

COOPERATIVES AND SOC

COOPERATIVES AND SOCIAL ENTERPRISES

Governance and normative frameworks

Edited by Bruno Roelants



CECOP PUBLICATIONS

With contributions by:

Felice Scalvini, Roger Spear, Jean Gautier,

Vilma Mazzocco, Eva Johansson,

Bob Cannell, Pekka Pattiniämi, Mervyn Wilson,

Antonio Fici and Guy Boucquiaux.

CECOP 
CICOPA Europe

The European confederation of
cooperatives and worker-owned enterprises
active in industry and services

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Edited by Bruno Roelants
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ISBN: 9782960086126

Legal deposit: D/2009/11.816.3

Printing: Gillis, Brussels

Graphic Design: Ana Laura Suescun for jcse

This publication is printed on 100% recycled paper

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CECOP – CICOPA Europe is the European confederation of cooperatives and other employee-owned enterprises in industry and services. It groups national federations in 16 EU countries, which in turn affiliate approximately 50 000 enterprises in those sectors employing 1.4 million workers. 9 000 are social cooperatives, employing around 270 000 workers.

As a confederation, CECOP has a double mission of representation (mainly with the EU institutions, but also towards other European-level civil society organisations, including other components of the cooperative movement and of the social economy) and networking (coordination of members' European activities, definition of common strategies and positions, promotion of entrepreneurial development, data collection and processing, comparative sectoral legislation etc).

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Acknowledgements

We wish to thank Paloma Arroyo, Emmanuel Bayo, Silvia Frezza, Emilio Emmolo, Elisabeth Barber, Joanna Brzozowska, Zsuzsanna Puskas, Lionel Orsi and Carla Silva for their help in providing the legal material necessary to make the comparative table in the annex and for other legal data; Olivier Biron for the organisation of the Manchester seminar in 2006 and of the whole publication process since then; and Claudia Sanchez Bajo for her critical re-reading of the book.

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INTRODUCTION

Bruno Roelants

Over the last 15 years, a new concept, called «social enterprise» has emerged and been developed in the Western industrialised countries, mainly in Europe and North America. Attached to it are different definitions, standards, governance mechanisms, policies, regulatory provisions, and priorities in the agendas, depending on the country. Basically, the concept seems to be related to the delivery of social goods and social inclusion, but even the meaning of those two concepts (not to mention the term «social») is not identical in the different countries involved. The only thing which appears to be clear is that the «social enterprise» concept is evolving against the backdrop of a profound change taking place in the welfare state and in the delivery pattern of public services in all Western industrialised countries.

On the other hand, the cooperative movement has been evolving over the last 165 years, surviving two world wars and adapting to the most contrasting political regimes, with clear and consistent values, standards and governance mechanisms. With the same clarity and consistency, and with a declared mission to satisfy the people's needs and aspirations through democratically controlled enterprises, the cooperative movement has continuously integrated new needs and aspirations linked to the profound transformation of the social and economic history of the last century and a half: the marketisation of daily goods (consumers' cooperatives), land reform (agricultural and rural credit cooperatives), urbanisation (housing and construction cooperatives), industrialisation (industrial cooperatives), the monetarisation of the economy (cooperative banks), the development of the tertiary sector (service cooperatives), and, last but not least, the «de-statisation» of public services (social cooperatives).

Social cooperatives, the most recent among the largest typologies of cooperatives, seem to act as an interface between the cooperative movement and the social enterprise phenomenon. Nevertheless, studying the relations between a consistent and universal model (the cooperative movement) on the one hand, and a variegated and geographically-bound one (social enterprises) on the other, is not an easy task.

This publication is an attempt to explore such interfacing and comparison between the two models, from two distinctive and complementary angles: governance and normative framework. Indeed, only with clear governance rules is there a guarantee that «social enterprises» may deliver their goods not only today but also tomorrow and in a

sustainable way without altering their mission; on the other hand, a specific normative framework seems to be needed to guarantee such delivery over the long term.

The drafting of the book covers a three-year time span, from 2006 with a first seminar on social enterprises organised by CECOP, and 2009 when the DG Enterprise of the European Commission organised a first conference on this topic. It is divided into two parts. The first one is the transcription of the 2006 CECOP seminar, aiming to be an initial attempt at comparing the two models at the European level, and in four selected European countries in particular. The approach in this section is based on the concrete observation on the ground. The second part, in turn, focuses mainly on a legal analysis of the normative framework of cooperatives, social cooperatives and social enterprises (or equivalent), grounded in a comparative table of 10 pieces of national legislation.

In chapter 1, Felice Scalvini opens the debate from a historical perspective, showing how both cooperatives and public services have been gradually entering areas which were previously excluded from the cash economy.

In chapter 2, Roger Spear brings with him the experience of the EMES network, whose main focus of analysis over the last ten years has been social enterprises. According to Spear, the social enterprise phenomenon emerges at the intersection between the more entrepreneurial cooperative movement and the world of charities and at the confluence between the trading economy and entrustment by the public authorities. Spear then introduces the definition of social enterprise provided by EMES and sets out a brief inventory of types of social enterprises in different European countries. Finally, he mentions the challenges ahead, and in particular the big opportunity which, in his opinion, this new entrepreneurial phenomenon offers the cooperative movement.

In chapter 3, Jean Gautier elaborates on the historical evolution introduced by Scalvini. He then delves in an interesting discussion on the semantic traps of the term «social», which, at least for the purpose of the present discussion, can be understood in the various senses of social redistribution, social assistance, social utility, and associative forms of governance. Gautier then presents what he summarises as the three pillars of cooperatives, and in particular of worker cooperatives, namely capital, labour and talent, and, attached to them, their three main governance principles: joint ownership, democracy, and the dual quality of the cooperative member. He concludes on the new opportunities brought about by the social cooperative sector, and on the cooperative movement's strong potential to work on behavioural development and,

thereby, produce the *social link* which is central to the delivery of social goods and services and to social inclusion.

In chapter 4, I briefly examine the link between, on the one hand, the interest expressed by some international organisations in social enterprises and, on the other, the consistent advocacy by the same organisations of the need for structural reform policies (including welfare state reform, budgetary reform and decrease in social spending, privatisation, labour flexibility, etc) and of the development of «safety nets» aimed to repair the social exclusion side-effects of those policies. In this context, the interest of these international organisations, at least until 2006, seemed to be more oriented towards the short-term delivery potential of social enterprises than towards the latter's sustainability and long-term governance patterns.

In chapter 5, Vilma Mazzocco analyses the situation in Italy. After noting that the vast majority of social cooperatives have allowed their staff to be members and co-owners of the enterprises, as is the case in worker cooperatives (even though the Italian legislation does not compel them to do so), she shows how they have served as a matrix for a wider «social enterprise» constituency in general and discusses the brand new Italian legislation which tightly regulates those «social enterprises» (under the Italian definition of the term), after an intense lobbying exercise in which the national cooperative federations were involved for its approval. Mazzocco somehow explores the same concept of *social link* as Gautier by concluding that social enterprises should focus on *the way in which* they deliver social services and social integration rather than simply on *what* they deliver.

In chapter 6, Eva Johansson briefly illustrates the social enterprise phenomenon in Sweden. Beginning with the «social worker cooperatives» two decades ago, she shows that this phenomenon is still overwhelmingly a cooperative one, like in Italy.

In chapter 7, Pekka Pättiniemi first illustrates the massive surge of worker cooperatives in Finland since the mid nineties, and explains how this phenomenon has remained largely unconnected from the debate about social enterprises (unlike what has happened in Sweden) and from the approval of the social enterprise law (unlike what has taken place in Italy). He concludes that, in the Finnish national environment, social enterprises constitute neither an opportunity nor a threat to cooperatives.

In chapter 8, Bob Cannell illustrates the situation in the UK. After a brief historical introduction to the British cooperative movement, he explains how the social enterprise concept was introduced in the UK as of the mid-1990s, against the

backdrop of the Blairite «third way» and in a totally different fashion from Italy, with two different versions, a genuine community-controlled enterprise and a private for-profit business with a social utility. He also explains how the personality-based concept of «social entrepreneur» was developed as a complement to the «social enterprise» concept. Cannell then mentions the public policies that have been developed by the UK government to promote the UK version of «social enterprises» together with the impressive figures on their number, which have been compiled by the same government. He goes on to examine a few emblematic examples of social enterprises, some of which are based, by and large, on the cooperative model and are endowed with a high level of democratic control and accountability, whilst others are barely distinguishable from ordinary private ventures. He concludes that the UK cooperative movement should open itself further to the social enterprise field, but should also make a clear distinction, in its alliances, between those that are characterized by clear accountability and governance rules, and those that are not.

In chapter 9, Mervyn Wilson concludes the seminar by highlighting the ambiguity of the state withdrawal policies and the trend to associate the cooperative movement with social inclusion in its most restrictive sense, while also underlining the fact that the cooperative movement probably needs to open up further to the field of social services. Thus, for Wilson, the social enterprise phenomenon may provide both a threat and an opportunity for the cooperative movement.

In Part II, Antonio Fici transfers the comparative discussion towards a more distinctly normative terrain, without losing touch with the socio-economic reality. On the one hand, Fici's expertise reflects the particularly evolved situation of his country, Italy, both because of the enormous strength of the social cooperative reality there and because Italy has both a social cooperative law and a social enterprise law. Fici successfully extends his analysis to national laws on social cooperatives or social enterprises (or the equivalent concept) from eight other European countries. Fici carries out a skilful exercise, first of all demonstrating the social function of the cooperative movement in general, then by investigating the possible reasons for the penetration of the economic and market dimension into welfare services and community services. He then analyses the distinctive features of social cooperatives versus other types of cooperatives and finally compares the various pieces of legislation on social enterprise (or equivalent) in Europe. He concludes by calling for precise regulatory provisions concerning the governance of social enterprises.

Also in Part II on the normative perspective, we find Felice Scalvini's closing presentation, in his capacity of CECOP president, at the European Conference on

Social Enterprise organised by the European Commission on 6 March 2009, in which he spells out the opportunities and priorities for social enterprises. Scavini underlines the need for social enterprises to be clearly regulated at the national level and for the European Commission to help analyse the converging aspects of the existing national legislations. He also argues that both the European Commission and national governments should promote public policies aimed to ensure the entrepreneurial development of this new enterprise typology.

In the final chapter, I conclude on the «state of the art» of the «social enterprise» issue – per se and in relation to the cooperative movement – as examined by the various contributors and as it can be assessed at the beginning of 2009, and envisage the prospects for the future.

The annex contains a comparative table that sets out the main provisions of 10 national laws regulating social cooperatives or social enterprises (or the equivalent concept). Three extra national laws are discussed in the final chapter, without being included in the table¹.

1 It was only possible to examine these laws just as this book was going to press

PART I

EUROPEAN SEMINAR:
SOCIAL ENTERPRISES AND WORKER COOPERATIVES
Comparing models of corporate governance and social inclusion
Manchester, 9 November 2006



1. Introduction to the seminar

Felice Scalvini

With this seminar, the European Confederation of Worker Cooperatives, Social Cooperatives and Social and Participative Enterprises (CECOP) wishes to begin to discuss and to closely examine what this, as yet partially indistinct type of object, namely the social enterprise, is at the moment, what it might be and what it might become in the future.

Social enterprise is a term that, currently, does not mean the same thing throughout Europe or the rest of the world. The concept that is denoted by the term «social enterprise» in the United States is somewhat different from our understanding of the term in Europe. Even in Europe there are differences between points of view, legislations and the provisions taken by the national governments.

This means that we need to be cautious in the way that we begin to look more closely at social enterprises, even though we know that, for the cooperative movement in general, and for organisations of worker cooperatives and social cooperatives in particular, the issue of social enterprises has to be addressed, since it is closely related to the cooperative experiences that we represent and is deeply entwined with these experiences on a daily basis, creating possibilities and problems, as well as opportunities and limitations.

Why is the issue of social enterprises emerging? I would like to give a very simple answer that can be underscored by a quotation by Rathenau, an academic and politician at the beginning of the 20th century, who was Treasury Minister of the Weimar Republic and was killed by Hitler's militia. In one of his articles, he clearly describes what our future may be by saying that, «the economy is our destiny.» This prophecy is happening now.

The economy occupies increasingly wider spaces within social relations and our everyday lives. If we just think of how many financial transactions and how many economic exchanges our grandparents carried out and compare them to how many we carry out today, we can quite clearly see the extent to which the dimension of economic exchanges has invaded our daily lives.

From this point of view, cooperatives have historically played a role as a driving force

behind this process of expansion of the economic dimension. What, after all, were the cooperative credit banks and the rural credit cooperatives, if not the instrument that introduced, to the dimension of financial exchanges, groups of people, such as farmers from the end of the XIXth century and the beginning of the XXth century who, up until that point, had been completely excluded from these exchanges?

The issue of the new frontiers of the economy is an issue that characterises the history of the cooperative experience. The cooperatives were responsible for taking the dimension of economic exchanges into areas that, towards the end of the XIXth century and the beginning of the XXth century, had never been occupied by the economic dimension. At the time, people consumed what they were able to produce themselves. The cooperative experience created new economic forms and did so in the name of the defence of individuals, the principle of solidarity and of mutual aid.

An unstoppable process has been underway over the last few decades to bring about a further expansion of the economic dimension into sectors in which, historically, for a series of reasons that would take too long to recall here, it had been granted precious little scope for development in the past. I refer to social assistance, social services, education, health, environmental protection, art and culture. Up until a few decades ago, no one had ever thought that economic exchanges could take place in these areas. Rather, they were considered to be areas in which the State would always be present as the provider and deliverer of services and forms of protection, or areas that would benefit from private benevolent initiatives.

The last few decades of the last century and the early years of this new century are furthering the fulfilment of Rathenau's prophecy as we see the economy occupying many new spaces, including spaces that, in the past, we thought, often from an ideological point of view, should not be occupied by market and economy practices. As these spaces develop, it is quite natural that new, well-equipped actors should enter the scene in order to manage the economic activities, or that the actors that occupied these spaces in the past should transform themselves so as to ensure that they are capable of managing economic activities.

A good example for the European countries is that of the institutes that provide care for children, the elderly or people with disabilities. In the past, these institutes were run by religious orders. They were set up to provide care services for those who needed them and were not enterprises. They managed to survive thanks to private donors, public contributions and the work provided, free of charge, by the female religious

orders. Almost everywhere, they have now become private structures that survive on the payment they receive from either the State or from private individuals. They no longer have sisters working for them, which was something that enabled these infrastructures to avoid almost all staff costs, and instead have regular employees. To all effects, these structures are enterprises and it is also true that many of these structures are now beginning to be managed by cooperatives.

We could provide many different examples and could take these examples from areas such as cultural activities and environmental protection. We are faced with an unstoppable process that we will have to address, creating a new and more evolved form of integration between economic and social dimension.

2. The phenomenology of social enterprises in Europe

Roger Spear

1. The roots of the social economy – 2. The factors favouring the development of social enterprises – 3. Factors defining social enterprises – 4. Examples in different countries – 5. The characteristics of new social enterprises – 6. The challenges for cooperatives

The last time I was in Manchester, I was with Bob Cannell at a seminar which was called «*If social enterprise is the wagon, are cooperatives the wheels?*» This was an ironic and humorous way of saying: «*if social enterprises are the bandwagon, are cooperatives the driving force behind that bandwagon?*» To be provocative, I argued that voluntary organisations, and particularly large charities, were the wheels. It is true that social cooperatives have been an inspiration for the development of social enterprise policy across Europe. It is particularly the case for social cooperatives in Italy, and the nurseries in Sweden. Regardless of whether or not they are the driving force, they are certainly one of the major inspirations behind the development of social enterprise.

1. The roots of the social economy

The social economy comprises mainly four types of actors:

- Cooperatives: there are essentially two types of cooperatives: users/ consumers and producers. Worker cooperatives are a special type of producer cooperative. We are seeing a new type of multi-stakeholder cooperatives with the social cooperatives in Italy and in other countries. Rather than having a single stakeholder (user or producer or worker), they have several.
- Mutuals: we have two classes of users: savers and borrowers. Sometimes, it is the same person, but the users are divided into two categories.
- Associations of voluntary organisations: service providing, self-help, advocacy. Those that provide services are in the social enterprise sector.
- Foundations and trusts.

In the 15 countries of the EU before enlargement, about 8% of the population is employed in the social economy. In the new EU member states, we have seen major

transformations from the Pre-World War II period, with very vibrant cooperative sectors and some particularly interesting ones, for example in the employment of disabled people in Poland.

After the end of Communism, those countries have experienced a kind of a race to the western world model of market capitalism. We have witnessed various problems: restitution of properties, privatisation, hostility to the traditional cooperative sector because of the nomenclature of the party linkages, dissolution of cooperative federations, etc. There has been a massive decline in cooperatives in these new member states during this period. As a response to the severe recession, we are now seeing the emergence of civil society activities. Some of them are cooperatives, such as FKOK in Poland (credit unions). We are also seeing foreign donors and NGOs playing a role in stimulating social economy activities and sometimes raising doubts as to whether they are replacing local civil society activities. We are also seeing some of the legacies of that Pre-World War II period, as there is a continued interest in integrating the disadvantaged and disabled. Those sectors continue to be significant. New legislation is also being introduced in this area². In Poland, new cooperative legislation was passed in 2006. In terms of numbers, some activities have developed and in some cases this development has been quite substantial (e.g. Credit Unions in Poland and Lithuania).

Therefore, in order to review the European social economy, we must consider that its roots are embedded in the values of civil society. The percentage of full time equivalent employment in the social economy varies from 16% in Ireland to 3.5% in Portugal. For various reasons, the family plays a bigger role in Southern Europe; in some countries, such as Spain and France, the social economy has been prominent in terms of political schools of thought. They are followed by the Netherlands and Ireland, largely because of the associations and voluntary organisations, which are the largest employers in the social economy.

We see that, historically, institutions have developed the social economy. It is also based on different kinds of welfare systems as well as the role played by the family. I once asked why there were not many crèches cooperatives in Barcelona. They answered: «*Roger, it is because we have grandmothers and grandfathers*». Indeed, in some European countries, the family plays a much bigger role.

2 See comparative legislation table at the end of this volume

We are also seeing some different trends in terms of how the social economy shapes the market and how it develops more towards becoming a business, or is getting closer to becoming a democratic service provider for the state. In the Netherlands and Germany, the large associations are very bureaucratic, almost like state organisations. In the UK, you might argue that there is more and more of a business-like approach to non-profit organisations and cooperatives in the welfare sector.

The new trend we are observing is a demand for different types of services, new forms of involvement and civil actions, new organisations of different legal forms, new solutions to local problems and multi-stakeholder entrepreneurship.

In terms of how the social economy is fitting into this picture, basically there is a part of the social economy that is trading and generating income, whilst there is another part which is contracting for services with the public sector. Both types are social enterprises.

We are seeing an increasing shift of the market into more and more types of activities. An increasing number of countries are privatising facilities, moving the market into traditional family sectors and finding ways to finance it. The concept of social enterprises is becoming more relevant. We are seeing an institutional pluralism, with diverse institutional forms being developed: social cooperatives in Italy, social solidarity cooperatives in Portugal, community interest companies in the UK, of which there is a cooperative version, the SCIC (société coopérative d'intérêt collectif) in France, and companies with a social purpose in Belgium.

Although it is probably related most strongly to the UK and the US, the idea of a 3rd way is gathering philosophical and political support across Europe, originally with Blair and Clinton. There is an attempt to establish a new social democracy to combine the ideas of the market and economy dynamism with the idea of social justice and creating opportunities more fairly. The idea is that we need to reform public services in many different ways to make them more efficient, more diverse and no longer standardised, but offering a differentiated service. We can also refer to the idea that «with rights goes responsibility» and we can consider the extreme situation of the workforce programme in the US, where your benefits are withdrawn if you do not engage in a programme for work integration. Finally, there is a new system of governance: you cannot move anywhere in the UK without a partnership.

Social enterprises seem to fit with many of these features and with the idea that the market is moving increasingly into more spheres of life. The UK is the only country

where the term «social enterprise» is used as a *brand*. In other words, we use social enterprise as a name to describe government policies (policy of the social enterprise). In many other parts of Europe, it is the *concept* of the social enterprise that we use. In Italy, the «social cooperatives» are not called as such by the Italians, who in turn refer to «l'impresa sociale», namely the social enterprise. In general, the UK has gone much further down the road of using social enterprise as a brand.

Other countries have their cooperatives and non-profits on the market, with many different local names. Conceptually, we are calling those: «social enterprises».

2. The factors favouring the development of social enterprises

We can mention the main following factors:

- the state pushing service provision further away;
- entities such as municipally-owned and independently-controlled sheltered workshops for disabled people in some countries are being pushed more and more into the market. There is a greater *marketisation* of income sources from the state;
- if you look at the way voluntary organisations raise donations, they do so very much in a market-driven way. It is a marketing exercise to «raise donations». A highly sophisticated system of marketing the brand has been developed for charities.

Many philosophies of management practices have moved to the social enterprise, not only in contracting or trading, but also in terms of raising donations, legacies, etc.

Of course, we have a public services market in many countries. In terms of the development of the social enterprise concept, the EMES network claims to have developed its thinking on the social enterprise concept in 1995. Social Enterprise London might also claim to have developed thinking about this concept in the mid-90s.

We did some comparative studies during the late 90s and developed a theoretical framework about multi-stakeholder structures, mixed resources (money from trading, contracts, plus money from subsidies and from social capital in terms of donations) and informational linkages.

We have not been uncritical in the process of developing this approach. We considered it important to say what the issues are about, namely the social economy operating increasingly in the market and being increasingly regarded as an entrepreneurial actor.

We have some criticism in terms of: «are they becoming more like businesses? Are they maybe taking the best disadvantaged clients and leaving the worse ones for someone else to look after? Are they making an excessive amount of money out of public contracts?»

In developing the social enterprise concept, we are also developing a critical framework to look at what is happening. In the UK, there is some unease about the move towards social enterprise and in the advocacy role that non-profits have performed up until now. Those voluntary organisations will be pushed more and more into service provision and so will not be able to play a political role of representing the disadvantaged groups of communities in the political process.

To a certain extent, the disadvantaged community will not find it so easy to express their views in the political process since there is a likelihood that they will just be treated as disadvantaged customers for services. There has already been criticism of these types of developments.

3. Factors defining social enterprises

There are different definitions. One of the key factors is the extent to which the proportion of income that the social enterprise receives comes either from trading or from contracting. For example, in the UK, the social enterprise unit argued that there should be more than 50% of income from trading. But in practice, when they bring their statistics together, they use a figure of 25% of income. This has the effect of boosting the number of social enterprises that are identical. Essentially, there are 2 types of characteristics: the enterprise characteristics and the social goals (participation, user involvement and community benefit).

There is some criticism regarding the extent to which governments are actually pushing disadvantaged communities and individuals into really tough market situations in which individuals are having to bear the risks and are being placed at a real disadvantage because of this situation.

Withdrawal of all subsidies and moving into the market is the rhetoric. In practice, you can imagine that there will be some groups of people that will always need some kind of subsidy due to their degree of disadvantage or disability.

We have seen non-profit organisations and cooperatives moving together. We have seen cooperatives moving into welfare service provision, with the traditional sector

of the non-profit organisations moving more and more into market-type relations. It is the bringing together of these two which form the social enterprise.

Social enterprises are new organisations but also organisations that are changing shape because of this changing dynamics.

They are organisations that may traditionally have received subsidies, but which are moving into contracting with the public sector or raising money from trading. The context has changed and established organisations have also changed their behaviour accordingly. They are both inside the 3rd sector. I should say that this is different from the perspective of the USA and some UK commentators. In the USA, when they talk about social entrepreneurship and social enterprise, they are not at all bothered about the organisational form.

The EMES has defined 4 economical factors and 5 social factors:

Economical factors:

- 1) A continuous activity producing goods and/or selling services
- 2) A high degree of autonomy (vs. dependency)
- 3) A significant level of economic risk
- 4) A minimum amount of paid work

Social factors:

- 1) An initiative launched by a group of citizens
- 2) A decision-making power not based on capital ownership
- 3) A participatory nature, which involves the persons affected by the activity
- 4) Limited profit distribution
- 5) An explicit aim to benefit the community

In very broad terms, we are seeing a growth in the different sectors: delivering services, childcare, welfare services and regeneration.

Now, in the first category, you can imagine that it is quite easy to achieve sustainability and the degree to which a continuing subsidy might be relevant in those organisations.

We are probably seeing more cooperatives in the first area than in the second one. The growth of ethical environment or fair trade type markets is particularly interesting.

4. Examples from different European countries

Austria:

- sheltered workshops
- childcare in the non profit sector

Belgium:

- work integration enterprises
- social housing

Denmark:

- unlike Sweden, it does not seem to have a strong worker cooperatives sector
- agriculture
- traditionally, they do not seem to have many social cooperatives emerging
- quasi-autonomous initiatives
- social housing and social work projects.

Finland:

- Labour cooperatives have been formed by the voluntary organisations of unemployed people. There is an interesting link within the social enterprises in this respect.

France:

- Childcare, social care, the origin of proximity services
- Close relations with the community, with users, with producers in the provision of local services.

Germany:

- Has resisted the inclusion of the younger, quite dynamic alternative enterprise projects and cooperatives and collectives until recently (NETZ network)
- Agri-tourism cooperatives and cooperatives for mentally disabled people

Ireland:

- Many different types of non profit organisations and a very dynamic credit union movement (half of the population is in a credit union).
- Many community businesses.

Italy:

- Social cooperatives
- Associations and foundations

Portugal:

- Private social solidarity institutions and integration enterprises

Spain:

- Very dynamic cooperative situation (Mondragon, Catalonia).
- The employee-owned societies (SAL) are very important and are a symbolic part of the social enterprise.

Sweden:

- The sheltered workshops for disabled people, which are slowly becoming more and more independent and possibly moving increasingly into the market. This is a trend we have seen in a number of countries.

The Netherlands:

- Here we see traditional non-profit pillars of service provision, with Catholic, liberal, Protestant and socialist values and political systems

To summarise the major type of social enterprises, we have:

- the traditional cooperatives and mutuals
- the associative structures, the voluntary sector structures contracted for services
- social and healthcare, social cooperatives
- community and worker-owned structures in many different countries
- community businesses (e.g. Régies de quartier in France)
- work integration enterprises, some which are transnational; people work there for 6 to 9 months and then go out onto the employment market as the organisations provide adult services for crèche and work integration in sheltered workshops

5. The characteristics of new social enterprises

We can observe the following characteristics

- a changing of the state / market relationships as mentioned earlier, moving increasingly towards contracting, reduction in subsidy, possibly a declining advocacy role played by the organisations. In the 60s, you might have expected a community action group to form in order to lobby and represent the community. When community action groups form now, the first idea is to deliver services and generate money for that community. It is a different way of thinking.

