

Annex C. Forms of social and solidarity economy entities

Associations

An **association** or **voluntary organisation** is a self-governing, independently constituted body of people who have joined voluntarily to take action for the benefit of the community. They are not established for financial gain (OECD, 2003^[1]). When implementing specific statutory laws on associations, policy makers should take into account that associations are characterised by a non-distribution constraint, prohibiting associations from distributing profit (or the liquidation surplus) to its members. Generally speaking, associations are made up for a very heterogeneous group of entities, ranging from sport groups and local communities to large service providers (Gaiger, 2015^[2]). This heterogeneity combined with a strong focus on associations as the SSE go-to legal form could cause difficulties regarding the recognition of other SSE entities and would make the implementation of suitable mandatory governance regulations quite difficult.

In certain countries, there are ongoing debates regarding whether associations can undertake economic/market-based activities. For example, under the former Belgian Law on Associations and Foundations (until 2019), Belgian associations were not allowed to primarily undertake economic activities. In some countries (e.g. Denmark, Finland, Spain and Sweden), associations tend to be more limited and are seen as organisations for cultural or leisure activities with no market-based activities. In these countries, the use of cooperatives is preferred when economic activities are undertaken. In other countries (e.g. Belgium, France, Luxembourg), associations are, due to historical reasons, the primary actors in the SSE ecosystem with a specific legal and tax regime in case they develop market-based activities.

Cooperatives

A **cooperative** is an autonomous association of persons and/or legal entities united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise (International Cooperative Alliance, 1995^[3]; ILO, 2018^[4]). Cooperatives play an important role in empowering the economic strength of workers in local communities and reducing income inequality by offering an alternative for “capital” companies. Democratic governance mechanisms distinguish cooperatives from more traditional companies (private, family-owned or shareholder). These mechanisms include the limitation of the amount of shares one shareholder can have, voluntary membership, and the one-person-one vote principle that is often adopted. Furthermore, cooperatives can offer a solid alternative to informal groups and organisations with economic ambitions.

Statutory law on cooperatives is recommended for all policy makers wanting to strengthen the SSE. However, policy makers need to bear in mind that some countries with a more liberal definition of the cooperative, experienced the use of cooperatives as a flex form for capital companies. To prevent this risk of degeneration of the cooperative, it is advised to refer to the cooperative principles established by the International Cooperative Alliance (1995^[3]), that include: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; co-operation among cooperatives; and, concern for the community.

Statutory laws on cooperatives should keep an open approach, making sure the different types of cooperatives fall within the scope of the definition. A cooperative includes one or more kinds of users or stakeholders, which enables to distinguish four main types of cooperatives, namely the producer cooperatives, worker cooperatives, consumer/user cooperatives, and multi-stakeholder cooperatives (ILO, 2018^[4]). Alternatively, policy makers could consider installing a “general” law applicable to all cooperative types and complement it with specific additional laws applicable only to certain types of cooperatives. This customised approach can be useful to implement other tailored supporting policy and legal measures (e.g. workers cooperatives might have other needs than agricultural cooperatives). For example, Korea has specific legislation for different types of cooperatives such as agricultural cooperatives, fishery cooperatives, credit unions, and consumer cooperatives as well as a complementing Framework Act on Cooperatives established in 2012. Similarly, Italy (Law 381/1991 on A-type and B-type social cooperatives), Greece (Law 4430/2016 on Social Cooperatives) and Poland (Law on Social Cooperatives (2006)) also regulate social cooperatives as a distinct type of cooperative.

Customised cooperative legislation may empower newly emerging types of cooperatives. This could be done by introducing labels or qualifications that are exclusively reserved for specific types of cooperatives.

- In 1999, Spain introduced the Social Initiative Cooperatives within the general framework of cooperatives. It was introduced to uphold “the social demands of solidarity and the new activities carried out for resolving the unemployment problems” (preface of Law 27/1999 on Cooperatives).
- In India, a new generation of cooperatives, known as Producer Companies, were introduced through adaptation of the Indian Companies Act of 1956 (Singh, Sukhpal and Singh, 2013^[5]). Traditional cooperatives often had a tarnished reputation, not least due to co-optation by political parties. This new legal form aimed to allow collectivities to avoid the reputational baggage of “old cooperatives” and give them greater legitimacy and autonomy in business and financial circles (Singh, Sukhpal and Singh, 2013^[5]; UNSRID, 2016^[6]). In the near future, adaption of existing cooperative legislation might be needed to accommodate for the specific features and needs of platform cooperatives.
- In the United States, unlike some other countries, cooperatives are more often composed of producers (producer-side cooperatives) than of consumers (consumer cooperatives) (Lane, 2012^[7]). One common aim of producer-side cooperatives is to assist workers and producers of goods and services exert control over the prices of those goods and services. To permit groups of producers exert price control, exceptions for producer-side cooperatives had to be made in the federal antitrust laws of the United States. Federal tax exemptions and benefits are also available to qualifying cooperatives. In the United States, state law dictates how cooperatives are formed and operated. These laws, however, can take different approaches to formation. Some state laws make distinctions based on whether the cooperatives are profit seeking, others do not.

