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DRAFT REPORT

with recommendations to the Commission on a Statute for social and
solidarity-based enterprises
(2016/2237(INL))

Committee on Legal Affairs

Rapporteur: Jiří Maštálka

(Initiative – Rule 46 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on a Statute for social and solidarity-based enterprises (2016/2237(INL))

The European Parliament,

- having regard to Article 225 and Article 50 of the Treaty on the Functioning of the European Union,
- having regard to its resolution of 19 February 2009 on ‘Social Economy’¹,
- having regard to its resolution of 20 November 2012 on ‘Social Business Initiative – Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation’²,
- having regard to its resolution of 10 September 2015 on ‘Social Entrepreneurship and Social Innovation in combating unemployment’³,
- having regard to the Council conclusions of 7 December 2015 ‘The promotion of the social economy as a key driver of economic and social development in Europe’⁴,
- having regard to the Communication from the Commission of 13 April 2011 on ‘Single Market Act - Twelve levers to boost growth and strengthen confidence ‘Working together to create new growth’’ (COM(2011)0206),
- having regard to the Communication from the Commission of 25 October 2011 on ‘Social Business Initiative - Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation’ (COM(2011)0682),
- having regard to Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds⁵,
- having regard to 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 inclusion⁶, and, in particular, to Article 2(1) thereof,
- having regard to Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC⁷, and, in particular, to Article 20 thereof,

¹ Texts adopted, P6_TA(2009)0062.

² Texts adopted, P7_TA(2012)0429.

³ Texts adopted, P8_TA(2015)0320.

⁴ 13766/15 SOC 643 EMPL 423.

⁵ OJ L 115, 25.4.2013, p. 18.

⁶ OJ L 347, 20.12.2013, p. 238.

⁷ OJ L 94, 28.3.2014, p. 65.

- having regard to Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)¹,
 - having regard to its resolution of 14 March 2013 with recommendations to the Commission on the Statute for a European mutual society²,
 - having regard to the report of the Commission Expert Group on Social Entrepreneurship (GECES) of October 2016 on “Social enterprises and the social economy going forward”³,
 - having regard to the study commissioned by the European Parliament Policy Department C of February 2017 entitled ‘A European Statute for Social and Solidarity-Based Enterprise’,
 - having regard to Rules 46 and 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Employment and Social Affairs (A8-0000/2017),
- A. whereas the concept of ‘social enterprise’ is used in some legal systems interchangeably with that of ‘solidarity-based enterprise’; whereas for the purposes of this resolution the concepts of ‘social enterprise’ and ‘solidarity-based enterprise’ are intended to be synonymous; whereas the concept of ‘social enterprise’ is not clear-cut, and overlaps with that of more traditional social economy organisations, such as cooperatives, mutual organisations, associations and foundations; whereas discussions about the boundaries of the concept of ‘social enterprise’ are taking place among social scientists and lawyers; whereas it seems imperative to agree at present on a legal definition that makes a solid contribution to the development of social enterprises by the European Union and public administrations at all levels possible;
- B. whereas there are substantial differences among Member States in the way they regulate social enterprises and the organisational forms available to social entrepreneurs under their legal systems; whereas the distinctive organisational forms that social enterprises adopt depend on the existing legal frameworks, on the political economy of welfare provision and on the cultural and historical traditions of non-profit development in each country;
- C. whereas in some Member States specific legal forms have been created either by adapting the cooperative model or through the introduction of legal forms that recognise the social commitment taken on by a plurality of entities and that include some features specific for social enterprises; whereas in other Member States social enterprises operate using pre-existing legal forms, including legal forms used by mainstream SMEs, such as the limited liability company;
- D. whereas the adoption of diverse legal frameworks on social enterprises in many Member States confirm the development of a new kind of entrepreneurship more

¹ OJ L 207, 18.8.2003, p. 1.

² Texts adopted, P7_TA(2013)0094.

