
Statute for social and solidarity- based enterprises

European Added Value
Assessment

Accompanying the
European Parliament's
legislative own-initiative
report (Rapporteur:
Jiří Maštálka)

STUDY

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Study

European added value assessment of a statute for social and solidarity-based enterprises

In accordance with Article 225 of the Treaty on the Functioning of the European Union (TFEU), the European Parliament has a right to ask the European Commission to take legislative action in a particular area. Such requests are based on a legislative initiative report by the parliamentary committee responsible. In January 2016, the Conference of Presidents of the European Parliament authorised its Committee on Legal Affairs (JURI) to draft a legislative initiative report on a statute for social and solidarity-based enterprises. In September 2016 the Conference of Presidents authorised the Committee on Employment and Social Affairs (EMPL) and the Committee on Legal Affairs (JURI) to be associated under Rule 54.

All legislative initiative reports must automatically be accompanied by a detailed **European added value assessment** (EAVA). Accordingly, the JURI Committee asked the Directorate-General for Parliamentary Research Services (EPRS) to prepare an EAVA to support the legislative initiative report on a **statute for social and solidarity-based enterprises**, 2016/2237(INL). The rapporteurs are, for JURI, Jiří Maštálka (GUE/NGL, Czech Republic), and, for EMPL, Heinz K. Becker (EPP, Austria).

The purpose of a European added value assessment is to support a legislative initiative of the European Parliament by providing scientifically-based evaluation and assessment of the potential added value of taking legislative action at EU level. In accordance with Article 10 of the Interinstitutional Agreement on Better Law-Making of 13 April 2016, the European Commission should respond to a Parliament request for proposals for Union acts by adopting a specific communication. If the Commission decides not to submit a proposal, it should inform the Parliament of the detailed reasons therefore, including a response to the analysis on the potential European added value of the requested measure.

Abstract

Social enterprises combine societal goals with entrepreneurial spirit. These organisations focus on achieving wider social, environmental or community objectives. There is currently no specific European legal framework to help social enterprises to benefit from the internal market. Against this background, this European added value assessment identifies the challenges in the existing national legal frameworks regarding social enterprises. It argues that action at EU level would generate economic and social added value. Moreover, it outlines potential legislative measures that could be taken at EU level, and that could generate European added value through simplification and a coordinated approach in this area.

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List of abbreviations and acronyms

CJEU	Court of Justice of the European Union
EaSI	Employment and Social Innovation Programme
EAVA	European added value assessment
EFSI	European Fund for Strategic Investments
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
EuSEF	European social entrepreneurship funds
OECD	Organisation for Economic Cooperation and Development
SCIC	<i>Société coopérative d'intérêt collectif</i> - cooperative of collective interest
SE	Social enterprise
SGEI	Services of general economic interest
SIA	Social impact accelerator
TFEU	Treaty on the Functioning of the European Union

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Executive summary

The purpose of this European added value assessment (EAVA) is to support the legislative initiative of the European Parliament on a **statute for social and solidarity-based enterprises**,¹ by providing a scientifically based evaluation and assessment of the potential added value of taking legislative action at EU level.² This EAVA focuses on and limits itself to an analysis and justification of possible action at EU level on social enterprises (SEs) primarily from the point of view of company law.

The assessment outlines the current regulatory context related to SEs (Chapter 1); identifies current regulatory problems (Chapter 2), then it assesses the potential socio-economic benefits of possible EU action (Chapter 3) and concludes by defining and making a comparative assessment of possible policy options to address the identified regulatory gaps (Chapter 4). The substantive scope of the EAVA is limited to the issues related to company law.

Despite the difficulty of collecting and comparing reliable data, it is estimated that the number of SEs in the EU is constantly rising and is currently at **between 130 000 and 250 000**.³ Also, there are more than 2.8 million entities and enterprises in the EU's social economy sector.⁴ Despite their diversity, social enterprises mainly operate in the areas of work integration, personal social services, local development of disadvantaged areas and environmental protection, sports, arts, and culture. They are therefore of the utmost importance for the EU economy. Their economic dynamism contrasts with the lack of visibility and awareness and the seeming underperformance of national policies targeting SEs. These and other challenges faced by SEs can lead to difficulties in accessing private finance and public markets for SEs, translating into difficulties for SEs in scaling up.

The study argues that SEs that are willing to scale up in the internal market could benefit from an enabling EU legal framework. There are three main reasons why the EU should adopt a supportive legal framework for SEs. Firstly, there are convincing economic benefits of adopting such a measure, as SEs could benefit from access to a larger market, reduced transaction and enforcement costs, and increased visibility. Secondly, there are social benefits, in particular the increase in consumer confidence in goods and services

¹ [Statute for social and solidarity-based enterprises](#), Legislative Observatory (OEIL), European Parliament.

² In accordance with Article 10 of the Interinstitutional Agreement on Better Law-Making, the European Commission will reply to the request for proposals for Union acts made by the European Parliament by adopting a specific communication. If the Commission decides not to submit a proposal it should inform the European Parliament of detailed reasons for its decision, including a response to the analysis concerning European added value.

³ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

⁴ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International – Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017.

produced by SEs. Finally, an EU legal framework for SEs would establish a level playing-field for SEs willing to expand within the internal market.

Considering the current lack of harmonisation, with the resulting economic and social disadvantages for citizens and social businesses, it is recommended that action at EU level be envisaged.

To address the current lack of harmonisation, this study looks at four policy options:

- Policy option 1: Baseline scenario, maintaining the status quo
- Policy option 2: Minimum harmonisation
- Policy option 3: Certification / label system
- Policy option 4: Supranational legal form

Based on the review of the qualitative cost-benefit analysis and a comparative qualitative assessment of policy options, it is suggested that such an EU approach could take the form a certification/label system. This EU certification/label system would give SEs the best balance between legal certainty and flexibility. In addition, it would allow SEs to distinguish themselves from other businesses, without having to register in each Member State to have their social condition recognised, while allowing them to choose the legal form under which they prefer to conduct their business, provided they respect certain basic criteria.

Methodology

This analysis was carried out internally by the Directorate-General for Parliamentary Research Services (DG EPRS) European Added-Value Unit (EAVA) of the European Parliament.

The study is based on:

- a public [hearing](#) organised in March 2017 by the Legal Affairs (JURI) and Employment and Social Affairs (EMPL) Committees of the European Parliament with various experts;
- data publicly available.

Even if some Member States have put a great deal of work in recent years into providing reliable data on various social economy groups,⁵ the statistical information provided in this study should be treated with caution. Indeed, the available data is not always comparable. Sometimes, the scope of each group considered in the social economy field is not the same in the different Member States or even in the same country over a long period. The methodology used to account for variables in each system of statistics has not always been homogeneous or consistently applied. It was very difficult to find countries with reliable and comparable data (i.e. covering the same statistical group, for same length of time, with the same variables).

Cross-country empirical research is also quite limited and therefore,⁶ the analysis provided by this study relies mainly on qualitative considerations.

⁵ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International – Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017.

⁶ [Global Entrepreneurship Monitor 2015 to 2016: Special Report on Social Entrepreneurship](#), Global Entrepreneurship Research Association, 2016; and N. Bosma, T. Schøtt, S. Terjesen, P. Kew, 'Comparative International Entrepreneurship: A Review and Research Agenda', *Journal of Management*, Vol. 42, No 1, 2016, pp. 299–344.

1. Introduction

Key findings

(1) Social enterprises make a significant contribution to the EU economy. The number of entities is growing and is currently estimated to be in between 130 000 and 250 000 in the EU. The sector employed 14 million paid workers in 2015.

(2) The regulatory framework is fragmented as proven by the significant differences across Member States in terms of activity profile, legal forms, fiscal treatment, business models and support structures.

(3) In recent years, more than 200 documents at EU level have underlined the importance of creating a level playing field for SEs. Nevertheless, progress has been slow and none of the initiatives has produced the expected results, especially for the SEs willing to scale up in the internal market.

The social economy is a very diverse and growing sector.⁷ Its diversity is reflected in the terminology used, receiving different names in different countries (third-sector, not-for-profit sector, solidarity economy, etc.). There is however a normative definition of the social economy that has been widely adopted in academic and policy spheres, stating that the social economy 'includes all economic activities conducted by enterprises, primarily cooperatives, associations and mutual benefit societies, whose ethics convey the following principles:

- placing services to its members or to the community ahead of profit;
- autonomous management;
- a democratic decision-making process;
- the primacy of people and work over capital in the distribution of revenues'.⁸

In addition, no commonly agreed definition exists at international level of what constitutes a social enterprise (SE). Defining SE is itself problematic and definitions of SE vary greatly within and between countries.⁹

However, a gradual convergence of understanding has occurred in the European Union (EU) with the development of a complex and widely accepted definition, elaborated

⁷ S. Terjesen, J. Lepoutre, R. Justo and N. Bosma, *Global Entrepreneurship Monitor Report on Social Entrepreneurship*, 2011.

⁸ J. Defourny and P. Delveterre, [The Social Economy: The worldwide making of a third sector](#), Centre d'Economie Sociale, 1999, p.16.

⁹ J. Kerlin, 'A comparative analysis of the global emergence of social enterprise', *Voluntas*, Vol. 21, No. 2, 2010, pp. 162-179.

within the EMES European research network.¹⁰ The definition is based on nine criteria for identifying social enterprises, grouped into three building blocks:¹¹

- **economic and business characteristics:**
 - continuous activity producing goods and services;
 - a significant level of economic risk;
 - a minimum amount of paid work;
- **social characteristics:**
 - an explicit aim to benefit the community;
 - an initiative launched by a group of citizens or civil society organisations;
 - limited profit distribution;
- **participative governance characteristics:**
 - a high degree of autonomy;
 - decision-making power not based on capital ownership;
 - a participatory nature, (the people benefiting from the goods and services manufactured/provided within the SE can effectively take part in economic activities).

Drawing upon that definition, the European Commission has developed an operational definition in its communication on the Social Business Initiative (SBI):¹² 'a social enterprise is 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'.

In addition, for the purpose of [Regulation \(EU\) No 1296/2013](#) and regardless of its legal form a 'social enterprise' is defined as an undertaking, that:

- 'in accordance with its articles of association, statutes or with any other legal document by which it is established, has as its primary objective the achievement of measurable, positive social impacts rather than generating profit for its owners, members and shareholders, and which:
 - provides services or goods which generate a social return and/or
 - employs a method of production of goods or services that embodies its social objective;
- uses its profits first and foremost to achieve its primary objective and has predefined procedures and rules covering any distribution of profits to shareholders and owners that ensure that such distribution does not undermine the primary objective; and

¹⁰ [EMES](#) European research network owes its name to its first research programme, on 'the emergence of social enterprises in Europe' (1996-2000).

¹¹ J. Defourny and M. Nyssens, [The EMES approach of social enterprise in a comparative perspective](#), WP No 12/3, 2012.

¹² Communication from the Commission on the Social Business Initiative, [COM\(2011\) 682](#), 25.10.2011.