Foundations/ trusts with a charitable or public-benefit purpose

Foundations are philanthropic organisations, organised and operated primarily as a permanent collection of endowed funds from an individual or a group of people, the earnings of which are used for the long-term benefit of a defined geographical community or non-profit sector activity (Noya and Clarence, 2007^[8]). Foundations operate as grant-making institutions, and also as providers of social, health and cultural services. They thus provide a significant link between the private and non-profit sectors, acting as a recipient of private capital and a funder of non-profit organisations. Foundations are tax-exempt, incorporated, not-for-profit and organisationally autonomous (Noya and Clarence, 2007^[8]).

The need for specific statutory laws on foundations/charities is less pertinent. Depending on the legal traditions of countries, associations and foundations are sometimes viewed interchangeably as to

their activities in the SSE. In most countries, associations will be the main organisational form for non-profit organisations. Exception to this can be found in the Netherlands, where most SSE entities are organised as foundations. Furthermore, a foundation can be a controlling shareholder of another SSE entity, and by holding a vast majority of shares safeguard the social the mission of the controlled entity. In some jurisdictions, foundations are also used for estate planning or for holding and managing assets, which might undermine the credibility of foundations as organisation of SSE (Thomsen and Hansmann, 2013^[9]). Legislation on foundations should therefore involve strict provisions on the possibility of a “midstream” change of purpose of the foundation. A balance needs to be found between not allowing to easily change the purpose of the foundation, but the purpose of a foundation should be able to evolve over time.

Foundations neither have members, nor a general assembly, resulting in a strong board of directors. Often, there is a perpetual board of directors since the board has the competence to nominate new directors. For this reason, foundations are found to be less democratic than associations. Policy makers should provide legal safeguards to ensure good governance, enable control mechanisms regarding the board of directors and install the possibility for judicial intervention to replace members of board of directors in case of abuse, given the absence of a general assembly or members.

Mutual societies

A **mutual society** is an organisation owned and managed by its members and that serves the interests of its members. Mutual societies can take the form of self-help groups, friendly societies and co-operatives. Mutual societies exclude shareholding as they bring together members who seek to provide a shared service from which they all benefit. Mutual societies show similarities with insurance companies. An important aspect is the trust that members have in the mutual benefit societies. In some countries, abuses in the past have led to strict regulation on mutual benefit societies. In many countries, mutual benefit societies operate as cooperatives or associations (Jenkins, 2021^[10]).

Legal frameworks on mutual societies vary among countries. While various countries do not have a specific definition or legal framework for mutual societies (e.g. Brazil, Canada, India, Mexico, and the United States), other countries have specific regulations that recognise an association or cooperative as a mutual society. The lack of a specific legal framework on mutual societies is usually caused by an overlap with citizen or consumer cooperatives such as insurance cooperatives, pension funds, and credit unions, or, to a smaller extent, associations. For example, without having a specific legal framework, mutual societies in Mexico exist and are defined as a group of people that build “a fund of financial assistance” (Conde Bonfil, 2015^[11]).

Some countries such as Belgium and France that have adopted legal frameworks on mutual societies generally orient these towards entities that are active in very specific areas, most commonly the insurance and health sectors (Noya and Clarence, 2007^[8]). Belgium and Luxembourg, for example, have laws on health insurance mutual societies.¹ These legal frameworks are characterised by a high degree of strict regulation with restrictions on governance and transparency, particularly when mutual societies play a role in the welfare state.

Social enterprises

A **social enterprise** is an entity, which trades goods and services, that fulfils a societal objective and whose main purpose is not the maximisation of profit for the owners but its reinvestment for the continued attainment of its societal goals (OECD, 2022^[12]). It has the capacity for bringing innovative solutions to social problems, among which are social exclusion and unemployment (OECD, 1999^[13]). The OECD definition considers that social enterprises emerge from the social economy and extend the scope of the social economy beyond its traditional forms. The European Commission has defined a social enterprise

as “an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities” (European Commission, 2011^[14]).

Given this hybrid nature of social enterprises, compliance with the three core elements of SSE entities (entrepreneurial approach, social purpose, inclusive governance) can be a challenge. Countries have adopted a number of approaches designed to ensure that social enterprises act in accordance with the SSE core principles and values. Still, the implementation of statutory laws on social enterprises can be a sensitive topic, specifically in the perception of the “traditional” SSE entities (Ferreira and Almeida, 2021^[15]). In Portugal this sensitivity finally led to the exclusion of social enterprises from the framework law (Ferreira, 2015^[16]).

Increasingly, countries are recognising the contribution social enterprises make to economic and inclusive growth and sustainable development. Some form of legislation on social enterprises exists in 16 EU countries, and explicit policies or strategies to boost their development exist in the other 11 EU countries (OECD, 2022^[17]). It is advised for policy makers to consider providing a specific legal form for social enterprises, as the demand for these legal forms is detected in almost every country (Ferreira and Almeida, 2021^[15]; OECD, 2022^[17]). Previous work of the OECD identified that different trends and options coexist to regulate the social enterprises. The OECD Manual on Designing Legal Frameworks for Social Enterprises provides a comprehensive overview and guidance on the different approaches to social enterprise legislations and the pros and cons of each option (OECD, 2022^[17]).

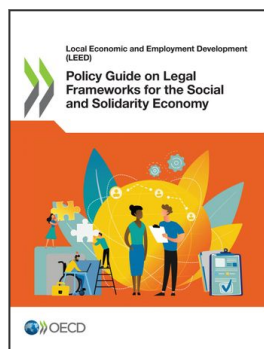
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Note

¹ Law of 6th of August 1990 on mutual societies and national unions of mutual societies (Belgium); Law of 1st of August 2019 about mutual societies (Luxembourg).



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