Legal Frameworks for enterprises with social objectives – a comparative analysis

Paper presented at the meeting on Emerging Models of Social Entrepreneurship: Possible Paths for Social Enterprise Development in Central, East and South-East Europe

Organised by the OECD LEED Trento Centre for Local Development and ISSAN in co-operation with USAID

Held in Zagreb, Croatia on – 29 SEPTEMBER 2006,
By Hans-H. Münkner, University of Marburg, Germany
Contents

1. Introduction
   The connection between the existence of a national Social Economy Network and the interest of the state in this sector
   Providing a favourable political and legal environment
   Definition of key terms: enterprise with social objects and favourable legal framework

2. Presenting a common, convincing and practically applied concept of Social Economy

3. How to convince the government and the law-makers of innovative force of Social Economy or an Economy based on Solidarity?

4. Components of a Favourable legal framework for the development of activities of Social Economy:
   a. Choice between several models.
   b. Autonomy to make by laws.
   c. Protection of the interests of members, creditors and of the public
d. Rules to implement the characteristic features of enterprises with social objectives:

• Social objective reached by economic activity
• Formation procedures which take account of the needs of small local organisations with reduced formalities and organisation cost.
• Multi-stakeholder structure (with different categories of members and heterogeneous membership group)
• Democratic and participatory internal structures (organs, votes, members’ rights).
• Special ways of dealing with capital and profit allocation.
• Special methods of assessment of success, economic efficiency, social ecological effectiveness.

e. Definition of the non-profit nature and mutual status of an enterprise or organisation under tax law.

f. Access to public tenders, to vacant land and to buildings.

5. Comparative analysis of legal frameworks for social enterprises in France, the United Kingdom and Germany

6. Conclusions.

7. Five theses regarding the interdependence of the different elements which constitute a favourable climate for a legal framework appropriate for enterprises with social objectives.
Definition of Key Terms

• Economic activities.
• Social objectives.
• Internal democratic and participatory structure.
• Management based on values such as solidarity, equity and transparency.
• Non-profit orientation of the common enterprise.
• Limited role of capital.
• Serving people and the environment.
Legal Framework
Every legal provision has to be in conformity with the national legal system and the general rules governing the subject-matter.

Different level:
• The constitution (e.g. freedom of association, freedom of exercising professions, protection of private property, social security),
• Laws (Act of parliament),
• Regulations made under laws by public administration and
• By-laws made by autonomous legal bodies

Different subject-matters
Organisation law as the main subject-matter.
In addition:
• Labour law,
• Competition law,
• Tax law,
• Laws and regulation regarding public tenders,
• Regulation regarding the official recognition as general interest or non-profit organisation and
• Regulations regarding access to public support and subsides.
Introduction
How to motivate the law-makers to offer enterprises with social objectives an appropriate legal framework and how to promote such development?
CEGES in France:
“Better know, more recognized, more effective”
(Mieux connu, mieux reconnu, plus efficace)

5-step approach:
• Create a national network of the different organisations belonging to Social Economy (co-operatives, mutuals, associations and foundations) to act as mouth-piece for all.
• Agree on a common concept of Social Economy.
• Include policy-makers to take interest in the concept.
• Develop simple, modern and effective legal frameworks in dialogue between the representatives of Social Economy, policy-makers, officials of the public administration and the law-makers.
• Spread the knowledge of the new model and the new rules by using the media, meetings and conferences. (E.g. Two Laws on Co-operatives for Social Solidarity in the autonomous region of Trentino-Alto Adige, Italy, 1988: One organisation law, one law providing founds and mechanisms for promotion of the new model).
### Comparative Analysis of legal frameworks for enterprises with social objectives

<table>
<thead>
<tr>
<th>National network of social enterprises representing social economy</th>
<th>France</th>
<th>United Kingdom</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>CNLAMCA (1970), turned into CEGES (2001)</td>
<td>Social Enterprise Coalition Wales Ireland Social Economy Link (WISE Link)</td>
<td>None Separate Networks of cooperatives, associations and mutual insurance companies</td>
<td></td>
</tr>
</tbody>
</table>