- is managed in an entrepreneurial, accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities'.¹³

The European Parliament, in its [resolution](#) of 10 September 2015 on social entrepreneurship and social innovation in combating unemployment, noted that 'social and solidarity-based economy enterprises, which do not necessarily have to be non-profit organisations, are enterprises whose purpose is to achieve their social goal, which may be to create jobs for vulnerable groups, provide services for their members, or more generally create a positive social and environmental impact, and which reinvest their profits primarily in order to achieve those objectives; points out that social and solidarity-based economy enterprises are characterised by their commitment to upholding the following values:

- the primacy of individual and social goals over the interests of capital;
- democratic governance by members;
- the conjunction of the interests of members and users with the general interest;
- the safeguarding and application of the principles of solidarity and responsibility;
- the reinvestment of surplus funds in long-term development objectives, or in the provision of services of interest to members or of services of general interest;
- voluntary and open membership;
- autonomous management independent of the public authorities'.

All of the above definitions bring together the features shared by all SEs regardless of the Member State of incorporation, and encompass for-profit and non-for-profit organisations. It is worth highlighting that, as it will be examined below, SEs can adopt multiple legal forms, provided that they comply with some requirements. As the above definitions are compatible, the SBI definition will be retained for the purpose of this study.¹⁴ It must be clarified as well that even if the title of this study refers to 'social and solidarity-based enterprises', the substance of the subject matter under consideration is the same.

¹³ Article 2 of [Regulation \(EU\) No 1296/2013](#) of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ('EaSI') and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion.

¹⁴ For a more in-depth analysis of the definition, see: A. Fici, [A European Statute for Social and Solidarity-Based Enterprise](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

1.1. The significant role of SEs in the EU economy

The number of SEs is continuously growing, together with their contribution to the EU economy. The currently available data suggests that there are **between 130 000 and 250 000 SEs in the EU**.¹⁵

Taking the social economy as a whole, there are more than 2.8 million entities and enterprises¹⁶ and in 2015 the sector employed over **14 million paid workers**, which is about 6.5 % of the EU's active population.¹⁷ In addition, in 2009, one in four companies created in the EU belonged to the social economy.¹⁸

SEs in the EU carry out activities in various areas such as the social and economic integration of underprivileged categories of people or people in exclusion situations, social and community services, land-based industries and the environment, cultural, tourism, sport and recreational activities, etc. As SEs cut across standard statistical classifications of economic activity such as NACE,¹⁹ classifying the activities that a social enterprise may or could engage in to deliver its social mission is complicated. However, some statistics are available for the entire social economy sector.

Table 1 – Main sectors of activity in the EU social economy

Social economy main sectors of economic activities in the EU	%
Employment and Training	14.88
Environment	14.52
Education	14.52
Economic, Social and Community Development	14.34
Culture, the Arts and Recreation	7.08
Health	6.90
Business Associations	2.00
Law, Advocacy and Politics	1.63
Other	4.72
Social Services	16.70
Total	100

Source: [Social economy](#) study for the IMCO Committee, p. 58, 2016.

¹⁵ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

¹⁶ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International - Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017.

¹⁷ *ibid.*

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Social Business Initiative, [COM\(2011\) 682](#), 25.10.2011.

¹⁹ NACE refers to the statistical classification of economic activities in the EU. The acronym derives from the French *Nomenclature statistique des activités économiques dans la Communauté européenne*.

Not only do SEs represent multiple economic sectors but they also differ enormously in terms of average **age and size**. The age of SEs in the EU varies greatly. For example, more than 70 % of SEs in Belgium are more than 10 years old, whereas that is the case for only a third in Spain.

Table 2 – Average age of SEs in selected EU Member States

	Year	≤ 4 years old	5-10 years old	11-20 years old
Belgium ²⁰	2013	10 %	18 %	72 %
Germany ²¹	2013	26 %	26 %	48 %
Hungary ²²	2012	20 %	20 %	60 %
Sweden ²³	2010	27 %	29 %	44 %
Spain ²⁴	2010	11 %	24 %	66 %
United Kingdom ²⁵	2015	30 %	34 %	36 %

Source: data compiled by the author.

Despite a wide range of ages, a converging trend regarding the size is emerging, since the vast majority of SEs are small and medium-sized enterprises (SMEs).

Table 3 – Average size of SEs in selected EU Member States

Member States	Year	Micro company: staff headcount <10	Small company: <50	Medium company: <250	Large company: >250
Hungary ²⁶	2012	52 %	28 %	17 %	3 %
Romania ²⁷	2012	61 %	30 %	9 %	0 %
Spain ²⁸	2010	33 %	27 %	20 %	20 %
United Kingdom ²⁹	2010	5 %	34 %	8 %	18 %

Source: data compiled by the author.

²⁰ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.2.

²¹ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.8.

²² [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.11.

²³ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.27.

²⁴ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.23.

²⁵ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.30.

²⁶ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.11.

²⁷ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.17.

²⁸ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.23.

²⁹ [The State of Social Entrepreneurship - Key Facts and Figures](#), SEFORIS, 2014, p.30.

Regardless of the impact of the recent economic crisis,³⁰ there has undoubtedly been an increase in the role taken on by SEs in the EU economy. Furthermore, SEs have proven more resilient to economic downturns.³¹

In addition to job creation and economic growth, the literature often highlights many of the contributions SEs make when it comes to achieving important goals for the community, such as **local economic development, increased social inclusion, and a reduction in the gender pay gap**.³² The European institutions³³ have also on a number of occasions underlined the impact of SEs on the EU economy and their contribution towards:

- high quality, inclusive and non-exportable job creation;
- stronger social, economic and regional cohesion;
- an increasingly territorial and community-based economy;
- gender equality;
- social protection and high-quality services of general interest;
- sustainable development, energy transition and environmental protection.

1.2. Regulatory framework

While Member States remain the main actors regulating SEs, the EU is progressively creating a regulatory framework to support the growth of SEs in the internal market.

1.2.1. Diverse national approaches

The social enterprise dynamic is present in all the Member States.³⁴ However, at Member State level, various regulatory frameworks exist, ranging from well-developed policy initiatives to non-formal frameworks targeted specifically at social entrepreneurship. As a result, there are significant differences across countries in terms of the activity profile of social enterprises, legal forms, tax incentives, business models and support structures.

³⁰ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International – Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017, p. 60.

³¹ S. Barco Serrano, G. Hahn and G. Pastorelli, [A better future - Results of the network for better future of social economy](#), Ministry of Regional Development of Poland, Department for European Social Fund Management, 2012.

³² Including E. Bidet and R. Spear, [The Role of Social Enterprise in European Labour Markets](#), EMES Network Working Paper No 03/10, 2003; M. Evans and S. Syrett, 'Generating Social Capital?', *The Social Economy and Local Economic Development, European Urban and Regional Studies*, Vol. 14 (1), 2007, pp. 55-74.

³³ [Social enterprises and the social economy going forward – A call for action from the Commission Expert Group on Social Entrepreneurship \(GECES\)](#), Commission Expert Group on Social Entrepreneurship (GECES), 2016; European Parliament resolution of 14 December 2006 on a [European social model for the future](#); European Parliament resolution of 19 February 2009 [on Social Economy](#).

³⁴ C. Borzaga and G. Galera, [Social Enterprises and their Eco-systems: Developments in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2016, p.14.

1.2.1.1. Different legal forms

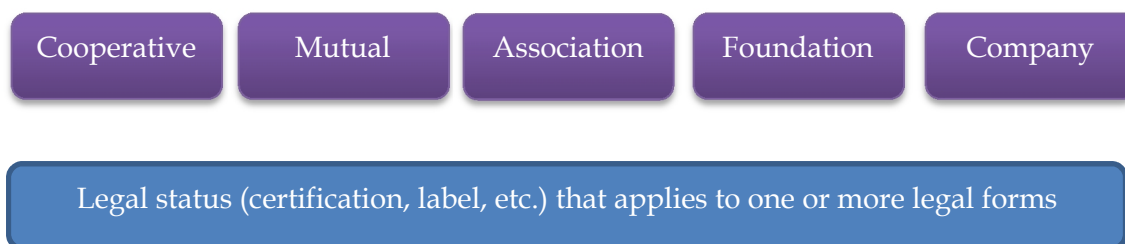
In terms of legal form, there is a great variety among Member States in the available forms under which SEs can register, including cooperatives, mutual societies, associations and foundations. The increasing proliferation of various company law forms available in national jurisdictions makes it increasingly difficult to navigate this complex landscape.

In addition, the development of social enterprise does not necessarily require the adoption of specific legal forms.

In a minority of Member States (10), there is no specific national recognition. The existing legal forms such as associations, foundations, or cooperatives can however have SE purpose. In these cases, the vast majority of SEs tend to use and adapt existing legal forms that are not specifically designed for SE and that enjoy no special legal recognition as such.

Only 18 Member States have some form of legislation that recognises and regulates social enterprise activity.³⁵ The panorama is varied. Here, an important distinction needs to be drawn between legal form, which relates to the fundamental legal structure of an organisation, and legal status, which concerns a number of legal forms with certain characteristics and affects the treatment of those legal forms. Specific recognition can take two main different forms:

- **social enterprise legal forms**, which are exclusively designed for SEs through the tailoring or adaptation of existing legal forms. National laws provide a specific legal form of incorporation for SEs, which is distinct from all other legal forms and constitutes a special sub-type (or modified type) of either a company or a cooperative. Social cooperatives in Italy, *sociétés coopératives d'intérêt collectif* (SCICs) in France, community interest companies (CIC) in the UK, are the most prominent examples of this sort of legislation;
- **social enterprise legal statuses**, which can be obtained via a number of different legal forms, and which comply with a number of pre-defined criteria.



Laws that recognise and establish the SE as a particular category identify a specific category of entities by some common requirements. Under these laws, an organisation

³⁵ A. Fici, [A European Statute for Social and Solidarity-Based Enterprise](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2017.

can qualify (and disqualify) as an SE if it complies with certain requirements, and the term 'SE' is, therefore, a legal qualification (or legal status). Hence this category may comprise entities incorporated under various legal forms (company, cooperative, association, foundation, etc.), provided they meet the relevant legal requirements. This sort of legislation can be found in many Member States, such as Belgium (social purpose company) or Denmark (registered social enterprise).

Some other countries (e.g. Slovenia) have created new types of legal form that allow traditional non-profit organisations to undertake economic activity.

