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Analysis of the Legal Framework on Social Enterprises in Albania



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Abstract

The social enterprises are deemed as socially entrepreneurial organizations where business and non-profit organizations merge. Social entrepreneurship and social enterprises as emerging fields are relatively new in research and disputable as definitions. In the last decade, there is an increasing effort of actors, including policy-making levels, to regulate this field, recognizing their high potential. Social entrepreneurship is increasingly considered as an important vehicle towards a fair society, by contributing to economic and social development.

In many EU countries, there is a growing trend of social enterprises contributing to social inclusion, employment, and gross domestic product of the country. The social enterprises are seen to grow in the areas where the private sector does not have a value fit like professional training, integration of labor forces, social care, and housing, but not only. For this reason, many governments and political-economic institutions, like OECD and the European Commission are shifting their focus towards stimulation, and support of social enterprises.

In Albania, social enterprises and state institutions have been debating for almost a decade the need to regulate (or not) this sector, and how to do so, taking into consideration the variety of legal forms it takes, diversity in the scope of work and the enabling environment it requires to be able to deliver. In 2016, the Law No. 65/2016 “On Social Enterprises in the Republic of Albania”¹ came into force, followed by several bylaws issued over a three-year period. The legal package as of this time is not implemented yet, due to unclear and cumbersome regulations, marking a missed opportunity for the social enterprises in Albania.

This paper will provide a synthetic overview of the legal package and address some key issues in the legislation that represent barriers in the activity of social enterprises. As part of the analysis, references to European and Western Balkan legal practice will be made.

We hope the analysis will contribute to a better understanding of the development needs of the social enterprise sector by state institutions. In addition, it will help the social enterprise sector in developing its fact-based advocacy effort.

¹ Law No. 65/2016 “On Social Enterprises in the Republic of Albania”, dated on June 9th, 2016. Available at: http://www.qbz.gov.al/botime/fletore_zyrtare/2016/PDF-2016/118-2016.pdf

Table of Content

Abstract	3
What is Social Entrepreneurship	5
Summary of the Legal Package on Social Enterprises in Albania	7
Analysis of the legal framework	8
Legal framework approach	8
Model of social enterprise according to the legal framework	10
Organizational Form	12
.....	12
Economic and Social Criteria according to the Legal Framework	12
Financing of social enterprises	13
Conclusions	18
References	19
Partners Albania and Social Entrepreneurship	21

What is Social Entrepreneurship

Social enterprises are perceived as hybrid entities bringing together non-profit focus on social values and business practices with regard to the management and usage of economic resources (Austin, Stevenson, & Wei-Skillern, 2006). This duality is coined as the “double bottom-line”. Social Enterprises are found in two types of organizational forms, the non-profit and for-profit.

There are two schools of thought, introducing the concept of social enterprises, emerged in the USA. First, the “earned income” school of thought has embedded a strategy undertaken by organizations, which generate incomes supporting their social mission. Later on, this approach expanded, involving even for-profit organizations, which have a social aim. The concept of social business is part of this school of thought. According to Yunus (2010), a social business is a non-dividend and non-loss company designed to address a social problem. While, the second school of thought “Social Innovation” emphasizes the central role of social innovation dynamic led mainly by the social entrepreneur, who possesses the features to follow a social mission such as dynamism, creativity and leadership (Petrella & Richez-Battesti, 2014).

While in Europe, the main school of thought is closely related to EMES network dating back to 1990, which defined social enterprises based on 9 criteria divided into three dimensions:

a) The first criteria belongs to the *economic dimension* (a continuous activity producing goods and/or services, a significant level of economic risk, a minimum amount of paid work);

b) The second criteria belongs to the *social and inclusive dimension* (one explicit purpose to benefit the community, an initiative launched by a group of citizens, or civil society organizations, a limited profit distribution);

c) The third criteria belong to the *governance structure dimension* (a high degree of autonomy, a decision making power not based on capital ownership, a participatory nature, which involves various parties affected by the activity) (Defourny & Nyssens, 2012).