- a resource mix
- an emphasis on social entrepreneurship
- multi-stakeholder structures
- social capital (particularly important in terms of the use of linkages, worker involvement and participation)

In the UK, the figure regarding earned income is growing, in particular for volunteers. We have seen a year by year growth in voluntary sector income. It is now the biggest single source earned income from the market. We have also noticed an increase in workforce. That is the pattern that has developed. We have seen a 40% increase in new charities since 1995, a doubling of the large charities and the emerging of super charities. We have also seen a *charitisation* of public sectors including leisure, with the establishment of trusts, some of which are multi-stakeholder cooperatives, some of which are charitable structures.

The cooperative sector has to keep up with these developments of social enterprise in Europe. Obviously, we are talking about different histories and different institutions in place. That institutional-historical structure will continue to influence what emerges and the spaces of entrepreneurial activity.

There is something like a public good arena with many different stakeholders playing an entrepreneurial role. We are seeing that people are talking about social entrepreneurs, but priests in churches are being called social entrepreneurs because of the activities they sponsor in and around their churches, some of which are the provision of social services. There is an arena for public goods which those various institutions are sharing.

There are quite different cultural traditions across Europe, in terms of use of social capital, the issue of creaming (taking the best clients) and ignoring the more disadvantaged ones, etc. We should wonder whether, with the ongoing professionalisation drive, they are not becoming more and more isomorphic and taking the same shape as business activities.

6. The challenges for cooperatives

The following challenges should be taken into consideration:

- thinking in terms of social entrepreneurship, not just creating a single new enterprise but how does the cooperative sector think in terms of creating new sectors of entrepreneurship?
- In a way, thinking about social enterprises is to think about the social movement and how we are surfing on the social movement in the cooperative sector.
- fair trade, ethical trading, organics; those movements should be presented by the cooperative movement as its big opportunity
- there has been an increasing interest in replication across Europe as replications are successful models
- new markets (ethical, environment): disability and integration is the new market in the UK. It is probably one of the big new markets across Europe (integration of disabled workers into the workforce) as well
- public services market: in a way, cooperatives have some disadvantages. Small organisations that are contracting public services and are buyers of services are really having a tough time, not necessarily because they are cooperatives, but because they are small. Increasingly, the public buyers do not want to make 20 deals with 20 small organisations but one deal with one big organisation. Size is becoming a big issue and maybe we can learn from Italy with the «consorzi» model of bringing together a number of small cooperatives at the local level so they can bargain and contract. The issues of trust, size, inclusion and multi-stakeholder structures in public service markets are quite challenging for cooperatives.
- there is also a need for local coalitions across the social economy, not just within the cooperative sector.

I have tried to bring out some of the diversity of the social economy experience in Europe and examined what we mean by the *concept* of social enterprise, which is distinct from the *brand*, to explore your opinions on the UK experience and to raise some question about the social economy and cooperatives.

3. The main governance characteristics of worker cooperatives in the light of the social enterprise phenomenon

Jean Gautier

1. Reasons for the development of social enterprises - 2. The semantic trap of the term «social» - 3. The governance of workers' cooperatives - 4. The response of the cooperative movement to the social enterprise phenomenon

1. Reasons for the development of social enterprises

Why are social enterprises developing throughout the world? There are many reasons for this development, but if we look for the main reasons, then we are able to say that there are phenomena of sociological and behavioural modifications, as well as the phenomena of the withdrawal of the state's functions in certain areas.

Sociological phenomena: in the XVIIIth century in particular, and to a lesser extent in the XIXth century, economic activities were first and foremost activities carried out to guarantee the subsistence of families. Today, the family unit is no longer a place for production, whether this be material production or the production of basic social functions such as bringing up children, looking after the older generations, dealing with many problems linked to social relations, etc. These elements are no longer «produced» within the family unit, which is increasingly losing its function, including that of economic production, which, in the past, has been of considerable importance.

We are also witnessing the presence of phenomena of withdrawal. In the XIXth century, the state had a function as both policeman and regulator. Throughout the XXth century, certainly in the European countries following the end of the Second World War, the state developed functions related to protection, including social protection, and at the same time it also gradually assumed responsibility for the education function that was no longer carried out by the family.

But what is happening today? For a whole range of reasons, the state is increasingly withdrawing from its former responsibilities and the authorities take less and less direct responsibility for social needs and requirements. So, if these needs are no longer taken care of by families, by the religious congregations – who, at one time, were responsible in great part for the running of the hospitals - or even by the state, who is going to assume responsibility for them?

The answer to this question has been organised and structured around the enterprise and according to an entrepreneurial model: the implementation of factors of

production, in other words of labour, capital and an enterprise function in which needs are analysed and responded to through the provision of services.

However, we find ourselves in a very different situation from an economic point of view because the demand that is expressed is generally not financially solvent. And yet, the financial model that we currently use, in which an enterprise deploys its means and resources in order to respond to demand, is only truly valid if, in the final analysis, there is the capacity to purchase and to remain solvent.

When it comes to satisfying certain needs, such as providing assistance for the elderly, for example, at a time when there were no schemes or means to finance pensions, then we can see that the use of enterprises in the conventional sense of the term is not possible.

The only way in which this is possible, - and this has been done in all countries across Europe - is to implement systems that ensure that the demand is solvent. This leads to an economy based on redistribution, with the state levying part of the country's wealth in order to be able to redistribute it to potential users.

In France, it is the social action committees that give this purchasing power back to a population of people who do not have the required level of solvency and who are going to make it possible, by making demand solvent, to provide an entrepreneurial response to a certain number of needs.

This is the implementation, both in France and in many other countries, of what we call human services. In turn, this has led to the development of an entire economy that has been termed as being the «social economy».

But in what way is it social?

2. The semantic trap of the term «social»

The first characteristic of this social economy may be found in the very nature of the needs to which it intends to respond. The social enterprise is defined, first and foremost, by the type of activity to which it is going to respond; health, social and cultural needs that are all in the area of the production of activities to provide goods and services.

In French, the term «social» can be used to describe an extraordinary variety of ideas. Social can mean the concern that is expressed to meet with the needs of the poor and this is the concept of social assistance. But it could also refer to the

system of redistribution: after all, workers, who are not necessarily any poorer than any one else, who put money to one side in order to protect their health and pay contributions and then have this money redistributed back to them by what we call the social security system, are also engaged in a social activity, although this time the redistribution system is not just aimed simply at the disinherited or the poor. Finally, there is another area of social activity today that is the regulation of the response provided to the needs of people who are no longer or not yet engaged in production activities, or who are not capable of being engaged in these activities because they are no longer of an active age. Here, of course, we refer to children, adolescents, students, senior citizens and we now see the development of another form of economy in order to respond to these needs which, I would like to remind you, were, in the past, taken care of by the state or by families.

Of course, the reality of this situation is far more complex; however there is no doubt that the emergence of what is today called the social enterprise is related to these changes within our society.

In what way could social enterprises organised in the form of workers' cooperatives be capable or even more capable of responding to this type of new development represented by the social enterprises? Do social economy enterprises, cooperatives and workers' cooperatives in particular present any specific advantages from this point of view?

When we talk about the «social economy» in France we must be very careful not to fall into the trap laid for us by the words themselves. When used in the term «social economy», «social» does not indicate that this is a response to the needs of the poor or the needs of society; rather, social means «organised in a societal form», in other words in an associative form.

The social economy is a mode of enterprise in which the governance, powers and the operating modalities all refer to an association of persons rather than to a grouping of capital which defines the company as being capitalist with the aim of generating the highest possible profit level.

Consequently, when we speak about workers' cooperatives or social economy enterprises, the difference lies in the mode of organisation and the ultimate purpose of the enterprise and not necessarily in its object.

From this point of view it is clear that, both historically and in the present day, production cooperatives do not work in areas that are considered to be in the field of social enterprises. Cooperative enterprises in France, Italy and other countries are active in sectors such as industrial production and construction which, a priori,

have nothing whatsoever to do with the social arena as we described it earlier. However, these are still social economy enterprises. Consequently, they pursue a specific purpose and are organised according to a particular mode of governance and operations in such a way that, as well as producing goods and services, they produce something that is considered to be of social utility. This takes us into another semantic area. We are no longer talking about the precise description of the social enterprise or of the objective of its social response, rather we refer to the production of what we call the collective or social utility.

So why should these cooperative enterprises, workers' cooperatives or other types, be capable, as a result of their operating methods, of producing an added social value or some form of supplementary value?

Those of us who work, in practice, with these forms of enterprise, know the answer to this question. But the real challenge for us today is to ensure that the outside world understands that, regardless of the field of activity in which it is engaged, a cooperative enterprise provides an added value through its mode of governance and its operating methods. This is the objective and main characteristic of governance in workers' cooperatives.

3. The governance of workers' cooperatives

The governance of workers' cooperatives is based on three main principles and three pillars, with all of the other elements resulting directly from these main aspects.

First and foremost, a cooperative has a form of ownership *sui generis*. It is not the sum of the ownership of individuals, as is the case in a capital based enterprise in which the capital is merely the sum of the assets held by individuals. In a cooperative, the production and accumulation of indivisible reserves means that the enterprise itself is the owner of its own assets. Accordingly, those who wish to use the cooperative enterprise form will be able to use their own «talents». That is what the earliest cooperative authors said, notably Fourier. In his view, the currency of cooperation was «capital and labour», and he placed them at the same level of importance since they were provided by the same person, as well as «talent». In other words, «capital – labour – talent».

On the basis of the combination of these three elements, a cooperative enterprise must be capable of providing something that is additional and something that is better in terms of its operations and the entrepreneurial response to a certain number of needs.

Therefore, joint ownership is the basis for the democratic principle regarding cooperative ideals that everyone knows about (although it is virtually the only thing that the general public knows), in other words the principle of «one member, one vote».

This principle is entirely related to the principle of joint ownership since the only way to organise the exercising of power within an organisation that is collectively owned is along democratic lines. There are no other ways of doing this.

Finally, a cooperative is an enterprise: it must therefore produce greater wealth than it consumes, but the results that it generates must be shared out according to rules which are not the same as those followed by conventional enterprises: it is not the capital as a factor of production that appropriates the added value, rather it is the labour for one part, and the cooperative enterprise for the other. It will generate its own assets through its indivisible reserves and organise its own continuity.

This method of cooperative organisation, which was born in the XIXth century, was therefore a reform and a response to social needs. Jean Baumont, a French cooperation historian, said that, «cooperation is the daughter of necessity and poverty». It was a method of organisation that met with a social necessity. First of all because, in the XIXth century, workers were exploited in a system in which there were no means to defend their rights and above all there were no means of trade union defence of their rights. I would like to remind you that, from 1793 up until 1884, individuals were strictly forbidden in France from defending their interests. Indeed, at that time, the criminal offence of collusion was introduced through the Allard decrees and the Le Chapelier laws. This was introduced because, quite simply, there could not be any intermediary bodies between the state and individuals. Such things were forbidden.

The only way to organise a social defence system was therefore the cooperative form of operation. And this is something that worked throughout the XIXth century.

But what about today? Today we are living in a period in which we can see the opening up of new areas and new needs and it is here that the social cooperatives are being created.

It would be appropriate at this stage to spend some time on the principle of dual quality: in a capital-based joint stock company, the shareholders are anonymous in the sense that the identity of the person who holds the shares is of no importance since a person becomes a shareholder by investing capital and the shareholders then expect a return on this capital. In a cooperative, there is a further dimension to be added. Whilst there is still a need to provide capital, one becomes a member because one contributes one's own labour, talents and economic projects. That is

what being a member of a cooperative is all about. Cooperation is first and foremost an association and a project established between persons, as well as a project for personal development. It is not a project designed to increase the return on one's capital. It is a professional project for work or production co-operators as we have always known it to be, both in the past and in the present.

4. The response of the cooperative movement to the social enterprise phenomenon

In terms of what we said earlier regarding the withdrawal of the state and the family from certain areas, as well as the devolution processes in which social enterprises are engaged, the world of cooperation must once again show its capacity for imagination and productivity. It has shown this first of all in Italy through the social cooperatives and it has continued to do so in France and now in other countries through what are known as the SCIC (Collective Interest Cooperative Societies) in France, the CIC (Community Interest Companies) in Great Britain, and through a certain number of other forms.

What has been the novation and the innovation? It always boils down to the same thing: it is a question of defining what might be the best means of governance and the exercising of power in order to satisfy a social need for the enterprise.

I will conclude with what I consider to be a simple, but significant, example. What sort of enterprise has the greatest chance of developing in order to respond in the future to demand for human services such as child care facilities, the development of support services for the elderly, etc? Companies that are going to seek the highest possible return on their capital and that are going to use staff required to meet with the most demanding levels of performance indicators and competitiveness? But what is the real demand within human services? The demand is the social link! It is not for productivity or the amount of time spent, rather it is the quality of the relationship.

Surely the type of enterprise that has the greatest chance of responding to these needs must be the enterprise whose objective is the quality of their production or what I earlier called the «talent», which is the very essence of the way in which a cooperative operates.

There is no doubt that, in practice and in the field, the reality of the situation is far more complex, since it is particularly difficult to transmit and to pass on skills that relate to an individual's growth and development.

However, for the last 150 years co-operators, both male and female, have been working on behavioural development, joint enterprise management and a certain number of areas in which enterprises, in their capitalistic and limited form ultimately have no, or very little, chance of out-performing the cooperative form of enterprise.

4. Social enterprises and state reform policies on the agenda of international organisations

Bruno Roelants

1. Introduction – 2. Definition and scope of activity of social enterprises according to the OECD - 3. The link between social enterprises and state reform policies in OECD papers - 4. The discussion on state reform and the establishment of safety nets at the IMF and the ILO - 5. A quest for new ideas in active labour market policies - 6. The issue of governance – 7. Conclusions

1. Introduction

The purpose of this short contribution is to show that the original interest expressed by a series of international organisations towards «social enterprise» and similar concepts (such as the so called «non-profit sector») is linked to the structural reform policies which the *same* organisations have been advocating at the same time, including budgetary reform, reform of the welfare state, privatisation, deregulation, flexibility of the labour market, and the encouragement of social inclusion measures and «safety nets» aimed to compensate for the social exclusion side-effects of such policies.

The international organisation that seems to have shown the keenest interest in the «social enterprise» concept at the end of the 1990s and at the beginning of the present decade is the OECD, through its LEED (Local Economic and Employment Development) programme launched in 1997. Discussion on «social enterprises» in the OECD literature essentially includes two landmark studies³:

- The first one, an OECD report called «*Social Enterprises*» (69 pages), was published in 1999⁴.
- The second one, called «*The Non-profit Sector in a Changing Economy*» (331 pages), and focusing in great part on «social enterprises», was published in 2003⁵.

3 Since the 2006 CECOP seminar (of which this was one of the presentations) was held, another OECD study has been published under the title «the changing boundaries of social enterprises» (2009): this took place a short time before this book was going to press. An analysis of the salient points of this OECD study can be found in the final chapter of this book

4 OECD (1999): «*Social Enterprises*»; Paris: OECD Publishing

5 OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing

2. Definition and scope of activity of social enterprises according to the OECD

In the 1999 «*Social enterprise*» report, the OECD provides the following definition: «*The expression «social enterprise» in this report refers to any private activity conducted in the public interest, organised with an entrepreneurial strategy but whose main purpose is not the maximisation of profit but the attainment of certain economic and social goals, and which has a capacity for bringing innovative solutions to the problems of social exclusion and unemployment.*»⁶» This quasi exclusive focus on social exclusion and unemployment is reflected in the various examples of social enterprises provided in the report in a number of OECD countries (11 EU countries, USA Canada, Australia and Mexico), where indeed the overwhelming majority have to do with the integration through work of disadvantaged persons. This limitation is clearly stated from the outset: «*The aim of this study is limited to a presentation of organisations in fifteen OECD Member countries that take men and women who are in danger of long-term exclusion and reintegrate them in the labour market, while at the same time producing goods and services that generate income*»⁷.

The second study, covering the larger «non-profit sector», examines only partly «social enterprises» with various scholars analysing the situation in different OECD countries and regions (Europe, the USA, Quebec, Australia, and Mexico). In this study, we mainly take interest in the parts directly drafted by the OECD (the summary at the beginning and the glossary at the end), rather than in the parts written by the various scholars (which only reflect their point of view, not the OECD's). Even though the above-mentioned 1999 definition of social enterprise is repeated in the glossary at the end, no consensus appears to emerge across the book on what a social enterprise actually is⁸. The synthesis at the beginning limits itself to saying that «*Organisations that conceive of themselves as social enterprises face important structural decisions. They can operate as for-profit businesses that make explicit contributions to the social good, or they can become not-for-profit organisations with social missions that generate income and social benefits through commercial means*»⁹.

6 OECD (1999): «*Social Enterprises*»; Paris: OECD Publishing, p. 10

7 Ibid., p. 7

8 Whereas in the European chapter, Borzaga and Santuari propose the definition provided in 2000 by EMES (p. 42), in the US chapter, Young argues for «*a more general understanding of social enterprise than a strict divide between nonprofits and for-profits would comfortably allow*» (68). The chapter on Australia avoids any definition, but mentions the Salvation Army as a possible social enterprise. In the Quebec chapter, Williams states that «*Whatever our selected nomenclature to capture the firms engaged in the social economy, they are all social enterprises*» (143)

9 OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing, p. 17

This dual vision thus introduces the possibility of a for-profit social enterprise which simply makes contributions to the social good, but without necessarily having such purpose. In terms of scope of activity, the second study goes beyond the labour inclusion of disadvantaged persons, to also include «*the delivery of personal and welfare services*¹⁰».

3. The link between social enterprises and state reform policies in OECD papers

As can be expected from an international organisation which is strongly focused on macro-economic policies, in the two studies the OECD also examines the relationship between the micro-level «social enterprises» / «non-profit sector» on the one hand and macro-level policies on the other.

The 1999 OECD study specifies in this respect that «*While social enterprises have often anticipated reforms to the Welfare State, their expansion in many OECD countries is certainly linked to the acceleration of these reforms and outsourcing of welfare services*¹¹».

In the 2003 OECD study, Anheier and Mertens observe that: «*In the course of the last decade, the non-profit sector in OECD countries has generally seen an increase in its economic importance as a provider of health, social and educational services of all kinds (...). This increase in economic importance is closely related to privatisation policies in most of the OECD countries that no longer see non-profit organisations as some outmoded form of service delivery and finance. Instead, they are seen as instruments of welfare state reform, be it under the heading of new public management, quasi markets, or public private partnerships*¹²». Social enterprises and other non-profit organisations are thus clearly seen in an instrumental light in relation to welfare state reform and privatisation.

As early as the mid-1980s, other OECD policy papers had begun to argue in favour of the need for welfare state reform in OECD countries, within the framework of a broader structural reform programme, comprising privatisation policies, budgetary and fiscal reform, labour market flexibility, decrease in unemployment benefits, as well as the social inclusion policies needed to address the side-effects of the proposed changes (inequality, joblessness, poverty, exclusion).

10 Ibid., p. 299

11 OECD (1999): «*Social Enterprises*»; Paris: OECD Publishing, p. 57

12 OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing, p. 270

For example, in a 2001 working paper called «*Growth, inequality and social protection*», the OECD argues that «*data are consistent with the theory that more social spending can be bad for growth*»¹³, conceding that «*There are a number of circumstances in which social protection can be good for growth. These include: to avoid social unrest; to spread the gains from other growth-enhancing policies more widely in the population; to facilitate human capital investment; and to support consumption expenditures during cyclical recessions*»¹⁴. The paper also concludes that «*more active spending is good for growth, whereas other social spending is associated with lower growth*»¹⁵, and, in particular, «*cutting attempts to help the disadvantaged support themselves would reduce growth*»¹⁶. Finally, in an explicit reference to the earlier 1998 OECD ministerial report «*A Caring World: the new social policy agenda*», the OECD provides its own vision of self-help by saying that «*far from there being any intrinsic contradiction between an efficient dynamic economy and one that places social justice at its core, the achievement of the former requires the latter. However, the best way to achieve the latter is to help individuals and families to help themselves by investing in their capacity to participate in the modern economy, by stressing active, rather than passive, interventions*»¹⁷. As we can see, this growth-oriented (and not development-oriented) policy calls for a reduction in social spending and, in terms of compensatory social inclusion policies, the encouragement of self-help among the people in general and the disadvantaged in particular.

In an earlier paper called «*Social and health policies in OECD countries*», the OECD analyses the impact of budget stringency and fiscal consolidation on social spending. «*The fiscal consolidation process is driving many of the changes to restrict eligibility and social programme outlays. Choices are being made to limit public expenditures, with the expectation that individuals will either manage on lower incomes or draw on income from other sources, such as increased work effort or savings. To date, the reform process has been fairly modest in most countries, reflecting natural conservatism about scaling back social protection arrangements*»¹⁸. Here, the OECD's structural reform policies are plainly stated: not scaling back social protection is seen as being

13 Arjona, R., M. Ladaique and M. Pearson (2001), «*Growth, Inequality and Social Protection*», OECD Labour Market and Social Policy Occasional Papers, No. 51, OECD Publishing, p. 3

14 Ibid

15 Ibid., p. 38

16 Ibid

17 Ibid., p. 39

18 Kalisch, D. W., T. Aman and L. A. Buchele (1998), «*Social and Health Policies in OECD Countries: A Survey of Current Programmes and Recent Developments*», OECD Labour Market and Social Policy Occasional Papers, No. 33, OECD Publishing, p. 131

conservative, whereas ordinary citizens are expected to compensate by earning less, working more, and using their savings and other sources of credit.

4. The discussion on state reform and the establishment of safety nets at the IMF and the ILO

This focus of the OECD on welfare state reform within the framework of budgetary and fiscal reform and privatisation reflects a policy orientation shared by other international organisation, and in particular the International Monetary Fund (IMF).

The scope of structural reform in OECD countries is discussed in an IMF 2002 working paper «*Impact of structural reform on productivity growth in industrial countries*». The paper argues that, in OECD countries, structural reform, which includes «*privatisation of public enterprises, deregulation and liberalisation of productive markets, and efforts to decentralize and make labor markets more flexible*»¹⁹, has little impact on productivity growth in the short term, but much in the long term. Although the IMF, in this study, finds that labour market reform may not be a good factor of productivity growth, even in the long run, it argues that this may be due to the unreliability of the indicators used in its own survey, and, thus, that labour market reform may be a positive factor after all. This assertion, which openly questions the survey's very methodology, reflects a preference for labour flexibilisation.

The IMF does recognize the social impact of structural reform, and thus argues for the establishment of «*social safety nets*». In a 1999 paper on «*privatisation, social impact and social safety nets*», the IMF discusses the role of social safety nets in «*cushioning job losses*»²⁰, and argues that «*the basic purpose of social safety nets is to mitigate the short term adverse effects of macroeconomic and structural policies on the consumption of the vulnerable*»²¹.

This concern for the need for «*cushions*» is echoed, a few months later, in the ILO 2000 report «*Promotion of cooperatives*», which provided the background information and discussion in preparation for the 2001/2002 negotiations which led to the adoption

19 Ranil Salgado (2002): «*Impact of Structural Reform on Productivity Growth in Industrial Countries*», IMF Working Paper WP/02/10; Washington: International Monetary Fund (IMF), p. 3

20 Sanjeev Gupta et al (1999): «*Privatization, Social Impact, and Social Safety Nets*», IMF Working Paper WP/99/68; Washington: International Monetary Fund (IMF), p. 15

21 Ibid., p. 3

of the ILO Recommendation 193 on the Promotion of Cooperatives. The report argues that «*in a time of rapid change due to structural adjustment programmes, cooperatives are seen as organizations capable of cushioning the adverse social effects of some adjustment measures*²²».

5. A quest for new ideas in active labour policies

In a 2001 paper «*social sector reform in transition countries*», the IMF again recognises that «*economic change creates social costs*» and argues for a better targeting of social transfer programmes, arguing for a flexibilisation of labour law and protection arrangements, and calling for the generation of «*new ideas*»²³ in active labour market policies. The above-mentioned discussion on cooperatives at the ILO originally tried to respond to this call for «new ideas».

The OECD's interest in the role that «social enterprises» and the «non-profit sector» can play within the framework of structural reform in general, and labour and welfare state reform in particular, can also be seen as part of this quest for «new ideas», in the same time span.

6. The issue of governance

Since the OECD's interest for «social enterprises» is linked to the latter's perceived capacity to contribute to structural reform policies, by delivering jobs and social inclusion, it is logical that, in its quest for «new ideas», it does not focus on the issue of governance nor on the organisational forms of these enterprises. The first of the two above-mentioned studies (1999) does not examine these issues at all. Even though democratic participation is mentioned in the analysis of some of the national examples provided in the book, this aspect is ignored in the OECD conclusions.

22 ILO (2000): «*Promotion of Cooperatives*»; Geneva: ILO, p. 12

23 Peter S. Heller et al (2001): «*Social Sector Reform in Transition Countries*», IMF Working Paper WP/01/35; Washington: International Monetary Fund (IMF), p. 3

In the second OECD study, authors of the chapters on Europe²⁴ and the US²⁵ do discuss the issue of governance of social enterprises. In his chapter on the US, Young even goes to some length in warning about the danger for the long-term sustainability of the delivery of social goods produced by «social enterprises», if the latter are not regulated by a precise governance and public policy framework. In turn, the OECD summary at the beginning ignores the topic altogether, by saying only that, no matter whether they are «nonprofit» or for-profit, social enterprises «*can design their governance arrangements and specify their financial goals and constraints in a variety of ways*»²⁶.

Since most of the scholars in the book call for well-defined governance and governance-related public policy, shunning the issue altogether in the OECD-drafted synthesis cannot be attributed to scientific objectivity. This suggests that the OECD, in this key document, chose not to call for clearer governance nor governance-related public policies to ensure the sustainability of the social goods and services delivered by «social enterprises».

7. Conclusions

As we have seen in this contribution, the debate on social enterprises launched by international organisations, and in particular the OECD, cannot be isolated from a much broader policy agenda promoted since the mid 80s by the same organisations,

24 Borzaga (Carlos) and Santuari (Alceste) (2003): «*New Trends in the Non-Profit Sector in Europe: The Emergence of Social Entrepreneurship*», in OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing, p. 56: «*While it is certain that the non-profit sector will play a major role in the future with respect to the «30 glorious years' (i.e. 1940-1970s), its future characteristics and its contribution to social policies are unsure. Indeed, much will depend on the capacity of the new organisations to find clear models of governance*»

25 Young (Dennis R.) (2003): «*New Trends in the US Non-Profit Sector: Towards Market Integration*» in OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing, p. 76 «*Is the enterprise founded to address a socially defined mission? And is the arrangement through which «interest holders» govern the organisation sufficiently potent to ensure that such intent is pursued in good faith?»* The author is even more specific: «*one must ask what kinds of new governing mechanisms can ensure that a new social sector will behave responsibly with the resources entrusted to it? It is all well and good for socially responsible businesses to declare themselves as agents of social progress and as worthy vehicles for public support, but what institutional mechanisms are in place to assure that stance over the long haul? For example, will Ben and Jerry's Ice Cream continue to make its contributions to society now that it has been sold to Unilever, or will the new parent corporation exploit Ben and Jerry's reputation just to make more money? Is there really something different about a for-profit business created by socially progressive entrepreneurs to carry out some mix of public good and private profit that should justify public trust or special treatment in public policy, should we just let the market decide, or is there a need for new public policies to govern these so-called social enterprises?»*

26 OECD (2003): «*The Non-profit Sector in a Changing Economy*»; Paris: OECD Publishing, p. 17

and focusing on the reform of the state, comprising, *inter alia*, budget stringency, the privatisation of public services, the flexibilisation of labour and the establishment of «safety nets». Social enterprise promotion, in the OECD's own terms, fits into this larger picture, in particular for the social enterprises' function of integrating disadvantaged and excluded people through work and providing welfare services. From this viewpoint, we observe a focus on the short-term delivery capacity of those enterprises rather than on their long-term structure and processes, thence the avoidance to deal with enterprise governance, at least till 2006.

