of the natural person who owns and runs the business. In this form of business, the natural person who owns and runs the business enters into contracts and relationships in a personal capacity and is therefore personally liable for the debts and liabilities of the business

DISTRIBUTED

RECOGNISED

PURPOSE

PROFIT

LIMITATIONS

Annex 4: Legal Mapping Methodology

To produce a “map” of legal frameworks, legal experts with a background in the legal and regulatory frameworks that social enterprises operate within were identified from each of the Member States through a variety of European networks and recommendations.

Legal experts were asked to complete a questionnaire which was intended to capture information about the legal forms which are designed for social enterprises in Member States and how other legal forms are adapted to enable a business to adopt the features of a social enterprise. Instructions to legal experts acknowledged that there is no single, simple, universal definition of a social enterprise and that there will be ‘boundary cases’. Legal experts were advised that, if in doubt, they should take a relatively wide interpretation of the minimum criteria, to include difficult boundary cases.

Given the breadth of information regarding each legal form that is sought to inform the findings of the Social Business Initiative, it would have been unrealistic to ask legal experts to give a detailed overview of the legal provisions governing every legal form which is available for use by a social enterprise in the legal expert’s Member State. Legal experts were therefore asked to provide more detail in respect of the three legal forms most commonly used by social enterprises in each Member State on the basis of their experience.

The information provided by legal experts was then synthesised by BWB to create a legal synthesis of the mapping work together with legal summaries for each jurisdiction. The BWB legal synthesis and legal summaries were used by ICF to inform, corroborate and add depth to the country reports produced by ICF in its production of the Mapping Report.