The legal forms of social enterprises may vary and are not important in their activity. As found, social enterprises organized as for-profits performed the same type of activities as the non-profits (Townsend & Hart, 2008). The legal form is just a decision of the social entrepreneur based on the convenience that the given institutional form provides in fulfilling the social purpose. Social Enterprises operate as social cooperatives, private companies, mutual, non-profit organizations, or foundations.²

In 2011, the European Commission (EC) launched the Social Business Initiative, identifying actions to make a real difference and improve the situation on the ground for social enterprises.

² Url: https://ec.europa.eu/growth/sectors/social-economy/enterprises_nl

According to the European Commission, the social enterprises are:

- *“those for which the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation”*,
- *“those where profits are mainly reinvested with a view to achieving this social objective”*,
- *“and, where the method of organization or ownership system reflects their mission, using democratic or participatory principals, or focusing on social justice”*.²

Within this framework of principals, the European Commission considers social enterprises “businesses providing social services, and/or goods and services to vulnerable groups, and/or businesses with a method of production of goods and services with a special objective, but whose activity may be outside the realm of the provision of social goods or services”.³

EC discusses that despite their diversity, social enterprises mainly operate in the four following fields:²

- “Work integration - training and integration of people with disabilities and unemployed people;
- Personal social services - health, well-being, and medical care, professional training, education, health services, childcare services, services for elderly people, or aid for disadvantaged people;
- Local development of disadvantaged areas - social enterprises in remote rural areas, neighborhood development/rehabilitation schemes in urban areas, development aid and development cooperation with third countries;
- Other - including recycling, environmental protection, sports, arts, culture or historical preservation, science, research and innovation, consumer protection and amateur sports”.

³ European Commission, 2011 COM(2011) 682 final “Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation” Available at Url: <https://www.fi-compass.eu/sites/default/files/publications/social-business-initiative-creating-a-favourable-climate-for-social-enterprises-key-stakeholders-in-the-social-economy-and-innovation.pdf>

Summary of the Legal Package on Social Enterprises in Albania

The first attempts to draft a law on social entrepreneurship have started since 2010 by the Ministry of Labor, Social Affairs and Equal Opportunities (now Ministry of Health and Social Welfare). In 2016, the Albanian government approved the Law No.65/2016 “For Social Enterprises in the Republic of Albania”.⁴ From 2010 to 2016, there were consistent efforts of the sector to stop the initial draft-law, which contained several problems. On the other hand, the Ministry of Finances did not agree with the initial draft law due to a clause on reduced VAT for social enterprises. Even after the presentation of the new draft law in 2016, a group of civil society organizations drew out a set of recommendations, out of which the only recommendation taken into consideration partly, was related to the legal form allowed to obtain the status of social enterprises changing it from “associations” to all non-profit organizations. Thus, the law was approved by the parliament without the consent of the defacto social enterprises sector in the country.

During a period of 3 years, the legal package has been completed respectively with the following bylaws:

- ✓ Decision No. 16/2018 “On the approval of the list of activities exercised by social enterprises”;
- ✓ Decision No. 56/2018 “On determining specific categories of disadvantaged groups”;
- ✓ Instruction No. 607/2018 “On the procedures and documentation required for recognition status of social enterprise”;
- ✓ Decision No. 16/2017 “On determining the procedures for the inspection of the activity of social enterprises”;
- ✓ Instruction No. 677/2018 “On determining the forms, deadlines and ways of periodic reporting, for activities exercised and categories of employed persons from social enterprises”;
- ✓ Decision No.789/2018 “On the establishment of the fund for support of social enterprises and support forms through subsidiaries for social enterprises”;
- ✓ Order No. 638/2018 “On the approval of the regulation on social enterprises functioning”;
- ✓ Instruction No. 2/2019 “On creating the register of social enterprises and the rules of its maintenance”.