5. Cooperatives and social enterprises in Italy

Vilma Mazzocco

1. Background: the development of social cooperatives in Italy - 2. The Italian legislation on social enterprises - 3. Conclusion

1. Background: the development of social cooperatives in Italy

In order to shed some light on the differences between the «social cooperative» and the «social enterprise» in Italy, it is necessary to refer to article 1 of Law number 381 which, in 1991, recognised the phenomenon of social cooperation²⁷. This recognition was important since this form of cooperation had already existed and been active in Italy for at least ten years. The ultimate aim of social cooperatives in Italy is to promote the general interest and the community and to foster the human development and integration of the citizens through their involvement in two main areas:

- a) The management of social-health and educational services;
- b) The carrying out of different activities (agricultural, industrial, commercial or services) aimed at the integration into employment of disadvantaged persons

The law on social cooperation in Italy does not correspond to the World Declaration on Worker Cooperatives adopted last year by the ICA²⁸. Here I refer, in particular, to the first and second part of this declaration. The first part covers the basic characteristics, whilst the second refers to the internal rules of operation. The law on social cooperation in Italy does not require all of the members to be workers. It does state that disadvantaged persons may be members, as long as their membership is compatible with their state of physical and mental health. However, there is no statutory requirement for all of the workers to be members.

In practice, however, this is the case in high quality forms of social cooperation in Italy. Consequently, the workers and the members are almost always the same people, even though this is not compulsory. Rather, this is a quality-driven choice that is

27 There were in 2003 4,048 social cooperative enterprises in Italy, which employ 80,836 workers and 11,500 volunteers. In total, they have 1,462,279 members and a combined turnover of 4.5 billion EURO (Istat figures for 2003)

28 Available at www.cicopa.coop

designed to guarantee the social and entrepreneurial sustainability of the actions undertaken by social cooperatives. However, perhaps a newer and more in-depth consideration should be given to the direct involvement of the workers and this is something that should also be more present within our social cooperation.

At the same time, the Italian social cooperation movement has activated a series of measure in order to encourage the involvement of a variety of stakeholders that are present in the communities and territories of reference. This is a phenomenon that opens up new areas for projects and actions within the economy of the territory. This strategic approach that has been adopted by the high quality social cooperatives is an expression of their own will and intentions, rather than a definition that has been set out in the law in a statutory manner.

The cooperatives have been granted exemption from paying social security and insurance charges for their workers who come from groups that are considered to be disadvantaged²⁹.

Article 5 of the Italian law 381/91, which applies to cooperatives who promote the integration, through employment, of disadvantaged persons, enables the authorities to conclude agreements with these employment integration cooperatives in cases in which the total financial amount of the agreement is below the threshold set for European public procurement contracts.

Goods or services can be directly entrusted to social cooperatives without being submitted to the tender procedures for public contracts that are normally required by national law.

Only limited use is made of this practice at present, since the Community thresholds do not allow for a broad application of this article. However, this article has made it possible, particularly during the first phase of the application of this law, to give a greater visibility to type B social cooperatives that are engaged in integration through employment in Italy.

29 The term disadvantaged refers to the following categories of people: the physically and mentally disabled; former patients of psychiatric hospitals and persons receiving psychiatric treatment; drug addicts; alcoholics; minors of working age from a difficult family background; convicts serving non-custodial sentences

2. The Italian legislation on social enterprises

The legislation on social enterprises is the culmination of a lengthy process that has led to the establishment of law number 118/05 and decree number 155/06.

It took more or less two years to bring about the approval of this law. The EMES network played an active part in the formulation and reflection phases, along with the Italian university networks that are linked to EMES. Many of the principles that had been developed as part of academic research proved themselves to be useful in significantly modifying the law on social enterprises that was presented by the government.

Significant modifications were made to the initial proposal and it was therefore very important to contact and to provide political guidance for the third sector in Italy³⁰. If we had failed to do this, then we may have found ourselves with a law on social enterprises that presented certain dangers.

The road towards the establishment of a law on social enterprises was a lengthy one. The law was introduced in 2005, whilst the decree designed to update it was introduced in 2006. This is an important law, since it implies recognition of the fact that economic and social aspects can become integrated with one another.

The social enterprise as such is not a new legal form of enterprise, but it does provide «social enterprise» status to forms of enterprise that already exist, under the terms of Chapters I and V of the Italian civil code, namely religious groups, associations, societies, social cooperatives.

This law does not provide for the granting of tax deductions or any other type of deductions. This has been the subject of some debate, since certain of our organisations did want tax provisions to be included in the law. Finally, for practical reasons and also because we really wished to obtain this law, we decided that we would prefer for these provisions to be considered at a later stage.

The law states that the economic activity organised by the social enterprise must

30 The third sector in Italy is made up of 110 representative national organisations (voluntary services, associations, NGOs, foundations and a variety of other bodies) that are all members of the Third Sector Forum. The latter has been recognised as a social partner since 1998 and is therefore allowed to sit down alongside the other Italian social partners and this gives it a very important and visible political role. Today, there are 235,000 bodies in the third sector and they generate a combined turnover of 38 million Euro (3.6% of the GDP)

have, as its ultimate aim, the production and exchange of goods and services that are of direct social utility or that are intended to achieve a general interest objective. The «not-for profit» notion is clearly reiterated in a manner that leaves no room for misinterpretation and this represents a success for us, particularly if we consider that, in the original proposals put forward by the previous government, although the «not-for profit» notion had not been entirely omitted, the law did provide for a form of control of social enterprises by profit-making bodies, which would not have made them real social enterprises.

Social enterprises are able to undertake their activities in a wide range of areas: Social services – Healthcare services – Social and healthcare services – Education and training (including university and post-university level, post-school education and training) – Cultural services and cultural heritage – Protection of the environment and ecosystems – Support services for other social enterprises.

The fact that we have been able to avoid external forms of control is of fundamental importance to the governance of social enterprises. Furthermore, involvement of the stakeholders in the enterprise has been provided for, particularly that of the workers, although the law does not provide for a high degree of involvement.

The social enterprise is accountable to its community and must present a real social balance sheet (to be submitted to the enterprise registration body), rather than a socio-economic report, and this balance sheet must provide details of what it does and why it does these things. In my opinion this is a central theme and an interesting strategic issue for our discussions and debates on the social enterprise.

3. Conclusion

My intuitive feeling, based on the excellence developed in Italy by the social cooperatives, is that social enterprises are not considered to be «social» because of *what they do* but rather as a result of *the way in which they do it*. Therefore, we are talking about actions that not only concern areas of service that are, for the most part, of a social nature, but of actions that, in the correct meaning of the term, concern the common good. From this point of view, we can look, for example, at the Bolivian experience of the public social enterprise that manages water: of course water is a common good and a form of management that provides for the participation of the citizens in order to guarantee a social and solidarity-based usage of the common

good that is water should give us all pause for thought. We can also look at the management of transport infrastructures, motorways and rail networks, by social enterprises in Canada. I really am left perplexed when I look at what happens in Italy, where conventional companies make huge profits out of infrastructures built as a result of the sacrifices made by many generations of Italian citizens. The debate on the social enterprise should not just stop at the economy of relationships, rather it should become part of the real debate, the debate on the economy at the territorial level, with the participation of individuals.

6. Cooperatives and social enterprises in Sweden

Eva Johansson

My first contact with what we call «*social worker cooperatives*» in Sweden was about 20 years ago when I was working as an ergo-therapist and took part in a dynamic process that was very strongly influenced by what happened in Italy at that time. These were the first social worker cooperatives in Sweden, even though we already had some enterprises which we would call social enterprises today. These enterprises were established and driven by client organisations based on the need to create work and good working conditions for special groups (blind people etc).

For some years, we experienced a substantial growth of social worker cooperatives in the Stockholm region and also in some other parts of Sweden. Some of these cooperatives still exist, whilst others no longer exist.

Over the years, the development of these enterprises has been very dependent on the political situation in Sweden. Our history of having a strong public welfare sector and a firm belief that this is the best way to fulfil the individual needs of people has had a strong impact on that development. In spite of this, the public sector has gone through a major reorganisation drive over the last ten years and it is now clear that it is not always able to fulfil all of the different needs.

Today, we can see an increasing number of social cooperatives and social enterprises, but it is still a new and much unknown sector, which is not taken into consideration in public procurement etc.

When talking about social worker cooperatives and social enterprises in Sweden, we usually refer to enterprises whose aim is to create work for marginalised groups (similar to Italian social cooperatives type B), rather than worker cooperatives providing services within the welfare sector (Italian type A). In a social worker cooperative, the individuals from the target group are members of the cooperative (in most cases they are the only member-group) and the empowerment process is considered crucial for their success. There is no specific legislation about social enterprises, nor is there any for social cooperatives. Most of the social enterprises choose the cooperative organisation model and are established as «economic associations», for which there is a special law.

Social cooperatives develop for, and with, different «target groups», but the disabled and especially people with mental disorders are the majority. Other groups are ex-offenders and former drug addicts, who have formed some very successful cooperatives. New groups are immigrants (mostly from outside Europe) and people on long-term sick leave.

The social cooperatives and social enterprises in Sweden range from very small, in terms of persons employed, to quite large enterprises with successful business ideas. They all operate in an area related to the public sector (getting grants or delivering services on a contract basis) and on the private market. The co-workers' lack of production capacity is in most cases compensated with salary-grants or in some cases pensions or some other individual support schemes from the social insurance system.

Today, we have identified 182 social enterprises (most of them being cooperatives) in Sweden in which around 4,500 people work under varying conditions.

7. Cooperatives and social enterprises in Finland

Pekka Pattiniämi

1. Worker cooperatives in Finland - 2. Finnish Act on Social Enterprises (1351/2003) - 3. The Finnish Act on Social Enterprises and worker cooperatives - 4. Future developments of social enterprises and social enterprise legislation

In this contribution, I analyse the positive and negative impacts which the Finnish Act on Social Enterprises (1351/2003) may have. First of all, I present a snapshot of the development of worker cooperatives in Finland, then I analyse the content of the Act on Social Enterprises and its applicability to employee-owned cooperatives. Finally, I will be taking a brief look at the future development plans for the Finnish Act on Social Enterprises.

1. Worker cooperatives in Finland

In Finland there have been worker cooperatives since the end of nineteenth century. The movement remained small for a hundred years until the serious economic downturn and high unemployment levels in the 1990s inspired various self-help groups of the unemployed to develop the idea of labour supply cooperatives or labour cooperatives. The establishment of the first labour cooperative in 1993 in the capital region of Finland raised huge interest in the media, followed by a wave of newly-born labour cooperatives.

Labour cooperatives organise their members' temporary and/or part-time jobs by «hiring out» their work to other enterprises for certain tasks or jobs. This method has proven to be an efficient way of introducing the unemployed and his/her skills and abilities to the employers and has led in many cases to permanent jobs in the «rental» enterprise. This type of activity is not problem free: it causes problems to the labour cooperatives because they often lose the most active and capable members to other employees. In fact, the number of labour cooperatives is estimated to have fallen since 2004.

At the same time, the more traditional type of worker cooperatives have been established in service sectors, mainly by highly qualified professionals. The latest trend has been the creation of cooperatives of performing artists (theatres, opera,

dancing, drama) and e-media and ITC services. Other sectors of activity for worker cooperatives include, amongst others, language services, architects and design services, construction and textiles industries. Most of the Finnish employee-owned cooperatives are micro-enterprises employing about 3 to 4 members, but a number of them have also grown to the size of more than one hundred employees.

Table 1. Employee-owned cooperatives in Finland 1994 - 2006

Type of employee owned cooperative / year	1994	1996	1998	2000	2002	2004	2006
Worker cooperatives	30	130	170	300	400	650	900
Labour cooperatives	15	65	180	250	300	300	200
All employee owned cooperatives	45	195	350	550	700	950	1100

Pattiniämi 2006

2. Finnish Act on Social Enterprises (1351/2003)

Through a very rapid process during the summer and autumn 2003, the Finnish Act on Social Enterprises (1351/2003) was prepared; it was adopted by the Parliament on 30.12.2003 and came into force on 1.1.2004³¹. The need for such an Act was motivated by the on-going, long-term unemployment of 180,000 persons and by the severe difficulties that 45,000 unemployed disabled persons had in finding jobs for themselves. According to the Act, a social enterprise is:

- 1) An enterprise created to provide employment to people with disabilities and to the long-term unemployed (1§);
- 2) A market-oriented enterprise with its own products and/or services;
- 3) It should be registered in the register of social enterprises kept by the Ministry of Labour (§3);
- 4) At least 30% of its employees should be disabled or long-term unemployed, and at least one should be disabled (§3);

31 Act on Social Enterprises No. 1351/2003. Issued in Helsinki, December 30, 2003; see [http://www.eduskunta.fi/triphome/bin/thw/?\\${APPL}=utppdf&\\${BASE}=utppdf&\\${THWIDS}=0.45/332389&\\${TRIPPIFE}=PDF.pdf](http://www.eduskunta.fi/triphome/bin/thw/?${APPL}=utppdf&${BASE}=utppdf&${THWIDS}=0.45/332389&${TRIPPIFE}=PDF.pdf)

- 5) Wages should be paid to all employees, regardless of whether they are disadvantaged, according to general agreements in the branch of industry.

Regardless of their legal form and ownership structure, all enterprises may apply for this register if they are already registered as an enterprise on the Enterprise Register of the Ministry of Trade and Commerce. Even associations that have a steady pace of business, have at least one employee and are already in the above-mentioned register, may also apply.

An enterprise that has been authorised to be included on the Register must ensure that its statutes clearly state that its aim is to employ disabled and long-term unemployed persons. Every social enterprises on the register must employ at least one disabled person. Only enterprises included on the register may use the denomination «social enterprise» for the purposes of marketing or in their name.

Public employment services may grant support to the establishment of a social enterprise. Support may also be granted to associations and foundations aiming to promote social enterprises as defined in this Act. These subsidies may not be granted for commercial development. The use of the subsidies has, in fact, been minimal due the restrictions on their use. Registered social enterprises are eligible for all subsidies, loans etc. just like any other registered enterprise in the country.

The registered social enterprises are subject to a more streamlined procedure for employment aids (employment subsidies or combined subsidies) for the long-term unemployed and/or disabled members of their staff than that applied to «normal» enterprises. They may receive subsidies for a three year period following the submission of a single application, whilst the normal enterprises have to apply every six-months or annually. The amounts granted to social enterprises are at the maximum level, whilst other enterprises may not always have their employment subsidies at that level. The three-year support period for a disabled person can be renewed as many times as necessary in order for the person in question to become capable of being employed on the open labour market. The subsidies for employing the long-term unemployed cannot be renewed.

Finnish social enterprises do not have any specific public benefit status. The marginal nature of the subsidies means that there are no restrictions for social enterprises regarding how they should use the possible profits or surpluses created.

In October 2006, there were 69 enterprises registered under the Law on Social Enterprises N° 1351/2003. Of these, 59 were companies and other private enterprises (some owned by social economy organisations) and ten were enterprises of the social economy.

Most of the registered social enterprises are micro-enterprises employing 2 to 3 persons. The trading sectors vary considerably. The largest enterprises produce metal, wood and textile goods and the smallest provide mostly services (cleaning, housing etc.).

3. The Finish Act on Social Enterprises and worker cooperatives

The Finnish Act on Social Enterprises does not require any type of participatory structure or participation by members, owners, employees or other stakeholders, nor does it provide any specific advantage to the cooperative model of enterprises (worker cooperative or other). On the other, it does not prevent cooperative enterprises from applying for social enterprise status, nor registered social enterprises from using participatory structures. In the Finnish context, the social enterprise legislation is not an opportunity for cooperative worker ownership, nor is it a threat.

Cooperators have recently regarded the «social enterprise image» of employee-owned cooperatives portrayed by the media, especially in the mid 1990s, as being a hindrance to further development of employee-owned cooperative enterprises. The main trend among Finnish worker cooperatives has always been to place the emphasis on developing their products and services, rather than on assuming wider social responsibilities.

4. Future developments of social enterprises and social enterprise legislation

When the Parliament passed the Act on Social Enterprises, it required that the effectiveness of the law be evaluated within two years. The ministry of labour carried out an evaluation of the effectiveness of the Finnish Act in spring 2006 and came to the conclusion that in order to increase the capability of social enterprises to employ disadvantaged and long-term unemployed, the parliament and government should:

- allow value added tax rebates to social enterprises;
- finance an efficient system to promote social enterprises;
- require the use of social criteria in public procurement;
- add the mental health sector to the target groups of social enterprises.

The Finnish Parliament agreed with the Ministry of Labour and even made some new proposals to amend the Act. According to Parliament, immigrants who are not

able to use the Finnish language should be included in the target group in the event that they are not able to find a job.

According to the parliament's conclusions, if the above mentioned amendments in the law and improvements in the practice of public services do not prove to be effective, other more profound means should be considered. The latter may include a provision that allows for social enterprises to be defined as not for profit enterprises and enterprises established for social purposes, in order to foster more support and even to introduce legal requirements on restrictions on profit redistribution and the selling or transfer of assets.

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8. Cooperatives and social enterprises in the UK

Bob Cannell

1. Cooperatives in the UK - 2. Social enterprise in the UK - 3. The rise of the social entrepreneur - 4. Support for social enterprise - 5. How big is the UK social enterprise industry? - 6. Areas of economic activity for UK social enterprise - 7. Social enterprise governance and accountability - 8. Accountability – Is it important? - 9. Where now for Social enterprises and cooperatives in the UK? - 10. Relations between UK cooperatives and social enterprises

1. Cooperatives in the UK

The UK has one of the oldest cooperative movements in Europe and now also probably the largest Social Enterprise movement. Social Enterprise is strongly supported by government and strongly promoted by national organisations such as the Social Enterprise Coalition (a UK wide trade association for social enterprises), regionally in London by Social Enterprise London and by either stand-alone organisations or government agencies in all of the English regions, as well as Scotland, Wales and Northern Ireland.

Consumer cooperatives in the UK are resurgent after a half century of stagnation. There are 30 consumer cooperative societies, including one of the biggest in the world, the Cooperative Group. Six societies account for the bulk of sales. Cooperative Financial Services (Cooperative Bank and Cooperative Insurance) are market leaders in mass market ethical products. The young and fast growing Phone Coop is a consumer owned telecoms provider typical of other new technology consumer cooperative societies.

There are around 400 worker cooperatives in the UK, although they are mostly very small (4 or 5 members), with only a few medium size businesses such as Suma wholefoods (150 employees). The UK is home to an unknown number of employee-owned businesses, the largest being the John Lewis Partnership with 70,000 partners. JLP operate a chain of department stores and supermarkets (Waitrose).

UK cooperatives are commercial businesses, operating in the open market to compete for customers. We consider democracy to be a key element of cooperation, though we

interpret this differently in our individual cooperatives. UK worker coops are often collectives with active participatory democracy by members. Consumer coops are usually formally elected representative democracies with employed managers. The forms of employee ownership vary widely in their interpretation of employee management.

All UK cooperatives would consider ourselves to be strongly independent and autonomous. Indeed, UK coops have been a «state within a state», often hardly noticing, nor caring about, developments taking place in the wider UK political scene. This is why we have been late in responding to the growth of social enterprise. It was several years before UK cooperatives were even considered to be part of the social enterprise sector and therefore to be included on mailing lists and invited to meetings.

2. Social enterprise in the UK

Social Enterprise first came to Britain in the mid-1990s. It grew out of the Community Business initiatives of the 1980s. Community Businesses were intended to be community-controlled enterprises providing a local social need, but were often badly run as businesses or lacked effective community input. The first ideal of social enterprise was therefore a democratic community business to foster community development and meet social needs. (Pearce 2003)

There was, however, an alternative and much simpler social enterprise model being promoted by ambitious social entrepreneurs of non-profit distributing, private sector businesses with a social purpose giving quick results. This model was based on philanthropist subsidised social business in the USA.

In 1997, the new Labour government wanted an alternative method, a Third Way, to deliver public services that does not involve an increase in state employees nor enriches private investors by means of public taxes.

We cooperatives hoped Labour would choose cooperatives as the Third Way. In 1999, Tony Blair described UK cooperatives as the third wing of the Labour movement (the others being the Labour Party and the Trades Unions). In fact, as a result of intense lobbying by supporters, they chose the second model of Social Enterprise as their Third Way.

3. The Rise of the social entrepreneur

Critics have accused the Government, in its rush for results, of abandoning many core elements of social enterprise. There is no requirement for democracy or accountability. The focus is on results and not process and therefore community development is sidelined. Group or community activity is not a key feature. The emphasis is on individual social entrepreneurs as in the American model.

From many comments made by politicians and enthusiasts, the ideal type of social entrepreneur can be described as: - *A heroic entrepreneurial individual with a passionate social conscience and exceptional business and leadership skills, highly creative, able to deliver value for money miracles on a small budget while overcoming major social and economic obstacles.*

Such people are obviously rare beasts and therefore worth whatever salaries they can command to run social enterprises. There is no cap on executive salaries in any government or local regulations for social enterprise funding and support. They do not have to mirror local government pay scales. Executive pay is left to the market or «light touch regulation» to use the jargon. This is obviously attractive to executives in tightly regulated charitable organisations, or directly grant funded voluntary sector service providers where salaries are restricted to local government pay scales.

4. Support for social enterprise

The British government have responded to social enterprise promoters and provided several key elements of support for the movement.

- A top level Social Enterprise Unit (SeNU) is part of the Cabinet Office. The Third Sector Minister reports directly to the Cabinet and Prime Minister. The SeNU was formerly part of the Department for Trade and Industry.
- European funding for economic regeneration has been channelled to social enterprises to provide employment for socially excluded people. This was a shift from funding infrastructure projects such as road building. Such funding is obviously time-limited with a presumption that the enterprise will either become self-funded or find alternative sources before the European funds dry up.

A Community Interest Company (CIC) was introduced as a new legal form in 2005³². A CIC is a form of company under the 1985 Company Act. It is required to have some form of social purpose defined in its Memorandum and Articles of Association and an «asset lock» which is a prohibition on the dispersal of proceeds to private parties should the company be sold.

CICs can be cooperatives or public or private companies. They are intended for social entrepreneurs who want «lighter touch» regulation than the traditional charity and to avoid the risks of dissolution of a normal company. 2,359 CICs were registered between 2005 and 2006. A cooperative CIC business model has been designed by Cooperatives UK, but few social entrepreneurs have chosen the more regulated cooperative model.

There is no requirement for non-cooperative CICs to have formal democracy or accountability beyond «involving» stakeholders. They are solely accountable to the CIC regulator, a civil servant, who has stated *«By being able to pay directors, CICs should be able to attract high quality wealth creators, paying them reasonable salaries, giving them immense job satisfaction, and the opportunity to put their talents to making profits for the public good»*³³. The profit motive is clear.

The national Small Business Service (SBS), which provides support to small businesses locally, has been required to provide support for social entrepreneurs including training of business advisers and sourcing of funding for social enterprises. This was a culture shock to SBS business advisers who were used to private enterprise clients and had to learn about the different nature and requirements of social enterprises. SBS involvement has ensured that social enterprises receive support from the viewpoint of a private enterprise culture.

English Regional Development Agencies (RDAs) have been required to develop social enterprise support strategies. Wales, Scotland and Northern Ireland have developed similar strategies. Wales and Scotland have specifically identified and resourced cooperative development as part of their social enterprise strategies. The English regions have not been required to specify cooperatives and consequently have largely ignored cooperatives as a special form of social enterprise.

32 See the comparative table in annex

33 <http://www.companieshouse.gov.uk/promotional/cics.shtml>

Colleges and Universities have been encouraged to set up Schools for Social Entrepreneurs and offer qualifications up to degree level. National standards for social enterprise qualifications have been agreed. We do not know how many courses include democratic management or cooperative governance topics. Students are now beginning to graduate from these courses. It is too early to say how many will build a career actually managing a social enterprise. Many of the students are practising, or will become, social enterprise advisers.

5. How big is the UK social enterprise industry?

Quoted figures are confusing.

The Social Enterprise Coalition (SEC) claims 55,000 enterprises with a combined turnover of £27 billion. Although these figures are often quoted by the SEC and by government ministers, it is not clear what is included, nor how this extraordinary figure has been calculated. If the UK cooperative sector is included, it will account for a large part of the turnover figure.

In 2005, the Social Enterprise Unit counted 5,000 social enterprises in the UK as a whole.

Social Enterprise London (an independent social enterprise support agency) claimed 5,000 in London alone.

Part of the problem is the lack of agreement on a definition of a social enterprise and the lack of a formal legal registration for social enterprises in the UK. Stricter definitions will count fewer social enterprises than looser definitions, which could include all UK cooperatives, charity trading arms (the UK has several giant charities, such as Oxfam, with hundreds of retail shops) and possibly other large corporate bodies such as mutual building societies.

Growth of social enterprises from a handful to 55,000 is not credible in the time span (approximately 6 or 7 years), unless there has been mass re-branding of existing charity and voluntary sector organisations. Given the enhanced access to support and funding available to social enterprises compared to grant-funded voluntary sector organisations and the strict restrictions on the activity of charities under UK law, it is not surprising that organisations restructured and renamed themselves to come out as social enterprises.

Other organisations, such as the large UK consumer retail cooperative societies, are included when it suits social enterprise promoters (to claim political and economic significance), but excluded at other times (debates about democratic governance). Unfortunately, these practices have camouflaged the new start-up social enterprises and made it difficult to assess genuine new growth and difficult to identify types of social enterprise, whether they are externalised local government services, transformed voluntary sector organisations, commercialised charities or genuine new start-ups trading on the open market.

6. Areas of economic activity for UK social enterprise

Social Enterprise promoters stress the commercial nature of social enterprises compared to prior forms of service provisions – grant-funded voluntary sector or directly employed local government departments. The government has frequently said that social enterprise is not intended to replace public sector (state) provision, but to complement it.

UK social enterprise is largely confined to a specific range of activities:

- Social Care, Child Care, Health Care
- Sports, Leisure services and Recreation
- Community transport services
- Recycling, Environmental services
- Community cafes, shops and community centres
- Social housing, Insulation and heating improvements, Repair and Maintenance
- Supported employment, training, workspaces

All of these activities are public sector funded. Previously it was largely either by grant funding of voluntary sector organisations or direct employment of state employees. Under the social enterprise regime, funding is by contract.