Table 4 – Different legal forms of social enterprises

Member States	Legal forms of a social enterprise	Special qualification with different legal forms
Austria	No information available	No information available
Belgium		Société à finalité sociale – Social purpose company (1995)
Bulgaria	<i>Draft for specific law on the social economy at national level (2016)</i>	
Croatia	Social cooperative law of 11 March 2011 No 764 (2011)	
Cyprus		
Czech republic	Act No 90/2012 on social cooperatives (2012)	
Denmark		Law 711/2014 on registered social enterprises (2014)
Estonia	No information available	No information available
Finland	Law 1351/2003 on social enterprises (2003)	
France	Entreprise solidaire d'utilité sociale (2014) Société coopérative d'intérêt collectif – Cooperative of collective interest (2001)	ESUS accreditation, solidarity enterprise of social utility
Germany	No information available	No information available
Greece	Law 4019/2011 on the social economy and social enterprises (2011) Law 2716/1999 on social cooperatives (1999)	Law 4430/2016 on the social and solidarity economy (2016)
Hungary	Law No X-2006 on social cooperatives (2006)	
Ireland	No information available	No information available
Italy	Law 381/1991 on social cooperatives (1991)	Law 106/2016 on reform of the third sector (2016)
Latvia		<i>Law on social enterprises (under development)</i>

Lithuania		Law IX-2251/2004 on social enterprises (2004)
Luxembourg		Social impact societies (2016)
Malta	<i>Draft social enterprise act, since June 2016</i>	<i>Draft social enterprise act, since June 2015</i>
Netherlands	No information available	No information available
Poland	Social cooperatives (2006)	
Portugal	Law 51/96 on social solidarity cooperatives (1998)	Law 30/2013, the basic law of the social economy (2013)
Romania		Law 219/15 on the Social Economy - Social enterprises (2015)
Slovakia	Act No 448/2008 on social services	Act No 448/2008 on social services
Slovenia	Act 20/2011 on social entrepreneurship	
Spain	Royal legislative decree 1/2013 on special employment centres (2013) Law 44/2007 on integration enterprises (2007) Law 27/1999 on social initiative cooperatives (1999) Law 13/1982 on sheltered employment centres (1982)	Law 5/2011 on social economy (2011)
Sweden	No information available	No information available
United Kingdom	Community interest company (2005)	

Source: data compiled by the author

As social enterprises take a variety of legal forms in each country studied, providing a precise estimation of the size of the various social enterprise types in each Member State is rather difficult. Even if significant steps forward in the collection of systematic data on SEs have been made in the framework of the EU-funded Third Sector Impact project (TSI),³⁶ research efforts have so far been unable to quantify the different legal forms that compose the social enterprise universe.³⁷

1.2.1.2. Policy framework

A large number of Member States do not have an express policy commitment to grow SEs and so there is often an absence of incentives for SE development. Where such a policy frameworks exist, their scope, coverage and content differ widely. Very few countries (e.g. Italy and the UK) can be said to have put in place – or indeed sought to have put in place – several of the components that would provide a policy environment for social enterprises, such as:

³⁶ The [Third Sector Impact](#) website.

³⁷ C. Borzaga and G. Galera, [Social Enterprises and their Eco-systems: Developments in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2016.

- legal recognition or institutionalisation of social enterprises through the creation of a bespoke legal form and/or legal status;
- fiscal incentives for social enterprises/ social impact investment;
- the existence of specialist support and infrastructure – business support, coaching, mentoring schemes that take into account the distinct characteristics of social enterprises;
- measures designed to facilitate access to markets, notably public sector markets (by creating demand for the services of social enterprises, introducing social clauses in public procurement for example);
- measures designed to support access to finance through the creation of dedicated financial instruments and social investment markets more generally; and
- standardised social impact measurement and reporting systems.³⁸

Public support measures for the start-up and scaling-up of social enterprises differ in terms of 1) the different public authorities entitled to implement the support programmes (central versus regional governments); 2) the array of support provided; and 3) the types of beneficiary organisations targeted.

Favourable fiscal treatments exist in some Member States. They can be classified into three main types: i) reduced social security contributions awarded to social enterprises when they perform in given fields; ii) tax exemptions and lower rates envisaged for social enterprises under specific conditions; and iii) tax reductions granted to private and/or institutional donors to SEs.³⁹

There are no examples of established tax exemption for SEs in general. Tax advantages are not specifically targeted at social enterprises, and tend to fall into the following categories:

- those that relate to the underlying legal form;
- those that relate to the charitable or public benefit status of certain legal forms of non-profit organisation, including relief on income tax and donations; this is, for example, the case in Ireland, where organisations with charitable status are exempt from tax on non-distributed profits; and
- those that are available to integration enterprises employing people who are disadvantaged, as a specific incentive to encourage employment.⁴⁰

However, specific tax treatment for SEs exists in most EU countries.⁴¹ Opponents of this specific treatment have long argued that it could be considered unequal treatment that

³⁸ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

³⁹ C. Borzaga and G. Galera, [Social Enterprises and their Eco-systems: Developments in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2016.

⁴⁰ [Social Enterprise in Europe – Developing Legal Systems which Support Social Enterprise Growth](#), European Social Enterprise Law Association, 2015.

⁴¹ J.L. Monzón Campos and R. Chaves Ávila, [The social economy in the European Union](#), Report drawn up for the European Economic and Social Committee by the International Centre of Research and Information on the Public, Social and Cooperative Economy (CIRIEC), 2012.

constitutes unlawful state aid in contravention of free competition rules. In 2011, the Court of Justice of the European Union (CJEU) ruled that the specific tax treatment is justified because social economy entities (cooperatives in the case) are, in principle, different in nature from for-profit companies.⁴² It could be argued that the same applies to SEs, even if they are not totally not-for-profit, since they are supposed to respect a constraint on benefits distribution and they carry out economic activities the explicit and main purpose of which is to have a positive impact on society.

Public support measures cover a variety of areas such as information services, specialist business development support, dedicated financial instruments (such as social investment funds), physical infrastructure (e.g. shared working spaces) and collaboration on market access.

1.2.2. EU initiatives

Since 2000, the European Commission, the European Parliament,⁴³ the European Economic and Social Committee and the Committee of the Regions have adopted more than 200 texts highlighting the social economy's contribution to employment, entrepreneurial spirit, social inclusion, financial services, rural and local development and social cohesion, inter alia.

The EU has taken various legislative measures and policy initiatives aimed at supporting the development of SEs, through the creation of a regulatory policy framework concerning both the legal forms and general enabling policy measures. These initiatives have had mixed results.

1.2.2.1. Legal forms

Few advances have been made concerning legal forms. In 1989, the European Commission published its first communication on social economy enterprises, which proposed an EU legal basis to establish EU-wide cooperatives, associations, mutual societies and foundations.⁴⁴

⁴² Judgment in joined cases [C-78/08 to C-80/08](#), CJEU, 8 September 2011.

⁴³ See European Parliament resolution of 10 September 2015 on [Social Entrepreneurship and Social Innovation in combating unemployment](#), which calls for the necessary framework conditions to be set up for a system of social innovation, facilitating access to public procurement, and improving access to funding; European Parliament resolution of 2 July 2013 on the [contribution of cooperatives to overcoming the crisis](#), in which the Parliament points out the resilience of this type of enterprise in face of the fluctuations of the economic cycle and their critical role in integrating disadvantaged workers; European Parliament resolution of 2 July 2013 on the [proposal for a Council regulation on the Statute for a European Foundation \(FE\)](#); European Parliament resolution of 14 March 2013 with recommendations to the Commission on the [Statute for a European mutual society](#); European Parliament resolution of 20 November 2012 on the [Social Business Initiative – Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation](#); European Parliament resolution of 13 March 2012 on the [Statute for a European Cooperative Society with regard to the involvement of employees](#); European Parliament resolution of 19 February 2009 on [social economy](#).

⁴⁴ Communication on businesses in the social economy sector, [SEC\(89\) 2187](#), European Commission, 18.12.1989.

Between the 1990s and 2000, the Council, the European Commission and the European Parliament adopted a series of initiatives directed at promoting the visibility of social economy entities.⁴⁵

In 2003 the EU adopted a [Regulation on the Statute for a European Cooperative Society](#) (SCE) to support the development of the cross-border and transnational activities of cooperatives. Its main aim is to improve European cooperatives' potential to conduct transnational activities. Nevertheless, a few years after this regulation came into force, the results had not been as positive as expected.⁴⁶ In the same period, the initiative for a European association statute (SAE) did not receive enough support from EU Member States.

The European Parliament also supported the establishment of EU-level legal forms for social economy actors in its resolutions on the [statute for a European mutual society](#), on the [statute for a European foundation](#) and on the [statute for a European cooperative society](#). In its 2012 [resolution on the Social Business Initiative](#) it emphasised the importance of improving the framework conditions for social enterprises, while recognising the diversity of social business models across the Member States. However, the proposal for a statute for a European mutual society and the proposal for a statute for a European foundation, were finally withdrawn by the European Commission owing to lack of institutional support.

1.2.2.2. Regulatory framework

Until recently, insufficient attention has been given to the specific features of the regulatory framework for SEs, with the application of competition policy remaining a priority. 2011 however saw an important shift in the European Commission's political agenda regarding SEs. Indeed, with its Social Business Initiative (SBI),⁴⁷ the European Commission highlighted three priority areas: funding, visibility and legal environment. The SBI listed the policy agenda of the European Commission with 11 key actions.

One set of measures are aimed at **improving private and public funds**. To enhance the interests of private investors in SEs, [Regulation \(EU\) No 346/2013](#) on European social entrepreneurship funds (EuSEF) was approved. It established a new label (the EuSEF label) that identifies European social entrepreneurship funds. The label highlights the social impact of the beneficiaries of the funds, not their statute or governance, and it requires that at least 70 % of capital received from investors be used in support of social businesses. The regulation has just been [revised](#).

A second measure is the [Programme for Employment and Social Innovation](#) (EaSI), established in collaboration with other pre-existing financial initiatives as the EaSI

⁴⁵ [COM\(93\)650](#); [COM\(97\)241](#); [COM \(2004\)18](#); and [Council Decision](#) of 19 January 2001 on guidelines for Member States' employment policies for the year 2001.

⁴⁶ [Study on the implementation of Regulation 1435/2003 on the statute for a European cooperative society](#), European Commission, 2010.

⁴⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Social Business Initiative, [COM\(2011\) 682](#), 25.10.2011.

Guarantee Instrument, the EaSI Capacity Building Investments Window and the Social Impact Accelerator (SIA). It provides microcredits with risk-sharing guarantees.

Concerning **public funds**, the promotion of the social economy and social entrepreneurship is included in the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Fund for Strategic Investments (EFSI) – with the [EFSI Equity Instrument](#). Other financial instruments are also available, though not exclusively to SEs, through InnovFin under Horizon 2020 (research and innovation investments for enterprises) and COSME (Competitiveness of Enterprises and Small and Medium-Sized Enterprises).

Another set of EU rules relevant to SEs is the EU **public procurement framework**. The public procurement reform package of 2014 included provisions encouraging public authorities to introduce social considerations in procurement decision-making. More specifically, it allowed for the insertion of certain social clauses in procurement procedures. In a similar vein, the 2012 Services of General Economic Interest (SGEI) package introduced more flexibility for public authorities when providing state aid for SEs in the area of public service compensation.

In addition, as highlighted by some contributions, the European Commission is, for the first time, currently implementing a series of measures to support the development of SEs at EU level. Following the publication of its communication 'Europe's next leaders: the Start-up and Scale-up Initiative',⁴⁸ the European Commission structured its measures around five major pillars:

1. access to funding;
2. access to markets;
3. improving framework conditions;
4. social innovation, technologies and new business models; and the
5. international dimension.

The EU is putting more and more effort into designing a policy framework to support the growth of SEs in the internal market. However, and even though the influence of SE in the EU economy is growing, SEs still face a number of challenges, especially when trying to scale up.