Three years after the approval of the law and the bylaws, still no non-profit organization has obtained the status of social enterprise. The legal package is expected to be completed with the

⁴ Law No. 65/2016 “On Social Enterprises in the Republic of Albania”, dated on June 9th, 2016. Available at Url: http://www.qbz.gov.al/botime/fletore_zyrtare/2016/PDF-2016/118-2016.pdf

Instruction “On procedures and documentation for the withdrawal of social enterprise status” (Law No. 65/2016, article 14(2)).

Analysis of the legal framework

Legal framework approach

→ *Social Entrepreneurship or social enterprise*

Since the beginning of the public discussion about the need for the legal regulation of social enterprises in the country, there has been a debate over the terminology “**Social entrepreneurship**” versus “**Social enterprise**”. In the understanding of the Ministry, “social entrepreneurship” is perceived as a for-profit organization (private company) which performs activities with a social mission, while “social enterprises” as an activity conducted by non-profit organizations embedding the social aim and providing social services, as well as employing persons from marginalized groups. According to public institutions, the approved law regulates social enterprises, while the government expects to propose a separate law on social entrepreneurship. Albeit the law introduces and aims to regulate a completely new activity, it does not give a clear definition of what is a social enterprise. Consequently, the lack of such definition brings vagueness and unclarities in the understanding and treatment of social enterprises.

→ *New entity or a status for the activity*

The absence of a definition on social enterprises contributes to the uncertainties whether the law refers to a completely new legal entity, or a status which is granted based on several criteria. For example according to the article 14 (1) in the law, “*the status of the social enterprise is lost if it has ceased its activity for a period longer than 6 months or has been dissolved*”, causing uncertainties if it refers to the non-profit organization or social enterprise.

This uncertainty is more evident and concerning when it comes to the criteria a non-profit organization has to meet to keep the status of “social enterprise”. One of the criteria strictly determines a compulsory percentage of incomes generated by economic activity. Respectively article 8 (2) of the law stipulates that at least **20%** for the second year and **30%** for the third year have to derive from economic activity. Besides the involvement of volunteers, social enterprises have to employ at least **three** full-time employees (Article 8 (2)). Regarding the social criteria, at least **30%** of the employees must belong to the marginalized groups according to the law (article 9 (2)). Meanwhile, the law imposes the non-distribution constraint, which consists of using the profit entirely for the continual expansion of social enterprises’ activities (article 17 (2)). Despite the criteria set forth in the law must be attained with the purpose of maintaining the status of social enterprise and not for obtaining the status, the Instruction No. 607/2018 “On the procedures and documentation required for recognition status of social enterprise” (article 2) determines that the

written request for receiving the status must state the reasons how the organization meets the aforementioned criteria. Therefore, the law creates confusion and does not explain which are the criteria required to obtain the status and which criteria must be met to maintain the status.

→ *An independent enterprise or state owned enterprise*

The legal framework treats social enterprises as entities strictly depending on public funds. Consequently, this approach is reflected on the direct involvement of the Ministry of Health and Social Protection, and local government units, in the social enterprise' decision making, conditioning even the determination of employees' salaries, which tackles seriously their independence (article 17(4)). Pursuant to the article 17 (4) of the law "*the employee' salaries of a social enterprise must not exceed more than 20% of the salaries provided in similar sectors and similar types of jobs*", even though in Albania there is not any reference salaries' system. Only public administration and institutions depending on state funds have a salary' structure. In such case, it is impossible to fulfill this obligation set by the law.

When it comes to employment relations, the regulation No. 636/2015 (article 12) determines strict rules for the employees' advance payments, repayment terms, and other details deemed excessive and unjustified interference in the internal operations of the social enterprise.

