Designing legal frameworks for social enterprises

Launch Event | 28 April 2022

HIGHLIGHTS
THE BIG PICTURE

- There is growing legal recognition of social enterprises. In the EU, 16 countries have adopted some form of legislation specific to social enterprises, over the past two decades, using a variety of approaches tailored to their specific domestic conditions and needs of social enterprises.

- The number of social enterprises has increased in recent decades. In the European Union, based on national-level data, there are roughly over 300,000 social enterprises, though the number varies significantly among Member states.¹

- Legal frameworks can be a powerful tool to foster and bolster social enterprise development. They can support clarifying what social enterprises are and what authorities can do to best tailor legal provisions to meet their needs.

The learning seminar presented the main findings and recommendations of the Manual and shed light on specific issues related to designing legal frameworks for social enterprises. The objectives of the seminar were to identify when and why to adopt legal frameworks for social enterprises, depending on national or subnational contexts, discuss how to choose between legal forms or legal statuses, and share the challenges of and success factors for effectively designing, implementing and monitoring legal frameworks. Two parallel breakout sessions were organised to allow for broader and more engaging discussions among participants and panellists.

Some 130 stakeholders from 34 countries joined the discussion, including policy makers, academics, researchers, and practitioners.

The *Manual on Legal Frameworks for Social Enterprises*, funded by the EU, was developed by the OECD to provide policy makers with comprehensive steps to successfully adopt and implement legal frameworks for social enterprises. It helps them identify the right time to develop legal frameworks. It also equips them with concrete guidance, including benefits and pitfalls to avoid to make the most of legal frameworks, and highlights notable practices mainly collected from Belgium, Denmark, France, Italy, Luxembourg, the Netherlands, Poland, Slovakia, Slovenia, Spain and OECD member countries.

Speakers (in order of appearance during the event)

Antonella NOYA
Centre for Entrepreneurship, SMEs, Regions and Cities, OECD

Anna ATHANASOPOULOU
DG GROW, European Commission

Karen MAGUIRE
Centre for Entrepreneurship, SMEs, Regions and Cities, OECD

Jakub SCHIMANEK
Ministry of Investment and Economic Development, Poland

Stefan PANHUIJSEN
Social Enterprise NL, the Netherlands

Amal CHEVREAU
Centre for Entrepreneurship, SMEs, Regions and Cities, OECD

Daphné ESTORET
Brussels Regional Public Service, Belgium

Victor MESEGUER
Social Economy Europe

James HERMANSON
Centre for Entrepreneurship, SMEs, Regions and Cities, OECD

Karen MAGUIRE
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Toby GAZELEY
Euclid Network

Julie RIJPENS
Centre for Entrepreneurship, SMEs, Regions and Cities, OECD
Highlights

Countries and regions are developing legal frameworks in the EU and beyond

There is growing legal recognition of social enterprises across the globe. Over the past two decades, 16 EU countries have adopted a diverse array of legislation on social enterprises, while the other 11 EU countries have designed explicit policies or strategies to boost their expansion and, in some cases, are currently in the process of adopting new legislation for social enterprises.

“A social enterprise or a social economy law is the result of a legal history. It thus has to refer to its national, historical context, but it can modernise pre-existing legal frameworks. And there may be spill over effects because countries are inspiring each other. It is critical to look at what is being done in other parts of the world, which is what this Manual encourages to do.” – Victor Meseguer, Social Economy Europe

Legal frameworks can boost social enterprise development...

OECD research indicates that with adequate design and effective implementation, legal frameworks can be a powerful tool to foster and bolster social enterprise development. Legal frameworks may spur social enterprise development by providing clarity on what they are, and enable public authorities to better promote their growth through targeted policies and support measures.

Legal frameworks have a significant impact on the visibility, recognition, identity and organisation of social enterprises and act as important enablers of their development. A common reason for adopting specific legal frameworks for social enterprises is that existing laws do not adequately meet their needs or capture their specific features. Some legal forms may limit social enterprises from prioritising social objectives over profit or inhibit those established as non-profits from engaging in economic activity.