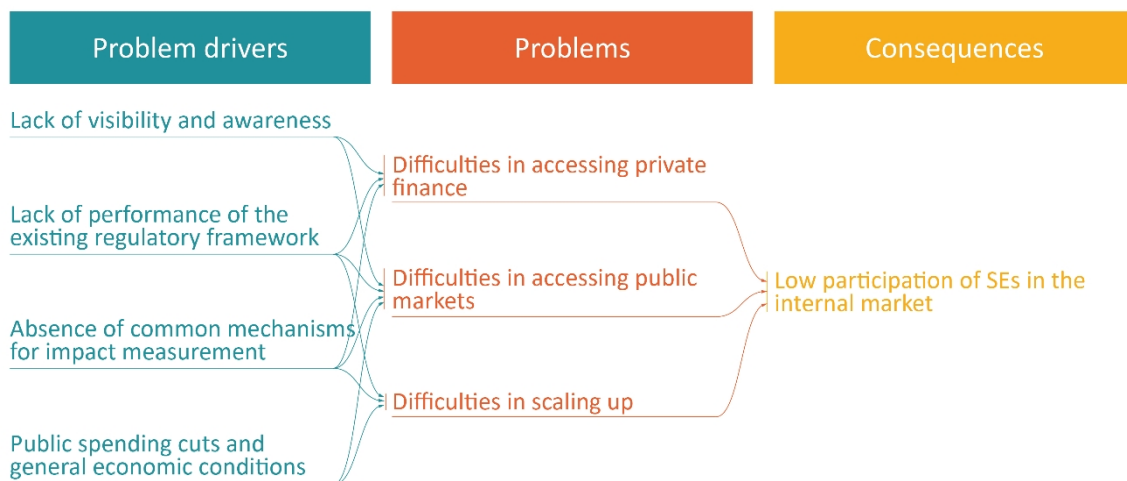
⁴⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Europe's next leaders: the Start-up and Scale-up Initiative, [COM\(2016\) 733](#), 22.11.2016.

2. Main challenges faced by SEs

Key findings

- (1) There is a lack of common understanding of the concept of social economy, leading to a lack of visibility and awareness of SEs.
- (2) Most EU Member States do not have a comprehensive policy framework specifically targeting SEs.
- (3) Only a small minority of SEs have systems in place for monitoring social impact.
- (4) Many SEs have difficulties accessing private finance and public markets, leading to complications for SEs wishing to scale up.
- (5) SEs that are willing to scale up in the internal market should benefit from an enabling EU policy framework.

SEs are developing and are crucial for the EU economy. However, their participation in the internal market remains low. Indeed, SEs encounter a number of challenges in the internal market. The causes and consequences of these challenges are summarised in the problem tree below, and further developed within this section.



2.1. Problem drivers

2.1.1. Lack of visibility and awareness

According to the study [Recent evolutions of the social economy in the European Union](#), Member States can be divided into three groups depending on their level of recognition of the social economy concept:

- **Countries in which the concept of the social economy is widely accepted:** In Belgium, France, Luxembourg Portugal, and Spain the social economy concept of enjoys a great degree of recognition by public authorities and in the academic and scientific world, as well as in the social economy sector itself.
- **Countries in which the concept of the social economy enjoys a moderate level of recognition:** These include Bulgaria, Cyprus, Denmark, Finland, Greece, Hungary, Ireland, Italy, Poland, Romania, Slovenia, Sweden, and the United Kingdom. In these countries, the concept of the social economy coexists alongside other concepts, such as the non-profit sector, the voluntary sector and social enterprises. In some Member States, such as the United Kingdom, the level of awareness of the social economy contrasts with the government's policy of support for SEs.
- **Countries where there is little or no recognition of the concept of the social economy:** The concept of the social economy is little known, emerging or unknown in the following countries: Austria, Croatia, the Czech Republic, Estonia, Germany, Latvia, Lithuania, Malta, the Netherlands, and Slovakia. The related terms non-profit sector, voluntary sector and non-governmental organisations sector enjoy a relatively greater level of recognition.

This lack of a common understanding of the concept of social economy leads to a lack of awareness and understanding, highlighted by the low visibility of SEs in the media and also in statistics. A lack of databases, official statistics and reliable data about SEs emerge in lot of countries, including Austria, Slovakia and Sweden.⁴⁹

In addition, there is a general misconception about the economic activity conducted by an SE. The term 'social' is often associated with charitable activities and social sector entities rather than entrepreneurship.⁵⁰

This lack of recognition and understanding of the term 'social enterprise' by the general public, partners and prospective investors as well as customers has a negative effect on the growth and financing prospects of social enterprises.⁵¹

⁴⁹ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International – Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017, p.47.

⁵⁰ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

⁵¹ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

2.1.2. Inadequacies of the existing regulatory framework

As demonstrated above, the Member States all take different approaches to regulating SEs. This diversity in SE legal forms in the EU exposes companies to a lack of flexibility. SEs expanding in the internal market have to choose a different company form in each Member State. As a result, they have to operate under a different internal organisation and different articles of association in each Member State. They do not have the flexibility to opt for the same internal structure throughout their organisation. For example, a group of SEs present in four Member States will have four different legal forms, each with a different management structure. In contrast, a domestic group of comparable size can apply a single model.

In addition, new laws and statutes on SEs are not always fit for purpose or implemented correctly, as seems to be the case of the Spanish social economy law,⁵² or in Poland and Portugal, where the recent changes in cooperative laws are not considered adequate for cooperatives.⁵³

Social Economy Europe points out that SEs face administrative and legal difficulties in the EU when they wish to operate across borders, particularly in countries where the creation or operation of certain social economy actors is not envisaged or restricted to certain activities. The lack of legal recognition for all social economy actors in EU legislation means that most EU policies are not designed taking the social economy into account. For that reason, the EU needs to find innovative ways to integrate the social economy into EU legislation and to establish a level playing field that provides all social economy actors with opportunities equivalent to those available to other forms of enterprise.⁵⁴

In addition, as stated above, most countries do not have a comprehensive array of public support measures specifically targeting SEs.⁵⁵ As a result, the fiscal framework within which SEs operate is rather complex, often incoherent and fragmented, and an overall and clear policy providing for specific fiscal incentives for SEs is missing.

2.1.3. Absence of common mechanisms for measuring impact

Only a small minority of SEs have systems in place for monitoring their social impact. Measurement of social impact is not yet a well-established practice even if some recent

⁵² J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International - Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017, p.48.

⁵³ J.L. Monzón and R. Chaves, [Recent evolutions of the Social Economy in the European Union](#), CIRIEC-International - Centre international de recherches et d'information sur l'économie publique, sociale et coopérative, 2017, p.49.

⁵⁴ [White Paper – Social Economy... Taking back the initiative – Proposals to make the social economy into a pillar of the European Union](#), Social Economy Europe, 2015.

⁵⁵ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

initiatives have made inroads in raising awareness on its importance.⁵⁶ In addition, there is no clear consensual definition of the concept of social impact, and the metrics and methodologies to carry out the measurement of social impact are numerous but incoherent. Moreover, it is debatable whether quantification, no matter how comprehensive it is, can express the intricate nature of the issues at hand.⁵⁷ Better measurement of their social impact would help increase awareness of SEs' contribution to society and their visibility. Indeed, one added value of SEs is their positive impact on society and therefore a more systematic monitoring of this element is essential.

It is an **emerging issue in social entrepreneurship** since about half of those individuals who fit the broad definition of social entrepreneurs report that they put substantial effort into measuring the social and environmental impact of their social ventures.⁵⁸

In addition, the European Commission started to develop a rigorous and systematic method for the measurement of social enterprises' impact on the community, with the creation of the GECES sub-group in October 2012. On 3 June 2014, the GECES adopted a [sub-group report](#),⁵⁹ which develops a minimum standard process for social impact measurement together with a standard set of criteria that should be exhibited by all social impact measurement reporting. The Social Impact Accelerator (SIA), the first pan-European public-private partnership addressing the need for equity finance to support social enterprises, also developed a [methodology](#) for measuring social impact performance in the context of SIA.

Finally, it is also worth mentioning that there are a number of initiatives emerging in the banking sector, including that of the European Federation of Ethical and Alternative Banks (FEBEA) on calculating social impact and social return on investment.⁶⁰

2.1.4. Public spending cuts and general economic conditions

Although SEs derive a portion of their revenues from the markets, the public sector remains an important source of income and support. Indeed, SEs' sources of capital vary across the Member States, ranging from models based on donation and grant finance to enterprises with sales and fees as their primary capital sources. The revenue stream is different from one Member State to the next.

⁵⁶ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015, p.98.

⁵⁷ N. Milotay, [Measuring social impact in the EU](#), EPRS European Parliament, May 2017.

⁵⁸ N. Bosma, T. Schøtt, S. Terjesen and P. Kew, [Global Entrepreneurship Monitor 2015 to 2016: Special Report on Social Entrepreneurship](#), Global Entrepreneurship Research Association, 2016.

⁵⁹ [Social entrepreneurship expert group](#), European Commission web site.

⁶⁰ M. Pedrini, [Review of impact assessment methodologies for ethical finance](#), study commissioned and financed by FEBEA (European Federation of Ethical and Alternative Banks and Finance companies), 2014.

Table 5 – Earned income derived by SEs from market services (competitive public sector contracts included)

Market income as a share of total revenues	Member States concerned
Above 50 %	Czech Republic, Finland, France, Italy, UK
Less than 50 %	Austria, Belgium, Poland, Hungary, Ireland, Slovakia

Source: [European Commission](#), 2015.

Recent years have seen significant cuts in public spending across the Member States. The Organisation for Economic Cooperation and Development (OECD) has found that decline in real social spending has been greatest in Greece, Italy, Portugal and Hungary.⁶¹ For example, in Italy, spending reviews implemented by the government have reduced the availability of public resources in sectors that are fundamental for social enterprises (such as welfare). This has reduced social enterprises' opportunities to expand.⁶²

2.2. Problems

As identified above, there is a wide range of interplaying factors inhibiting social enterprise development and growth across the EU. All these problem drivers affect the growth potential of SEs negatively, including by limiting access to finance and markets. Three main obstacles preventing social economy enterprises from taking full advantage of the single market by operating cross-border have been identified: limited access to financing, difficulties in accessing public markets and problems in scaling up.

2.2.1. Difficulties in accessing finance

Limited access to finance is one of the main barriers to the growth for SEs. The scaling stage for SEs has been identified by an EU-funded research project as requiring € 100 000 to € 500 000.⁶³

It is indeed more difficult for social enterprises to access mainstream finance and instruments than for small and medium-sized enterprises (SMEs). As the social added value of such enterprises is often difficult to ascertain and measure, the return on investment is not clear for financial institutions, which often rely on short-term exit

⁶¹ [Social expenditure update](#) – Social spending is falling in some countries, but in many others it remains at historically high levels. Insights from the OECD Social Expenditure database (SOCX), 2014.