According to the Regulation No. 636/2018 "On social enterprises functioning", social enterprises have to be subject of **external audit** annually without explaining whether this is an obligation for all social enterprises, or only for those which benefit from public funds. While social enterprises are legally registered as non-profit organization, the latter are not subject of such requirement. The external audit is a condition only for those non-profit organizations financed by public funds, or private companies meeting some criteria such as the total of assets, revenues, and the number of employees. This requirement implies the legislator has assumed that social enterprises finance their activities exclusively by public funds.⁵

Regarding participatory governance as one of the main criteria of social enterprises, the law (article 16) states that "*the activity of social enterprises is governed by decision making bodies and executive bodies, including in decision making other actors such as employees, volunteers, service users and buyer of goods, local government bodies, and any other interested party*". The involvement of local government in the decision-making is very complicated to be interpreted by the sector of social enterprises. This criterion is also stated in the article 5 (2) of the Order No. 638/2018 "On the approval of the regulation on social enterprises functioning". This reinforces the preceding conclusion that the legal approach seems to treat social enterprises as public entities by

⁵Please refer to the article 41 of the Law No. 10091/2009 "On Statutory Audit and Organization of the Accountancy Profession". Available at Url:https://www.financa.gov.al/wp-content/uploads/2017/09/Ligji_i_auditimit-konsoliduar.pdf

hindering their autonomy and internal democracy. Anyway, neither the law nor the bylaws explain the ways of involving these actors as members and decision-makers in the social enterprise.

Box 1: European Practice related to participatory governance

- ✓ According to the Italian Law, social cooperatives are governed based on the principle “one member, one vote”. Social cooperatives can include volunteers as members, **up to 50 %** of the total membership, who have a decision-making power. In addition, employees must be involved as cooperative members (Traversi, 2019).
- ✓ **Service users** and **employees** might be members of social enterprises according to the legal framework in Portugal and France. While, in other countries it is recognized multi-stakeholder approach, participating through channels less formal than membership, such as the representation and participation of users and employees in various committees and activities during the activity of the social enterprise (Defourny & Nyssens, 2012).

→ *Development through support or penalization*

The legal framework contains a series of sanctions ranging from restrictions to fines for the use of the label "social enterprise", or non-compliance with criteria, which gives this law a more **restrictive approach rather than an enabling one**, causing disproportionality between lack of support/incentives and abundant penalties/criteria.

The law does not provide the right to appeal as a constitutional right, which is very important, particularly in the case of not recognizing the status of a social enterprise.

The *Minister for Health and Social Affairs* has the responsibility to register, certify, assess the applications of social enterprises applying for the social fund, or withdraw the status. These responsibilities in charge of the minister centralize the process up to a political level rather than a technical one.

Model of social enterprise according to the legal framework

The approach of the Albanian legal framework is focused entirely on **work integration social enterprise model (WISE)**. According to the law, only non-profit organizations providing goods and services in the sector of development of local communities, social services, promotion of health, education services, culture and cultural heritage, promotion of tourism, environmental protection, employment mediation, and youth employment. This model tested in other Balkan and European countries has not resulted successful, when social enterprises have been considered exclusively as mechanisms to involve marginalized groups.⁶

⁶ EMES Network & Euricse, 2019 “Social Enterprises and their Ecosystems: Recent Development in Europe” – Seminar Paper

The legal framework recognizes as social enterprises only non-profit organizations *integrating marginalized groups* (WISE), as well as providing *social and educational services* exclusively to these target groups (Article 2 (c) and article 11(1)). In this sense, the law combines two different types of activity within the same entity, while these activities are completely different in terms of the purpose, required expertise, implementation challenges, including also the funding opportunities. European practice also treats these types of activities separately. It seems that the only purpose of the law is to address the employment and integration of marginalized groups, a strategy, which will facilitate the state burden in the future by reducing the number of persons obtaining the social assistance.

Generally, the countries of European Union divide these categories into two typologies: a) social enterprises *providing social, educational, cultural services* etc., and b) social enterprises producing a diverse range of goods and offering various services, by employing people *belonging to marginalized groups*.