³ http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=9024

focused on social value creation; whereas this diversity also confirms that social entrepreneurship is an innovative field;

- E. whereas, in light of this diversity of legal forms available for the creation of a social enterprise across Member States, there does not seem to exist a consensus in Europe as to whether it is convenient or necessary at the present moment to set up at EU level a specific form of social enterprise; whereas Parliament has already stressed that the development of any new legal frameworks at Union level should be optional for enterprises and preceded by an impact assessment to take into account the existence of various social business models across the Member States; whereas Parliament has also stressed that any measures should demonstrate Union-wide added value;
- F. whereas the fact that there is a choice in the available legal forms has the advantage of permitting social enterprises to shape their structure in the manner which suits them best in the circumstances in question, the tradition where they have their roots and the type of business they wish to conduct;
- G. whereas notwithstanding the above it is possible to derive from national experiences at Member State level some distinctive features and criteria that a social enterprise should fulfil, regardless of the legal form it adopts, if it is to be considered as such type of enterprise; whereas it seems desirable to establish at Union level those features and criteria in the form of minimum standards with a view to creating a consistent legal framework for such enterprises and to ensure that all social enterprises have a common identity regardless of the Member State of incorporation; whereas such institutional features should help to maintain social enterprise advantage over alternative ways of organising the production of social services;
- H. whereas in its communication of 25 October 2011 (‘Social Business Initiative’) the Commission defined a social enterprise as ‘an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities’;
- I. whereas for the purposes of Regulation (EU) No 1296/2013, ‘social enterprise’ means an undertaking, regardless of its legal form, which:
 - (a) 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:
 - (i) provides services or goods which generate a social return and/or
 - (ii) employs a method of production of goods or services that embodies its social objective;
 - (b) 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

- (c) is managed in an entrepreneurial, accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities;

J. whereas in its resolution of 10 September 2015, Parliament 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;

K. whereas the above definitions are compatible and seem to bring together the features shared by all social enterprises regardless of the Member State of incorporation; whereas such features should constitute the baseline for a cross-cutting and more definitive legal definition of ‘social enterprise’ at Union level;

L. whereas social enterprises are private organisations independent from public authorities;

M. whereas social enterprises operate in the market in an entrepreneurial fashion; whereas this implies that social enterprises carry on activities of a commercial nature and assume economic risks; whereas the financial viability of a social enterprise ultimately depends on the efforts made by their members and workers to secure adequate resources;

N. whereas the contribution to social value creation must be the main purpose of a social enterprise; whereas social enterprises should expressly pursue the aim of benefitting the community at large or a specific group of people, transcending membership; whereas the social purpose pursued by social enterprises should be clearly indicated in their documents of establishment; whereas the notion of social enterprise should not be confused with that of corporate social responsibility (CSR), even though commercial enterprises with significant CSR activities can have a strong interconnection with social

business;

- O. whereas social enterprises should conduct a socially useful activity; whereas they may be active in a wide spectrum of activities; whereas social enterprises have typically engaged in the delivery of social services and work integration services for disadvantaged groups; whereas a common trend in national legislation has been to enlarge the range of activities in which social enterprises are entitled to engage, provided that they are of general interest and/or have a social utility, such as the provision of community services, including the educational, cultural and environmental fields; whereas these socially useful activities may be determined by law *ex ante* in a list or through a general clause;
- P. whereas social enterprises are generally associated with social innovation, as a result of the expansion of social enterprise activity in new fields of production of goods or of delivery of services, including environmental, cultural and recreational services, and/or the introduction of innovative production or work organisation methods;
- Q. whereas social enterprises are not necessarily non-profit organisations but, on the contrary, they can also be for-profit; whereas this notwithstanding the main focus of social enterprises should be on social values and on having a positive and durable impact on society's wellbeing and economic development rather than making a profit for their owners, members or shareholders; whereas in this connection a constraint on distribution of profits and assets among members or shareholders, also known as 'asset lock', is essential to social enterprises; whereas a limited distribution of profits could be allowed, having regard to the legal form adopted by the social enterprise, but the procedures and rules covering that distribution should ensure that it does not undermine the primary objective of the enterprise; whereas the most significant proportion of profits made by a social enterprise should be reinvested or otherwise used to achieve its social purpose;
- R. whereas for it to be effective, the non-distribution constraint should cover a number of aspects, notably the payment of periodic dividends, the distribution of accumulated reserves, the devolution of residual assets at the entity's dissolution, the transformation of the social enterprise into another type of organisation, if this is permitted, and the loss of the status of social enterprise; whereas the non-distribution constraint could also be indirectly violated by the payment of remuneration to employees or directors that is unjustifiable and above market levels;
- S. whereas social enterprises should be ruled following democratic governance models involving the persons affected by the activity; whereas this participatory model represents a structural procedure to control the actual pursuit of the organisation's social goals; whereas members' power in decision-making should not be based only or primarily on any capital stake they may hold, even when the model adopted by the social enterprise is that of a commercial company;
- T. whereas social enterprises can adopt the form of commercial undertakings in some Member States; whereas the possibility of commercial companies having the status of social enterprises should be made dependent on fulfilling requirements and conditions that help resolve the potential contradictions between the company form and the social enterprise model;