⁶² [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

⁶³ [How fine-tuned, state-of-the-art hybrid financing packages can build bridges and channel more investment capital into the social entrepreneurship sector](#), Final Project Report to the European Commission, July, Financing Agency for Social Entrepreneurship, 2015.

strategies, traditional ownership structures and a high-return investment logic.⁶⁴ In addition, because of the financial crisis, banks are following stricter rules to finance enterprises and therefore cooperatives have limited or no access to venture capital on the capital markets and depend primarily on their own members' capital.⁶⁵ Initial funding often requires social entrepreneurs to use personal funds.⁶⁶

In some Member States, difficulties are the result of national rules or regulations. For example, not-for-profit social enterprises in Romania have limited access to bank finance on account of national bank rules, placing them in the most risky category as borrowers. In the Czech Republic, organisations are prohibited from using property to guarantee loans.⁶⁷

In addition, the limited degree to which social enterprises are able to distribute profits to investors inhibits access to equity finance. For example, in France, an investor who makes an equity investment into a *société coopérative d'intérêt collectif* (SCIC) by purchasing shares will become a 'contributing' member of the SCIC. However, SCIC investors can only receive a 3-4 % rate of return on dividends. On winding up, a SCIC's surplus assets and capital cannot be distributed to members but must be transferred to a public interest organisation.⁶⁸

2.2.2. Difficulties in accessing public markets

Public procurement represents a significant percentage of the EU economy (14 % of GDP).⁶⁹ It is particularly relevant to social enterprises' scaling trajectory, and may enable them to grow while reducing their dependency on grants.

Many studies⁷⁰ have highlighted the low level of participation of SEs in the EU public procurement market. This is mainly due to the fact that contracts are predominantly awarded with regards to price before, or to the exclusion of, other considerations (including the social value).⁷¹ There also exist other factors that limit access for social enterprises, such as the size of contracts, the common use of framework contracts, pre-qualification and specification requirements that inhibit competition by requiring long track records or very strong financial positions. Delays in payment for services delivered

⁶⁴ N. Bosma, T. Schøtt, S. Terjesen and P. Kew, [Global Entrepreneurship Monitor 2015 to 2016: Special Report on Social Entrepreneurship](#), Global Entrepreneurship Research Association, 2016, p.25.

⁶⁵ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

⁶⁶ N. Bosma, T. Schøtt, S. Terjesen and P. Kew, [Global Entrepreneurship Monitor 2015 to 2016: Special Report on Social Entrepreneurship](#), Global Entrepreneurship Research Association, 2016, p.25.

⁶⁷ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

⁶⁸ [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015, p.56.

⁶⁹ [Public procurement](#), European Commission website.

⁷⁰ D. Pirvu and E. Clipici, [Social Enterprises and the EU's Public Procurement Market](#), Voluntas, 2016.

⁷¹ For example, in Bulgaria, Czech Republic, Estonia, Italy and Ireland, according to [A map of social enterprises and their eco-systems in Europe](#), Directorate-General for Employment, Social Affairs and Inclusion, European Commission, 2015.

to public administrations were also named as a factor adversely affecting the sustainability of social enterprises.

In addition, traditionally, following the application of competition policy, the introduction of social clauses in public procurement was prohibited. In 2014, the public procurement reform package⁷² partially changed this. The rules now allow public authorities to include social clauses in procurement procedures – but it remains an option, not an obligation. However, by May 2016, 21 Member States had failed to transpose (or notify) those provisions into their national legislation and the practice of including social criteria in public contracts is not yet very extensive.⁷³

Public procurement is an opportunity that is used mainly by already established and/or large social enterprises. For example, in the United Kingdom, the largest social enterprises – i.e. those with an approximate turnover in excess of €6.3 million or £5 million – are three times more likely than smaller ones to rely on the public sector as their main source of income.

It is also worth noting that public officials – particularly at local level – may not be familiar with the added value of social enterprises when they evaluate tender offers, and may therefore evaluate them exclusively on value-for-money grounds during the tender processes. That explains why Social Economy Europe used its white paper to urge the European Commission to give Member States and other public authorities guidance on how to include social and environmental considerations in public procurement procedures.⁷⁴

2.2.3. Difficulties in scaling up

SEs need to overcome a set of challenges as they establish and consolidate their activities, but they also face additional challenges once they decide to scale up. While conventional enterprises' main objective is to prioritise profit maximisation or shareholder value, the main aim of social enterprises is to expand and deepen their social impact by creating value for people, communities and society. For SEs, scaling up therefore means finding the most effective and efficient way to increase social impact. Some social enterprises aim to reach a greater number of users or beneficiaries, and therefore aspire to **expand their social impact widely** (quantitative approach). Others diversify their activities, either to address emerging needs at local level or tackle the same needs from multiple angles. These social enterprises aspire to **expand their social impact deeply** (qualitative approach).⁷⁵ In both cases, this could be achieved through two complementary

⁷² [Public procurement strategy, legal rules and implementation](#), European Commission website.

The public procurement package comprised of [Directive 2014/24/EU on public procurement](#), [Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors](#) and [Directive 2014/23/EU on the award of concession contracts](#).

⁷³ European Commission – Fact Sheet, [May infringements' package: key decisions](#), 26 May 2016.

⁷⁴ [White Paper Social Economy... Taking back the initiative – Proposals to make the social economy into a pillar of the European Union](#), Social Economy Europe, 2015.

⁷⁵ A. Heinecke and J. Mayer, 'Strategies for Scaling in Social Entrepreneurship', *Social Entrepreneurship and Social Business*, C. Volkman, K.O. Tokarski and K. Ernst (eds.), 2012, pp. 191-209.

strategies: increasing their presence on the internal market by merging, diversifying or specialising; or opening up new legal entities in other Member States.

According to a study by Global Entrepreneurship Monitor,⁷⁶ SEs have strong potential to expand into new markets, with 56 % of Eastern European SEs expecting to grow in the next five years. In the UK, the proportion of social enterprise employers that aim to grow is even higher: 78 %.⁷⁷

However, among this large proportion of SEs willing to expand, only few actually do. This is the case for example in Germany, with only about 6 % of SEs operating at EU level.⁷⁸ In Scotland, 7 % of social enterprises are collaborating with international partners, and approximately 5 % have exported/licensed goods or services to international markets.⁷⁹

SEs do not seem to be exploiting the scale and potential of the internal market fully. Further measures could be necessary at EU level to favour the scaling up of SEs in the internal market. EU action should aim to enable the development of a regulatory framework and a specifically tailored financial ecosystem to support SE growth.

⁷⁶ N. Bosma, T. Schøtt, S. Terjesen and P. Kew, [Global Entrepreneurship Monitor 2015 to 2016: Special Report on Social Entrepreneurship](#), Global Entrepreneurship Research Association, 2016, p.27.

⁷⁷ UK Department for Digital, Culture, Media and Sport Department for Business, Energy and Industrial Strategy [Social Enterprise: Market Trends 2017](#), September 2017.

⁷⁸ T. Scheuerle, B. Schmitz, W. Spiess-Knafl, R. Schües and S. Richter, '[Mapping social entrepreneurship in Germany – a quantitative analysis](#)', *Int. J. Social Entrepreneurship and Innovation*, Vol. 3 (6), 2015, pp.484–511.

⁷⁹ [Internationalising Social Enterprise](#), A Strategy for Scotland, September 2016

3. Why is EU-level action needed?

Key findings

- (1) An EU framework for SEs would establish a level playing-field.
- (2) There are different legal bases in the Treaty on the Functioning of the European Union (TFEU) that could be used for the adoption of an EU legal framework for SEs.
- (3) The main objectives identified above could be reached within the limits of EU competences while respecting the principles of subsidiarity and proportionality.
- (4) An EU legal framework for SEs could translate into economies of scale for SEs, as they could benefit from access to a larger market, reduced transaction and enforcement costs, and increased visibility.
- (5) An enabling EU legal framework could also increase consumer confidence in goods and services produced by SEs, while also reinforcing some of the intrinsic advantages of SEs, thus leading to social added value.

SEs contribute to addressing today's key social challenges – including poverty, social exclusion and unemployment and promote sustainable development.⁸⁰

Boosting the development of SEs could help to **overcome the challenge of an aging population**. The European Commission estimates that in 2060, there will be only two active people (between 15 and 64 years) for each person older than 65, where as in 2013 there were four.⁸¹ Elderly people will need more services especially in the sectors of health care and personal services, developing wide opportunities in this area, especially for SEs.

Fostering the development of SEs could also potentially help to **decrease the unemployment rate** by hiring a specific population of workers that would have lower chances on the 'regular' labour market (long-term unemployed, immigrants, disabled, elderly persons, etc.). Between 2003 and 2010, paid employment in the social economy increased by 26.8 %. In Belgium, between 2009 and 2013 there was an 8.3% total increase in paid employment⁸², whereas in the private sector the increase was only 4.2%. In France, since 2000 the number of jobs created has increased by 24 %, compared with an increase of only 4.5 % in paid-employment in the private sector.⁸³

⁸⁰ [Policy Brief on Scaling the Impact of Social Enterprises – Policies for social entrepreneurship](#), OECD/European Commission, 2016.

⁸¹ [The 2015 Ageing Report](#), European Commission, 2015.

⁸² [Baromètre 2015 des entreprises sociales en Belgique](#), p38.

⁸³ [Économie sociale : Bilan de l'emploi en 2013](#), ACOSS-URSSAF and CCMSA, 2014.

Despite these prospective economic and social benefits, the potential of SEs has yet to be fully realised.⁸⁴ To facilitate the development of an ecosystem within which SEs can thrive, stakeholders recommend the provision of legal and regulatory frameworks to encourage the creation and development of social enterprises.⁸⁵

An EU framework for SEs would establish a level playing-field for SEs giving them equal possibilities to add a European dimension to their activities. It would also provide them with adequate legal tools to facilitate their cross border and transnational activities, as well as with a way to group and develop their organisation and activities in the internal market.

For an EU measure to be legal and effective, it would require a valid legal basis, and would have to uphold the principles of subsidiarity and proportionality. It would also necessitate clear economic and social added value. The following section will first analyse the feasibility of EU action and then look at the benefits that an EU framework would bring for SEs.

3.1. Legal basis

The legal basis for EU action would depend on the content of the proposal put forward. Several options could be envisaged.

- **Company law: Article 50 TFEU**

Article 50 [TFEU](#) could be the legal basis for a proposal, since it is the legal basis for EU competence in the area of company law and freedom of establishment. If the proposal were to create a new legal company form, Article 50 could be used as the legal basis, provided that it covered for-profit SEs.⁸⁶

- **Flexibility clause: Article 352 TFEU**

The EU has already created several European legal entities that apply throughout the EU and co-exist with national ones. The legal acts underpinning their creation are based on Article 352 [TFEU](#) (previously Article 308).⁸⁷ This provision provides a legal basis for EU action aiming to attain one of the EU's objectives in the absence of any specific legal basis in the Treaty. The CJEU confirmed⁸⁸ that Article 352 was the correct legal basis for the European Cooperative Society. By analogy, if the option chosen were to set up a completely new SE legal entity, Article 352 TFEU could be envisaged as the legal basis.

⁸⁴ [Policy Brief on Scaling the Impact of Social Enterprises – Policies for social entrepreneurship](#), OECD/European Commission, 2016.

⁸⁵ [Social enterprises and the social economy going forward – A call for action from the Commission Expert Group on Social Entrepreneurship \(GECES\)](#), Commission Expert Group on Social Entrepreneurship (GECES), 2016, p.7.

⁸⁶ In accordance with Article 54 (2) [TFEU](#).

⁸⁷ [Regulation 2157/2001](#) on the Statute for a European company (SE), [Regulation 1435/2003](#) on the Statute for a European Cooperative Society (SCE).