Amongst Social Enterprises there is a minority of open market trading as understood by cooperatives. They are contract dependent organisations and are not 'autonomous and independent' as defined by the 4th ICA principle. There is a mutual dependence between public sector funder and social enterprise provider. The majority of social enterprises have only one customer, the local public sector. A common citation for social enterprises is reduced dependency on grant funding. If grants are merely

replaced by contracts from the same funders, the «commercial» nature of the majority of social enterprises is dubious.

7. Social enterprise governance and accountability

If social enterprises are public funded, is there accountability or democratic control?

Greenwich Leisure Ltd. (GLL) is «leisure's most successful social enterprise» according to its own PR. GLL originated as an externalisation of the sports centres in the London Borough of Greenwich. By becoming an «arms length» organisation it was able to take advantage of tax benefits and funding opportunities not available to local government. Today, GLL has grown to manage 50 sports centres on behalf of many London Boroughs and employs 800 full time and 3,000 part time staff.

GLL is owned by those of its contracted (permanent) staff who have become members. GLL is guided by a management board, appointed on an annual basis by the members at the general meeting. There are also places on the board for representatives of the funding local authorities, elected user representatives and Trade Unions.

The London boroughs (local councils) give management contracts to GLL, which pay for subsidised services for low income users. GLL markets its services to these users but also must attract full price customers away from private leisure and sports clubs to be viable. It is trading in an open market where users have alternatives, but it could not survive without the local government subsidy.

GLL is a multi-stakeholder cooperative. It is democratically governed and accountable to its public sector funders.

Externalising sports and leisure services from local government has major financial benefits. The GLL example has encouraged many other trusts to be formed and a trade organisation, SPORTA (sports and recreation trusts association), represents them and a few similar organisations that are not externalisations.

SPORTA's 110 members have a combined turnover of £500 million. Its members employ 12,500 full-time staff, providing 118 million user visits each year. However, only a third are structured on the GLL model. Most are simply externalised local government departments with little democratic accountability. The same people

who were local government employees have become trust employed managers, but are no longer confined to local authority pay scales. They clearly have a lack of independence and autonomy and there is mutual dependency between these simple externalisations and their former employers.

The independent status of these trusts has been challenged by the Charity Commissioners, concerned about charitable status and governance, and by Her Majesty's Revenue and Customs for potential tax evasion.

This fundamental difference in governance, between superficially similar social enterprises, can also be demonstrated in community transport initiatives.

Hackney Community Transport started, like most community transport projects, as a grant-funded voluntary organisation operating minibuses in the London Borough of Hackney for community groups. It is now a significant London public transport provider with 320 employees operating under contract to local authorities and London public transport. It is managed by a committee elected by service users. The committee oversees the strategic direction of HCT and operational management is delegated to the Chief Executive. HCT is functionally a consumer cooperative. Finance comes from funding bodies and from ticket sales to customers and accountability is to customers.

Ealing Community Transport (ECT) started in much the same way as HCT. Today, it employs 1,300 staff with a turnover of £55 million for the ECT group of companies. ECT (a CIC) operates transport, recycling, health service management and engineering services across nine English counties and the Isle of Man – 17 local authorities in total. ECT is a business success with a diversified customer base and service offering. It is frequently lauded as a social enterprise success of the first order.

However, there is no clear evidence of accountability to either users or funders (except by means of the contractual relationship). It is difficult to imagine how such a diverse and widespread corporate group could be subject to democratic accountability.

The ECT executive leadership team is obviously highly capable of running a corporate group operation. Local government clients are obviously satisfied with the value for money services they receive for their voters.

ECT conducts itself like the private sector in acquisitions and divestments. In June

2008, ECT sold ECT recycling to a public listed company, May Gurney Plc. ECT's community rail transport interests were sold to another privately owned American business, Iowa Pacific.

Just what is the difference between ECT and a private sector service management company such as Serco or Sodexo? They would all claim to have much the same service offering. Public Limited Companies like Serco and Sodexo are accountable to their shareholders.

ECT is a corporate entity that has developed an internal life of its own. Like any large corporate, there will be a strong tendency to prioritise the benefits of its executive management. Cooperatives and shareholders of public companies understand the need for strong accountability to counter this tendency. What will be the future of corporate but unaccountable social enterprises like this? Will they become indistinguishable from privately owned corporate companies?

Another such example is the FRC Group of Merseyside. FRC began life as the Furniture Resource Centre, recycling unwanted furniture to low income residents. Such furniture services are a very common voluntary sector service in UK cities, frequently organised as charities and funded by grants from the local authority and other sources.

However, unlike many others, FRC became a vehicle for rapid growth under its former chief executive, expanding into supported employment, training and workspace provision, as well as the core furniture recycling activity. It is often cited as the ideal social enterprise model.

But there is no publicly provided evidence of accountability or democratic control. The board of directors possess a wealth of business and organisational experience. The chairman is a former chief executive of Rolls Royce cars. Other directors are a chief of a national business support agency, director of a major urban regeneration consultancy, director of a football pools (betting) company, director of a wealth management and private investment company. There are no community representatives, no staff or user representatives, no funder representatives. FRC is a well managed business with some social aims.

8. Accountability – Is it important?

Lack of accountability can be a serious disadvantage. The competitors for these social enterprises are ruthlessly efficient private sector companies. Social Enterprises may ape private enterprise in management structures and governance, but their managers lack the same right to manage that exists in a private sector business.

Unless staff are included in governance decisions, develop an ownership culture and work in the best interests of their business (which is the key to the success of Greenwich Leisure), they will revert to alienated underperformance, particularly since social enterprises select people with employment problems for employment. Indeed, it is frequently part of their contract that they train and employ the otherwise unemployable.

An example of a high profile failure demonstrates this problem.

Sheffield Rebuilding was a £5 million turnover building skills training and house renovation enterprise for one customer, Sheffield City Council. It experienced 9 years of very rapid growth and received national prizes for its success as a social enterprise. In autumn 2005, Sheffield Rebuilding suddenly ceased trading with redundancies for 100 staff.

It was unable to restructure for a rapidly changing market. There were serious inadequacies in quality of work and fulfilment of contracts. The former chief executive said later, «our failure was due to a lack of accountability right up to board level», that is, right from the workshop floor. Sheffield Rebuilding, like many social enterprises, had an orthodox corporate governance structure, copied from the private sector, a unitary model where authority flows from the chief executive and board down through managers to instruct the operatives. But managers were unable to use orthodox sanctions to fire workers who failed to achieve adequate performance.

Workers did not feel the future of the business was any concern of theirs. They lacked an ownership culture because they had no influence on the future of the business. These serious faults were overlooked by the prize givers who only saw a dazzling rate of growth. But it was a bubble about to burst. It is telling that the former chief executive went on to say that the only route to rescue Sheffield Rebuilding would have been to convert it into a proper private sector business.

9. Where now for social enterprises and cooperatives in the UK?

The Government is pushing ahead with Social Enterprise as a service delivery solution in various areas, most notably for the National Health Service (NHS), which has traditionally directly employed service providers. A dedicated Social Enterprise Unit has been established at the Department of Health to promote the provision of health and care services by social enterprises.

At the same time, the Government is externalising other parts of the traditional NHS by moving to private sector contractors – all NHS logistics are to be provided in this way. However, this direct privatisation is controversial and politically damaging for the government. Critics have asked if social enterprises are being used by government to soften up the NHS and public opinion before further privatisation of service delivery.

John Reid, ex British Home Secretary, said that he wanted to see a substantial proportion of probation services for offenders provided by social enterprises, a policy supported by his successor.

Cooperatives are still seen by Government as too slow to deliver and too old fashioned, and, perhaps, also too difficult to control. Yet cooperatives easily achieve many of the performance factors cited as advantages of social enterprises. Cooperatives are self-funded and commercial organisations.

The cooperative model can be self-replicating. Once the model is understood, it can be copied and easily reproduced by workers and consumers in other locations. The British cooperative movement grew from one cooperative in Rochdale to domination of the domestic consumer economy in 40 years. Similar cooperativisation took place in social services in Sweden in the last two decades. Cooperatives, being a collective response, do not depend on a thin supply of suitably skilled social entrepreneurs.

Cooperatives also possess unique safeguards in relation to responsible management of public funds. Cooperatives are regulated by Cooperatives UK. Cooperatives are self-regulated by their members in internal democracy, which reduces their ability to be run by, and for the benefit of, their executives, to the exclusion of their other stakeholders.

10. Relations between UK cooperatives and social enterprises

In this social enterprise environment of exaggeration and camouflaged self-interest, how should cooperatives relate to social enterprises?

We should not treat all social enterprises alike. It is clear there are two types: those which are fundamentally accountable and even democratically governed; and those which are not and can be described as «managerialist enterprises». Cooperatives should encourage and support the former to develop democratic forms of governance and enjoy the advantages of democratic inclusion of stakeholders and an ownership culture by employees.

Cooperatives should distinguish between these democratic enterprises and the managerialist enterprises, pointing out their deficiencies and the risks inherent in trusting public funds to defectively governed businesses.

It is not appropriate for UK cooperatives to continue to ignore UK social enterprises and hope they are simply a temporary political fad. Managerialist social enterprises are a quick fix (and politicians love quick fixes), but they are becoming an institution in our economy. Cooperatives have demonstrated the stability and sustainability of our version of social enterprise. It would be to the advantage of all if we were able to persuade the government to take a longer view of social enterprise and prioritise democracy and accountability.

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The opinions expressed here are personal. Information is from personal conversations with chief executives of social enterprises, websites, and unpublished papers.

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9. Conclusions of the seminar

Mervyn Wilson

First of all, I wish to thank all contributors to this debate for their respective contributions to the comparative legislation work on social enterprises and cooperatives in Europe, the CECOP Secretariat for organising this debate and finally, Bruno Roelants for placing the ongoing European debate on social enterprise in a global perspective.

In opening these concluding comments, we should remind ourselves of what is often asserted regarding the situation in the UK and the US. Although they share a common language, there are many different meanings attached to the same words used to mean different things in different countries: in this debate on social enterprises, the same conceptual difficulties are reflected in the contrasting approach between economic forms and definitions that appear in the various contributions.

This is especially the case when we observe that political drivers promote and use concepts around which there is actually no agreement on their very definition. This issue, which is related to the convenience of forms, is the simplification of the diversity of economic forms that is driving economies in the EU and around the world to simply slim down the public sector by its traditional components. A substantial challenge for cooperatives is the reflexion around hybridized forms of governance, where there may seem to be an appearance of autonomy, whilst control is continually conferred to the same actors. Cooperatives face many difficulties in responding to severe changes in the economic environment, in particular in their respective attitude when adapting their structures to the new opportunities offered by the growth of the public sector and the reform agenda, and in responding adequately to the threats present in this changing environment.

One of the key points I would like to emphasise is the contrast between the ambiguity of the legal and other definitions of «social enterprise» on the one hand, and the clarity of the identity and underpinning values of the cooperative sector (one of its main strengths) on the other. Although the debate around the «democracy» component of our governance approach is important, it is not the only fundamental issue, and this actually drives some of the tensions we have experienced here: concepts like self-responsibility and self-help, equality in governance and equity in distribution, and, finally, solidarity in the building of the cooperative sector, are at least as important in the underpinning values that compose our governance structure.

Secondly, we have to evoke the dangers and challenges that cooperatives are facing when being exclusively part of the social inclusion agenda, this being a massive concern for many types of cooperatives. In this context, the challenge first identified in the very history of the building of the cooperative sector and that lead to the adoption of the statement on cooperative identity was what Iain Macpherson referred to as the supremacy of the investor-owned model of enterprise. Ever since, we have seen an increasing drive of the market forces to slim down the public sector and the subsequent attempt to create social enterprises as the catch-up for those economic actors not finding their way in the general market-driven economy. And the danger for cooperatives, precisely, is situated in the potential identification of the cooperative model as being one of the alternative «catch-up» features in the «real economy». The «Global 300» work undertaken by the ICA plays a crucial role in countering this marginalisation and in strongly affirming the fact that cooperatives and mutuals are effective parts of the modern economy. Thus, in responding to the social agenda, we ought to be precautious in not eclipsing the role our enterprises are effectively playing in the mainstream economy.

Finally, a last challenge that leads to the difficulties experienced by the cooperative movement in providing a rapid response to changes in the environment is the unique characteristic of our model that is the mission to meet the needs of the members. The problem is the coherence in time and the accurate re-evaluation of the needs of members of whatever cooperative concerned. Indeed, referring to Roger Spear's phenomenology, the social enterprise phenomenon creates new opportunities for cooperatives of every type to identify new needs of their members that can lead to the creation of new business opportunities. In concrete terms, this means stopping some of the «inward looking» characteristics described by Bob Cannell, i.e. the obsession we have of only considering our own structures instead of looking out for new opportunities. The phenomenon of disengagement from the public sector and the subsequent creation of this new «social enterprise» area within the market economy that should not simply be left to the voluntary community and foundation sector, does create opportunities as well as threats for cooperatives.

PART II

NORMATIVE ANALYSIS

Comparison between national normative frameworks on
cooperatives and social enterprises in Europe



10. Cooperatives and social enterprises: comparative and legal profile

Antonio Fici

1. *Introduction. What is the relationship between cooperatives and social enterprises?* – 2. *The social function of cooperation.* – 3. *The private provision of welfare and community services: from providers to social enterprise.* – 4. *Social cooperatives as a legal form of social enterprise.* – 5. *From social cooperatives to the social enterprise.* – 6. *Conclusions.*

1. Introduction. What is the relationship between cooperatives and social enterprises?

As we can see in the contributions published in this volume, the cooperative movement would appear to be particularly interested in this new, «partially still indistinct»³⁴ subject that, in the legislation in the countries that have already begun to contemplate it, is referred to as «social enterprise»³⁵.

Indeed, it is possible to detect a note of concern in some of these contributions with regard to the social enterprise, almost as if there is a risk that the new form of enterprise may occupy the areas occupied thus far by more traditional forms of enterprise and, since it has gained accreditation on the market and in the eyes of the public institutions as a result of the «social» status that has been granted to it by legislation, it may push the sociality of cooperatives into the background, particularly as far as worker cooperatives are concerned³⁶.

In this contribution, a «social enterprise» is considered to be any private organisation which, regardless of its legal form, undertakes, either exclusively or at least for the most part, activities that are of a social utility and whose purpose is the general interest.

34 Cf. SCALVINI, in this *Volume*

35 Cf. In particular the Finnish law no. 1351, dated 30 December 2003, *Act on social enterprises*, and the Italian legislative decree no. 155, dated 24 March 2006, n. 155, *Act on social enterprise*

As a result of their different approach to the subject, neither the Belgian nor the British law refer to the «social enterprise» as such. Instead, they refer, respectively, to *enterprises with a social purpose* (included in article 164 *bis* of the *Codes on enterprises* of the law dated 13 April 1995) and to *community interest companies* (cf. *Companies (Audit, Investigations and Community Enterprise) Act 2004; Community Interest Companies Regulations 2005*)

All of these provisions are taken into account in the comparative table of existing legislation on social enterprises that has been put together by CECOP and is included in this *Volume*

36 Cf notably CANNEL in this *Volume*

Naturally, the definition given above, which, for the time being, is only a very concise and brief definition, will have to be further developed and broken down into its various component parts (activities of social utility, general interest purpose, etc.) and in order to do this it will be necessary to compare the notions of social enterprise that are in force in each piece of legislation. In order to achieve this objective, we feel that it is relevant to look not only at the legislation on social enterprise, but also at legislation on individual forms of social enterprise and therefore at legislation on social cooperatives and enterprises with a social purpose.

The debate on the possible consequences of recognition being given, in legislation, to social enterprises has been, and continues to be, particularly intense in those countries, such as Italy, in which the phenomenon of social cooperation is widespread. Nor should this come as a surprise to anyone, since if we consider the comparison with this new form of enterprise to be necessary for the cooperative movement in general³⁷, then it is even more so for the part of the cooperative movement which, for some time now, in a series of European countries, has assumed the «social label» and has directed its activities towards the general interest³⁸.

The analysis provided in this contribution will be predominantly legal and, as such, may also reflect the inability of the legislators to acknowledge and to represent the phenomena of these realities as they really are, as they can be submitted to a historical analysis, and as they are perceived by those who are their main architects. Therefore, the «social enterprise» examined in these pages is only the «social enterprise» as it is recognised in legislative texts and does not include examples of social enterprise that may be different, broader or more complex and that may be object of discussions between practitioners, of particular public policies, etc.

An analysis of this type might, therefore, appear to be partial or limited, but since it presents a higher degree of certainty and is more error-free than other types of analysis

37 Cf. SCALVINI, *op. ult. cit.*, who talks about it being an unavoidable issue that has to be addressed

38 Cf. the first to do so was the Italian law no. 381, dated 8 November 1991, *Act on Social Cooperatives*, followed by the statutes introduced for the Portuguese *cooperativa de solidariedade social* (cf. art. 4, para. 1, letter. m), law no. 51, dated 7 September 1996, n. 51, *Código cooperativo*, and legislative decree no. 7, dated 15 January 1998, *Regime jurídico das cooperativas de solidariedade social*); the Spanish *cooperativa de iniciativa social* (art. 106, law no. 27, dated 16 July 1999, *de Cooperativas*); the French *société cooperative d'intérêt collectif* (art. 19 *quinquies*, law no. 1775, dated 10 September 1947, *statut de la coopération*, as an annex to law 624, dated 17 July 2001). Cf. now also see the regulation on social cooperatives as introduced into Polish legislation on 27 April 2006 and the Hungarian legislation on cooperatives in 2006. All of these provisions are taken into account in the comparative table of existing legislation on social enterprises that has been put together by CECOP and is included in this *Volume*

(since the value judgements are contained within cogent legislative provisions), it should be considered to be the necessary (albeit insufficient) precondition for any comparison between organisational forms, particularly since these forms (such as cooperatives and social enterprises) are characterised by their common approach to economic activity and the market. Furthermore, only by analysing and contrasting the legislative texts on the organisational forms under comparison, will it be possible to establish whether or not the existing legislation reflects, and if it does so, to what extent, the reality of these forms, at least as they are perceived by someone who assumes an opinion that is neutral from a legal point of view.

2. The social function of cooperation.

Before looking at the relationship between cooperatives and social enterprises, it would first of all seem appropriate to establish whether there exists a link between the cooperative form of enterprise and social utility and, if this link does exist, what is its nature.

The social-economic purpose of cooperatives is something that has been spoken about for some time now at different levels and by various parties.

In its recommendation (no. 193, dated 20 June 2002) on *The promotion of Cooperatives*, the International Labour Organisation (ILO) recognises that, «cooperatives in their various forms promote the fullest participation in the economic and social development of all³⁹». The recommendation states that the promotion of cooperatives – that are guided by the specific values⁴⁰ and principles set out by the International Cooperative Alliance (ICA) and which were formally acknowledged in the very same ILO recommendation⁴¹ – «should be considered as one of the pillars of national and international economic and social development⁴².

In its Communication COM(2004) 18, of 23 February 2004, *on the promotion of*

39 Cf. RECOMMENDATION OF THE INTERNATIONAL LABOUR ORGANISATION ON THE PROMOTION OF COOPERATIVES, Geneva, 20 June 2002, page. 2

40 According to this Recommendation, these are: self-help, self-responsibility, democracy, equality, equity and solidarity (cf. ILO Recommendation, point 3.a)

41 These principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community. Cf. ICA, *Declaration on the Cooperative Identity*, Manchester, 1995

42 Cf. RECOMMENDATION cit., point 7.1

cooperative societies in Europe, the European Commission states that «cooperatives are an excellent example of a company type which can simultaneously address entrepreneurial and social objectives in a mutually reinforcing way»⁴³ and recognises their «increasingly important and positive roles... as vehicles for the implementation of many Community objectives in fields like employment policy, social integration, regional and local development, agriculture, etc.»⁴⁴.

It is also well known that, for some time now, the European institutions include cooperatives, together with associations, foundations and mutuals, in the sphere of the so-called «social economy organisations»⁴⁵.

Indeed, this recognition is also to be found in legislation, sometimes at the highest level of the hierarchy of legal instruments.

Perhaps the most important case (without being the only one⁴⁶) is that of the Italian Constitution, which includes an article on cooperative societies, thereby making the cooperative the only legal form of enterprise that enjoys a mention in the constitution and therefore benefits from constitutional protection⁴⁷.

According to article 45 of the Italian Constitution, «the Republic recognises the social function of cooperation of a mutual nature without private speculation», and consequently it is incumbent upon the legislator to promote and to favour its increase through the most appropriate means.

The «social function» of cooperation is therefore established as a fact in law (this is the interpretation that should be given to «recognises» in the abovementioned article 45). This is what distinguishes it from an ordinary enterprise, with regard to which the very same Constitution states, on the one hand, that it «may not perform

43 Cf. COMMISSION COMMUNICATION COM (2004) 18, 23 February 2004, *on the promotion of cooperative societies in Europe*, point 4.

44 *Id.*, point 1.2

45 More recently, cf. COMMISSION COMMUNICATION COM(2008) 412, of 2 July 2008, *The renewed Social Agenda: opportunities, access and solidarity in 21st century Europe*, point 4.5, in which cooperatives (together with mutuals) are mentioned as being «social economy enterprises»

46 In fact, amongst others, both the Portuguese (art. 61) and the Spanish Constitutions refer to cooperative societies and the latter requires the legislator to promote cooperatives (art. 129). The Hungarian Constitution also contains a similar article (art. 12).

47 Since the Italian Constitution is a «rigid» constitution, then even should it wish to do so, the legislator (the Italian Parliament) could not abolish cooperative societies with an ordinary law, rather it would have to adopt a law to revise the constitution which requires a larger majority in parliament and may even have to call upon the people to give their approval through a referendum (cf. art. 138)

its activities in such a way that it is contrary to the social utility or that it harms human safety, liberty and dignity», clearly anticipating this probability (article 41, comma 2), whilst on the other, it requires the legislator to guide and to coordinate it towards social purpose activities, on the basis of the clear condition that it does not pursue social purpose activities (art. 41, comma 3).

There still remains the problem of establishing what should be understood by the «social function» of cooperation, or perhaps why the cooperative should be deemed to be a legal form of enterprise of a social utility.

Italian doctrine has identified and recognised the social function of a cooperative in the fact that it is an institute of economic democracy that represents «one of the ways in which the workers may participate in the «economic organisation» of the country», and therefore can influence the «shaping of political life» and the «exercising of sovereignty»⁴⁸. By granting the workers ownership and control of the enterprise (which, furthermore, should be carried out in a democratic way), thereby allowing them to participate effectively in the country's economic and political life, the cooperative form may contribute to the efforts made to implement the social reform project that the members of the Italian parliament envisaged and called for in art. 3, comma 2 of the Constitution⁴⁹.

This is a position that is not only correct from an interpretative point of view, but it is also extremely topical from a political point of view, since the European Commission has also expressed its view that cooperatives contribute to the development of knowledge (since they are «schools of entrepreneurship and management» for the members, notably the workers, who take part in their activities)⁵⁰ and also that they are the most appropriate and least traumatic legal form for the transfer of an enterprise that has no hope of continuing in its present form: in these cases, the ownership of the company may be transferred to the workers, in other words the very people who, on the one hand, have a huge interest in its survival and have a good

48 See GALGANO, *sub* art. 41, in *Commentario della Costituzione*, edited by Branca, Rapporti economici, t. II, Bologna-Roma, 1982; cf. also NIGRO, *sub* art. 45, *ibidem*

49 «It is the responsibility of the Republic to remove the obstacles of an economic and social nature that, by limiting the freedom and equality of the citizens, prevent the complete development of the human person and the effective participation of all workers in the political, social and economic organisation of the country.» With great awareness and political-institutional sensitivity, the members of the Italian parliament were therefore conscious of the fact that the legislative recognition of formal equality and the prohibition of discrimination are not sufficient to guarantee the exercise of fundamental rights in the absence of the material means required to exercise these rights

50 Cf. COMMISSION COMMUNICATION COM (2004) 18, *cit.*, point 2.1.1

knowledge of the sector in which they operate, whilst on the other would not have the required financial means to acquire the enterprise unless they were organised within a cooperative⁵¹.

The sociality of cooperatives implies that due respect is given to several fundamental rules of function, structure and *governance* that are present in almost all of the legal systems.

First of all, from a functional point of view, the cooperative is the only type of enterprise whose main purpose, regardless of how this has been identified in the various pieces of legislation⁵², is not that of providing a return on the members' capital through the distribution of operating profits, accumulated reserves or in any other way. Indeed, this form of distribution is either completely prohibited or (as does happen) is only allowed to a limited extent⁵³. This makes cooperatives (unlike stock companies or corporations) *not-for-profit*⁵⁴ enterprises or at least partially so: obviously this does not mean that they do not have a legitimate right to generate profits, rather it means that, as has already been said, these profits may not be allocated (either fully or in part) to the members according to the capitalistic criteria for the distribution of profits, that is to say in proportion to the amount of capital paid in by each member (*non-distribution constraint*)⁵⁵.

In this way, legislation on cooperatives reflects the ICA's 3rd principle, which states that, «Members usually receive limited compensation, if any, on capital subscribed as a condition of membership». On a similar note, the Italian Constitution makes its

51 Cf. *ib.*, point 2.3.1

52 Italian law refers to «mutualist purpose», in the sense that the cooperative provides its members with goods or services (consumer or user cooperatives) or receives goods or services from its members (production cooperatives) or benefits from the labour activities of its own members (worker cooperatives) under the best possible conditions for the members (cf. arts. 2511 and 2512, Italian Civil Code). Similarly, cf. art. 1. para. 1 and 2, of the French law on cooperatives; also see section 56 of the Hungarian law on cooperatives, which refers to «modes of personal involvement of members» and specifies that this personal involvement may be achieved «by way of production, processing products, and preparation for marketing, sales, consumption or by other means», and that «one mode of personal involvement . . . is the obligation to perform work». Even the Community regulation on the European Cooperative Society (SCE) states that the satisfaction of the members' interests should take place through «the conclusion of agreements with them to supply goods or services or to execute work of the kind that the SCE carries out.» Other laws limit themselves to stating, more generically, that the cooperative is an enterprise that has been established with the purpose of satisfying the economic or social interests of its own members: cf. art. 1 para. 1 of the Spanish law on cooperatives; art. 2, para. 1, of the Portuguese cooperative code; sec. 2 of the Hungarian law of 2001 on cooperatives; also see the concluding part of art. 1, para 3, of the French legislation

53 Cf., for example, art. 2514 of the Italian Civil Code; art. 48 para. 2 of the Spanish law; art. 14 of the French law

54 This is stated very clearly in art. 2, para. 1 of the Portuguese cooperative code (see also art. 73)

55 Italian doctrine expresses this concept by stating that cooperatives are prohibited from generating a *subjective profit*, but are allowed to have an *objective profit*

granting of recognition of the «social function» of cooperation conditional upon the «absence of private speculation».