<p>| Recognition by political decision-makers and government as an important sector of the economy | Conseil supérieur de la coopération, Délégation à l’économie sociale at Prime Minister’s Office (1981), délégation générale à l’Innovation Sociale et l’Economie Sociale, attached to the office of the Minister of Social Affairs and Integration (1991) | Co-operative Commission (2000): representing the cooperative movement, the Trade Union Congress and the Labour Party with a mandate covering social enterprises Regional social economy networks Cabinet Office Study Unit (2000) | Separate representation of different components of social economy, each recognized as a spokesman for its affiliates: Central Committee of German Co-operative Federations National Committee of federations of social welfare association Mutual Insurance Companies without a common representation at national level |</p>
<table>
<thead>
<tr>
<th>Legal frameworks for enterprises and organisations of social economy</th>
<th>France</th>
<th>United Kingdom</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Choice between different legal patterns</td>
<td>Choice between different legal patterns</td>
<td>Choice between different legal patterns with problems: Cooperatives: for the promotion of the economic interest of their members only, Co-operative Societies Act (1889) amended to suit the needs of established, large co-operatives and approximated to the rules of company law. Levelled co-operative profile. Not recognised as general interest organisation. Amendment 2006: co-operative also for social and cultural needs their members. Associations (Civil Code of 1900): only for social objectives with economic activities as a side line without operating a full fledged enterprise, except in case of public recognition as economic association.</td>
<td></td>
</tr>
<tr>
<td>Adjustment of the Code Rural et du Code des Marchés Publques</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>France</td>
<td>United Kingdom</td>
<td>Germany</td>
</tr>
<tr>
<td>------------------------</td>
<td>--------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Values and principles</td>
<td>Yes</td>
<td>Following British legal tradition: Partly in the law, partly outside the law, e.g. the criteria for defining a “bona fide co-operative” are</td>
<td>Up to now: No</td>
</tr>
<tr>
<td>of social economy as</td>
<td></td>
<td>contained in a Circular of the Registrar. “Reasonable person test”, if a reasonable person would see the activity planned by CIC as being in</td>
<td>With the amendment of the Co-operative Societies Act of 2006 at the occasion of introduction of the Statute of governing the European Co-operative Society (SCE) into German law, there is a certain adjustment of the co-operative law to the need of small and new co-operatives having not only economic but also social and cultural objectives.</td>
</tr>
<tr>
<td>part of the legal</td>
<td></td>
<td>the interest of the community.</td>
<td></td>
</tr>
<tr>
<td>framework</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Nine rules for transforming a company into a society with social objectives

The ‘loi de réparation’ of 03.04.1995 introducing articles 164bis – 164 quater into the coordinated laws governing commercial societies (lois coordonnées sur les sociétés commerciales) in Belgium

<table>
<thead>
<tr>
<th>Subject</th>
<th>The nine rules in articles 164bis (1995)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-profit</td>
<td>Rent-seeking is restricted or excluded.</td>
</tr>
<tr>
<td>Clearly defined Activities</td>
<td>The activities mentioned in the objects clause have to be clearly defined.</td>
</tr>
<tr>
<td>Reinvestment of surplus</td>
<td>Profit (surplus) made in the business has to be allocated to serve the internal and external objectives of the society.</td>
</tr>
<tr>
<td>Limited plural voting</td>
<td>Voting rights at general meeting are limited (maximum votes per member: 10 percent, if the member is employed by the society: 20 percent).</td>
</tr>
<tr>
<td>Limited interest on capital</td>
<td>The maximum rate of interest on paid-up share capital is fixed by Royal Decree.</td>
</tr>
<tr>
<td>Transparent management</td>
<td>Presentation of a special annual report on the way in which the society has reached its social objective laid down in its by-laws and a declaration on the operating expenses and salaries paid.</td>
</tr>
<tr>
<td>Worker-member</td>
<td>The opportunity of each staff member to became a member of the society within a year from the date of his/her employment by the society.</td>
</tr>
<tr>
<td>Identify of workers and members</td>
<td>Rules to safeguard that a person dismissed as a staff member ceases to be a member of the society.</td>
</tr>
<tr>
<td>Liquidated assets</td>
<td>Allocation of the liquidated assets to a purpose as close as possible to the social objective of the society.</td>
</tr>
</tbody>
</table>
Participative Law-making
with the legislation on CICs in the UK as an example