⁸⁸ Judgment in case [C-436/03](#) - European Parliament v Council of the European Union, CJEU, 2 May 2006.

- **Internal market: Article 114 TFEU**

Should the option be chosen to harmonise Member States' laws on some aspects of their laws on private companies, Article 114 of the [TFEU](#) could provide an appropriate legal basis. This provision offers a legal basis for measures whose object is to improve conditions for the establishment and functioning of the internal market.

3.2. Subsidiarity and proportionality

As for the legal basis, respect for the subsidiarity and proportionality principles will depend on the option chosen.

According to the **subsidiarity** principle the EU should act only where it can provide better results than intervention at Member State level. The legal and regulatory frameworks adopted so far by individual Member States with regard to social enterprises have not been coordinated at EU level. It appears that without any action at EU level, only non-harmonised national legal and regulatory frameworks would be available and SEs would continue to face barriers, making their expansion abroad more difficult. The simplification resulting from coordinated or harmonised rules could theoretically be achieved by Member States acting individually, but it is highly unlikely. EU action would create positive synergies that would otherwise not exist. In this context, targeted EU intervention appears to comply with the principle of subsidiarity.

As regards the **proportionality** principle, EU action should be appropriate to achieve the objectives of the policy pursued and should be limited to what is necessary to achieve them. It is appropriate to coordinate the legal framework of SEs to achieve an increase in the number of SEs scaling up on the internal market. This action should facilitate and encourage SE access to public markets and private finance, without fully harmonising the surrounding regulatory framework (tax issues, employment rules, etc.). This would not go beyond what is necessary, since it would not attempt to fully harmonise all legal aspects of SEs, but be limited to those aspects that are the most important in the cross-border context.

Thus the main objectives identified above, namely easing access to public and private finances for SEs to help them with scaling up, could be achieved within the limits of the EU competences while respecting the principles of subsidiarity and proportionality, and without imposing on Member States extensive amendments to their company law regulatory systems.

3.3. Economic added value

In addition, an action at EU level would certainly bring economic added value. Indeed, SEs and social entrepreneurs face legal and administrative barriers each time they seek to operate or set up a new SE in another EU Member State. These legal and administrative requirements affect both the creation and the day-to-day operation of businesses. These barriers require companies to dedicate human and financial resources and consequently expose them to significant costs.

3.3.1. Economies of scale

According to Cecchini⁸⁹, economies of scale are benefits offered by a single European market. An EU legal framework for SEs could translate into economies of scale for SEs, as they could benefit from access to a larger market, reduced transaction and enforcement costs, and increased visibility.

3.3.1.1. Access to a larger market

An EU framework for SEs could help SEs providing goods or services to reach a **larger market**. With recognition at EU level of SE status, the benefits of that status to SEs could apply across borders. For example, consumers could easily recognise products from a certain SE regardless of the Member State of production; or SEs could be considered in public procurement with social clauses in EU Member States other than their own.

It is clear that SEs are also concerned about customers, suppliers, entry barriers, substitutes, competition, and the economics of the venture.⁹⁰ The main difference with commercial enterprises is that their primary focus is not on economic returns but on social returns. Having the possibility to reach a wider market would most certainly help SEs to scale up.

3.3.1.2. Reduced transaction and enforcements costs

All SEs wishing either to extend activities across borders or set up new entities in another Member State are affected by administrative and legal burdens. These administrative and legal burdens are proportionately much heavier for smaller companies and their founders, who often have fewer financial and human resources than large companies.

Having an EU legal framework could help reduce compliance costs when setting up a new SE. The administrative costs associated registering a new legal entity would be reduced, together with the fees for expert legal advice,⁹¹ and other costs relating to accounting, auditing, financial reporting, tax-filing, compliance, human resource management, information technology, and cash management. The above-mentioned costs associated with the creation of a company, excluding capital, can run up to levels that can deter company formation in some markets. In 2008, the European Commission referred to a Baker & McKenzie study, which estimated that a total of €28 550 was required in Belgium, €20 500 in the Netherlands, and € 16 500 in Italy, to set up a small company.⁹²

When it comes to the day-to-day operation of companies in various Member States, the compliance costs are on average €2 300 a year.⁹³

⁸⁹ P. Cecchini, 'Europe 1992: The overall challenge.' SEC (88) 524, 1988.

⁹⁰ J. Austin, H. Stevenson and J. Wei-Skillern, '[Social and commercial entrepreneurship: same, different, or both?](#)', *Revista de Administração*, 2012.

⁹¹ Including advice on the legal entity form and/or the drafting of articles of association.

⁹² European Commission staff working document accompanying the proposal for a Council regulation on the Statute for a European Private Company (SPE), Impact assessment, [SEC\(2008\) 2098](#).

⁹³ European Commission staff working document accompanying the proposal for a Council regulation on the Statute for a European Private Company (SPE), Impact assessment, [SEC\(2008\) 2098](#).

3.3.1.3. Increased visibility

Evidence from behavioural economics suggests that under certain circumstances, consumers prefer goods or services that have a social value dimension, rather than a purely commercial one. A recent study by Deloitte points in the same direction.⁹⁴ Creating customer value would benefit SEs by providing new opportunities in an enlarged market.

3.3.2. Leverage effect

An EU framework for SEs would also have a multiplier effect,⁹⁵ understood as the economic impact generated, including indirect impacts not directly related to the activity.⁹⁶ Potentially, creating a new legal form would have a leverage effect in those Member States where there is currently no legal and/or regulatory framework.

It would also raise interest in SEs at EU level and encourage national governments to be more innovative and encouraging in supporting SEs by creating and securing supportive policy frameworks.

3.4. Social added value

3.4.1. Consumers

A strong EU framework regulating SEs would forbid the use of any 'fake' SE label. At the same time, it would provide consumers with the guarantee that wherever they bought a product or used a service with the certification mark, it would be a product or service coming from an SE that had been registered as such because it complied with the EU specification. This would certainly increase consumer confidence in goods and services produced by SEs.

3.4.2. Improving social policies

A clear EU framework on SEs would enable them to reach their full potential, reinforcing some of their intrinsic advantages.

As SEs work to improve the quality of employment and working conditions, reduce regional differences, and reconnect disadvantaged groups (immigrants, the elderly, groups suffering discrimination, and disabled people, etc.) with the remainder of society,⁹⁷ a clear EU framework would support these policies.

⁹⁴ [Big demands and high expectations: The Deloitte Millennial Survey](#), 2014.

⁹⁵ M. Albert and R.J Ball, [Towards European Economic Recovery in the 1980s: Report Presented to the European Parliament](#), Working Documents 1983-1984, 1983.

⁹⁶ J Núñez Ferrer and EA Kaditi, 'The EU added value of agricultural expenditure—from market to multifunctionality—gathering criticism and success stories of the CAP.' Report prepared by the Centre for European Policy Studies for the European Parliament, CEPS, 2008.

⁹⁷ S. Barco Serrano, G. Hahn and G. Pastorelli, [A better future – Results of the network for better future of social economy](#), Ministry of Regional Development of Poland, Department for European Social Fund Management, 2012.

4. Policy options

Key findings

(1) No action, (policy option 1) seems to fail to address the specific needs of SEs that want to scale up, would not resolve legal uncertainty and does not appear sufficiently effective.

(2) A minimum harmonisation directive setting out some of the main features that an SE should encompass (policy option 2) could help to address some of the challenges, but might not be effective enough. Indeed, a generic framework might not fit each SE characteristic, and would not give a marketing incentive to send signals to consumers that products came from an SE, not therefore improving visibility or awareness.

(3) The creation of an EU certification/label system (policy option 3) appears to be the most acceptable approach, with a good balance between legal certainty and flexibility. In addition, a certificate or a label would help social enterprises to distinguish themselves from other businesses. It would save SEs costs as they would not have to register in each Member State to have their social condition recognised, while being able to choose the legal form under which they preferred to conduct their business.

(4) The addition of a new supranational legal form for SEs (policy option 4) would seem to leave Member States and SEs little flexibility in an innovative field that is currently evolving. Furthermore, in the absence of political acceptability, this policy option appears unlikely to materialise.

Having ascertained that an EU legal framework for SEs is both necessary and appropriate, the subsequent topic is the possible form that ad hoc SE legislation might take. The comparative analysis conducted in the next section of this study will examine this point.

It is assumed that SEs will continue to grow, but the rate at which this will happen will depend on the legal regime applicable. For the baseline scenario, we assume that the existing law remains as it is, with no particular adaptation. We then develop a number of scenarios to represent the impact of different legal regimes on the rollout and take-up of SE. Quantification of these effects is beyond the scope of this study. Only overall impacts are calculated.

4.1. Options and their impacts

Based on the analysis of the existing literature and current rules in the EU Member States, the following policy options were identified:

Table 6 – Policy options

Policy option 1: 'No action' Baseline scenario, Maintaining the status quo	The existing framework comprised of various EU Member States' rules would be maintained, with no additional EU action.
Policy option 2: Minimum harmonisation	This option would seek, through legally binding EU legislation, to align national rules, including minimum elements of SE definition. However, Member States would still be able to regulate issues related to specific legal form, internal organisation and financing.
Policy option 3: Certification / label system	This option would seek to introduce a voluntary system of certification/labelling. In addition to the current framework, the EU would introduce a system where SEs could apply for a certificate of recognition of SE status. The granting of this certificate would be based on a set of minimum criteria under which a specific company could be recognised as an SE. All EU Member States would recognise this certificate.
Policy option 4: Supranational legal form	This option would seek, through legally binding EU legislation, to create a new EU legal form for SEs. If chosen, this legal form needs to be as simple as possible to give the possibility for a regulatory simplification in all the Member States.

Source: Author's own summary.

For each policy option, a qualitative cost-benefit analysis taking into account the various stakeholders (SEs, workers, customers, investors and the State) is provided.

4.1.1 Policy option 1: no action

This policy option implies that the existing framework comprised of various EU Member States' rules would remain, with no additional EU action.

As described in Chapter 3, the existing framework fails to address the specific needs of SEs that want to scale up, and is not therefore sufficiently effective. It does not ensure the level of consistency and flexibility that would enable SEs to scale up in the internal market, whether by setting up subsidiaries or by operating in another Member State.

In addition, this option seems politically unsatisfactory since there is a growing consensus that SEs do not currently benefit sufficiently from the advantages of the internal market.⁹⁸

4.1.2 Policy option 2: minimum harmonisation

This policy option would seek, through legally binding EU legislation, such as a directive, to align national rules, in part by including minimum elements of a definition for SEs. A directive could be introduced, requiring all EU Member States to incorporate in their national legislation at least one legal form for SEs. The directive could contain the minimum criteria to be included by the Member States in their national legislation for an enterprise to qualify as an SE. However, Member States would still be able to regulate issues related to the name given to such enterprises, their internal organisation, financing, or certain non-essential constitutive elements. This option would imply the existence in all Member States of a specific legal form for SEs.

Coordination among Member States would be improved, as they would be required to amend or introduce to their national legal systems identical requirements for a company to qualify as an SE.

A minimum harmonisation directive would introduce a specific and (partially) harmonised law on SE in all the Member States, including, therefore, those that still lack such legislation. It would also create incentives for Member States to develop further policy framework for SEs, such as fiscal policy, public procurement, or competition law, if not already existing.