- U. whereas the treatment of employees in social enterprises should be comparable to that of employees of ordinary business enterprises; whereas social enterprises should take into consideration the special needs of its disadvantaged workers, where appropriate;
- V. whereas the positive impact of social enterprises on the community may justify the adoption of concrete actions in their support, such as the payment of subsidies and the adoption of favourable tax and public procurement measures; whereas those measures should in principle be considered as being compatible with the Treaties, since they aim at facilitating the development of economic activities or areas mainly intended to have a positive impact on society;
- W. whereas it is essential that public authorities check and ensure that a given undertaking fulfils the requirements to be issued a certificate before it is granted one; whereas a social enterprise should have its certificate revoked in the event that it fails to respect those requirements and its legal obligations;
- X. whereas social enterprises should issue a social report on a regular basis in which they give account, at least, of their activities, results, involvement of stakeholders, allocation of profits, salaries, subsidies and other benefits received;
1. Calls on the Commission to introduce at Union level a ‘European social label’ to be awarded to social enterprises;
 2. Considers that the ‘European social label’ should be available for organisations that satisfy a set of legal requirements, regardless of the legal form of their incorporation in a Member State; and that the label should be optional for the undertaking;
 3. Considers that the legal requirements for acquiring and maintaining the European Social label should be identified by reference to certain features and criteria, in particular those laid down in the annex to this resolution;
 4. Is of the opinion that a mechanism involving Member States should be established by which entities that fulfil the relevant legal requirements can obtain the European social label. Any legal entity fulfilling the legal criteria should be entitled to the EU label, regardless of whether the Member State of incorporation has a special legal form for ‘social enterprises’;
 5. Considers that a mechanism should be established in cooperation with Member States for the protection of the European social label and the prevention of the establishment and operation of ‘false’ social enterprises; this mechanism should ensure that enterprises bearing the European social label are monitored regularly regarding their compliance with the provisions set out in the label;
 6. Considers that social enterprises bearing the European social label should be recognised as such in all Member States in which they carry out their social activities and should enjoy the same benefits, rights and obligations that the social enterprises incorporated under the law of the Member State in which they operate;
 7. Calls on the Commission to carry out, in cooperation with Member States and the social enterprise sector, a comparative study of the various national and regional legal

frameworks governing social enterprises throughout the EU, and of the operating conditions for social enterprises and of their characteristics, including their size and number and their field of activities, as well as of national certification and labelling systems;