Box 2: Two typologies of Social Enterprises in European Countries

→ Italian Law No. 381 divides social enterprises into two typologies: a) Social Cooperatives of **Type A**, which offer *social, health, and educational services*; b) Social Cooperatives of **Type B**, which conduct various economic activities by employing a certain number of persons from *marginalized groups*.

The same model is followed by **Slovenia, Portugal, and Spain** (Fici, 2015)

Organizational Form

The law strictly determines that a **non-profit organization** is the only legal form eligible to obtain the status of social enterprise (Law No. 56/2016, article 20). The law excludes all other legal forms such as private companies (sole proprietorship, limited liability companies) and cooperatives, which operate based on social entrepreneurship principles and are considered eligible by the majority of legislation in EU countries. Consequently, the Albanian legal framework excludes several legal forms which bring an added value in various fields of economy and encourage social and technological innovation.

Box 3: Recognition of diverse social enterprises' legal forms according to European practice

- The legal framework in different countries such as **Greece, Italy, Croatia, Great Britain, and France**, etc. recognizes various legal and organizational forms qualified as social enterprises.
- Countries like Great Britain and France have created a specific form beside other legal forms, respectively: **Community Interest Companies, Collective Interest Cooperative Companies**.

Economic and Social Criteria according to the Legal Framework

The Law No. 65/2016 on Social Enterprises sets forth strict limitations in terms of social and economic criteria, as well as profit non-distribution constraint.

In terms of *economic criteria*, social enterprises have to employ a minimum number of full-time employees (at least **3**), and in the same time sets a compulsory percentage of income generation from the economic activity, at least **20%** for the second year and **30%** for the third year (article 8 (2) and (3)). Firstly, it is still unclear whether these percentages are based on a certain assessment, which showcases the growth trend of social enterprises and their potential of expansion. On the other side, the employment of **three** full-time employees is considered coercive by non-profit organizations that intend to apply for the status of social enterprise.

Box 4: Economic Criteria according to European practice

- Most of the European countries **do not have** restrictions on the number of employees, except Slovenian legal framework, which sets forth **at least one** employee for the first year only for social enterprises of **Type A** which provide social services, and not for those of **Type B** which employ people from marginalized groups.
- As per **Croatian** and **UK** law, at least **25 %** of social enterprises income should be generated from entrepreneurial activities (In Croatia, this is required 3 years after the establishment of the social enterprises). Countries such as Slovenia set forth this type of restriction only for social enterprises of **Type A**.
- In **Greece**, up to **65%** of the income may come from public funds.

In terms of *social criteria*, at least **30%** of employees should belong to marginalized groups (article 9 (2)). The decision No. 56/2018 “On determining specific categories of marginalized groups” represents a list of 28 categories of marginalized groups targeted as potential employees for social enterprises. However, the decision does not provide any clarification about the assessment criteria necessary for social enterprises that have to meet the requirement of employing marginalized groups. In addition, there are no supporting documents required as proof of verification for the employment of marginalized groups neither in the reporting templates nor in the instruction No. 677/2018 “On the definition of forms, deadlines and ways of periodic reporting, for exercised activities and categories of persons employed by social enterprises”.

Some examples of these categories overlapping, or representing difficulties to be verified part of the decision No. 56/2018 are as below: e) migrant workers who are relocated or internally displaced; g) persons belonging to the age over 50 years old; i) persons who have not had their first paid job regularly since the commencement of the serving of the sentence of deprivation of liberty, alternative punishment, or any other alternative punishment; i) women living in rural areas: where the average unemployment rate exceeds 50% of the national average for at least two last years; ii) women living in rural areas: where female unemployment rate is over 150% of the average level of male unemployment for at least the last two years etc.

Box 5: Social Criteria according to European practice

- Countries as **Greece, Italy, and Slovenia** have set forth the criteria that at least 30-40% of the workforce must constitute of marginalized groups only for one type of social enterprise (WISE model).
- Other countries such as i.e. **Great Britain, France, and Croatia** do not impose such a restriction.