The *surplus* generated by a cooperative enterprise is used for purposes that are determined by modalities designed to not only satisfy the particular interests of the cooperative's members.

Indeed, according to current legislation, cooperatives are generally required to allocate a part of their *surplus* to indivisible reserves (this does not mean that these reserves are no longer available, rather it means that they cannot be shared out amongst the members in the event of the dissolution of the cooperative)⁵⁶ and a part to support the development of the cooperative movement (for example into a fund established for this purpose by the associations that represent the cooperative movement)⁵⁷.

Rather than allocating the *surplus* in proportion to the capital subscribed, they may only allocate the residual portion of the *surplus* to their members, according, and in proportion, to their transactions with the cooperative (in other words their contribution to the activities of the cooperative)⁵⁸; furthermore this is sometimes only possible within specific limits⁵⁹.

It is also important to emphasise the fact that these successive allocations (which have different names, for example in Italian they are known as «returns») only represent an *ex post* settlement (on the basis of the authenticated *surplus*) of the contractual consideration due to be paid by the cooperative to its own members. This is because, in a cooperative, the relationship between a cooperative and its members are normally governed by «*open-terms contracts*», in which the financial consideration to be allocated to the members is not fixed or pre-determined, rather

56 Cf., *ex plurimis*, art. 2545-*quater*, comma 1, Italian Civil Code; art. 55 of the Spanish law; art. 69 of the Portuguese cooperative code; section 9 of the Finnish law; art. 65, para. 2 of the SCE Regulation

57 Cf., for example, the requirement to allocate 3% of the net annual profits to mutual funds for the promotion and development of cooperation (established by the national associations that represent the cooperative movement), that is imposed upon Italian cooperatives by article 11 of law no. 59, dated 31 January 1992

58 This part of the surplus, which is allocated to the members in accordance and in proportion with the mutual relationship with the enterprise, is called the «rebate» in Italian law (cf. art. 2545 *sexies*, Italian Civil Code). The distinction between limited remuneration of capital (or rather the distribution of profit) and the allocation of rebates is made clear in the 3rd principle of the ICA, in which a distinction is made between «limited compensation, if any, on capital subscribed» and «benefiting members in proportion to their transactions with the cooperative». Also see articles 66 and 67 of the Regulation on the SCE, the first of which refers to dividends, whilst the second refers to the profit available for distribution

59 Cf., for example, article. 3, comma 2, of the Italian law no. 142, dated 3 April 2001, which limits the dividend that may be paid to the worker-members to 30% over the basic remuneration due to them

it is susceptible to further adjustment (either up or down) according to the economic results achieved by the enterprise⁶⁰.

These rules – which reflect not only the provisions of the 3rd principle of the ICA⁶¹, but also those of the 6th and 7th principle⁶² – establish a company profile in which the degree of sociality is quite clear.

On the one hand, the indivisible reserves constitute resources that may be used for the purposes of the running or development of the enterprise, thereby contributing to the well-being of all of those (users, workers, etc.) who derive a benefit from the enterprise, whilst on the other, if they are not used in this way, they enable the perpetuation of the enterprise to the benefit of future generations of co-operators.

As for the provision of support to the cooperative movement, this is just one way of sharing the economic profits generated by individual cooperatives and groups of co-operators.

In terms of the company structure, one factor of a cooperative's sociality is the variable nature of its corporate capital and its consequent tendency to be open to the outside world (the admission of new members, just like the exclusion of members, does not require a specific modification of the statutes). In this way, cooperatives apply the ICA's 1st principle, which states that cooperatives are organisations open to all persons able to use their services⁶³.

At this stage it is necessary to make it clear that, quite apart from the substantial degree of sociality of their purpose, as illustrated above, ordinary cooperatives (a

60 For further information on *open-terms contracts* (or *incomplete contracts*), see article 2.14 of the *Unidroit Principles on international commercial contracts*, as well as article 6:104 and successive articles of the *Principles of European contract law*

61 According to the ICA's 3rd principle on Member Economic Participation, «Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes: developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.»

62 The 6th principle on «Cooperation among Cooperatives» states that, «Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.» According to the 7th principle on «Concern for Community», «Cooperatives work for the development of their communities through policies approved by their members.»

63 Cf. articles 2511 and 2524, Italian Civil Code; art. 13 of the French law; articles 2, para. 1, and 18, para. 1 of the Portuguese Cooperative Code; section 2 of the Finnish law; section 7 of the Hungarian law, art. 1, para. 2 of the SCE regulation

different approach will have to be taken regarding social cooperatives and we will have the opportunity to comment upon this later on) are still an organisational form that pursues a particular interest, since it aims to satisfy the needs and aspirations of its members⁶⁴. By admitting new members, the cooperative extends the benefits it is able to generate beyond the original circle of its own members and in this way it is able to generalise its own «particular» purpose.

However, it should be said that this latter profile is highly dependent on the specific way in which the cooperative conducts itself and on its effective good qualities, because although the existing legislation does protect third party interests upon admission, they do not recognise their right to admission (indeed, it would be difficult to do so, since what is at stake here is the freedom to manage the enterprise). The Italian law is very efficient in this area, since it states that the statutes must set out the requirements, conditions and procedure for the admission of members and it also specifies that such criteria may not be discriminatory and that they must be coherent with the purpose pursued and the activity carried out (art. 2527, Italian Civil Code); it also states that in the event that an application for membership be denied (reasons must be given) by the board, then the third party may ask for the application to be submitted to the general assembly of the members (art. 2528); finally, it requires the members of the board to provide details of the decisions it has taken with regard to the admission of new members in the annual report (art. 2518, last comma).

As far as the issue of *governance* is concerned, it is worthwhile recalling the well-known rule of «one member, one vote»: in cooperatives – and this is a rule that is common to all legislations, although there is the possibility of a small exemption, so that they reflect the contents of the 2nd and 4th ICA principles⁶⁵ – each member has one vote, regardless of the capital he/she has subscribed.

64 The proof of this is to be found in the fact that, in many legislations, the undertaking of activities with non-member third parties is subject to limitations: cf. art. 2513 Italian Civil Code; art. 4 para 2 of the Spanish law; art.3, para. 1 of the French law. Clearly the statements made in the text are based on the concise interpretation of the strictly legal data, since practice shows that cooperatives go beyond their legal requirements and allocate a further part of their available surplus to the general interest

65 The 2nd ICA principle: Democratic member control, states that «Co-operatives are democratic organisations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organised in a democratic manner.» The 4th ICA principle: Autonomy and independence, states that «Co-operatives are autonomous, self-help organisations controlled by their members. If they enter to agreements with other organisations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.»

The social importance of the principle of democracy is evident, if we think that not only does this make the cooperative an instrument that satisfies people's needs and aspirations, rather than the interests of capitalists, but also, and above all, it encourages the participation of everyone in the control and the running of the enterprise, making the cooperative the «school of entrepreneurship and management» referred to in the abovementioned European Commission Communication, or even the instrument of economic democracy alluded to in the Italian Constitution.

Finally, it clearly emerges from the analysis carried out thus far that the same positive evaluation of the social utility function that is performed by the cooperative movement with regard to its members is to be found not only in the opinions expressed by the national and international institutions, but also, and above all, in the respective legal systems.

Having established these facts, we will continue by attempting to assess if, and to what extent, the social utility, which is a feature of cooperative societies, is different from the social utility which, in a variety of forms, is a distinguishing feature of social enterprises.

3. The private provision of welfare and community services: from providers to social enterprise

In the contributions published in this volume, many of the authors contemplate the possible reasons behind the penetration of the economic and market dimension into sectors, such as welfare services (assistance and healthcare services, etc.) and community services (cultural and environmental services, etc.), in which, historically, this dimension has never played a prominent role. Understanding these reasons also means pinpointing the reasons behind the birth and the development of the phenomenon we are currently examining, namely social enterprises.

In this regard, it should be said first of all that in the sectors under consideration, the economic and market dimension has predominantly come to the fore due to a transformation in the operating modalities of the *not-for-profit* private provision of services, rather than as a direct response to the scarcity of public provision⁶⁶. The traditional theory of the «failure of the state» to provide welfare and community

66 Cf., regarding the Italian experience, BORZAGA and IANES, *L'economia della solidarietà. Storie e prospettive della cooperazione sociale*, Roma, 2006, 99 ss

services therefore cannot be used to provide an adequate and direct explanation for the emergence of the social enterprise.

Nor can this emergence be explained by the other traditional theory on the «failure to establish a contract», since this refers to the incapacity of the private *for-profit* enterprises to inspire trust in their counterparts in a context in which trust is necessary for the success of the company, due to the presence of an asymmetric flow of information between the producer and the consumer. This theory, therefore, explains why they are able to assert themselves in sectors in which they are considered to be *not-for-profit* without, however, making a distinction between social enterprises and non-entrepreneurial provider bodies.

Whilst it is true that the social enterprise is created out of the transformation, in an entrepreneurial sense, of many voluntary organisations and other provider bodies, we still need to ask ourselves what are the reasons behind this transformation.

One possible, first reason is that of the limitation imposed on the free of charge provision of welfare and community services, since, by their very nature, these services tend to be affected by what is known as «Baumol's cost disease»⁶⁷.

The provider bodies act as providers in the sense that they deliver services without receiving remuneration from the users or they may receive remuneration that is lower than the costs entailed in producing the services: the provision of the services and the survival of the body are therefore assured by the resources granted free of charge to the body: donations, public contributions, voluntary provision of work, etc.⁶⁸.

67 Cf. BAUMOL & BOWEN, *Performing arts: the economic dilemma*, New York, 1966

68 As correctly affirmed by Spear elsewhere in this volume, the state providers are making increasing use of managerial methods to seek out resources to guarantee their own sustainability. This gives rise to the following question: are they or do they become social enterprises for this reason? If we were to respond in technical/legal terms, then the answer is complex. In fact, entrepreneurs are only subjects who undertake economic activities and whose revenue is at least equal to the operating costs (see art. 2082 of the Italian Civil code, which affirms that the enterprise is an economic activity). If the provider does not generate revenue because it does not ask its users to pay for its services, then it should not be considered to be an entrepreneur and not should it be considered to be performing economic activities as carried out by enterprises: its sustainability does not depend upon the market, rather it is dependent upon the fact that those who contribute to its activities do so free of charge. However, if the provider does not receive subsidies or receives subsidies that are not linked to the activity carried out, rather it receives payment for services rendered or to be rendered to third parties, then the legal assessment of this provider may also change. In this case, whoever supports the provider would not be acting free of charge, rather they would be purchasing services for third parties and in this way the economical and entrepreneurial dimension of the activities would be reinstated

However, as the cost disease theory teaches us, there are some specific *labour-intensive* forms of production, such as cultural services, in which there is no relationship between a rise in salaries and an increase in labour productivity and consequently an increase in costs gives rise to issues regarding their sustainability. What is of interest to us here is that this means that an increasing demand (which is due to the emergence of new needs and the incapacity of the public and *for-profit* private bodies to satisfy them) requires an increasing amount of resources that are free of charge in order to support the provider bodies and therefore, in the long-term, the provider body will no longer be able to satisfy the demand for welfare and community services that are specifically aimed (as a result of the failures of the state and the *for-profit* enterprises) at the *not-for-profit* target group.

Therefore, in order for the *not-for-profit* services to be sustainable, then the users must, either fully or in part, pay a price for the services that they receive. The social enterprise therefore contributes to the sustainability of the private, *not-for-profit* provision of welfare and community services.

The second possible reason is connected to the enhanced capacity of prices to indicate the users' real preferences. Indeed, if the users are required to make a payment in order to obtain a service, then they will ask for the service only, and within the limits, of when they really need them. The market therefore acts to prevent any wastages of resources that may otherwise be encouraged by the resources being provided free of charge, as is illustrated by the phenomenon of the «abuse» of drugs faced by free of charge public health services (which the compulsory minimum prescription charge system should help to reduce).

Thus, the social enterprise is more efficient than the provider bodies in cases in which it is possible to identify a demand for which payment may be made (even though it is quite clear that this may be difficult). The non-economic activities undertaken by the provider bodies (and by voluntary organisations) should, therefore, be aimed at categories of users who are unable to pay for the services they require⁶⁹.

The third possible reason is to be found in the greater efficiency (both in terms of productivity and internal organisation) that the private, *not-for-profit* organisations may achieve when they are autonomous, in other words when they are not dependent

69 It should also be said that, with an appropriate price diversification policy between the categories of users, then even social enterprises could be in a position to satisfy demand for which payment is not made or at least take into account its users' different levels of spending power

on private benevolence or public contributions, rather they are dependent on the impersonal entity that is the market⁷⁰.

The fourth possible reason may be the fact that private, *not-for-profit* provision is more inclined to satisfy a demand that the private, *for-profit* provision is not prepared to satisfy because it is not particularly profitable. Indeed, companies, such as social enterprises, that carry out their activities with a view to balancing their books, rather than to distributing their profits to their members, have no incentive to accord priority to activities that are more economically advantageous over those that are not so lucrative or are not lucrative at all⁷¹. This also creates a market in the sectors under consideration.

The progressive spread of the social enterprise into sectors that have traditionally been occupied by public bodies and private, *not-for-profit* providers is not dependent on a single factor, rather it has been brought about by a combination of a range of different factors. If we agree upon this conclusion, once we have clarified the economic needs of the social enterprise, then we must develop a further knowledge of this new reality, which is what we will be doing in the following pages.

4. Social cooperatives as a legal form of social enterprise

The legislative process for the recognition of the phenomenon of the social enterprise began with the introduction of rules to govern social cooperatives and therefore through the legislative specialisation of the ordinary cooperative form⁷², which was clearly considered, by the legislators, including the European Commission today, to be a particularly efficient model for the integration of social objectives⁷³.

For the purposes of the more general debate on social enterprise, it is important to understand the outcome of this specialisation, particularly in terms of the distinction between cooperatives in general and social cooperatives in particular.

70 Cf. in this context SCALVINI, *La legge 118 e l'evoluzione del terzo settore, ovvero «Finalmente non saranno tutte le imprese sociali»*, in *Impresa sociale*, 2005, n. 2, pag. 180

71 The low profitability level may be due to the «cost disease» referred to here or even to presence of users who have a low income and therefore limited spending power

72 Cf. SPEAR in his article in this *Volume* in which he highlights the pioneering role played by social cooperatives in the process for the recognition of social enterprises

73 Cf. COMMISSION COMMUNICATION COM(2004) 18, cit., point 2.3.2., which, with reference to social cooperatives, states that, «the effectiveness of cooperative forms in integrating social objectives has led some Member States to adopt specific legal forms in order to facilitate such activities.»

From a functional point of view, in other words the institutional objectives of the organisation, only the Italian legislation on social cooperatives contains an appropriate identification of the particular purpose pursued by social cooperatives. This legislation states that «the purpose of social cooperatives is to pursue the general interest of the community in terms of human development and the social integration of the citizens», (art. 1, comma 1, law no. 381/1991).

However, as we can see in the legislative table published in this volume, in other national legislations social cooperatives are not given this status because they pursue a particular purpose, but rather because they carry out a specific activity: the «sociality» of the cooperative is therefore made primarily dependent upon the nature of the activity carried out, rather than upon the final objectives it has in view when carrying out activities of a certain type.

Therefore, the Italian legislator would not consider a cooperative which, for example, carries out social and healthcare activities for the elderly with the objective of earning the highest possible salaries for its worker-members, to be a social cooperative; rather it would be considered to be an ordinary worker cooperative. However, it would be an authentic and genuine social cooperative if it were to propose (and to operate in such a way to achieve this) to provide assistance to the largest possible number of the elderly, providing services of the highest possible quality, at the lowest possible price. In other words, if its *mission* were to satisfy the general interest of the community, maximising the utility of the services provided to the elderly beneficiaries.

The purpose of social cooperatives is therefore completely «altruistic» (in terms of the destination of the advantages), since all of the benefits generated by the enterprise must be used for the purposes of the pursuit of the general interest, rather than the particular interests of the members⁷⁴. This point is well made in the preamble to the French legislation on the SCIC (even though the French law does not go on to explicitly state this concept, which it evidently believes to be implicit), which affirms that, «...the altruistic purpose of this new form, contrary to what happens within traditional cooperatives, may be ascribed to the fact that its objective is not

74 Of course this does not mean that only social cooperatives have an altruistic purpose since all cooperatives, not only social cooperatives, are required, as has already been explained, to allocate a good part of the surplus for altruistic use. The difference is therefore perhaps only quantitative in nature, since, in general, cooperatives have a part of the surplus available that they are able to distribute to their own members (according, as we have already seen, to the cooperative, rather than the capitalist, allocation criteria), whilst social cooperatives must allocate all of the surplus generated to the general interest

the simple satisfaction of its members, rather than of a wider public whose needs the cooperative aspires to satisfy»⁷⁵.

Clearly this does not mean that the members cannot be the beneficiaries of the cooperative, but they are not considered to be beneficiaries because they are members, rather because they may belong to the category of persons identified by the social cooperative as being the beneficiaries of its activities. For example, a cooperative that has been set up by a group of elderly people with a view to providing assistance for this group (as user-members) as well as for other elderly people who are not members but who find themselves in the same circumstances (thereby making a distinction between «member-beneficiaries» and «non-member beneficiaries») may be considered to be a social cooperative⁷⁶.

The organisation's planned objectives are therefore of fundamental importance if we are to talk about a «social enterprise» and also in order to identify, on the general cooperative landscape – even considering the already high level of «sociality», which is a characteristic common to all cooperatives, – a cooperative as being a «social enterprise» which, as well as the «sociality» possessed by all cooperatives, has an extra element of sociality that is formed by its direct and exclusive pursuit of the general interest (rather than the interests of its own members *per se*), as well as by the fact that it carries out a specific activity of a social nature (social and healthcare services, the integration of disadvantaged persons through employment).

It would appear that the partial or complete prohibition on the distribution of the surplus to the members, which is applied to social cooperatives under the terms of the current legislation in force in this area (sometimes in a manner that makes its application more stringent than it is to cooperatives in general)⁷⁷ cannot be considered to be an effective replacement for the clear statement of the fact that

75 Cf. MARGADO, *SCIC: società cooperativa di interesse generale*, in *Impresa sociale*, 2004, n. 4

76 This is the interpretation that should be given to the provision set out in article 19*sexies* of the French legislation on SCIC, which states, without imposing as a requirement (even though this would have been more appropriate) that, «non-member third parties may benefit from the goods and services of the cooperative general interest society». Also see MARGADO, *op. cit.*, who believes that, «the cooperative exception provided for in article 19.6 satisfies this altruistic purpose. It states, in fact, that SCIC may interact with third parties free of any type of limitation, unlike other cooperative forms, whose activities are carried out predominantly for the benefit of their own members

77 Some legal systems allow for a limited distribution of the profits: cf. Italia and France (for the latter, an important provision is made in article 19 *nonies*, para. 3, which states that, in any case, the resources received by the social cooperative in the form of public aid may not be distributed to the members). Other legal systems, on the other hand, exclude any form of distribution: cf. art. 7 of the Portuguese law 7/1998; art. 10, para. 2, of the Polish legislation; sec. 59, para. 3, of the Hungarian legislation

these cooperatives have a general interest purpose (even though this purpose does constitute a fundamental form of legislative protection), since the prohibition is merely a negative requirement. Whilst it is true that the undistributed profits are allocated to the indivisible reserves and therefore serve to increase the enterprise's assets, no indication is given, at present, as to the purpose to which these assets should be allocated, whether this be to satisfy the needs of the members (as is the case in cooperatives in general), or to satisfy the general interest (as is the case in social cooperatives).

With regard to the legal definition of the activities that a social cooperative may undertake, the legislation in the European countries under consideration does not take a uniform view, since in some countries the definition is at a «higher» level, whilst in others it is at a «lower» level; in some countries specific target groups are identified, whilst this is not the case in others. Two models of social cooperation are presented in some countries, whilst in other countries the distinction either does not exist or only one of these models is accepted.

Once again, the Italian legislation can be taken as an initial point of reference, since it was the first to be introduced in this area.

Two types of social cooperatives are recognised in Italian law: the so-called type a) cooperatives, namely those that manage specific services (notably social, healthcare and educational services) and the so-called type b) social cooperatives, or those that carry out a range of activities (of almost any type) that are designed to integrate disadvantaged people through employment. These disadvantaged people are considered to be persons who have a physical or mental disability, people undergoing psychiatric treatment, drug-addicts, alcoholics, young people of a working age who have family-related difficulties and some categories of people who have been given a conviction (the disadvantaged persons must represent at least 30% of the total workforce within the cooperative and they must also be members of the cooperative, as long as this is not incompatible with their personal status).

The Italian legislation on social cooperatives is, therefore, on the one hand a «high definition» law since it limits the sphere of activities that may be carried out by the type a) social cooperatives and it clearly specifies the people that the type b) cooperatives should be integrating through employment, whilst on the other hand, it is a generic law in the sense that it does not identify the target groups of the services carried out by type a) social cooperatives.

Other national legal systems are different from the Italian system, either because, although they include both type a) and type b) social cooperatives, they identify the activities of social cooperatives through a general approach (such as the Spanish legislation which, following a list of specific activities, contains a general clause that states, «*other activities of a social nature*» or «*the satisfaction of social needs that are not met by the market*»⁷⁸); or because they do not distinguish between type a) and type b) social cooperatives and trace the origins of the latter back to the former (this would appear to be the case in the Portuguese legislation)⁷⁹; or because they limit the definition of social cooperatives only to type b) social cooperatives, although this model is broader in its definition than its Italian counterpart, since it not only includes integration through employment but also social or other forms of integration (this is the case of the Hungarian legislation)⁸⁰; or perhaps because they limit the definition of the social enterprise to type a) social cooperatives (this is the case of the French SCIC)⁸¹.

We will later note how this diversity of legislative approach regarding activities of social utility will also be encountered (albeit in partially different terms) in legislation on social enterprises.

With regard to the profiles of *governance*, the current laws on social cooperatives do not normally include particular rules or regulations that make social cooperatives any different from other types of cooperatives. The social cooperative is therefore established just like any other type of consumer, worker, etc. cooperative and is governed by the fundamental organisational principles of the cooperative form

78 Cf. art. 106 para. 1 of law no. 27/1999. Cf. also art. 2, para. 2 and 3 and the Polish law, according to which, «*a social cooperative acts in favour of 1) social reintegration of its members, which should be understood as an action aimed at rebuilding the participation in the life of the local community by supporting the ability and fulfilling a social role in the place of work or residence 2) professional reintegration of its members, which should be understood as an action aimed at rebuilding and supporting the ability to provide work on the labour market in a self-reliant way*» and «*the social cooperative can carry out social and educational-cultural activities for its members and their local environment as well as activities that are socially useful in the sphere of public tasks defined by the law of 24 April 2003 on public benefit activities and voluntary activities*»

79 Cf. art. 2 of law no. 7/1998

80 Cf art. 8 of the Hungarian law, according to which, the purpose of the social cooperative «*is to find employment for its members who are without a job or are socially disadvantaged and to encourage the improvement of their social situation by other means*»

81 However, here once again the wording is generic. In fact, the SCIC «*have, as their object, the production of goods and services of collective interest that are of social utility*». Also see on this point MARGADO, *op. cit.*, who states that «*the social utility is not defined by the law on the SCIC. It is a concept that goes beyond the law, since it does not belong to it, even though, nevertheless, it becomes perfectly part of it. The social utility may, in fact, only and exclusively be taken into consideration with reference to a particular, well-defined territory and considering the various human, geographic, cultural, political, economic, etc. aspects. . . . Otherwise, who would benefit from it, who would be interested in it and according to what, exactly, would it be defined?*»

(democratic, participation, open membership, etc.) and it is not the object of any particular rules (such as, for example, the composition and functioning of the enterprise's bodies; involvement of the non-member beneficiaries, drafting of the social report, etc.) that may well be appropriate if we share the opinion that the specific altruistic purpose pursued requires a form of *governance* that is coherent with this purpose.

The only major exception to this is perhaps represented by the French legislation which, with a view to the involvement, within the membership base, of all of the categories of actors involved in the activities of the SCIC, imposes the *multisociétariat* model upon it⁸². The SCIC must have at least three categories of members, two of which must be composed of workers and users (whilst the last category could be composed of volunteers or public bodies or all of the other actors that support the cooperative)⁸³.

Finally, whilst the various legislations on social cooperatives may be considered to be laws to establish a particular legal form of social enterprise (and whilst, as a consequence, social cooperatives are the first social enterprises to be the subject of rules and regulations), they nevertheless have certain shortcomings that have perhaps represented one of the many reasons for the successive introduction of other, more general laws on social enterprises.

Indeed, the current laws on social enterprises are uncertain in their identification of the altruistic purpose and general interest of the social cooperatives and the way in which these features may be used to distinguish them, at a functional level, from other types of cooperative. Nor do these laws introduce any particular rules of *governance* which, without modifying the fundamental cooperative principles, would adjust the organisation and operation of social cooperatives to the altruistic purpose that they pursue. Without forgetting, of course, what has already been established at the beginning of this chapter, namely that it is the very intrinsic sociality of the cooperative legal form and its consequent particular effectiveness in integrating social objectives, that probably constitutes the reason behind the original legislative

82 Cf. MARGADO, *op. cit.*, who states that the «multi-stakeholder dimension of the SCIC, its capacity to develop the joint decision-making process that provides for the involvement of persons characterised by a different relationship with the same activity, regardless of the activity in question, represent a milestone of this new form of cooperative. They are, at the same time, the distinguishing feature and the guarantee that the cooperative's activity is well-rooted in the territory in which it operates.» It is significant that the *multi-stakeholder* structure may justify an exemption from the principle of «one member, one vote» through the provision of a collegial voting system (cf. art. 19 *octies* of the French law)

83 The Italian law, on the other hand only authorises, rather than imposes, this model, in that it provides for the admission of voluntary members and members, juridical or private person, who propose to promote and to support social cooperatives

preference for the cooperative as the only legal model of social enterprise, and they should constitute, as we will have the opportunity to conclude in this article, the reason for a differentiated treatment of social enterprises in a cooperative form compared to social enterprises in other forms.

5. From social cooperatives to the social enterprise

Therefore, the social enterprise is born through social cooperation. Indeed, with the sole exception of Belgium⁸⁴, the first laws on the social enterprise are laws on social cooperatives. The legislators therefore deemed it appropriate to graft the social enterprise onto the legal cooperative form, having clearly decided that the virtues of the cooperative enterprise, with its inclination towards sociality, which is something that has even been enshrined in legislation (and therefore is not solely entrusted to the benevolence of the cooperative movement), were not only compatible, but were even necessary to the legal configuration of the social enterprise.

If this is the case, we must therefore ask ourselves (and this is a valid question especially for countries such as Italy, which had already adopted a law on social cooperatives) why, rather than improving upon existing laws, a second group of laws, as shown in the table published in this volume, extended the social enterprise beyond the cooperative form, thereby allowing the establishment of social enterprises in the form of joint stock companies or (as has been the case in Italy and Finland) of associations or foundations.