“Well functioning policy and legal frameworks are the first and fundamental step to enable the Social Economy to unleash its full potential for our economies and societies.” – Anna Athanasopoulou, DG GROW

Legislation that specifically recognises and regulates social enterprises gives them a clear, distinct and protected legal identity which can generate positive impacts, including:

- Clear boundaries with other entities or more general concepts (e.g. small to medium sized enterprises, other social economy organisations, corporate social responsibility) that help to improve public recognition and facilitate targeted support measures, among other benefits.
- Legal identification and recognition that can facilitate the collection of more reliable official statistics and data.
- Improvement of the conditions in which they operate through targeted public support schemes and specific public policies, such as tax incentives, public procurement and financial and non-financial assistance and benefits.

“Social enterprises have difficulties demonstrating their social mission, because most of them in the Netherlands operate from a company legal form which has a commercial image and whose goal is to serve the shareholders. This is not what social enterprises are doing but this is what their legal form said they were doing. […] There is no need for a completely new legal structure for social enterprises, but something that recognises that the most important thing for social enterprises is their social mission, not the financial interests of the shareholders.” – Stefan Panhuijsen, Social Enterprise NL
... but designing legal frameworks remains a challenge in many countries

Adopting legal frameworks often requires complex and time-intensive processes. Policy makers can struggle navigating the process of selecting an appropriate legal approach, preparing it for adoption and, ultimately, implementing it effectively. In some countries, it has taken decades of focused engagement and awareness raising to win the requisite political support to pass legislation on social enterprises.

Legal frameworks for social enterprises are context-sensitive and cannot be transposed from one country to another. It is important that legal frameworks reflect the specific conditions of a given country or region. What works in one country may actually prove counterproductive in another by constraining the scope of activity of social enterprises, or preventing their access to financial resources or even sometimes inhibiting them from achieving their social missions.

“There is not a one-size fits all approach. A good legal framework is one that responds to the local, regional or national context, as social economy legal frameworks are the results of historic evolutions.” – Victor Meseguer, Social Economy Europe

Legislation introduced too early or with inadequate stakeholder input can stifle innovation and constrain the development of social enterprises.

Introducing a legal framework too early in the development of social enterprise ecosystems may constrain it or even discourage social enterprises from using novel business approaches or operating in new sectors. At the same time, early intervention can jumpstart ecosystem development by facilitating access to finance markets and promoting awareness.

As has been highlighted by the speakers, it is also imperative to involve stakeholders throughout the whole development phase of the legal framework. This Manual helps policy makers identify key stakeholders and choose the appropriate method with which to gather their insights.

“Jumpstarting ecosystem development
Slovakia intervened relatively early on in the development of its domestic social enterprise ecosystem, which helped improve public perceptions of social enterprises and facilitated access to finance.”

Monitoring and evaluation remains a common blind spot

By providing guidance on the evaluation phase, the Manual highlights the importance of monitoring legal frameworks, as it is often a blind spot. Legal frameworks for social enterprises cannot be seen as static. Legal frameworks need to evolve alongside the sector, to make sure they keep meeting their objectives. Speakers insisted on the importance of keeping evaluation tools simple in order to avoid bringing any additional administrative burden. The OECD has identified best practices for regulatory impact analysis and established the 2012 Framework for Regulatory Policy Evaluation, which help to
ensure that legal frameworks and other policies are fit for purpose. Likewise, the EU Better Regulation Guidelines outline mechanisms to facilitate stakeholder input into policymaking processes.

“We need to have data to be able to conduct evaluations and measure the social impact of social enterprises. In our legal framework, we have three evaluation moments: an annual evaluation for stakeholders and the Brussels Parliament which is mainly quantitative, an evaluation every 2 years which is more qualitative, and a self-assessment for social enterprises during the recognition and renewal procedures.” – Daphné Estoret, Brussels Regional Public Service, Belgium

THE MANUAL

The Manual provides guidance for the three primary stages of developing and adopting legal frameworks: the scoping phase, the development phase and the evaluation phase. Each phase is broken down into distinct but intertwined steps that policy makers are likely to encounter when designing legal frameworks for social enterprises and provides straightforward guidance to address these steps along with best-practice examples and useful tools.

Drawing on concrete examples from consultations with more than 80 experts, policy makers and stakeholders from 10 European countries, the Manual provides lessons learnt to support policy makers in their regulation efforts and flags good practices for success.

This is further supported with checklists and toolkits to resolve common challenges and ensure the development of effective legal frameworks.