Financing of social enterprises

→ *Management of their revenues*

As set forth in the law, despite the fact that social enterprises are obliged to use “*the profit entirely for the expansion and development of their activity*” (article 17 (2)), “*social enterprises are taxed for the profit generated, based on the Income Tax legislation*⁷” (article 17 (1)). In such case, there is a counterbalance between missing tax benefits and profit non-distribution constraint. The law does not leave any room for the social enterprise to use the profit in different investment forms, or as bonuses and salaries for the employees (article 17 (3) and (4)). There is bound to be

⁷ Law No. 8438/2018 “On Income Tax” amended, dated June 28th, 1998. Available at Url: <http://www.qbz.gov.al/Ligje.pdf/taksa%20sistemi/ligj%20nr%20%208438%20dt%20-28%2012%201998%20i%20perditesuar,%202017,%201.pdf>

questionmarks over the continuity and sustainability of these social enterprises because this approach implies prejudices about the human resources capacities involved in these entities and does not enable the recruitment and retention of talents and expertise.

In the countries of European Union, social enterprises can distribute a certain percentage of the profit for the expansion of the activity as an investment, bonus for employees, reserve fund, etc. as well as social entrepreneurs and the members are allowed to keep a certain percentage from the profit. Consequently, no reinvested profit is the subject of taxation.

Box 6: European Practice on non - distribution constraint

- As per the **Croatian** example, at least **75%** of the profit should be re-invested by the social enterprise in the development of its activities and the achievement of its social mission.
- In **Greece**, the law sets forth that **60%** of the profit should be re-invested for the expansion of social enterprise' activities; **35%** as a bonus for employees; **5%** as a reserve fund.
- In **Italy**, **up to 50%** of the profit can be distributed in three forms: a) capital increase; b) contribution for organizations of the third sector; c) profit distribution to the shareholders/members of the social enterprise (Salatino, 2018).

Box 7: European Practice on fiscal incentives for social enterprises

- In **Italy** following the latest amendments, social enterprises benefit *tax exemption for reinvested profits*.
- Social enterprises in **Greece** benefit from tax exemption for the profit allocated as *employee' bonuses*.
- In some countries such as Great Britain and France, social enterprises are legally bound to maintain an “**asset lock**”, which means non-distribution of the assets to the enterprise' members, shareholders, and employees.
- The law in Italy has adopted a measure to encourage investments in social enterprises. Entrepreneurs that invest in social enterprises incorporated by no more than **36 months** are eligible *for a reduction in income tax* in an amount equal to **30%** of the investment in the corporate capital of social enterprises (Salatino, 2018).

Taking into consideration the above analysis, there is a question mark over the incentives provided by this legal framework for non-profit organizations currently functioning as social

enterprises, while they actually have several benefits deriving from the Law No. 8788/2001 “On Non-profit Organizations”⁸ and its latest amendments in 2007⁹ and in 2013.¹⁰ Non-profit organizations have the right to conduct economic activity up to **20%** of the total revenues, provided that the economic activity is in conformity with the organizations’ primary mission. The economic activity is exempted for the profit tax. In addition, non-profit organizations providing services in social, education, culture, and sport area are VAT exempted for **three** consecutive years.

→ *Public Funds*

In terms of the state supporting mechanisms, the Decision No. 789/2018 “For the establishment of the fund for the support of social enterprises and support forms by subsidiaries for social enterprises” has approved the establishment of a fund with a total value of 249,760,000 ALL for the period 2019-2021. The fund subsidies:

a) *The activity* of social enterprises – The fund covers up to 70% of the eligible costs, but not more than 1,500,000 ALL. The eligible costs include: a) investment in machinery/equipment; b) for qualification and training to increase the professional skills of new employees from the categories of disadvantaged groups; c) coverage of up to 50% of the minimum wage for new employees from the categories of disadvantaged groups, for a six-month period.

b) *New jobs* created for individuals from the marginalized groups – The available fund is for those social enterprises, which reflect an increasing number of the employee’s representatives of disadvantaged groups. For each new job vacancy, these social enterprises can benefit up to 100,000 ALL, which should be used for work tools, raw materials, and consumables. The subsidy is conditioned by the employment of individuals from marginalized groups with a contract duration not less than two years.

c) *Social and Health Insurance* of social enterprise’ employees belonging to disadvantaged groups – Social enterprises can receive annual funding up to 100% of the social and health insurance, provided that the duration of the employment contract is not less than two years.