One of the first reasons behind this situation may well be found in the shortcomings and imperfections of the previous laws and in the legislative will to develop more «sophisticated» provisions.

Indeed, as we have already seen, the laws on social cooperatives limit themselves, at most, to establishing the form, without regulating it sufficiently. The purpose of social cooperatives is therefore easily confused with that of general cooperatives, thereby blurring the distinction between a social cooperative enterprise and an ordinary cooperative enterprise. There are no specific rules of *governance* or of *accountability*, so that the social cooperatives remain a form of enterprise that should involve the

84 The SFS may, in fact, have either the form of a cooperative society or limited liability company (or, if it prefers, a commercial or a joint stock company)

parties concerned, but is not required to do so, that should be accountable to the community for the social utility produced, without being required to be and so on.

In the laws on the social enterprise (including the laws on enterprises with a social purpose) efforts have been made to bridge some of these gaps, even though this conclusion is true in particular for the Italian law, since the other laws remain very generic (as illustrated by some of the criticism levelled at them on these grounds in the contributions published in this volume).

If we compare the Italian legislative decree no. 155/2006 on the social enterprise with the Italian law no. 381/1991 on social cooperatives, then it is useful to note how many *governance* profiles are not taken into account by the latter, actually are included in the former. There is no doubt that the most important are the requirement to produce an annual social report, (art. 10, comma 2)⁸⁵ and the requirement to involve the workers and the users (non-members) in the management of the enterprise (art. 12)⁸⁶: these are rules of governance that are of fundamental importance for an enterprise that aspires to describe itself as being «social». Indeed, it would be a surprise not to find these rules in other laws on the social enterprise⁸⁷.

The second reason (which is only really applicable to countries such as Italy and Finland that allow the status of social enterprise to be given to associations and

85 That has to be written according to a precise outline that was adopted through a decree issued by the Minister for Social Solidarity on 24 January 2008

86 By «involvement», the Italian law (clearly drawing on European legislation on the involvement of workers within enterprises) means, «whatever mechanism, including information, consultation or participation, through which the workers and the beneficiaries of the activities may exert an influence on the decisions to be adopted by the enterprise, at least in relation to issues that directly affect the working conditions and the quality of the goods and services produced or exchanged.» As we can see, the Italian legislation is not particularly clear in requiring social enterprises to involve workers and users, partly because the method of involvement may use «whatever mechanism...» to be chosen by the social enterprise and partly because involvement may be limited to issues that are of direct interest to the workers and users («at least in relation to issues...»), thereby excluding the more general strategies of the enterprise

87 Whilst no specific mention is made of the «annual social report», both the Belgian and the British law require the social enterprise to prepare a special document that accounts for the enterprise's pursuit of social objectives. The Belgian law requires the directors to draft «a *special report on the manner in which the enterprise makes sure that it achieves the [social] objective*» (art. 661, para. 6), whilst the British law refers to a «*community interest report*» (sec. 26, CIC Regulations). There is no reference to the social report in the Finnish law, even though registered social enterprises are required to provide the Labour Minister with a range of information regarding their respect for the criteria to be fulfilled in order to be granted social enterprise status. Regarding the involvement of non-member *stakeholders*, there are no rules of this type in the Belgian law, however, the accessibility of the SFS is partially guaranteed by the provision contained in art. 661, para. 7. There is no real requirement for the involvement of the stakeholders in the CIC Regulations, but the *community interest report* must provide details of any consultation that takes place with persons «*affected by the company's activities*»

foundations, rather than just to enterprises) probably lies in the legislative will to «capture», through the attractiveness of the social enterprise legal «brand», the phenomenon of the undertaking of enterprise activities of social utility, either primarily or exclusively, by bodies other than enterprises, in other words by associations and foundations, where this is legally admissible⁸⁸.

Generally speaking, the legislative framework of associations and foundations, unlike that provided for enterprises, is insubstantial and ambiguous and, in any case, not sufficient to truly regulate the running of an enterprise (in the interests of the workers, of the users, of the creditors, etc.). Furthermore, in performing enterprise activities in the absence of legislative restrictions and therefore of the related obligations, associations and foundations are engaged (in silence and therefore with the consent of the law) in a form of unfair competition to the detriment of those organisations, such as social cooperatives, that are subject to regulations imposed upon enterprises and therefore to various formal obligations that increase the costs to be borne by enterprises.

Since it is necessary to abide by the rules and regulations applicable to enterprises (registration on the company register, preparation and submission of an annual report, etc.) in order to acquire (and to use) the social enterprise status, then it follows that associations and foundations, should they wish to bear the social enterprise brand (although there is not an obligation to do so), will have to observe the very same operational rules that are applicable to other forms, thereby protecting the third parties that enter into contact with the social enterprises, as well as upholding the principle of fair competition between social enterprises, regardless of their legal form.

A further probable reason may consist in the legislative will to prefer legislation inspired by the principle of the plurality of legal forms, rather than legislation in which the social enterprise may only be established in one legal form (namely the cooperative form). This is applicable to countries that did not have a law on social cooperatives as well as to those that did have this type of legislation.

There may be many explanations behind this preference for the plurality of legal forms, ranging from the more political one according to which each legal form may

88 In Italy, for example, the civil code does not say that associations may not carry out entrepreneurial activities and this gives rise to the prevailing theory that they are allowed to undertake any type of activity, including economic activities. For an overview of this point regarding other legal systems, see the various national reports in the Digestus project, *Verso l'impresa sociale: un percorso europeo*, Roma, 1999, as well as, *ivi*, the summary report by CAFAGGI

be the expression of individual movements and cultures, so that admitting more legal forms means respecting social and economic pluralism, to the more technical reason, according to which each legal form is the expression of its own organisational principle, so that the admission of a series of legal forms may be translated into the attribution, to the economic operators interested in the social dimension, of more operational instruments (those, for example, who are interested in the democratic dimension will choose the cooperative form; those who are interested in controlling the capital invested will choose the form of a joint-stock company or of a corporation).

In comparing the laws on the social enterprise with those on the social cooperative, there would probably appear to be less uniformity between the former than the latter.

We have already commented, in part, on the legal forms and *governance*.

With regard to the legal forms of the social enterprise, the following distinctions may be made between:

- i) legal systems that allow all types of organisations (associations, foundations, joint stock or limited companies, social cooperatives) to be recognised as being social enterprises, such as the Italian and Finnish system⁸⁹;
- ii) legal systems that grant recognition as a social enterprise only to companies, including cooperatives, such as the British and Belgian system⁹⁰;
- iii) legal systems that recognise only the social cooperative as the sole general form of social enterprise⁹¹.

In terms of *governance* requirements, on the other hand:

- i) some laws are particularly attentive to these aspects, such as the Italian law;
- ii) whilst others, such as the Belgian and British (where the role of the regulatory body, however, plays an important function in compensating for certain legislative shortcomings) are not so attentive to these requirements;
- iii) laws that are not at all attentive to this aspect, such as the Finnish law.

89 In fact, due to the transversal nature of the regulation, the designation used is actually that of the «social enterprise».

90 In which the denomination of «social enterprise» does not exist, rather reference is only made to «enterprise with a social purpose»

91 Such as the French system where, as we already know, when discussions were held on the introduction of the social enterprise, it was decided, in keeping with the conclusions of the Lipietz report, that it was not necessary

If we then look at the modalities used to pursue the social utility, the following distinctions may be made between:

- i) laws, such as the Italian law, that confer the status of social enterprise on an enterprise because it mainly carries out a specific enterprise activity that has been rigorously identified with reference to particular sectors (social assistance, healthcare, etc.);
- ii) laws, such as the British law, that prefer to adopt a general clause, leaving the *community interest company* free to demonstrate the social utility of the activities undertaken (at the most only excluding certain activities) under the control of the regulatory authority;
- iii) laws, such as the Finnish law, that only recognise enterprises that help disadvantaged people into employment as being social enterprises;
- iv) laws, such as the Italian law, that specifically recognise as being social enterprises those enterprises that provide goods and services of social utility, or those that, regardless of the type of work carried out, help to get disadvantaged persons into employment;
- v) laws, such as the Belgian law, that do not grant recognition to a social enterprise (enterprise with a social purpose) on the basis of the fact that it carries out a specific activity, but rather because it devotes this activity, whatever it may be, or rather the surplus it generates, to a social purpose ⁹².

Finally, in terms of the *mission* of the social enterprise, it would appear that only in the Italian law is there a clear reference to the requirement to pursue the general interest (and therefore the interests of the users and disadvantaged workers within the enterprise over any other interests). This is also accompanied by highly stringent obligations regarding the destination of the *surplus* generated by the enterprise, whereas the other laws limit themselves to sanctioning a total or partial prohibition, according to different circumstances, on the distribution of the profits to the members.

92 If this is the case, then it is also possible to note a profound difference between the Italian social enterprises and the Belgian SFS, since the former directly and predominantly carries out enterprise activities of a social utility to which it must allocate all of its operating profits (cf. art.3 of law no. 155/2006), whilst the latter could have the ultimate purpose of acting as a provider, with regard to which the activity represents a mere instrument

6. Conclusions

In attempting to draw conclusions from the analysis carried out thus far, it would seem that it is possible to say that, in reality, given the current state of legislation in this area, then rather than witnessing a shift from the social cooperative to the social enterprise, we are seeing the establishment of this new form alongside the more traditional form. Indeed, this shift is sometimes prevented, as is the case in Italy, by the absence of tax or other types of incentives in favour of social enterprises, which means that economic operators are not prepared to make use of this new legal form due to the obligations that it imposes.

Looking to the future, we may perhaps imagine that, as a result of the effect of the introduction of general and transversal laws on the social enterprise, in countries, such as Italy, where it is already well developed, social cooperation will undergo a quantitative reduction, since other legal forms, as well as cooperatives, will be eligible to operate as a social enterprise. However, it is highly probable that this quantitative reduction will be followed by a substantial increase in the quality of social cooperation, since the debate on the social enterprise will also highlight the objectives and the *mission* of social cooperatives (and at the same time it will also serve to make clearer their functional differences compared to other types of cooperative).

A further scenario is that of the creation of aggregations between social cooperatives in a form that is different from the traditional secondary level cooperatives: indeed, the possibility of adopting the legal form of a joint-stock company, whilst at the same time remaining within the sphere of the social enterprise, may well encourage social cooperatives to create, for the purposes of jointly carrying out some entrepreneurial functions, a joint-stock «social enterprise» company, rather than a secondary level cooperative should this better serve their interests, particularly considering the lack of homogeneity amongst its membership (which often gives rise to operational problems for cooperatives). This is further matter for reflection for the cooperative movement.

In any case, our underlying hope is that the legislation moves in the direction of the most effective and efficient pursuit of the interests of those who are the real beneficiaries of the social enterprise: the users, the disadvantaged workers, their families and the community in general.

If we are in agreement upon this, then we must, on the one hand, express a favourable opinion on the legislation on the social enterprise if, by increasing the number of

legal forms available to economic operators, it leads to the creation of a greater number of social enterprises (as long as they are «real» social enterprises); whilst on the other hand, we should hold true to our belief that, amongst all of the forms of social enterprise, there is one, namely the social enterprise in the cooperative form, that offers something extra that the legislators should take into account (for example in terms of concessions and incentives). In fact, the cooperative «social enterprise» combines the sociality of the purpose and of the activity, which is common to all social enterprises, with the sociality of the democratic method of managing the enterprise which, as we have tried to explain in these pages, in itself is a factor of a country's economic, social and democratic growth.

The fears and sometimes criticism associated with the social enterprise, some of which have been expressed in the chapters published here, would appear to be rooted in the failure to share the idea that a social enterprise may exist without it being subject to democratic control⁹³.

However, our proposal is to accept the plurality of legal forms (even those that are not democratically controlled), on the following conditions that:

- i*) the social enterprise is carefully regulated in terms of both its internal and external governance, so that the absence of democratic control is compensated for by rules on transparency, social *accountability*, involvement of the beneficiaries;
- ii*) the social enterprise is appropriately monitored and therefore that the legal «brand» is subject to careful checks so as to avoid the abuse of the legal form to the detriment of the traditional interests and operators, such as the social cooperatives;
- iii*) the legislators recognise that, as a result of the fact that they operate in a democratic way and also of the socialisation of the benefits, which is something that they already do, cooperative «social enterprises» play a leading role amongst all of the social enterprises, and provide them, for example, with concessions from which all social enterprises established in a different form are excluded.

In my opinion, only in this way will the legislation on the social enterprise not represent a missed opportunity to increase the sociality of the market economy (if we also consider that legislation on the social enterprise provides *for-profit* enterprises with a powerful incentive to adopt practices of corporate social responsibility); only in this way will the legislation on the social enterprise not have a negative effect on the economy and society and will not harm organisations, such as cooperatives and social cooperatives, that have sociality firmly imprinted in their DNA.

93 Cf. the abovementioned observations made by CANNELL

11. Opportunities and priorities for social enterprise

Conclusions and proposals at the occasion of the conference of the European Commission on social enterprises, Brussels, 6 March 2009 ⁹⁴

Felice Scalvini

1. *Why it is necessary to reach a clear and univocal definition of social enterprise -*
2. *This definition must contain some basic elements -*
3. *DG Enterprise can stimulate member states to gradually elaborate a homogeneous legal framework -*
4. *As of now, DG Enterprise can already intervene on a set of relevant issues linked to sectoral measures -*
5. *DG Enterprise can launch programmes for the development of those enterprises*

First of all, I would like to thank the European Commission to have entrusted to us, CECOP, the conclusions of this conference. It is a coherent choice, considering that CECOP regroups at the European level the most substantial part of what is generally called social enterprises, with about 9000 social cooperatives and 270 000 workers throughout Europe.

We have had a particularly interesting day, even though we should regret the time lost in the morning to criticize the report on social enterprises commissioned by the European Commission and presented at the beginning of the conference: indeed, almost all people who intervened during the debate explicitly expressed the opinion that the report was of very bad quality⁹⁵.

This is extremely regrettable, because, precisely in this moment, there is a particularly pressing need for the EU to rigorously deepen its work on the phenomenon of social enterprises, at least to be on a par with other institutions such as the OECD and UNDP, both of whom recently published reports and very interesting documents on this phenomenon. Indeed, it is not only a European phenomenon, but a worldwide

94 This text and the other documents of this conference are available on http://ec.europa.eu/enterprise/entrepreneurship/craft/social_economy/soc-eco_studies_events_en.htm

95 See, in particular, the interventions of Agnès Mathis (Cooperatives Europe), Bob Cannell (Co-operatives UK), Manuel Mariscal (CEPES), Prof. Jacques Defourny (EMES Network), and Prof José Luis Monzón (CIRIEC). Critiques focused, inter alia, on the deficiencies in the data collection methodology, on the choice of the variables, as well as on the weakness in the analysis of the key concepts, and have, therefore, questioned the scientific character of the study

one. The proof is that more than 150 proposals of papers coming from around 40 countries on all continents have been sent for the international scientific symposium on social enterprises organised next July by EMES and EURICSE, the new European Research Institute on Cooperatives and Social Enterprises, based in Trento in Italy.

If this is the state-of-the-art, as has been clearly confirmed by today's work, the conclusions that we can draw should, in my opinion, hinge around five points:

1. Why it is necessary to reach a clear and univocal definition of social enterprise.
2. This definition must contain some basic elements.
3. DG Enterprise can stimulate member states to gradually elaborate a homogeneous legal framework.
4. As of now, DG Enterprise can already intervene on a set of relevant issues linked to sectoral measures.
5. DG Enterprise can launch programmes for the development of those enterprises.

1. Why it is necessary to reach a clear and univocal definition of social enterprise

While recognizing the diversity of what it is agreed to call «social enterprises», it is necessary to reach a univocal concept.

This search for a univocal concept is even more important in the historical moment that we are living in Europe, with complex transformations of the economy and society, exacerbated by the present crisis in which an important return of the state is taking place, including in domains of general interest.

This new entrepreneurial phenomenon should be promoted and encouraged at the European level, at least for four important reasons:

- a. It represents a new and original entrepreneurial paradigm that, directly or indirectly, can represent one of the most important elements for change in the present worrying state of the European economy.
- b. It already responds to the needs of general interest of millions of people across Europe.
- c. It represents a fundamental element of social cohesion and social inclusion.
- d. It constitutes a very important source of jobs.

Nevertheless, it will be possible to valorise such elements only if we reach a univocal and shared concept of social enterprise, because it is the only way for it to acquire all its strength and relevance on the European social and economic stage.

2. This definition must contain some basic elements

In order to valorise and bring to their full potential the four above-mentioned factors, it is also necessary to ensure that the most fundamental characteristics of this new entrepreneurial phenomenon be clearly recognised. On the basis of the debate initiated by EMES in 1997, and the observation of best practices on the ground both from the point of view of the entrepreneurial viability and of the mission of general interest of those enterprises, and in coherence with today's debate, we can outline the following features.

What we define here as «social enterprises» are enterprises that:

- are characterised by a clearly **private** nature (even though they can include representatives of the local authorities in their membership);
- are characterized by a **diversity of legal forms, while having a clear and recognized entrepreneurial nature** (which means that they finance themselves by selling goods or services on the market);
- are **involved in the production of goods or services of general interest**, namely goods or services that are fundamental and common to the citizens in general, including particularly weak categories of the population, on a given territory or community;
- are characterized by the **social purpose of the surpluses**: in this sense, those enterprises can generate profits, but the latter must be used for the development of their activities and of their mission of general interest.

From CECOP's viewpoint, these enterprises should also be characterized by an important participatory component, so as to exercise their missions of general interest in the best possible way. Therefore, we consider that they should also be characterized by:

- A **control on the enterprise by members/stakeholders**;
- A **democratic and participatory governance**;
- The **valorisation of the heritage of the local community**.

It is fundamental that the main source of financing of the enterprise be not subsidies but the sale on the market of goods or services, even though the situation is, in some cases, still in transition, as we saw during the day.

3. DG Enterprise can stimulate member states to gradually elaborate a homogeneous legal framework

In order to guarantee the fundamental characteristics mentioned in section 1 above, which are necessary to ensure that these enterprises accomplish their mission of general interest, a national legal framework is needed.

In fact, a legal framework of one type or another (for the social enterprises as a whole or for particular categories or legal forms in particular), and under different denominations, already exist in at least 10 out of the 27 EU member states. All these national laws have been voted during the last 17 years, which clearly indicates that an increasing number of member states consider that this type of enterprises requires a precise legal framework.

We thus propose that DG Enterprise be the promoter of a **comparative and exchange activity between the authorities of member states, assisted by the main involved actors, within the framework of the open method of coordination (OMC)**, in order to clarify the common points that exist and the best elements to reach a higher level of convergence. All the others lines of action will be stronger if we can have a basic legal framework.

4. As of now, DG Enterprise can already intervene on a set of relevant issues linked to sectoral measures

In parallel with the work mentioned under the previous point, it is possible and urgent to proceed to the identification of public policy issues linked to the mission and the activity of social enterprises, which the EU legislation and public policies should take into account from now on.

Let me mention some of them:

- Within the framework of the Public Procurement Directive, it is necessary to properly define the «protected workshops» mentioned in art 19 of the

directive, as this expression is undefined at the European level and lacks a legal basis in almost all member states. An interpretative communication on this point would thus be necessary.

- Within the framework of the transposition in progress of the Services Directive in national legislations, the Commission should encourage a clear definition of the general interest concept by each member state (article 1) and a clear formulation of the exclusion of some social services from the scope of the directive (article 2), as well as a clarification concerning the conditions by which the public authorities entrust general interest missions to private enterprises whose very mission is the general interest (namely the social enterprises in the definition provided above).
- More generally, it is necessary to gradually establish a normative and public policy framework on services of general interest and social services of general interest (SGI/SSGI) at the European level that clearly recognizes the role of social enterprises as private enterprises whose very mission is the general interest.

5. DG Enterprise can launch programmes for the development of those enterprises

We ask that the promotion of the social enterprises be more clearly encouraged within the framework of community programmes, and in particular Progress, in order to support entrepreneurial development, exchanges and best practices, as well as dialogue between the representative organisations and the public authorities. In this respect, a stronger interaction between DG Enterprise and DG Employment and Social Affairs would be desirable.

However, we should underline that the promotion of social enterprises at the European level should not only be seen as a responsibility of the European Commission, but also requires that the representative organisations that we constitute make a particularly strong effort in this regard. Indeed, we tend to have the habit to represent our organisations, rather than to collaborate between us. There is a problem of cohesion of social enterprises that must not be left to the public authorities. We should overcome narcissist tendencies and establish alliances among us to work together. Otherwise, our dialogue with the public authorities will be fragmented and incoherent.

CONCLUSIONS AND FINAL CONSIDERATIONS

By Bruno Roelants

1. The dramatic change brought about by the privatisation and subcontracting of public services – 2 – Social enterprises: one name with different concepts, or one concept with different names? – 3 – The emergence of common denominators in national regulation – 4 – The preference given to the cooperative form – 5 – The success rate of the new laws to date – 6 – The impact on public policy – 7 – The need for endogenous entrepreneurial development – 8 - Concluding remarks



CONCLUSIONS AND FINAL CONSIDERATIONS

Bruno Roelants

1. The dramatic change brought about by the privatisation and subcontracting of public services – 2. Social enterprises: one name with different concepts, or one concept with different names? – 3. The emergence of common denominators in national regulation– 4. The preference given to the cooperative form – 5. The success rate of the new laws to date – 6. The impact on public policy – 7. The need for endogenous entrepreneurial development – 8. Concluding remarks

1. The dramatic change brought about by the privatisation and subcontracting of public services

As seen throughout this book, the debate concerning the emergence of a new economic actor called «social enterprise», including the latter's relations with cooperatives in terms of governance and normative framework, must be seen against the backdrop of a massive change in the structure of the public, welfare and social services in Europe and beyond⁹⁶. This change originates from three basic factors:

- a) on the supply side, the privatisation and subcontracting of services previously delivered by the state, within a wider context of liberalisation, deregulation, structural reform and budgetary constraints⁹⁷;
- b) on the demand side, the birth and development of new fundamental needs in society⁹⁸;
- c) on both the supply and demand side, the entry into the monetary economy of activities that were previously confined, in great part, to the non-monetary field (the family, charitable and religious institutions etc)⁹⁹.

This three-sided phenomenon immediately raises several questions: who are the economic actors that deliver these services? What are their characteristics? How are they regulated? Who controls them? How does the state (as the guarantor of public,

96 Indeed, this change is not only a European phenomenon, as it encompasses most other OECD countries, such as the USA, Canada, Japan, Australia, South Korea etc. But it is also emerging, to different degrees, in other countries (in particular emerging ones such as Brazil, China, South Africa, etc.)

97 See Chapters 3 by Jean Gautier, 4 by Bruno Roelants and 9 by Mervyn Wilson in Part I of this volume

98 See Chapters 2 by Roger Spear, 3 by Jean Gautier and 9 by Mervyn Wilson in Part I

99 See Chapters 1 by Felice Scalvini, 2 by Roger Spear and 3 by Jean Gautier in Part I

welfare and social services) ensure the delivery of these services, with appropriate standards of quality, at affordable conditions, with a thorough geographical coverage, and with the necessary sustainability over time? These questions, in turn, immediately place the debate within the domain of public policies. Indeed, the proper delivery of public services to a country's citizens is one of the most central public policy issues that a modern state has to deal with.

2 Social enterprises: one name with different concepts, or one concept with different names?

As appears from the first part of this volume¹⁰⁰, and as the OECD openly recognises in a brand new publication called «*The changing boundaries of social enterprises*»¹⁰¹, the denomination «social enterprises» covers widely divergent concepts in the various EU countries' legislations, public policies, opinions and considerations¹⁰². We can group those concepts under three broad categories¹⁰³:

1. Private (non-public) enterprises with a social utility and having the purpose to produce goods or services of general interest: this concept corresponds to the Italian social cooperative law and social enterprise law¹⁰⁴, and, broadly speaking, to the EMES definition¹⁰⁵. It is also reflected in a recent UNDP report on social enterprises in Central and Eastern Europe and CIS (ex Soviet Union) countries commissioned to EMES¹⁰⁶.
2. Entities of the social economy, in the original French understanding of this term¹⁰⁷: this is the trend in countries where the social economy is characterised by

100 And as CECOP has observed through a number of dedicated projects, interviews and consultations over the last 13 years

101 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 14: «*In recent years, the term «social enterprise» has become familiar to academic and policy audiences as well as increasingly to the general public. A common understanding is nevertheless far from being achieved*»

102 Not to mention at the world level

103 These differences in definition and perception regarding the «social enterprise» denomination are closely related to the different meanings of the term «social», and the different hierarchies existing between these meanings, that can be found in the European countries and languages. These differences are far more profound than may appear at first sight, as Jean Gautier tries to explain in his Chapter

104 See contribution 11 by Antonio Fici in Part II

105 See contribution 2 by Roger Spear in Part I

106 UNDP/EMES (2008): «*Social enterprise: a new model for poverty reduction and employment generation – an examination of the concept and practice in Europe and in the Commonwealth of Independent States*»; Bratislava: UNDP, p. 5

107 A term which, according to the European concept, is inspired by the French concept and comprises cooperatives, mutuals, associations and foundations

a high level of institutionalisation or insertion in public policies, as is the case of Spain, France or Belgium¹⁰⁸. It is also the concept that came up in the conclusions of the European Conference on Social Economy and Social Enterprises under the Czech presidency in April 2009¹⁰⁹.

3. Enterprises characterised by the most diverse forms of social utility (comprising, according to the variations of this category, all cooperatives and all social economy enterprises, or not) but without necessarily having such purpose, and, furthermore, characterised by any type of legal form, surplus distribution system, ratio of public funding or governance structure, and thus with no guarantee that the enterprise will preserve its autonomy from the public authorities nor that it will maintain its character over time: this is the concept which has been developed in the UK¹¹⁰ and seems to be directly inspired by the USA. Often linked to this concept is that of social entrepreneurship and social entrepreneur¹¹¹, which the brand new OECD study on social enterprises comments as follows, referring to the US model: «*The concept of social entrepreneurship stresses social innovation processes. These processes are undertaken by social entrepreneurs in a wider spectrum of organisations along a continuum from profit-oriented businesses engaged in socially beneficial activities (corporate philanthropy), to dual purpose businesses which mediate profit goals with social objectives (hybrids), to non-profit organisations*»¹¹².

While in the previous section we stressed the need to place the «social enterprise» debate within the framework of public policies, it is almost impossible to find common denominators among such divergent conceptions that would be meaningful in terms of public policies: how could enterprises having the general interest incorporated in their very founding purposes (category 1 above) be treated in public policies on a par with conventional enterprises that may decide, as part of their business, to provide an undefined ratio of goods or services with a social utility in an easily reversible way (category 3 above)¹¹³?