8. Calls on the Commission to establish, in cooperation with Member States, a list of existing legal forms in Member States having the characteristics of social undertakings and to maintain that list updated;
9. Calls on the Commission to collect, in cooperation with Member States and the social enterprise sector, information on good practices in the Member States, in particular in those fields laid down in the annex to this resolution, and to implement guidelines to encourage and support Member States in establishing or improving national frameworks for the development of social enterprises;
10. Calls on the Commission to review existing legislation and to submit, where appropriate, legislative proposals establishing a more coherent and complete legal framework in support of social enterprises, specifically, but not only, in the fields of public procurement and competition law, so that such undertakings are treated in a manner that is consistent with their particular nature and contribution to social cohesion and to economic growth;
11. Considers it appropriate that the Commission examines the possibility of establishing a line of financing to support innovation in social enterprises, in particular when the innovative character of the activity carried out by the undertaking makes it difficult for it to ensure sufficient financing under normal market conditions;
12. Calls on the Commission and Member States to engage in the collection of both quantitative and qualitative data, and analyses on social enterprises and their contribution to public policy within and across countries with a view to improving policy and strategy making;
13. Requests the Commission to submit, on the basis of Article 50 of the Treaty on the Functioning of the European Union, a proposal for a legislative act on the creation of a European social label for social enterprises, following the recommendations set out in the Annex hereto;
14. Considers that the financial implications of the requested proposal should be covered by the Union and the Member States;
15. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council, and to the governments and parliaments of Member States.

**ANNEX TO THE MOTION FOR A RESOLUTION:
RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

Recommendation 1 (creation of the European social label and qualifying undertakings)

The European Parliament considers that the legislative act to be adopted should aim to create a ‘European social label’, which will be optional for social enterprises, regardless of the legal form they decide to adopt in accordance with national legislation.

The European Parliament considers that the ‘European social label’ should only be awarded to enterprises complying with the following criteria:

- (a) the organisation should be a private entity established in whichever form available in Member States and under EU law, and should be independent from the State and public authorities;
- (b) its purpose must be of general interest and/or public utility;
- (c) it should conduct a socially useful activity, as determined by law, either ex ante or through a general clause;
- (d) it should be subject to a total or at least partial constraint on profit distribution and to specific rules on the allocation of profits and assets during its entire life, including at dissolution; in any case, the majority of the profits made by the undertaking should be reinvested or otherwise used to achieve its social purpose;
- (e) it should be ruled following democratic governance models involving the persons affected by the activity; members’ power in decision-making should not be based only or primarily on any capital stake they may hold;

The European Parliament considers that nothing prevents commercial undertakings from being awarded the European social label if they comply with the above-mentioned requirements, in particular regarding the distribution of profits, governance and decision-making.

Recommendation 2 (mechanisms for the certification, supervision and monitoring of the European social label)

The legislative act should establish a mechanism of certification and of supervision and monitoring of the legal label with the involvement of Member States, which is essential to protect the legal label of ‘social enterprise’ and preserve its intrinsic value. The European Parliament considers that this public control could involve secondary organisations representative for the social enterprise sector.

Penalties and sanctions for the infringement of the legislation could range from a mere admonition to the withdrawal of the label.

Recommendation 3 (recognition of the European social label)

The European social label should be valid in all Member States. An enterprise bearing the label should be recognised as a social enterprise in all Member States. The label should allow any undertaking bearing it to carry out its main activity in other Member States under the same requirements as national undertakings bearing the label. They should enjoy the same benefits, rights and obligations as the social enterprises incorporated under the law of the

Member State in which they operate.

Recommendation 4 (reporting obligations)

The legislative act should require social enterprises willing to maintain the label to issue on a regular basis a social report on their activities, results, involvement of stakeholders, allocation of profits, salaries, subsidies, and other benefits received. In this regard, the Commission should be authorised to produce a model to help social enterprises in this endeavour.

Recommendation 5 (guidelines of good practices)

The legislative act should also authorise the Commission to establish guidelines for good practices for social enterprises in Europe. These good practices should include at least the following:

- (a) models of effective democratic governance;
- (b) consultation processes for the establishment of an effective business strategy;
- (c) adaptation to local social needs and to the local employment market;
- (d) wage policy, professional training, health and safety at work and quality of employment;
- (e) relations with users and clients and the response to social needs not yet covered by the market or the State;
- (f) the situation of the enterprise with regard to diversity, non-discrimination and equal opportunities for men and women among their members, including positions of responsibility and leadership;

Recommendation 6 (list of legal forms)

The legislative act should include a revisable list of legal forms in Member States of enterprises and undertakings qualifying for the European social label.