The directive could concentrate on the essential elements of SE identity, leaving the other aspects of regulation to the national law of each Member State. The most likely form for the directive would be to set the criteria for convergence between the EU's SEs.

A specific legal identity under organisational law would permit, not least, the establishment of clearer boundaries between SE and other concepts, such as, notably, corporate social responsibility.

⁹⁸ The Commission Expert Group on Social Entrepreneurship (GECES) [called](#) among other things for EU action, as they considered the previous SBI not to have achieved its intended results.

Table 7 – Qualitative cost-benefit analysis for policy option 2

	Benefits	Costs
SE	<ul style="list-style-type: none"> • Some existing SEs could endorse the new status without changing their legal entity • Legal certainty (especially where no regulation already exists) • Clear legislation is an incentive to start and develop an SE • Prevention of the establishment and operation of 'false' SEs • No additional registration fee – as would be the case for certification/a label 	<ul style="list-style-type: none"> • The need to monitoring the law for modifications • A generic framework might not fit each SE characteristic • No marketing incentive to send signals to consumers that the product comes from an SE • No improvement to visibility or awareness
Investors	<ul style="list-style-type: none"> • Better investment protection, the use of the term 'SE' being guaranteed by a legal standard • Increased visibility, especially for international or pan-European investors 	<ul style="list-style-type: none"> • No clear signal effect on the quality of the goods or services • No clear signal effect on the type of firms
Consumers	<ul style="list-style-type: none"> • No additional cost to bear • Better protection, the use of the term 'SE' being guaranteed by a legal standard 	<ul style="list-style-type: none"> • If no information on the product: consumers do not know what they are buying
State	<ul style="list-style-type: none"> • Improvement of SEs' statistics • Easier to identify SE for the design of specific public policies in support of SEs, notably, tax, public procurement, or competition law • Easier justification of national policies under EU competition and state aid law • Harmonisation of local and national levels 	<ul style="list-style-type: none"> • Transposition costs

Source: Author's own summary.

4.1.3. Policy option 3: certification/label regime

Policy option 3 would seek to introduce a voluntary system of certification/labelling. In addition to the current framework, the EU would introduce a system where SEs could apply for a certificate of recognition of SE status. The granting of this certificate would be based on a set of minimum criteria under which a specific company could be recognised as an SE. All EU Member States would recognise this certification/label.

The European Commission Working Group recommended adopting a soft legal measure that could help Member States design an adequate framework to support the

flourishing and expansion of social enterprises.⁹⁹ This could certainly be achieved by adopting a social enterprise certificate/label, which could be used by a variety of legal entities if they complied with given criteria.

A certificate or a label would help social enterprises to distinguish themselves from other businesses and send a clear signal to consumers and investors. For the certificate or label to be effective, it should present a good certification system, without conflicts of interest, but the system should also be transparent, information on the content and the organisation behind the label should be accessible and there should be opportunities for public comment. It should also be well known, distinctive and unique. There are currently many different types of label and certificate either identifying the social aim of an SE, or a specific sector where the SE is acting.¹⁰⁰ To avoid the duplication of different and divergent certificates/labels, the EU should create and monitor the certification/label system so as not to constrain SE freedom needlessly, but rather enable SEs to affirm and make their distinct identities visible, and benefit accordingly.

Whether this initiative should take the form of a certificate or a label should be further studied.¹⁰¹

Table 8 – Qualitative cost-benefit analysis for policy option 3

	Benefits	Costs
SE	<ul style="list-style-type: none"> Ensuring a common identity and allowing SEs to enjoy exclusive rights over the denomination of 'social enterprise', thus preventing organisations that are not SEs from using it and allowing social entrepreneurs to distinguish their own initiatives in front of various stakeholders (e.g. customers, employees, investors, volunteers, donors, public institutions, etc.) Saving SEs costs, as they would not have to register in each Member State to have their social nature recognised 	<ul style="list-style-type: none"> No automatic accompanying policy (such as tax exemption) Increased competition (every firm can be compared) Registration costs No additional protection Lack of mutual recognition of labels at global level Labels and marks should be treated with caution, however, as they may have negative effects on social enterprises in specific cultural contexts.¹⁰⁸

⁹⁹ [Social enterprises and the social economy going forward – A call for action from the Commission Expert Group on Social Entrepreneurship \(GECES\)](#), Commission Expert Group on Social Entrepreneurship (GECES), 2016.

¹⁰⁰ For example the green economy with the label Ecocert for Belgium.

¹⁰¹ According to the [FAO](#), while a certificate is a form of communication between seller and buyer, a label is a form of communication with the end consumer.

¹⁰⁸ [Policy Brief on Scaling the Impact of Social Enterprises – Policies for social entrepreneurship](#), OECD/European Commission, 2016.

	<ul style="list-style-type: none"> • Creating niche markets where higher prices may be obtained¹⁰². In the fair trade labelling case, the cost is increased for consumers but their willingness to pay also increases;¹⁰³ generating increased demand for ethical products¹⁰⁴ • Attracting and retaining consumer loyalty, generating fidelity and trust among customers • Helping development of a network and/or exchange of good practices and encouraging cooperation between economic actors, civil society and Member States • Giving SEs the choice of whether or not to belong to the SE label denomination • Allowing SEs to choose the legal form under which they prefer to conduct their business¹⁰⁵ • Increasing consumer awareness; indeed, many consumers only learned about the existence of organic farming methods through the label and the associated publicity • Permitting existing organisations to become an SE without having to re-incorporate as an SE, and allowing an existing SE to lose its status as an SE without having to 	
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¹⁰² Several studies have tried to model the effects of labelling on demand, prices and production levels, including G. Stigler, '[The economics of information](#)', *The Journal of Political Economy*, Vol. 69 (3), 1961. A. Mattoo and H.V. Singh, '[Eco-Labelling: Policy Considerations](#)', *Kyklos*, Vol.47, 1994, and R.A. Sedjo and S.K. Swallow, 'Eco-labeling and the Price Premium, 1999, studied eco-labelling in a partial equilibrium model. S. Marette, J. Crespi and A. Schiavana in 'The Role of Common Labelling in a Context of Asymmetric Information', *European Review of Agricultural Economics*, 1999, Vol. 26 (2), pp.167-78, use cartel theory, and C.F. Mason, on 'The economics of eco-labelling', *International Review of Environmental and Resource Economics*, Vol. 6(4), University of Wyoming, 2002, models certification as a noisy test.

¹⁰³ A.P. Carlson, '[Are Consumers Willing to Pay More for Fair Trade Certified Coffee?](#)', Working Paper (University of Notre Dame), 2015.

¹⁰⁴ J. Hainmueller, M.J. Hiscox, and S. Sequeira, 'Consumer demand for Fair Trade: Evidence from a Multi-Store Field Experiment.', *Review of Economics and Statistics*, Volume 97, Issue 2, 2015.

¹⁰⁵ Moreover, nothing prevents legislators from providing different treatment for SEs established in different forms; for example, to favour, under tax law or policy measures, an SE in the cooperative form, in consideration of its democratic nature as compared to an SE in the company form.

	<p>dissolve, convert into, or re-incorporate in another legal form, thereby reducing costs and facilitating access to (and exit from) the SE legal denomination¹⁰⁶</p> <ul style="list-style-type: none"> • Permitting SEs to shape their structure in the most suitable manner, according to the circumstances (e.g., the nature of the founders or members: workers, investors, first-degree SEs, etc.), the (cultural, historical, etc.) tradition where it has its roots (e.g. associations or cooperatives), or the type of business to conduct (e.g., labour-intensive or capital-intensive) thereby taking advantage of the benefits that each of these legal forms is capable of conferring • Offering support, aiming at improving knowledge levels and market transparency, certification/labelling lower the costs, especially transaction costs¹⁰⁷ 	
Investors	<ul style="list-style-type: none"> • Increased knowledge of the firm (signal effect) 	
Consumers	<ul style="list-style-type: none"> • Reduced information costs • Increased confidence in product • Decreasing the number of labels and improving clarity and trust: a single EU label would make it easier for EU consumers to understand and visualise what they wanted to buy. 	<ul style="list-style-type: none"> • In some cases, increased product costs
State	<ul style="list-style-type: none"> • No regulation cost • Imposing sanctions may be simpler for the authority enforcing the SE status (and less onerous for the organisation), because it may suffice to revoke the SE qualification (or threaten 	

¹⁰⁶ K.E. Sørensen and M. Neville, '[Social Enterprises: How Should Company Law Balance Flexibility and Credibility?](#)', European Business Organization Law Review, 2014.

¹⁰⁷ A. Perrels, '[Efficiency and effectiveness of policy instruments: concepts and practice](#)', 2015.

	to revoke it if irregularities were not addressed), instead of dissolving or converting a legal entity. ¹⁰⁹	
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Source: Author's own summary.

4.1.4. Policy option 4: full harmonisation

This option would seek, by means of a regulation, to create a new EU legal form for SEs. This legal form would be additional to those already existing in the Member States.

If chosen, this legal form would need to be as simple as possible to allow for regulatory simplification in all the Member States.

Table 9 – Qualitative cost-benefit analysis for policy option 4

	Benefits	Costs
SE	<ul style="list-style-type: none"> • Legal certainty • Clear legislation is an incentive to start and develop SE • Possibility of accompanying policy (like tax exemption) • Better awareness • No additional registration cost 	<ul style="list-style-type: none"> • Existing SEs have to change their legal entity • Generic framework may not fit each SE characteristic • No clear signal effect on the quality of the goods or services • No marketing incentive to send signals to consumers that the product comes from an SE • Rigidity of one SE status
Investors	<ul style="list-style-type: none"> • Increased knowledge of the firm (signal effect) 	<ul style="list-style-type: none"> • No clear signal effect on the type of firm
Consumers	<ul style="list-style-type: none"> • No additional cost to bear 	<ul style="list-style-type: none"> • With no information on the product, consumers do not know what they are buying. • Not necessarily an external recognisable sign
State	<ul style="list-style-type: none"> • Improvement of SE statistics • Easier to identify SE for public procurement procedures • Harmonisation of local and national levels 	<ul style="list-style-type: none"> • Regulation costs

Source: Author's own summary.

4.2. Comparative analysis of the impacts

As accurate and precise data was very difficult to collect (see methodology section), the impacts of the various options will be analysed through a multicriteria analysis. This analysis aims to compare the various policy options according to a variety of criteria and

¹⁰⁹ K.E. Sørensen and M. Neville, '[Social Enterprises: How Should Company Law Balance Flexibility and Credibility?](#)', *European Business Organization Law Review*, 2014.

policies. As the aim is here to find out which of the exploratory scenarios best matches decision makers' expectations, the method is considered to be appropriate.

Five qualitative measurable indicators of direct impacts are used to comparatively assess the four chosen policy options. Both legal certainty and legal adaptability, as the two corresponding aims that lawmakers need to balance, are assessed.¹¹⁰ Efficiency, effectiveness and acceptability, as substantive values to be achieved by a policy, are also thoroughly evaluated.