There are several criteria in this decision considered either as **ambiguous** or **restrictive**:

⁸ Law No. 8788 “On Non-profit Organizations”, dated on May 7th, 200. Available at Url:

http://www.akdie.org/sites/default/files/ligj_per_ojf.pdf

⁹ Law No. 9814 “For some additions and amendments in the Law No. 8788, dated on May 7th, 2001 “On Non-Profit Organizations”, October, 4th 2007. Available at Url:

http://www.qbz.gov.al/botime/fletore_zyrtare/2007/PDF-2007/138-2007.pdf

¹⁰ Law No. 92 “For some additions and ammendments in the Law No. 8788, dated on May 7th, 2001 “On Non-Profit Organizations”, February 28th, 2013. Available at Url:

http://www.qbz.gov.al/botime/fletore_zyrtare/2013/PDF-2013/36-2013.pdf

- Pursuant to the article 7 of the decision, in order to benefit from the fund, social enterprises must submit either a *project-proposal* or a *business plan* without specifying any application format and assessment criteria.
- Pursuant the article 10 (c) of the decision, in order to benefit from subsidies for the development of the activities, a social enterprise must hire minimally **three** new employees from the categories of disadvantaged groups within **12** months from the moment of receiving the subsidy. A social enterprise might obtain the status only if it has 3 full-time employees (out of which 30% belong to the marginalized groups), while according to this decision the social enterprise has to employ at least three other employees belonging to the marginalized groups (six employees in total). Even in the case of subsidies for new job vacancies, the social enterprise is required to increase the number of employees in order to benefit from the fund (article 12). This comprises a major hurdle if one takes into account the insufficient capacity of social enterprises in terms of human resources.
- Pursuant to the article 16 and 17 of the decision, social enterprises are not excluded from other state support forms with the condition that the total state support (including all public funds available) shall **not exceed the amount of 14,000,000 ALL** for a period of 3 years. On this case, it is unclear how it is going to be verified and monitored such condition.
- Social enterprises applying to this fund, need to submit the court decision on registration as a non-profit organization and the tax identification number (NIPT), considered as avoidable documents because the entity applying must have the social enterprise status (article 18). The status is obtained only if the entity meets the criteria of the legal form eligibility, which is a non-profit organization. Thus, it is unnecessary to burden the application for the subsidies with such documents.

→ *Public Procurement*

Except the social fund, which determines specific subsidies, the legal framework **does not take into consideration** other support forms by the *local government*, as well as the *public procurement*. According to the law, social enterprises are not excluded from public procurement, but taking into consideration the experience of non-profit organizations, accessing funds from public procurement has been almost impossible due to the impending criteria set forth in the law.¹¹ Even though social enterprises can participate in public procurement procedures, defacto cannot compete with other entities. The introduction of social procurement model, which is based not solely on the lowest price offered, but on the social impact is significant to give advantage social enterprises (Partners Albania, 2014).

Encompassing social criteria into public procurement is one of the recommendations drawn out by the European Commission for the further development of the social economy (European

¹¹ Law No. 9643/2006 “For Public Procurement”, dated on November 20th, 2006 with the latest amendment in 2018. Available at Url: <http://www.app.gov.al/GetData/DownloadDoc?documentId=0e11826f-ddab-45e9-9e7d-2d8793c55b94>

Commission, 2016). Most EU countries have progressively moved away from grants, evolving towards competitive public procurement over the last two decades, as a very essential funding source for the survival and boosting of social enterprises.