Recommendation 7 (revision of existing legislation)

The Commission is invited to review existing legislation and to submit, where appropriate, legislative proposals establishing a more coherent and complete legal framework in support of social enterprises;

EXPLANATORY STATEMENT

Social and solidarity-based enterprises are part of the social economy. They combine wider social, environmental and community objectives with a management which follows an entrepreneurial model. Their activities are varied. They have typically engaged in the delivery of social services and work integration services for disadvantaged groups but there seems to be a common trend of national legislations to enlarge the range of activities in which social enterprises are entitled to engage, provided that they are of general interest and/or social utility, such as the provision of community services, including the educational, cultural and environmental fields.

The recent economic and financial crisis has showed that the individuals most affected by the consequences of crisis are those who belong to the most excluded and disadvantaged groups in the labour market, namely women, people with disabilities, young people and workers with little qualification. In this context, your rapporteur would like to recall that the social and solidarity-based economy provides employment for more than 14 million people, which represents around 6.5% of workers in the EU and 10% of EU undertakings.

In EU Member States social enterprises can take a variety of legal forms and statuses, ranging from more traditional legal forms (i.e. associations, foundations, cooperatives, mutual, share companies) to new legal forms exclusively designed for social enterprises (i.e. social cooperatives in Italy or GmbH in Germany). This diversity and the innovative character of certain of these legal forms advice for caution in this field which is currently in intense development. It is also indication that it will be difficult to find consensus in Europe as to whether it is convenient or necessary at the present moment to set up at EU level a specific legal form of social enterprise.

This is why your rapporteur adopts a more cautious approach that he considers could help build more political consensus and, more importantly, that can have substantial benefits for social enterprises. Your rapporteur proposes to call on the Commission to introduce at EU level a “European social label” which will be optional, that is to say, upon request from social enterprises and that would be awarded to those which comply with a set criteria regardless of the legal form they decide to adopt in accordance with national legislation. This set of criteria is defined in the text of the report and it is not completely new. It builds on previous texts and resolutions of the EU institutions. Your rapporteur would like to stress in this context in order to clear up any doubt that his definition of social enterprises includes for-profit organisations. The critical element is that the most significant part of benefits is reinvested in the activities of the organisation and devoted to the social aim.

Your rapporteur believes that the idea of a labelling would give more visibility to social enterprises, would provide them with more opportunities to access to both public and private financing find better financing and more benefits and also of mobility within the European Union.

Together with this recommendation, your rapporteur includes in the Annex to his draft report a series of other recommendations. Your rapporteur proposes the establishment of a mechanism of certification and of supervision and monitoring of the European legal label with the involvement of Member States. This will protect social enterprises from fraud.

Your rapporteur also proposes that the European social should be valid in all Member States which entail that any undertaking bearing it should be able to carry out its main activity in other Member State under the same requirements than national undertakings bearing the label. They should also enjoy the same benefits, rights and obligations that the social enterprises incorporated under the law of the Member State in which they operate.

The legislative act should require social enterprises willing to maintain the label to issue on a regular basis a social report on their activities, results, involvement of stakeholders, allocation of profits, salaries, subsidies, and other benefits received. In this regard, the Commission should be authorised to produce a model to help social enterprises with this endeavour.

The legislative act should also authorise the Commission to establish guidelines of good practices for social enterprises in Europe. The basic elements to which those guidelines should refer are detailed in the Annex.

For the sake of convenience, the legislative act should include a revisable list of legal forms in Member States of enterprises and undertakings qualifying for the European social label.

Finally, your rapporteur invites the Commission to review existing legislation and to submit, where appropriate, legislative proposals establishing a more coherent and complete legal framework in support of social enterprises.