108 See Chapter 3 by Jean Gautier in Part I. Outside Europe, this conception is shared by Quebec

109 «As Commissioner Spidla said, we are «entrepreneurs from the social sphere, social enterprises», whose economic weight is now recognized by the European union with our 2 million enterprises, representing 6% of jobs in Europe», in : PFLIMLIN Etienne (2009): Final conclusions of the European Conference on the Social Economy and Social Enterprises, Prague, 16-18 April 2009, available in French at:
http://www.seconference.cz/zaver/a_zavery/zaverykonference_etiennepflimlin_aj.doc:

110 See Chapter 8 by Bob Cannell in Part I

111 Ibid., section 3 «*the rise of the social entrepreneur*»

112 OECD (2009): «The changing boundaries of social enterprises»; Paris: OECD Publishing, p. 14

113 See excerpt from Young in footnote 25, p. 45, in Chapter 4, where the author explicitly asks himself how to consider, in terms of public policies, a «social enterprise» producing ice creams which is suddenly purchased by a multinational

In turn, our hypothesis in this book is to aim at a converging concept with common denominators, departing from existing national normative frameworks regulating new forms of enterprises with a social utility, even if the entrepreneurial category regulated by the relevant national legislation carries different epithets according to the country, such as «social», «community interest», «collective interest», «insertion», «social purpose», «social initiative», or «social solidarity», and independently from the fact that it may be restricted to one enterprise form (cooperatives) or open to various or all possible private entrepreneurial forms, and that it may be limited to one type of social utility or extended to several.

Our interest in a regulatory framework for social enterprises, which is clearly expressed in this book¹¹⁴, is essentially based on two premises:

- The recognition that the provision of public, welfare and social services provided by those enterprises does require a normative framework and that there is a necessary link between such normative framework and public policies geared towards the provision of those services.
- The rapid evolution of legislation instituting this type of enterprises over the last few years, involving at least 11 EU member states in 2009 (against 3 until 1999).

The OECD itself has not left this rapid legislative evolution unobserved. In its 2009 study, unlike in the previous ones, it strongly underlines the normative context and its public policy implications¹¹⁵.

3. The emergence of minimum common denominators in national regulation

In the second part of this book, 10 different national legislations from 9 EU countries are analysed¹¹⁶. Three additional national legislations were recently examined as well¹¹⁷: one from 1999 on social cooperatives in Greece (limited to the rehabilitation through work of mental health patients), one from 2004 on «social enterprises» in

114 See Chapters 11 by Antonio Fici and 12 by Felice Scalvini in Part II

115 See section «*New frontiers in the legal structures and legislation of social enterprises in Europe: what are the policy implications at the national and European levels?*» in OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 15-17

116 See Chapter 10 by Antonio Fici in Part II and the comparative table in the annex

117 But could not be included in the analysis nor in the comparative table because we were only able to have them translated just before this book was going to press; nevertheless, the last-minute analysis of these last pieces of legislations only confirm our conclusions concerning minimum common denominators, as we will see below

Lithuania (limited to the integration through work of disadvantaged persons) and one from 2007 on «insertion enterprises» in Spain (limited to the integration through work of persons in situations of social exclusion). We have also examined the UK Industrial Provident Society legislation, reformed in 2003, which is applicable to both cooperative societies and «societies for the benefit of the community» (SBC), a society that must benefit people other than its own members.

In all, at least 11 out of 27 EU member states have, over the last 18 years, passed legislation configuring brand new types of enterprises characterised by some form of social utility. Let us now summarize the minimum common denominators between those national legislations.

First, they all unambiguously institute entities that have a **full-fledged private and entrepreneurial character**, namely entities that are totally independent from the public authorities and that are endowed with the same level of entrepreneurial risk and constraints as other enterprises¹¹⁸.

The second common denominator has to do with the concept of **general interest**. Only the Italian social cooperative and social enterprise laws explicitly refer to this expression¹¹⁹, while others refer to similar notions such as «collective interest» (France) or «community interest» or the «benefit of the community» (UK). Others limit themselves to providing a list of specific activities¹²⁰. In order to verify that such activities do fall within the scope of the general interest, it may be useful to clarify this latter notion.

The general interest is linked to fundamental human needs in a given territory or community, its scope covering all citizens living in it¹²¹. In some cases, the satisfaction of the needs of general interest applies to all citizens without exception (eg., health protection or the environment). In other cases, it applies only to citizens characterized by a given situation, such as the elderly, immigrants, or the disabled. But this limitation to specific types of citizens does not reduce the universality of the

118 See contributions 10 by Antonio Fici and 11 by Felice Scalvini in Part II

119 See contribution 10 by Antonio Fici in Part II

120 The case of the Belgian law is slightly more complex. Indeed, whereas the Belgian social purpose company can be used to deliver goods or services of general interest, it can also be used by a company producing goods or services of whatever kind (thus not necessarily of general interest) provided that its profits are entirely earmarked for a purpose of general interest

121 See Cooperatives Europe's and CECOP's position on services of general interest (SGI), available at http://www.cecop.coop/article.php?id_article=778

concept of general interest, for four main reasons:

- first, all citizens in those specific categories are included;
- secondly, those various categories boil down to the notion of disadvantaged and excluded citizens, and no citizen is immune from the risk of being disadvantaged or excluded at one point in his/her life;
- thirdly the needs of those specific categories being addressed do have a universal character, such as health, work, a decent income, dignity etc, and are linked to universally-recognised human rights;
- fourth, provided that such activities are clearly embedded in a set of goods and services of general interest serving all citizens, and not limited to a purely «therapeutic» vision of social exclusion, they contribute to ensuring the accessibility of those goods and services to all citizens, thereby reinforcing the general interest concept itself.

As we can see, the two main modalities through which those enterprises deliver social goods, namely a) the provision of social, health, environmental or cultural services to the surrounding community, and b) the integration through work of disadvantaged citizens¹²² do fall within the scope of the general interest, as defined in the previous paragraph.

An even more interesting common denominator between the various national legislations analysed¹²³ is that these enterprises should not only deliver goods or services of general interest, but should make it **their very purpose** (generally through specific and explicit provisions in this sense in their statutes). In other words, these enterprises must prove that they have a stable commitment towards the provision of goods or services of general interest, not just a temporary or reversible one¹²⁴.

122 See table in the annex, under the «definition» criterion, in both the social cooperative and the social enterprise (and equivalent) parts of the table

123 Including also the Lithuanian and Greek one, but only partly the Belgian one for the reason mentioned above

124 See Chapters 10 by Antonio Fici and 11 by Felice Scalvini in Part II. In Chapter 10, section 3, Fici argues that only the Italian legislation defines the purpose of general interest, while the other ones define specific activities rather than specific purposes. If we take the laws to the letter, this is indeed the case. Our conclusions on the purpose of general interest, in this discussion, is based on a further reasoning including a) the observation that all these activities fall within the scope of goods or services of general interest (as argued above), b) the analysis of the term «social» in the comparative table in the annex; c) the fact that those enterprises can lose their qualification if they no longer engage in the activities defined by the legislation; and d) the fact that, according to most of these laws, the surpluses must be reinvested in the social purpose of the enterprise

As a corollary of this general interest purpose, the overwhelming majority of the national laws examined submit the enterprises in question to a **strict regulatory framework concerning the redistribution of surpluses, which must be re-utilised totally or prevalently for the general interest purpose itself**, with the possibility of a limited distribution of surplus to the operators and workers, but under no circumstances to remunerate shareholders' capital¹²⁵. Most of them also have a provision **prohibiting owners from reclaiming the assets of the enterprise in case of liquidation**¹²⁶. In addition, a system of internal and/or external audit and sanctions ensures that these provisions are fully respected.

No explicit minimum common denominator, in turn, can be found among those 13 legislations in terms of governance, democratic management and control being systematically enforced only under the 7 legislations (out of 13 examined in this book) that are limited to the cooperative form of enterprise. However, the financial constraints regulated by 11 out of the 13 laws (namely in 9 of the 11 countries concerned) necessarily have a direct impact onto the type of internal and external control exerted on the enterprise and, thence, also on its governance structure (even if it does not necessarily make the latter democratic), at least in as much as governance cannot be geared towards the financial interest of shareholders.

As we can conclude from the minimum common denominators summarized in the previous paragraphs, the 13 national legislations instituting specific enterprises producing social goods that are analysed in this book clearly belong to the first notion of «social enterprise» mentioned above, namely **private enterprises with a social utility and having the purpose to produce goods or services of general interest**¹²⁷.

This seems to indicate that around one third of EU member states have deemed it

125 This is the case of 9 out of the 10 legislations examined in the annex, namely all except the Finnish law. The Lithuanian law does not have this characteristic either, whereas the Greek social cooperative law and the Spanish insertion enterprise law have it, as well as the UK «society for the benefit of the community». Thus, it is the case of 9 out of the 11 countries that have some kind of normative framework in this field. It could be argued that only in those 9 countries that have provisions related to the non distribution constraint is the purpose of delivering goods or services of general interest totally clear, whereas this purpose is weaker in Finland and Lithuania, where the law seemingly does not prevent the remuneration of external shareholders

126 Finland and Lithuania are, again, not included, whereas Hungary is included only for the amount of the lock-in reserve funds, which can vary in importance according to the statutes of the cooperative, and Greece only if the statutes of the cooperative foresee indivisible reserves. The UK 'society for the benefit of the community' can also have it. The Spanish insertion enterprise law does not have it

127 It can be argued that, in as much as their surplus distribution is strictly regulated (according to the 11 out of the 13 laws examined, plus the UK 'society for the benefit of the community'), those enterprises can be considered as being within the scope of the social economy, even though they are not all characterised by democratic governance

necessary not to leave the provision of all sub-contracted goods or services of general interest to the sole domain of conventional enterprises (namely enterprises whose aim is to remunerate capital). Among these countries we find EU founding members (France, Italy, Belgium), and countries from the various waves of enlargement: towards the North (UK, Finland), the South (Greece, Spain, Portugal), and the East (Poland, Hungary, Lithuania), thus a sample of EU member states reflecting a large variety in terms of social, political, economic, historical, geographic and cultural background. It is possible that these EU member states have considered that it was necessary to have entrepreneurial actors that may ensure stability and long term sustainability in providing goods or services of general interest, with no short term reversals, and that the existence of such actors alongside the conventional ones necessarily tends to raise the standards of quality, accessibility, affordability, and long term durability, which are key to the proper delivery of the goods or services of general interest. This hypothesis needs to be demonstrated through in-depth research, but, if confirmed, would be extremely meaningful in terms of public policies linked to the general interest, both nationally and at the European level.

It is worth noting that 7 out of the 13 laws examined here were approved after the 2003 OECD study on non-profit entities and social enterprises, which, unlike the 2009 study, did not emphasise in its summary and conclusions the need for national regulation and specific governance structures – much less for non-redistribution constraint mechanisms. The first 2 of these 7 laws, namely the Finnish and Lithuanian (both passed in 2004), can be seen as the «weakest» in the sense that they contain no provision concerning the redistribution of surpluses. But the other 5 (passed between 2005 and 2007) all have such provisions. Even the UK, which has been promoting a very wide and blurred definition of «social enterprise», passed the Community Interest Company (CIC) law in 2005 with stringent conditions concerning financial redistribution and even instituting an «asset lock» in case of dissolution of the enterprise, a basic institution of the cooperative system in a large number of EU countries.

4. The preference given to the cooperative form

As many as 7 out of the 11 EU member states that have passed specific legislation configuring enterprises whose purpose is the provision of goods or services of general interest (6 being included in the table in the annex, plus Greece) have given priority to the cooperative form. The latest two (with laws passed in 2006, thus after the OECD 2003 study) are 2 ex-Soviet bloc countries (Poland and Hungary), and this in spite of the fact that many people in those countries used to perceive cooperatives

negatively, as remnants of communism¹²⁸.

The list also includes Italy, a country which waited a decade and a half after establishing the first social cooperative law in the world (1991), and the creation of thousands of social cooperatives, before it passed a law on social enterprises (2005/2006), in an effort to provide other types of enterprises with the possibility to engage in the same activities as social cooperatives, with similarly stringent conditions concerning their mission and redistribution mechanisms, and an implicit recognition of the social cooperatives' «success story». The list also includes Spain, which waited 8 years after establishing its social initiative cooperative law (1999) and the registration of over 1000 enterprises under such status, before it passed its insertion enterprise law (2007).

This first-hand preference by the national legislator for the cooperative form probably has two main reasons.

First of all, the cooperative movement has, by and large, been the initiator of this type of enterprises, beginning with Italy. This is logical if we take into consideration the fact that the cooperative is, in the first place, an enterprise dedicated to satisfying citizens' economic, social and cultural needs and aspirations (according to the internationally-agreed definition), characterised by open membership (1st cooperative principle) and having a concern for the community (7th cooperative principle). When faced with the challenge of addressing new needs – those of general interest which were previously inexistent or managed by other entities (the state, the family etc), the cooperative movement tends to incorporate them, as it has done systematically in its two centuries of history. When the Italian social cooperative law was approved in 1991, there were already over 1000 social cooperatives in Italy (configured under the then existing cooperative forms, and mainly as worker cooperatives). This phenomenon is to be attributed to the cooperative movement itself, namely both to civil society which organised itself in this way, and the cooperative organisations which promoted this new form of cooperatives. In turn, there is evidence that the Italian social cooperative «success story» directly inspired legislators in some other countries such as Greece¹²⁹, France and Poland in drafting and approving national social cooperative (or equivalent) laws.

128 Around 300 of them are specialised in work integration of disabled people, currently making the cooperative system one of the biggest single employers of disabled persons in Poland, Czech republic, Slovakia, Romania and Bulgaria

129 Synergia (2008): «Co-ops for the mentally ill – Greece breaks new legal grounds»

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Secondly, the cooperative form of business, per se, already resolves several of the above mentioned minimum common denominators which we have found in the different laws, such as the satisfaction of needs as the enterprise's very purpose (cooperative definition), a limitation in the distribution of surplus and the indivisibility of assets (3rd cooperative principle)¹³⁰, and, as a consequence, a specific audit system.

Furthermore, the **democratic form of governance** among the members-owners (2nd cooperative principle) provides a strong element of accountability and stability over time. At stake here are not only the advantages of democratic participation in terms of citizenship, enterprise sustainability and responsibility of the service providers, but also the importance of democratic control by the members-stakeholders in order to guarantee that the enterprise will remain faithful to its general interest purpose in a sustainable way over time. The OECD 2009 study, by contrast with the 1999 and 2003 ones, reflects an explicit interest for democratic governance¹³¹, although it fails to underline that this is a common denominator of the social cooperative laws, and not of all laws on social enterprise (or equivalent)¹³². Democratic governance is also underlined in the UNDP 2008 report on social enterprises¹³³.

The fact that worker members are overwhelmingly the main type of member in social cooperatives brings in a further dimension of worker ownership like in conventional worker cooperatives¹³⁴: the staff of the enterprise, including the providers of goods and services of general interest (e.g. social workers, nurses, doctors, psychologists, trainers etc.) and the disadvantaged persons employed by these enterprises, is directly involved in joint ownership and in democratic management and control. The involvement of the staff provides those enterprises with additional sustainability, as well as a much higher level of social integration in the case of cooperatives specialised in work integration of disadvantaged persons, than businesses where the latter cannot become members and co-owners.

In addition, the cooperative system, being one in which the members-co-owners are always stakeholders (such as workers, producers, consumers, savers and borrowers,

130 Including in the case of dissolution of the enterprise in 5 of the 7 social cooperative legislations

131 «Attention to a broad, or distributed democratic governance structure (...) is also important» in OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 14

132 In *Ibid.*, p. 15, the «*democratic nature of the social enterprises*» is mentioned, without mentioning cooperatives, and even though this feature is not part of the minimum common denominators between the 13 laws under examination

133 UNDP/EMES (2008): «*Social enterprise: a new model for poverty reduction and employment generation – an examination of the concept and practice in Europe and in the Commonwealth of Independent States*», p. 5

134 See the *World Declaration on Worker Cooperatives*, approved in 2005 by the General Assembly of the International Cooperative Alliance, Available at www.cicopa.coop

apartment-dwellers etc), is likely to **associate various stakeholders** when those exist, as is generally the case in the provision of goods or services of general interest. It is significant, in this respect, that 6 out of the 7 social cooperative legislations existing in EU member states¹³⁵ make it possible to associate different types of members in the same cooperative, corresponding to the various stakeholders involved (such as providers, users, supporting institutions, and even the representatives of the local communities as is explicitly stipulated by the French, Italian and Spanish laws). In the case of France, it is even mandatory to have at least 3 types of members¹³⁶. Multi-stakeholder membership combined with democratic control provides a governance structure which is unique in its capacity to bring together the various stakeholders who are naturally involved in a service of general interest in a given territory¹³⁷. The latest OECD study rightly underlines the importance of multi-stakeholder involvement in social enterprises, and does recognise that this is a distinctive feature of the cooperative system and of the relevant cooperative legislation¹³⁸. However, in its conclusions, it bases itself exclusively on the Quebec «solidarity cooperatives», while failing to mention that this is also an important provision in most of the existing 7 European social cooperative legislations.

Another key aspect to consider is the close relationship between cooperatives (including those providing goods and services of general interest) and **local development**. The OECD 2009 study recognises that «*At the international level, the co-operative model is seen as one of the best organisational models to maintain a close link between the economy and the territory*»¹³⁹. However, in the section of its executive summary dedicated to local development, it fails to explain how cooperatives contribute to local development through a web of different locally-rooted economic activities, and not

135 Including Greece, but to the exclusion only of Hungary

136 Multistakeholder membership, in turn, has a particularly important meaning in terms of the management of missions of general interest by cooperatives. Indeed, without this characteristics, social cooperatives could be considered as atypical cooperatives in the sense that they would not predominantly address the satisfaction of the economic, social or cultural needs and aspirations of their members. In turn when, beyond the workers/providers of the good or services of general interests, also the users and the representatives of the whole local community can be included within the membership, the apparent contradiction between the inner and mutual interest of member and the external mission of general interest disappears. Multistakeholder membership may thus constitute a key adaptation of the cooperative movement to the specific field of the provision of goods or services of general interest, and a central step in its history. Of course, the various stakeholders should be attributed a power ratio that is commensurate to their relative stake and, at the same time, does not jeopardize the autonomy of the cooperative (4th cooperative principle)

137 See Chapter 10 by Antonio Fici in Part II

138 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 14 and 19

139 Ibid., p. 23

only through the provision of goods and services of general interest¹⁴⁰. Indeed, the cooperative movement contributes to the structuring of society and the economy in the most varied fields of activity, such as industry, services, agriculture, fisheries, energy, banking, housing, distribution of consumer goods etc. This inter-sectoral component is one of the main strengths of the cooperative system in local development.

Indeed, no matter how widely social cooperatives and the wider social enterprise world develop in terms of the scale and scope of their operations, no matter how strongly they organise in groups, consortia, networks etc, no economy (be it local, national or international) can rely solely on goods and services of general interest to ensure its development. By contrast, the cooperative system substantially contributes to the various «ingredients» needed to develop a local economy rooted in the community, based on the needs and aspirations of citizens organised as producers and users, and not on shareholders' return on investment, and where the citizens-members are systematically included in a democratic-control type of governance.

Another key feature of cooperatives in general, and in local development in particular, is their proven capacity **to organise at the meso-level**, with mutualised support institutions (in the fields of training, counselling, financing etc) and business scales through groups and consortia¹⁴¹. It is only in Italy that social cooperatives have fully developed this cooperative potential (with a wide panoply of consortia and peer groups among individual social cooperative enterprises). This is also one of the main reasons why Italian social cooperatives have experienced such a huge expansion and such a strong negotiating capacity with the public authorities as «general contractors». The recent OECD study strongly advocates the need to promote support institutions, groups and networks of social enterprises, but, again, fails to mention that this phenomenon has so far been essentially a cooperative one¹⁴².

5. The success rate of the new laws to date

The table below indicates how many enterprises have so far been registered under the laws examined in this book (social cooperatives in column D and the wider

140 Ibid, p. 21-22

141 This capacity has been developed in all cooperative sectors, such as industry (e.g. CCPL in Italy), services (e.g. CNS in Italy), banking (e.g. Credit Mutuel in France), retailers (e.g. Super U in France), agriculture (e.g. Coopagri Bretagne), or at the intersectoral level (e.g. Mondragon Corporacion Cooperativa in Spain). This phenomenon can also be observed outside Europe both in developed countries (e.g. the Desjardin cooperative banking group), and in developing and emerging countries (e.g. the Anand milk cooperative group in India)

142 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 16 to 21

forms of enterprise in column E). In the countries where there is a social enterprise (or equivalent) law (namely a law that is not limited to the cooperative form), we also indicate the number of cooperatives that have been registered under this law (column F). In addition, in column C, we indicate the number of cooperatives (all sectors put together) in each of the 11 countries concerned¹⁴³.

A Country	B Date of approval of the first social cooperative or social enterprise law	C <i>N. of enterprises registered under the cooperative law (all cooperative sectors)</i>	D N. of enterprises registered under social cooperative law	E N. of enterprises registered under social enterprise (or equivalent) law	F <i>N. of enterprises registered under social enterprise (or equivalent) law that are cooperatives</i>
Italy	1991	78 358	7 200	560	15
Belgium	1995	472		457	12
Portugal	1998	3 180	201		
Spain	1999	25 891	1 500	189	23
Greece	1999	6 480	7		
France	2001	21 000	138		
Finland	2004	4 123		197	15
Lithuania	2004	320		30	/
United Kingdom	2005	4 820		SBC: 3249 CIC: 2600	20
Hungary	2006	5 245	38		
Poland	2006	12 800	150		
Total		162 689	9 234	7 282	85

This table enables us to draw a few conclusions.

143 Sources: for Italy Union Camere (2009): «*Imprese, occupazione e valore aggiunto delle cooperative in Italia*», Roma, and communications Silvia Frezza (Confcooperative) & Flaviano Zandonai (EURICSE); for Belgium MERTENS Sibille & DUJARDIN Anne (2008): «*Contours statistiques des entreprises de l'économie sociale*», CERA Entrepreneuriat et Management en Economie Sociale, e-note 6/2008 (here, only the numbers of cooperatives certified by the Conseil National de la Coopération are considered); for Portugal data Inscop <http://www.inscoop.pt/index.asp>; for Spain Observatorio de la Inclusion Social (2007): «*Las empresas de insercion en España*»; Barcelona: Fundacio Un sol Mon and communication Paloma Arroyo; for Greece, Cooperatives Europe (2007): «*The role of the Co-operatives in the Social Dialogue in Europe*» and EU Social Protection and Social Inclusion Committee (2007): «*Legal frameworks: a first step towards social and economic integration of the mentally ill*»; for France communications GNC and Lionel Orsi (CGSCOP); for Finland: communication Pekka Pattiniämi: for Lithuania Cooperatives Europe (2007): «*The role of the Co-operatives in the Social Dialogue in Europe*» and UNDP/EMES (2008): «*Social enterprise: a new model for poverty reduction and employment generation – an examination of the concept and practice in Europe and in the Commonwealth of Independent States*»; for the UK: communications Bob Cannell and Co-operatives UK; for Hungary communication Zsuzsanna Puskas (AFEOSZ); for Poland, communication Joanna Brzozowska (NAUWC)

First of all, we observe that the number of enterprises registered in Europe under the social cooperative laws (column D) is higher than the number of enterprises registered under the wider social enterprise (or equivalent) laws (column E). This ratio is even higher if one considers that the UK «society for the benefit of the community» (SBC), with 3 249 enterprises, is actually a model which is very close to the cooperative model, being regulated by the same legislation.

Secondly, apart from Italy and Spain (for the social cooperative laws) and the UK (for the SBC and CIC legislations), the numbers of enterprises registered under the social cooperative laws or the wider social enterprise (or equivalent) laws are still rather low. The time elapsed since the law was passed can partly explain the low or high numbers, as is obviously the case for Italy, where the social cooperative law was passed in 1991; but this does not seem to apply, for example, to the Belgian social purpose company, passed in 1995, and with barely 457 enterprises registered 13 years later: this issue should thus be properly surveyed. In turn, the reason for the high rate of success of the UK CIC law (with five times as many enterprises being registered as in Belgium with the social purpose company, over a time span which is four times shorter) should also be investigated. The width or narrowness of the scope of activities foreseen by the various laws may also be a partial explanation for the numbers, a hypothesis which, again, should be checked through future research: the particularly low number of Greek social cooperatives, for example, could be linked to the particularly narrow scope of activity allowed by the law (the work integration of psychiatric patients).

Thirdly, the relation between the development of social cooperatives and the development of cooperatives in general, which we discussed in the previous section, seems to be reflected in the table by the ratio between the number of enterprises registered as social cooperatives and as cooperatives in general. The high figures in Italy and Spain for both cooperatives in general and social cooperatives in particular are telling in this respect.

Fourth, the ratio of cooperatives registered under the wider social enterprise (or equivalent) laws is still marginal or even insignificant. This ratio is 0.16% for Italy, 2.6% for Belgium, 12% for Spain, 8% for Finland and 0.8% for the UK. Except perhaps for Belgium, the legislations are still too recent to allow us to draw conclusions at this stage. In any case, further studies will be needed to find out the reasons for such a low interfacing.

6. The impact on public policy

The need to link social enterprises to public policy, as argued in section 1 above, is also emphasised in the 2009 OECD study. In the executive summary of this study, the OECD considers that «*the policy makers at national and international levels will also have a role to play in order to build an integrated approach leading to a new policy framework that recognises the social enterprise sector's capacity but also its critical needs*¹⁴⁴», and that «*If social enterprises (...) are perceived as part of a renewed commitment to social citizenship and equity, the challenge ahead is to build the (...) policy architecture to meet these objectives*¹⁴⁵».

If we follow the definition of social enterprises used in this volume, based on national legislation, as private enterprises dedicated to the provision of goods or services of general interest, the link with public policies is even more obvious.

Indeed, if over one third of EU member states have established normative frameworks instituting enterprises dedicated to the provision of goods or services of general interest, with stringent surplus redistribution constraints as well as control and sanction mechanisms, they cannot, on the other hand, disregard the specificities of these enterprises when they establish public policies linked to the same goods and services of general interest. In order to ensure the development of these enterprises and their capacity to implement their mission, normative frameworks, per se, are not sufficient if they are not accompanied by the relevant public policies. Their specificities should be taken into consideration, inter alia, in the following specific policy areas:

- The entrustment of services of general interest
- Public procurement (reserved tenders, social, ethical and environmental clauses etc)
- Concessions
- Fiscal policies
- Enterprise development policies
- Employment policies
- Social inclusion policies
- The European Social Fund

144 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 14

145 Ibid, p. 19

- Sectoral policies in the fields of health, social, environmental, educational, cultural services etc.

At the EU level, the European Commission, and in particular DG Enterprise and Industry, DG Internal Market and Services and DG Employment and Social Affairs should also recognise the specificity of these enterprises when establishing EU level policies in the above mentioned policy areas and all others that are related to the general interest.