A process over five years.
Appointment of a **Co-operative Commission** and team of experts from different involved (Cabinet Office Study Unit) to prepare the text and to organise meetings, congresses and round tables.

- 2003: Government White Paper: Analysis of the discussions, the proposals made and presentation of government intentions regarding the new legal framework for CICs.
  - Fact Sheet 1: Community Interest Companies: An Introduction to CICs, Department of Trade and Industry (DTI), London, December 2004.
  - Fact Sheet 2: The Regulator of CICs, DTI, January 2005.
- 2004: Adoption and promulgation of the “Companies (Audit, Investigations and Community Enterprise) Act”.
- 2005: Appointment of the CIC Regulator as supervisory authority and adoption of CIC Regulation

Less then one year after the promulgation of the Act:
- 185 CICs registred.
Münkner, University of Marburg/Germany: **Same terms – different meaning in East and West**

1. Property

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Federal Republic of Germany</th>
<th>German Democratic Republic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic concept</td>
<td>Private property being the main incentive for economic activity</td>
<td>Private property of means of production being the main cause for inequality, exploitation, injustice, therefore strictly limited or excluded</td>
</tr>
</tbody>
</table>
| Contents         | Full legal right over all kinds of objects or assets with attached social obligation defined in the constitution (art. 11gg) | Property is subdivided in four categories:  
|                  |                                                                                             |   1 Socialist state of property\(^1\)  
|                  |                                                                                             |    • 100% of all Industrial and Transport firms, banks and insurance organizations  
|                  |                                                                                             |    • 75% of the building and construction industry  
|                  |                                                                                             |    • 60% of the trade  
|                  |                                                                                             |   2 Co-operative property of collectives\(^2\)  
|                  |                                                                                             |    • Property of mass organisations of citizens  
|                  |                                                                                             |    • Private property\(^3\)  
|                  |                                                                                             |    (Art. 10 of the Constitution of the GDR)  

\(^1\) Socialist State property covers:  
- 100% of all Industrial and Transport firms, banks and insurance organizations  
- 75% of the building and construction industry  
- 60% of the trade  

\(^2\) A special feature of co-operative collective property are co-operative funds, regulated by model by-laws  

\(^3\) Private property of means of production is subject to rigid restrictions and mainly covers consumption goods
## 2. Co-operative Society

<table>
<thead>
<tr>
<th>Criterion</th>
<th>Market related co-operative in the FRG</th>
<th>Socialist co-operative in the GDR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Formation</strong></td>
<td>Voluntary formation by autonomous founders</td>
<td>Formation ordered or enforced by the state</td>
</tr>
<tr>
<td><strong>Purpose</strong></td>
<td>Determined by members (promote the interest of the members)</td>
<td>Fulfill plan targets</td>
</tr>
<tr>
<td><strong>Direction</strong></td>
<td>Autonomous self-administration</td>
<td>Integrated into state planning</td>
</tr>
</tbody>
</table>
| **Functions of the co-operative** | To promote the economic interest and the income of the members | Political **Education function** (promote functions socialist consciousness)  
**Integration function** (bring members closer to socialist way of living and collective property)  
Economic **Transformation function** (transfer functions private economic activity into collective production)  
Incentive function (sharing surplus earned in collective work)  
**Coordination function** (overcoming the imperfections of central planning) |