4.2.1 Legal certainty and predictability

Legal certainty is one of the general principles of the European Union.¹¹¹ As a general principle, it means that the law must be certain, in that it is clear and precise, and its legal implications foreseeable. In our particular policy analysis context, it refers to the degree of stability, predictability and certainty for SEs regarding applicable rules. The more clear and precise the rule is, the stronger the legal certainty will be.

The current situation (policy option 1) is not predictable enough, as it is difficult for SEs to find the applicable set of rules. Indeed, it involves national (sometimes even regional) legislation on the setting up of SEs, a private institution for labelling, and EU rules relating to public procurement or financing. In some Member States, SEs first have to set up a legal entity, before knowing if they will qualify for the SE appellation.

With a directive (policy option 2), the need for national transposition might lead to a loss in legal certainty. Indeed, each Member State could transpose the directive in a slightly different way, leading to a difficult uniform interpretation of the rules. However, the CJEU could ensure, a posteriori, that all national rules follow the same objectives.

The creation of an EU certificate/label (policy option 3) could reinforce legal certainty. Indeed, by introducing a clear EU definition and removing ambiguities, SEs would be able to better predict whether they belonged to this given category or not. They would be better able to plan growth at EU level, knowing that they would enjoy the same recognition in all EU Member States.

A legislative EU framework harmonising the legal status of SEs (policy option 4) would definitely be the most predictable option, for SEs, investors, consumers, and Member States. The regulation would then be the same in every EU Member State, directly applicable, and uniformly interpreted by the CJEU.

4.2.2 Flexibility

Legal flexibility should balance the need for legal certainty. Indeed, social entrepreneurs also need flexibility, notably regarding the formation, functioning and operation of their

¹¹⁰ M. Fenwick, M. Siems and S. Wrba, *The Shifting Meaning of Legal Certainty in Comparative and Transnational Law*, Oxford: Hart Publishing, 2017, pp. 115-134.

¹¹¹ Judgments in cases [C-7/56](#) – Algera, CJEU, 12 July 1957; [C-42/59](#) – SNUPAT, CJEU, 22 March 1961; and [C-265/78](#) Ferwerda, CJEU, 5 March 1980.

business. In addition, it has to be kept in mind that 'the diversity and openness of the concept [of SE] are probably some of the reasons for its success'.¹¹²

The current situation (policy option 1) leaves maximum flexibility in a majority of Member States, as the social entrepreneurs can choose between a lot of different legal forms and/or statuses.

On the contrary, having only one EU legal status for SEs (policy option 4) would lead to extreme rigidity. Moreover, national legislation has failed to boost social enterprise replicability when legislation and concepts embedded in legislation were transplanted from other countries/contexts with a significantly different history/tradition (as was, for example, the case in Slovenia) or were excessively rigid (e.g. French legislation on SCICs).¹¹³ Embedding all legal culture and traditions into one legal instrument does not seem desirable or even possible.

Introducing some common definition elements in all EU Member States (policy option 2) implies the existence of a specific SE legal form and/or status in all Member States. Even if a directive would leave some or a wide margin of flexibility, depending on the final content of the instrument, for the Member States, the requirement of a specific legal form and/or status for SE could appear as a form of rigidity.

Having a certification/label system (policy option 3) would leave maximum flexibility to social entrepreneurs. Indeed, they would still be able to choose the legal form they felt corresponded best to their business needs, while conferring upon them strong recognition as social actors. In addition, the acquisition or loss of the SE certification/label would be easier than with other options.

4.2.3 Efficiency

Efficiency is the ratio of inputs to outputs. Policies that achieve more of a desired goal at a lower cost are more efficient. For SEs, a monetary quantification of the policy's outputs and outcomes is problematic and would be based on controversial assumptions. This assessment of efficiency therefore focuses on maximisation of satisfaction by society.

Policy option 1, would not require any additional inputs. However, this policy option is not expected to create any additional outputs either.

On the other hand, creating an EU legal framework, whether thanks to a directive (policy option 2), certification/labelling (policy option 3) or a regulation (policy option 4) would establish stable and reliable investment conditions for social entrepreneurs. All three options would also lead to long-term perspectives contributing to dynamic efficiency.

¹¹² J. Defourny and M. Nyssens, [The EMES Approach of social enterprise in a comparative perspective](#), WP No 12/03, 2012.

¹¹³ C. Borzaga and G. Galera, [Social Enterprises and their Eco-systems: Developments in Europe](#), European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2016, p.14.

However, the drafting of an EU directive, and its transposition into 28 national legislations (policy option 2) would lead to regulatory costs. In some cases, it could also lead to the requirement, for some enterprises, to change their legal form.

The drafting of certification/labelling criteria and the maintenance of the system (policy option 3) would also imply regulatory costs. However, SEs' transaction costs, leading to static efficiency, would be minor, as they would not have to adopt a new legal form. Indeed, certification schemes can be used by all corporate forms, provided company legislation allows the pursuit of social purposes. Certification does not require reincorporation as a new form of company (which can entail significant costs).

With policy option 4, SEs would, in most cases (especially in countries where there is currently no specific legal form for SEs), have to adopt a new legal form. The regulatory and transaction costs would then be quite high for doubtful increases in output. Indeed, whereas clear legislation is an incentive to start and develop SEs, the requirement to adopt of a specific SE legal form could hamper the development of SEs.

4.2.4 Effectiveness

The effectiveness refers to the extent to which a policy achieves its goals. A policy approach is considered to work when it solves, reduces or ameliorates the problem or problems that prompted lawmakers to adopt it in the first place.

As no policy change (policy option 1) would certainly not result in an increase of in the number of SEs doing cross border business or an increase in their scaling up, this policy option does not seem effective.

Recognising a specific form, whether through national legislation (policy option 2), certification/labelling (policy option 3) or regulation (policy option 4) would most probably be effective in boosting visibility; but at the same time it could overshadow all the types that do not enjoy formal recognition. In Italy and Poland, social cooperatives registered a dramatic increase in number right after the introduction of specific legal acts. Conversely, cooperative adjustment was disappointing overall in France.¹¹⁴

A specific formal recognition through a certification/labelling (policy option 3) or a regulation (policy option 4) would also ensure a common identity and allow SEs to enjoy exclusive rights over the 'social enterprise' denomination. It would prevent organisations that were not SEs from using it and allow social entrepreneurs to distinguish their own initiatives vis à vis various stakeholders (e.g. customers, employees, investors, volunteers, donors, public institutions, etc.).

Both options would also help Member States in the creation and/or maintenance of key statistical databases. It would also certainly be easier for public authorities to identify SE for public procurement procedures, thus helping SEs to access finance.

¹¹⁴ C. Borzaga, G. Galera, [Social Enterprises and their Eco-systems: Developments in Europe](#), European Commission, Directorate-General for Employment, Social Affairs and Inclusion, 2016, p.22.

In addition, certification/labelling (policy option 3), would save SEs the cost of having to register in each Member State to have their social condition recognised. It would permit existing organisations to become SEs without having to re-incorporate as SEs, and existing SEs to lose their SE status without having to dissolve, convert into, or re-incorporate in another legal form, thereby reducing costs and facilitating access to (and exit from) the SE legal denomination. Imposing sanctions may be simpler for the authority enforcing SE status (and also less onerous), because it might suffice to revoke SE qualification (or threaten to revoke it if irregularities were not addressed), instead of dissolving or converting a legal entity. Finally, an EU certification/labelling scheme would decrease the number of already existing labels, improving clarity and trust.

The introduction of a completely new legislative form is unlikely to be very effective. Indeed, the adoption of the European cooperative society should serve as a lesson. The European Commission report on 'the application of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)'¹¹⁵ notes that only seven SCEs could be considered as 'social cooperatives' or social enterprises. The lack of success of this initiative should not be replicated.

4.2.5 Acceptability

Political acceptability is primarily an instrumental criterion that is a means to achieving other values because it is critical to the success of a public policy.¹¹⁶

There is a lot of literature on the need for EU action. This implies that the status quo (policy option 1) is not currently well accepted among scholars, stakeholders and to a certain extent policy makers too.

The European Parliament asked the 'Commission to establish clear rules to identify which entities can legally operate as social economy enterprises'.¹¹⁷ This could be achieved through the adoption of a minimum harmonisation directive (policy option 2) or the setting up of a certification/labelling scheme (policy option 3). This latest option also benefitting from support from an increasing number of scholars.¹¹⁸

However, the creation of a new regime, with the adoption of an EU regulation (policy option 4), seems highly unlikely. There is indeed a very negative atmosphere when EU lawmakers talk about the introduction of additional EU legal entities. In the last few years, the debates around the European Association, the European Foundation, the European Mutual Society, and the European Private Company have been very complicated. The process of their adoption has been officially suspended or interrupted, mainly owing to the fact that Members States show the same negative attitude towards

¹¹⁵ Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on The application of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), [COM\(2012\) 072](#), 23.2.2012, p.12.

¹¹⁶ C.H. Rossell, [Using multiple criteria to evaluate public policies](#), Boston University, 1993.

¹¹⁷ European Parliament resolution of 19 February 2009 on Social Economy ([2008/2250\(INI\)](#)).

¹¹⁸ Cf., in particular, K.E. Sørensen and M. Neville, ['Social Enterprises: How Should Company Law Balance Flexibility and Credibility?'](#), *European Business Organization Law Review*, 2014.

EU organisational law that they harbour towards harmonisation directives in company law. This climate, of course, infuses pessimism about the introduction of an EU statute on SEs.

Table 10 – Comparative analysis of the impacts

	Legal certainty	Flexibility	Efficiency	Effectiveness	Political acceptability
Policy Option 1: baseline scenario, maintaining the status quo	--	++	=	--	+
Policy Option 2: directive with minimum elements of definition	+	+	-	+	+
Policy Option 3: certification	+	++	+	++	++
Policy Option 4: fully harmonised legislation	++	--	-	-	--

Key: '--' highly negative; '-' negative; '++' highly positive; '+' positive; '=' neutral

Source: Author's own summary.

4.3. Conclusion

According to the multicriteria analysis performed, creating an EU certification/label scheme seems to be the best available strategy. It would ensure the best balance between legal certainty and flexibility. In addition, it would allow SEs to distinguish themselves from other businesses, without having to register in each Member State to have their social condition recognised, while allowing them to choose the legal form under which they prefer to conduct their business, provided they respect certain basic criteria. Nevertheless, whichever model of SE legislation is adopted, the legal identity legislators should assign to SEs remains a fundamental question.

However, legislation is often of limited effectiveness without associated policies. In addition to the legal recognition that could be given to SEs by an EU framework, a range of possible measures at EU level to support the development of SEs could be envisaged. A common EU approach to the legal status could be a precondition for addressing other problems relating to the development of SEs, including increased funding, easing access to public procurement or fostering cooperation between EU SEs.

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There are a number of weaknesses in the existing national legal frameworks regarding social enterprises and this European added value assessment (EAVA) attempts to identify them. It goes on to argue that action at EU level would generate economic and social added value and presents a qualitative analysis of possible policy options and qualitative estimates of the possible additional value of taking legislative action at EU level in connection with a statute on social enterprises.

The EAVA also identifies the economic and social costs associated with the implementation of each one of the identified options. Finally, it compares the various options on the basis of a set of criteria.

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