The Commission should also help disseminate knowledge and exchanges among national governments concerning the relevant legislations, through the Open Method of Coordination, involving the representative organisations of these enterprises¹⁴⁶ in the process.

Similarly, the Commission should explicitly foresee the participation of such enterprises and their representative organisations in enterprise development, social and research programmes¹⁴⁷. The financial bodies of the EU such as the EIB and the EIF should support the non-banking financial institutions which already help those enterprises in their development¹⁴⁸.

7. The need for endogenous entrepreneurial development

In the wake of the cooperative movement, these enterprises should not merely rely on public policies to engineer their entrepreneurial development, and they should develop together, through cooperation. The financial component mentioned above is certainly one of the most critical ones, as the 2009 OECD study rightly underlines¹⁴⁹. Besides non banking financial institutions, cooperative and social economy banks are also increasingly active in the development of such enterprises. Even conventional banking is beginning, in some EU countries, to launch specific financial products for these enterprises¹⁵⁰.

146 See Chapter 11 by Felice Scalvini in Part II of this volume

147 Ibid

148 Several such non-banking financial institutions which have specialised partly or totally in the promotion of social and worker cooperatives exist in the CECOP network; see: http://www.cecop.coop/article.php?id_article=763

149 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 17-19

150 Such as Intesa-San Paolo in Italy

Nevertheless, the cooperative experience also indicates that financing is not sufficient to ensure sustainable entrepreneurial development. A whole array of support services specialised in the development of these enterprises is needed, encompassing training and education, as well as entrepreneurial advisory services and follow up, among others.

The development of entrepreneurial networks, groups and consortia, also rightly encouraged by the OECD 2009 study¹⁵¹, is fundamental. Italy is, in this respect, a model of entrepreneurial development and organisational innovation not only for social enterprises in general but for social cooperatives in the other EU countries too. Such development at the national level is an important prerequisite in order to develop such entrepreneurial systems at the European level as well, as the OECD also rightly advocates¹⁵².

8. Concluding remarks

The cooperative movement has been, in great part, at the origin of the wider phenomenon of the social enterprises, understood in this volume as private enterprises dedicated to the provision of goods or services of general interest. The present evolution indicates that it will continue to increase its role in this field.

The experiences of Italy and Spain (where social cooperatives have developed most rapidly and profoundly) tend to indicate that the cooperative movement, and in particular worker cooperatives, provides a sustainable matrix for the development of social cooperatives. On the other hand, the provision of goods and services of general interest is certainly one of the main «new frontiers» of the expansion of the cooperative movement in the years and decades to come, in coordination with all other forms of enterprise that have, as their purpose, the difficult task of providing goods and services of general interest.

It should be added that many cooperatives across Europe are «*de facto*» social cooperatives even if they do not formally have a social cooperative status (either because the latter does not exist, or because the cooperatives in question are not configured under this status even if it is available, or because their activities are beyond the scope of the goods or services of general interest foreseen by the social

151 OECD (2009): «*The changing boundaries of social enterprises*»; Paris: OECD Publishing, p. 17

152 Ibid

cooperative law). It is the case, *inter alia*, of a substantial part of worker cooperatives involved in local development, community activities, educational, health, environmental activities, and in work integration of disabled and disadvantaged persons (in particular, the cooperative system is one of the largest single employers of disabled persons in Poland, Czech Republic, Slovakia, Romania and Bulgaria). It is also the case of housing cooperatives involved in social housing, worker and consumer cooperatives involved in the production of energy, etc. In addition, the border between the legal status of the worker cooperative and of the social cooperative is not always well defined; in Spain, for example, the social initiative cooperatives must be first registered as worker cooperatives (the majority of them are in this case) or consumer cooperatives.

Whereas the contribution of the cooperative form of enterprise to the economy and society has been very substantial over the last two centuries, it has perhaps never been as critical as it is today with the provision of goods and services of general interest. Indeed, for activities related to the general interest, even more than for other types of activity, it is particularly valuable to have enterprises that are citizen-based, community based, stakeholder- (and not shareholder-) based, democratically controlled, characterized by cooperation between members (and thus also between the various types of stakeholders involved when they exist, as is the case for the delivery of goods and services of general interest) and by a limited redistribution of surpluses¹⁵³.

The advantages provided to society by these cooperative characteristics are particularly clear in these present times of crisis. Cooperatives provide a model of socio-economic sustainability which is in stark contrast with the model which is at the origin of the crisis, based on debt, greed, instability of the financial value of the enterprise, instability of financial markets, dissociation between the real economy and the financial sector, instability of the location of the enterprise and of the jobs it provides. In turn, including during the period of financial frenzy that preceded the crisis, cooperatives have stuck relentlessly to capital accumulation, trust, stability of enterprise value, non-reliance on financial markets, and stability of enterprise location and employment. All of these strengths are particularly relevant when it comes to ensuring a stable and sustainable supply of goods and services of general interest.

In this respect, it is heartening that, in its latest study on the topic, the OECD has finally expressed very clearly the advantages for social enterprises to develop several

¹⁵³ As a complement establishing the final price of the transactions between the member and the cooperative, and not to remunerate capital except under very limited percentages in some countries

key elements which are in fact contributions of the cooperative system (and are additional to the minimum common denominators of social enterprises as they emerged through our analysis), such as democratic governance, multi-stakeholder membership, and horizontal forms of cooperation among enterprises (through consortia, networks and peer groups).

We can only hope that these additional characteristics, that have proven to be central to the development of cooperatives in general, and social cooperatives in particular, will gradually be internalised by other forms of enterprises dedicated to the general interest. This desired outcome, which will require far greater cooperation between the different organisations that represent these enterprises at the national and European level, is important not only to substantially increase the share of the stakeholder-based economy, but, first and foremost, for the sake of the general interest of the citizens of Europe.

ANNEX

Comparative table of existing legislation in Europe:

- on social cooperatives (and equivalent), in Italy, Portugal, Spain, France, Poland and Hungary
- on social enterprises (and equivalent), in Belgium, Finland, UK, and Italy

Guy Boucquiaux, Antonio Fici, Bruno Roelants



1. SOCIAL COOPERATIVES AND EQUIVALENT

	Hungary Social cooperative	Italy Social cooperative	Portugal Social solidarity cooperative	Spain Social initiative cooperative	France Collective interest cooperative society	Poland Social cooperative
Legislative texts	Act X of 2006 on cooperatives.	Law of 8 November 1991, n°381.	Cooperative Code (Law n° 51/96 of 7 September 1996) and Legislative decree n.° 7/98 of 15 January 1998.	National law 27/1999 and regional laws in 12 autonomous regions between 1993 and 2003.	Law of 17 July 2001.	Law of 5 June 2006.
Definition / scope	To find employment for its members who are without a job or are socially disadvantaged, and to encourage the improvement of their social situation by other means.	The general interest of the community for the human promotion and the social integration of the citizens through: a) the management of social, health and educational services. [type A] b) the production of various activities (in agriculture, industry, trade or services) for the labour integration of disadvantaged persons (physical, psychic, or sensorial disabled, persons under psychiatric treatment, drug-addicts and alcoholics, minors of age with family difficulties, prisoners. [type B]	Satisfaction of the social needs, promotion and integration of vulnerable groups such as children and youth, people with disabilities and idle persons, socially disadvantaged families and communities, poor citizens returning to Portugal, etc.	1. Provision of assistance services in the fields of health, education, culture or any other activity «of a social nature». [equivalent to type A] 2. Any economic activity aiming to provide labour integration of persons who are victims of any type of social exclusion, and, in general, the satisfaction of social needs that are not catered for by the market. [equivalent to type B]	Production or provision of goods or services of collective interest, which present a character of social utility. equivalent to type A) The notions of collective interest and social utility are not legally defined : Power of evaluation by the prefect (decree n° 241 of 21.02.2002, art. 3.: in order to obtain the permission as per art 1, the SCIC must justify the social utility character of the goods or services that it sets itself to produce or deliver. In order to evaluate the social utility character of the project, the prefect takes into account, inter alia, of the project's contribution to emerging or still unsatisfied needs, to social and professional inclusion, to social cohesion, and to the accessibility to the goods or services.	Social and professional reintegration of jobless and/or disabled persons, and social and educational activities.

1. SOCIAL COOPERATIVES AND EQUIVALENT (CONTINUED)

	Hungary Social cooperative	Italy Social cooperative	Portugal Social solidarity cooperative	Spain Social initiative cooperative	France Collective interest cooperative society	Poland Social cooperative
Constitution						
Categories of members	No specific provisions. No investor members.	Depends on the statute of each cooperative. 1. Disadvantaged persons in type B cooperatives (who must make up at least 30% of the workers of the cooperative), should be members of the cooperative if this is compatible with their situation. 2. The statutes may foresee the presence of volunteers in the membership but their total number cannot be higher than half the total number of members. 3. Members who exert their professional activity through the cooperative (workers). 4. Public and private legal persons that have statutory provisions relating to the financing and development of social cooperatives.	1. Effective members: - users of the services provided by the cooperative, in their own benefit or of their families; - those who develop their professional activity through the cooperative (workers). 2. Honorary members: persons who contribute with goods or services, in particular of social volunteerism, for the development of the objectives of the cooperative. The inclusion of honorary members must be decided upon by the general assembly.	1. Generally speaking, they are worker cooperatives with a further qualification. 2. In some cases (Castilla La Mancha, Extremadura) cooperatives corresponding to social objective 2 above may be consumer cooperatives, when their purpose is to provide their members with consumer goods and services that are necessary to their subsistence, development or social integration. 3. Public entities can always be members (depends on the statutes). 4. (In some cases, the regional law allows for the integration of voluntary members (it must be stipulated in the statutes). 5. Generally, the regional law foresees the incorporation of parents or tutors of disadvantaged workers in the case of social objective 2 above.	At least 3 categories must be represented, the first two being mandatory: 1. worker-members; 2. user-members; 3. At least a 3 rd category. In fact, any physical or legal person which does not correspond to the 2 first categories.	1. Workers: - jobless and/or disabled persons; - other persons if they possess a skill which is lacking in the coop, but cannot be more than 20% of total membership. 2. NGOs (NB: volunteers can work in the cooperative but they cannot be members).
Minimum (and maximum, where it occurs) number of members to launch the enterprise	7 members, all natural persons.	- 9 members in general; - 3 members when they are physical persons and when the enterprise adopt the legal norms that regulate the limited liability company.	- 5 members for first degree cooperatives; - 2 members for higher degree cooperatives.	- 3 members for first degree cooperatives; - 2 members for higher degree cooperatives .	The law imposes no minimum member in each category. Since the minimum number of categories is 3, the minimum number of members is also 3.	- 5 members minimum. - 50 members maximum. If the cooperative is the result of a transformation from a cooperative of support to the blind, there is no maximum number of members.
Minimum capital	No minimum capital.	No minimum capital.	2.500 euros (minimum).	Around 3000 euros.	If Sarl : 1 euro. If SA :18 500 euros.	No minimum capital.

Registration procedure	Registration in the Register of companies.	<ul style="list-style-type: none"> - Registration in the register of prevalent mutuality cooperatives established by the ministry of productive activities. - Registration in the public register of enterprises. - (Depending on regional regulation) registration in regional registers of social cooperatives. 	<ul style="list-style-type: none"> - Registration at the commercial register. - After registers, cooperatives are obliged to send a duplicate of all their constitution act elements, to INSCOOOP (Instituto António Sérgio do Sector Cooperativo) that will supervise the use of the cooperative form, in compliance with the principles and standards relating to the incorporation and operation thereof. - If Cooperatives want to enjoy the same rights of the IPSS (Social Solidarity Associations), they must request their registration to the services of the Social Security. 	Registration in the Public Register.	Must obtain a permit by the prefecture of the departement where their headquarters are located.	Registration in the Domestic Court Register.
Governance Management organs	Administrative body (at least 3 members) or managing director allowed in co-ops with less than 50 members.	Three possibilities: <ul style="list-style-type: none"> - Traditional system with assembly, board, supervisory council when necessary, and body for account auditing. - Dualist system with assembly, management committee and supervisory board. - Monist system with assembly and board (within which a committee of management supervision is formed). 	Board of Directors [General Council: un a consultative body that can be established by the statutes, and can also group the honorary members].	Governing council.	If SA: one or several managers designated by the members' general assembly. If SA : a board and a supervisory committee.	Supervisory board if more than 15 members.

1. SOCIAL COOPERATIVES AND EQUIVALENT (CONTINUED)

	Hungary Social cooperative	Italy Social cooperative	Portugal Social solidarity cooperative	Spain Social initiative cooperative	France Collective interest cooperative society	Poland Social cooperative
Voting rights, holders of voting rights, possible moderation of votes.	One member one vote.	One member one vote.	One <u>effective</u> member = one vote. Honorary members have the right to information, not to elect nor to be elected.	One member one vote But the voluntary members (wherever this category exists) have the right to information, but no right to vote, except to elect their representatives on the board, who do not have voting right within the latter. No moderation foreseen amongst the different categories of members.	One member - one vote. But moderation of votes according to the various members' colleges: no college may have more than 50% of votes nor less than 10%.	One member - one vote.
Supervision Internal – external audit and/or supply of progress/financial report	Internal: Supervisory body (at least 3 members) or one supervisor: in co-ops with less than 20 members. External: Auditor in accordance with the Accounting Act or the statute.	<u>External audit.</u>	<u>Internal audit</u> by supervisory Board. Provision of reports - Cooperatives are obliged to send to INSCOOP their annual management reports and their financial accounts for each fiscal year. - If equivalent to IPSS (social solidarity associations), cooperatives must also send the above elements to Social Security services every year.	<u>Internal audit</u> The audit is done by an internal «intervention» body. Provision of reports Cooperatives are obliged to send to the register their annual management reports and financial reports including balance sheet and income statement.	<u>External audit</u> Every five years the cooperative is subject to a cooperative audit as per the decree of 23.11.1984.	<u>External audit</u> Every three years, made by auditors from Auditing Unions of cooperatives or by the National Co-operative Council.
Social balance sheet	Not mandatory.	Not mandatory.	Mandatory for cooperatives with more than 100 workers: to be sent to the Ministry of Labour and to INSCOOP. For cooperatives of between 10 and 100 workers, the enforcement of this provision has been delayed.	Not mandatory.	Not foreseen (but the mandatory cooperative audit mentioned above includes social aspects).	Not mandatory.

Redistribution of surpluses to members	The social co-op registered as public benefit organisation shall use its taxed profits for its objectives for the public benefit.	It is allowed to: a) distribute an interest on shares of rate higher by only 2% (2,5%) to the postal bonds; b) compensate the financial instruments which the members subscribe to with an interest rate of 2% higher than the interest on their shares; Beyond those limits, the redistribution of surpluses to members is forbidden.	Forbidden: 100% of surpluses go to reserves.	Forbidden: 100% of surpluses go to reserves.	Allowed but subject to legal rules : - The interest on shares is limited to the average interest rate on bonds. - the amount distributed to members cannot exceed the total of the balance of surpluses, after deduction of subsidies, encouragements and other financial means paid to the cooperative by public authorities, their groupings and associations during the fiscal year. Statutory reserve: once the legal reserve is deposited (15%), 50% of the balance must be deposited on a «statutory» reserve (SCIC law – art 19 – 9 of law of 10 Sept 1947). The balance, and to a maximum extent of 42.5% of the surplus, can be partly earmarked for the remuneration of the members' shares after deduction of any state subsidy that must be earmarked for indivisible reserves.	No redistribution nor interest granted on shares.
Destination of assets in case of liquidation	Foreseen in the general cooperative rules (sec. 94).	Foreseen in the general cooperative legislation.	The residual assets are attributed to another social solidarity cooperative, if possible in the same municipality, and designated by the federation where the cooperative is affiliated.	Foreseen in the general cooperative legislation.	Attributed to a structure whose social objective is similar : other scic, other cooperative, association, or public authority.	Max 20% to members, rest to labour fund (national fund for the promotion of employment).
Specific legal and fiscal provisions	n.a.	<ul style="list-style-type: none"> - The part of the surpluses that go to the mandatory reserves is (totally or partly) not taxed. - In some regions, reduction or exemption of the regional tax. - Reduction of the labour costs for disadvantaged workers working in the type B social cooperatives. - Reduction by ¼ of cadastre and mortgage tax. - Rebate on VAT rate for the services delivered by A-type social cooperatives. 	<ul style="list-style-type: none"> - Exemption for corporate tax (if recognized as being of public utility and/or equivalent to Association of Public Utility). - Exemption for fiscal stamps. - Tax exemption for successions and donations. - Exemption for local taxes. - State financial and technical support. 	Same as those of the specially protected cooperatives. They can be considered as not-for-profit entities, at the same level as other entities such as associations or foundations.	Same fiscal obligations as other societies and same advantages.	<ul style="list-style-type: none"> No costs for registration - 300 % of average wage as a dotation for every founding member of the co-operative; - 200 % for every member that joins the co-operative. - supported employment (for 12 month from the moment of employment the labour office will refund payments for social insurances).

2. SOCIAL ENTERPRISES AND EQUIVALENT				
	Belgium	Finland	UK	Italy
	Social finality enterprise 1995	Social enterprise 2004	Community Interest Company 2005	Social enterprise 2005/2006
Legislative texts	Law of 13 april 1995 – Company code: section 7bis art 164bis à 164 ter.	Law N° 1351/2003 on social enterprises. Reference to other laws in particular for the definition of long-term unemployed.	Companies (Audit, Investigations and Community Enterprise) Act 2004. Community Interest Company Regulations 2005.	Law n. 118 of 13 June 2005. Decree n. 155 of 24 March 2006. Ministerial implementation decrees of 24 January 2008.
Legal form	Can adopt different legal forms: - limited company (sa); - limited liability cooperative society (srl); - private limited liability society (sprl).	The enterprise forms may be: - company (Oy, Oyj); - co-operative (Osk); - associations (ry); - foundation; - sole entrepreneur (Tmi); - open company (Ay); - company with one fully responsible partner (Ky).	A special class of company governed by the Companies Act 1985. Any type of enterprise, including cooperatives.	- Associations - Foundations - Cooperatives - Societies
Definition	Are considered social finality societies those that are not aimed at the lucrativity of their members/shareholders, and whose statutes comply with 9 criteria defined by law.	The social enterprises referred to provide employment opportunities particularly for the disabled and the long-term unemployed. Only those that deal with disabled persons and long term unemployed may use the social enterprise denomination.	Limited companies with special additional features created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage.	All private organisations (included those mentioned in book 5 of the civil code) that exert as a stable and main activity an economic activity aiming at the production and exchange of goods or services of social utility, targeted to the implementation of finalities of general interest.
«Social» concept	The «social» finality is not defined <i>per se</i> but results from constitutive elements foreseen by the legislation and which must appear in the statutes.	Its «social» quality is defined by the various target groups. The concept of social is based on the fact that 30% of the employees should be disabled and long-term unemployed, independently from the activity of the enterprise.	The concept of «social» is based on the production of social services corresponding to the needs of communities and complementary to fundamental social services provided by the government (hospitals, schools, etc).	The concept of social finality is based: - either on the production or exchanges of services in the sectors of social and health assistance, education and training, environmental protection, social tourism, cultural services; - or on the labour insertion of disadvantaged or disabled workers, independently from the activity of the enterprise.

<p>Constitution</p> <p>Which are the members/shareholders and the stakeholders</p>	<p>- Depends on the legal enterprise form. - There is a modality allowing staff members to acquire, at most one year after their appointment, the status of members (this does not apply to staff members who do not enjoy their full civic rights).</p>	<p>Members, owners, stakeholders and other such categories vary according to the enterprise legal form. Enterprise applying for the status of social enterprise should be registered to (trading) enterprise register under the Ministry of trade and commerce.</p>	<p>Shareholders. Requirement to consult stakeholders and report annually. Members can be anyone, as defined in the articles of association.</p>	<p>Depends on the legal form of the enterprise. Furthermore, in all social enterprises the involvement of workers and users is foreseen.</p>
<p>Minimum number of members or shareholders to launch the enterprise</p>	<p>Depends on the legal enterprise form . If it is a cooperative, 3 members (physical or legal person).</p>	<p>Depends on the legal enterprise form (Co-operative 3, association 3 company with one fully responsible partner 2).</p>	<p>Private company: 1 Any other type of enterprise: 2.</p>	<p>Depends on the legal enterprise form (down to 1 person in certain enterprise forms).</p>
<p>Capital structure</p>	<p>Depends on the legal enterprise form. If a cooperative, the minimum capital is 6200€ (1/3 of 18.550€ which is the minimum capital for a cooperative).</p>	<p>Depends on the legal enterprise form.</p>	<p>Can be company limited by shares or Company limited by guarantee and not having a share capital. If share company there is no restriction on modes of transfer but no single investor may have more than a 25% stake in the company.</p>	<p>Depends on the legal form of the enterprise.</p>
<p>Registration</p>	<p>Verification of the legality of its constitution, with a notariad act and a registration to the commercial register.</p>	<p>The Ministry of Labour must provide a decision in writing for a refusal of registration or a removal from the register.</p>	<p>Approval by the CIC Regulator after demonstrating that its purposes could be regarded by a reasonable person as being in the community or wider public interest. It will also be asked to confirm that access to the benefits it provides will not be confined to an unduly restricted group.</p>	<p>Established with a public act, which must state the social character of the enterprise in compliance with the decree, and in particular: - the social objective; - the not-for-profit nature</p>
<p>Governance</p> <p>Management organs</p>	<p>No specific governance obligations Depends on the legal enterprise form.</p>	<p>No specific governance obligations Depends on the legal enterprise form.</p>	<p>Board of directors appointed by shareholders. In the same way as a private company or a charity, each CIC will be controlled by those individuals who are appointed to its board and by those who become shareholders/members. The precise structure that is put in place will be a matter for each CIC to determine and will reflect the particular needs that apply in specific cases.</p>	<p>No specific governance obligations. Depends on the legal enterprise form. However, the law foresees: - some level of involvement of the users and the workers; - the impossibility for public entities or for-profit enterprises to control social enterprises and to nominate the majority of the board members; - requisites of honour and professionalism (established by the statutes) for the members of the enterprise bodies (board, etc.). In the case of associations, the nomination of the majority of the Board cannot be given to persons that are external to the membership of the social enterprise, except for church entities.</p>

2. SOCIAL ENTERPRISES AND EQUIVALENT (CONTINUED)

	Belgium Social finality enterprise 1995	Finland Social enterprise 2004	UK Community Interest Company 2005	Italy Social enterprise 2005/2006
Voting rights, holders of voting rights, possible moderation of votes	No single person can have more than 1/10 th of the total number of votes linked to shares being represented; this percentage is 1/20 th in the case of member/shareholders being staff members	According to the basic enterprise form used.	Shareholders rights as defined in the «Companies Act 1985».	No democratic management is foreseen. It depends on the legal enterprise form.
Supervision				
Internal audit – external audit or reporting	Every year, the managers will make a special report on the way the company has implemented the objectives.	Obligation to provide information.	No requirement for special internal audit beyond Company Act requirements to report to shareholders . CIC regulator requires an enhanced annual report covering involvement of stakeholders, performance of the community interest, and directors remuneration.	By one or more members of the supervisory committee, who check on the compliance of management, administration and accountability with the law and statutes.
Social audit	Not foreseen.	Not mandatory .	Not mandatory but CIC must submit an annual statement of how it has met its community interests.	Mandatory.
Sanctions	Under the request of one member, an involved third party, or the judge, the tribunal may pronounce the dissolution: - of an enterprise pretending to be a social finality society whereas its statutes do not comply, or no longer comply with the provisions of this law; - of a social finality society which, in practice, violates the statutory provisions that it has adopted.	If fails to employ 30 % disabled or /and long-term unemployed loses the right to use the title social enterprise.	It is intended that the CIC regulation will be «light-touch». The very active regulation which is necessary for charities will not be required for CICs. However, the regulator will be able to investigate complaints from stakeholders and will have powers to act if it is found that a CIC is not working in the interest of the community or that the profit/asset lock is not being observed. These powers will include the ability to change the directors or wind up the company.	Loss of the quality of social enterprise in case of proven violation of the norms of the decree, or grave violations of the norms protecting the workers, and, as a consequence, loss of the company assets.

<p>Redistribution of surplus/profits to members/shareholders</p>	<p>The surplus/profit must be earmarked for the social objective of the enterprise, as per the statutes. Redistribution among members/shareholders is possible, but limited.</p>	<p>Not regulated. Depends on enterprise form.</p>	<p>Profits must be reinvested. Distribution limited on dividend payments to shareholders and interest rates payable on loans.</p>	<p>- The distribution of profits, direct or indirect, under any denomination, is forbidden, as well as funds or reserves in favour of board members, members, participants, workers or collaborators. - A partial distribution is admitted towards some financial instruments investing in the enterprise.</p>
<p>Destination of assets in case of liquidation</p>	<p>After the payment of all debt and the repayment of shares, the outstanding assets will be attributed to an entity with a similar social aim.</p>	<p>According to the statutes.</p>	<p>The asset lock established in legislation prohibits CICs from distributing their assets to their members. Member shares are repaid to members.</p>	<p>Apart from what is foreseen in the specific case of cooperatives, the outstanding assets shall be transferred to not-for-profit and social-utility organisations, associations, committees, foundations or church entities, according to what is foreseen in the statutes, on the basis of the private autonomy (and differently from the «depossessing» foreseen for the «Onlus» or Not-for-Profit Social Utility Organisations).</p>
<p>Specific legal and fiscal provisions</p>	<p>Various. Examples : if the statutes of the society exclude the distribution of dividends, the society may be excluded from the scope of corporate tax and be subject to legal person taxes. Exemption of employers' taxes for low-skilled jobless persons.</p>	<p>Support possible; easier access to employment support and for longer periods than for conventional enterprises. An important amendment in practice is that a social enterprise hiring a disabled or long-term unemployed will get wage-related subsidies as a compensation for potentially reduced work ability of the employee.</p>	<p>Currently companies that do not have charitable status find it difficult to ensure that their assets are dedicated to public benefit. There was so far no simple clear way of locking assets to a public benefit purpose other than applying for charitable status. CICs are more lightly regulated than charities but will not have the benefit of charitable status.</p>	<p>Still lacking. Meanwhile, the social enterprises having the characteristics enshrined in decree 460/1997 can be considered «ONLUS» (organizzazioni non lucrative di utilità sociale) and enjoy the same specific provisions .</p>

Equivalents of main English and French cooperative terms used in this book

Asset lock	Cadenassage du patrimoine
Democratic control	Contrôle démocratique
For profit	A but lucratif
Indivisible reserves	Réserves impartageables
Joint ownership	Propriété collective
Multi-stakeholder membership (in a cooperative)	Adhésion de plusieurs types de porteurs d'enjeu (à la coopérative)
Not for profit	Sans but lucratif
Returns	Ristourne
Share capital	Capital social
Social balance sheet	Bilan sociétal
Social cooperative	Coopérative sociale
Surplus	Excédents
Worker cooperative	Coopérative de travail associé
Worker ownership	Travail associé
Worker-member	Travailleur associé

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