

1

Why a Manual on Designing legal frameworks for social enterprises?

There is growing legal recognition of social enterprises across the globe. Over the past two decades, 16 EU countries (e.g. France, Denmark, Italy, Luxembourg, and Spain) have adopted some form of legislation on social enterprises to identify them as such. Although the other 11 EU countries have not done so they have designed explicit policies or strategies to boost their expansion (European Commission, 2020^[1]).

Social enterprises are active in a broad range of sectors, offering innovative solutions to pressing challenges. For example social enterprises help to address: demographic changes linked to ageing populations (e.g. Italy, Luxembourg); climate change; regional development, and revitalisation of remote communities (e.g. Slovakia, Spain); care activities, education, community development, environment and energy, social housing (e.g. France), migrant integration (e.g. France, Spain). They are also active in work integration activities, (WISEs, work integration social enterprises) (European Commission, 2020^[1]). The ongoing recovery from the COVID-19 pandemic provides an opportunity to leverage on the potential of the social economy, including in collaboration with public and private partners, to further local economic development and support more sustainable and inclusive economies and societies (OECD, 2020^[2]).

Legal frameworks have a significant impact on the visibility, recognition, identity and organisation of social enterprises and act as important enablers of their development. The primary and most common justification for designing legal frameworks specific to social enterprises is the inadequacy of most existing legal frameworks to grasp the specific features of business models that they use which in turn, can act as a barrier to their development. Business models used by social enterprises can be generally characterised by i) the priority pursuit of community or general interest, ii) a continuous economic activity and an entrepreneurial dimension, iii) asset locks that ensure assets, including profits generated by the activities, are partly retained within the organisation and not fully distributed to capital owners, and iv) inclusive governance models.

However, existing legislation on other legal entities captured in the broader notion of the social economy are not always well equipped to reflect these models. For example, legislation regulating cooperatives can prohibit them from addressing the needs of non-members, i.e. pursuing a general interest. Legislation on associations often prevents them from engaging in market activities. Legislation regulating limited liability companies may prevent them from explicitly pursuing a social purpose and limiting the distribution of profits. Likewise, existing legal statuses in some countries suitable for certain categories of social enterprises, e.g. WISEs, may be too restrictive regarding the social needs that these organisations are meant to pursue.

In practice, social enterprises use various legal forms and legal statuses that reflect their diverse entrepreneurial approaches. Some of these legal forms and statuses have been designed specifically to recognise social enterprises and support their development (e.g. France, Luxembourg or Slovenia). Social

enterprises can also take legal forms and statuses which have not been designed specifically for them, such as WISEs' legal statuses or legal forms such as associations or cooperatives.

Legislation which specifically recognises and regulates social enterprises (Box 1.1) gives them a clear, distinct and protected legal identity, which might have positive impacts (Fici, 2017^[3]; Fici, 2015^[4]; OECD/EUCLID, 2020^[5]) namely: i) clearer boundaries with other entities or more general concepts (e.g. SME's and traditional entities or enterprises of the social economy; corporate social responsibility); ii) legal identification and recognition that could facilitate the collection of more reliable official statistics and data ; iii) the improvement of the conditions in which they operate through targeted public support schemes and specific public policies, such as tax incentives, public procurement and financial and non-financial assistance and benefits.

Box 1.1. What is referred to by “Legal frameworks” in this Manual?

In the context of this Manual, the term “legal framework” or “legal framework specific to social enterprises” is used to refer to legislation adopted specifically to recognise social enterprises through suitable legal forms or legal statuses. These legal texts may include provisions to:

- define the specific features of the legal form or legal status created by the legal framework, as well as the list of criteria an entity must follow to be recognised under this legal framework,
- clarify the possible financial and fiscal benefits attached to this new legal form or status,
- organise the evaluation of the legal framework on a regular basis, possibly indicating the actors to be involved,
- in some cases, define the social (and solidarity) economy or the third sector as a broader phenomenon in which social enterprise is recognised as one dynamic.

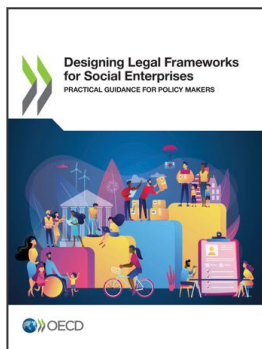
Legal frameworks specific to social enterprises introduce legal forms or legal statuses:

- A legal form is the foundational legal structure adopted by an organisation, e.g. association, cooperative or limited liability company (European Social Enterprise Law Association, 2015^[6]). Legislations that define legal forms establish specific purposes and set specific rules on the ownership, governance structure as well as distribution of profit (e.g. social cooperatives in Italy and in Poland);
- A legal status can be adopted by a number of legal forms based on the compliance with certain criteria such as the primacy of social purpose, a stable and continuous production of goods and services or limited profit distribution (OECD, 1999^[7]). A legal status has an impact on the treatment, e.g. fiscal, of those legal forms (European Social Enterprise Law Association, 2015^[6]). Several countries have adopted such legal statuses, like Denmark, Luxembourg and Slovenia.

References

European Commission (2020), *Social enterprises and their ecosystems in Europe. Comparative synthesis report*, Publications Office of the European Union, <https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8274>. ^[1]

- European Social Enterprise Law Association (2015), *Social Enterprise in Europe. Developing Legal Systems which Support Social Enterprise Growth*, ESELA. [6]
- Fici, A. (2017), *A European Statute for Social and Solidarity-Based Enterprise*, European Union. [3]
- Fici, A. (2015), "Recognition and Legal Forms of Social Enterprise in Europe: A Critical Analysis from a Comparative Law Perspective", *Euricse Working Papers*, Vol. 82/15. [4]
- OECD (2020), *Social economy and the COVID-19 crisis: current and future roles*, OECD Publishing. [2]
- OECD (1999), *Social enterprises*, OECD Publishing. [7]
- OECD/EUCLID (2020), *Webinar: OECD Global Action to Promote the Social and Solidarity Economy*. [5]



From:

Designing Legal Frameworks for Social Enterprises

Practical Guidance for Policy Makers

Access the complete publication at:

<https://doi.org/10.1787/172b60b2-en>

Please cite this chapter as:

OECD (2022), “Why a Manual on Designing legal frameworks for social enterprises?”, in *Designing Legal Frameworks for Social Enterprises: Practical Guidance for Policy Makers*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/b9b8651d-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.