

# **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**

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a. Choice between several models.

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- 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.

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# 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 subsidies.

## **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, mutuels, 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 funds and mechanisms for promotion of the new model).

## Comparative Analysis of legal frameworks for enterprises with social objectives

	<b>France</b>	<b>United Kingdom</b>	<b>Germany</b>
<b>National network of social enterprises representing social economy</b>	CNLAMCA (1970), turned into CEGES (2001)	Social Enterprise Coalition Wales Ireland Social Economy Link (WISE Link)	None Separate Networks of cooperatives, associations and mutual insurance companies
<b>Common concept of social economy</b>	Charte de l'économie sociale (1982) Charte de l'économie sociale (1995)	Principles of social enterprise based on cooperative principles and regulations on general interest status	None
<b>Recognition by political decision-makers and government as an important sector of the economy</b>	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

	<b>France</b>	<b>United Kingdom</b>	<b>Germany</b>
<b>Legal frameworks for enterprises and organisations of social economy</b>	<p>Choice between different legal patterns</p> <p>Law governing co-operatives of 1947 amended to meet the needs of social economy (1983, 1986, 1987, 1997, 2001)</p> <p>Adjustment of the Code Rural et du Code des Marchés Publiques</p>	<p>Choice between different legal patterns</p> <p>Broad autonomy to make by-laws; Industrial and Provident Societies Act (IPSA) of 1852 governing both co-operatives and community benefit organisations (BENCOMS); amendment of IPSA 2001; Co-operatives and Community Benefit Societies Act, 2003.</p> <p>Company Law amended in 2004, introducing the Community Benefit Company (CIC); Appointment of CIC Regulator; CIC Regulations in 2005</p> <p>Special laws for Credit Unions (1976) and Industrial Common Ownership (1978)</p>	<p>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.</p> <p>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.</p>

	<b>France</b>	<b>United Kingdom</b>	<b>Germany</b>
<b>Values and principles of social economy as part of the legal frame work</b>	Yes	Following British legal tradition: Partly in the law, partly outside the law, e.g. the criteria for defining a “bona fide co-operative” are contained in a Circular of the Registrar. “Reasonable person test”, if a reasonable person would see the activity planned by CIC as being in the interest of the community.	Up to now: No  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.

## 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

<b>Subject</b>	<b>The nine rules in articles 164bis (1995)</b>
<b>Non-profit</b>	Rent-seeking is restricted or excluded.
<b>Clearly defined Activities</b>	The activities mentioned in the objects clause have to be clearly defined.
<b>Reinvestment of surplus</b>	Profit (surplus) made in the business has to be allocated to serve the internal and external objectives of the society.
<b>Limited plural voting</b>	Voting rights at general meeting are limited (maximum votes per member: 10 percent, if the member is employed by the society: 20 percent).
<b>Limited interest on capital</b>	The maximum rate of interest on paid-up share capital is fixed by Royal Decree.
<b>Transparent management</b>	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.
<b>Worker-member</b>	The opportunity of each staff member to become a member of the society within a year from the date of his/her employment by the society.
<b>Identify of workers and members</b>	Rules to safeguard that a person dismissed as a staff member ceases to be a member of the society.
<b>Liquidated assets</b>	Allocation of the liquidated assets to a purpose as close as possible to the social objective of the society.

# 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.

2001: Publication of the report of Co-operative Commission and public discussion of the report.

2003: Government White Paper: Analysis of the discussions, the proposals made and presentation of government intentions regarding the new legal framework for CICs.

2004 et 2005: Publication of three documents explaining Government's intentions (facts Sheets 1-3).

- 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.
- Facts Sheet 3: Forming and running a CIC, DTI, March 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 than one year after the promulgation of the Act:

185 CICs registered.

Münkner, University of Marburg/Germany: **Same terms – different meaning in East and West**

## 1. Property

Criterion	Federal Republic of Germany	German Democratic Republic
<b>Basic concept</b>	Private property being the main incentive for economic activity	Private property of means of production being the main cause for inequality, exploitation, injustice, therefore strictly limited or excluded
<b>Contents</b>	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: <ul style="list-style-type: none"> <li>• Socialist state of property<sup>1</sup></li> <li>• Co-operative property of collectives<sup>2</sup></li> <li>• Property of mass organisations of citizens</li> <li>• Private property<sup>3</sup></li> </ul> (Art. 10 of the Constitution of the GDR)

<sup>1</sup> 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

<sup>2</sup> A special feature of co-operative collective property are co-operative funds, regulated by model by-laws

<sup>3</sup> Private property of means of production is subject to rigid restrictions and mainly covers consumption goods

## 2. Co-operative Society

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