Box 8: European Practice on social enterprises' access to public procurement

- ✓ In Italy, A-type and mixed social cooperatives derive approximately **70%** of their income from “contracts and/or agreements with public institutions”, while for social cooperatives of B-type **57.1%** of incomes derive from “contracts and/or agreements with public institutions (Borzaga, Poledrini, & Galera, 2017). The EU regulation is transposed in Italian law, and social clauses are included in public contracts.
- ✓ Slovakia has included several social, environmental, and ethical clauses in public procurement, as very essential to access funds from public procurement (European Commission, 2017).

On the other hand, a **lack of integration and coordination** is noticed between the National Strategy for Social Protection 2015-2020 and the Law No. 65/2016 “For Social Enterprises in the Republic of Albania”. According to the National Strategy for the Social Protection 2015-2020, a series of measures have been undertaken to create a sustainable network of decentralized social services in compliance with the administrative-territorial reform.¹² Residential social care services, social care services targeting marginalized groups (children, people with disability, elderly, victims of trafficking). As set forth in the strategy, these services will be contracted by non-profit organizations or other service providers, which will bring a reduction of the initial investment costs and flexibility in the services' provision. Contracting of social services will enable its provision tailored to the municipalities needs. The State Social Service is responsible for the capacity building and technical assistance needed in local units, while the Inspectorate will supervise the services. The municipality does the evaluation and the planning, as well as the distribution of services. The strategy emphasizes the consistent challenge of finding the most relevant model of service decentralization, unified with the administrative-territorial reform in the country (Ministry of Social Welfare and Youth, 2015). The new National Strategy for the Social Protection should envisage the collaboration between the local government and social enterprises for social services provision, as well as for the approval of appropriate measures, in order to make this collaboration function.

¹² Law No. 115/2014 “On the administrative and territorial division of the local government units in the Republic of Albania”, dated on July 31st, 2014. Available at Url: http://www.reformaterritoriale.al/images/presentations/Ligji_115_2014.pdf

Conclusions

A set of significant conclusions stem from the above analysis, which should be taken into consideration by the respective public institutions with the intention of creating an enabling legal environment.

- **Lack of a clear definition of the concepts such as “social entrepreneurship” and “social enterprises”** have led the approach of the law towards work integration social enterprise model (WISE). According to the legal framework, it is evidenced as an overlap because social enterprises should integrate marginalized groups in the labor market as well as provide social services. Commonly, European practice addresses these models separately categorizing into two social enterprises’ typologies. Meanwhile, reports on social entrepreneurship produced by European Commission show that countries where legislative interventions have legitimized only certain forms of social enterprises (such as the WISE model), have involuntarily contributed to overshadowing the numerous defacto social enterprises.⁶
- **Granting the status of “social enterprise” only to non-profit organizations** by leaving out all other existing legal forms (private companies, cooperatives, credit-savings associations) which meet the principles of social entrepreneurship, is one of the major concerns of the legal framework. Based on the European practice, the impact of specific legislation on social entrepreneurship has been beneficial where the new legal acts have provided for a general acknowledgment of the diverse typologies without imposing too tight constraints, and when the social enterprise community has been actively engaged in the reform process.⁶
- **Determination of a set of economic and social criteria accompanied with a range of penalties and ambiguities** on which criteria apply to obtain the status and which to maintain it, create a burden for social enterprises if one takes into account their insufficient capacities. Based on the practices of the aforementioned European countries, the criteria set forth in their legal framework are more permissive and usually applied to only one of social enterprises’ types, which benefit from the incentives stipulated by the legislation.
- **The understanding of social enterprises as entities dependent on public funds** (even though it is their choice to apply for public funds) is a general approach prevailing in the legal framework, ranging from employee relations to the intervention of local government in the social enterprise’ decision making. It is unjustified the level of state intervention in these entities. Such approach does not appear in any of the good practices of European countries.
- **Failure to take into consideration support forms from the local government and public procurement** is one of the main gaps of the legal framework. The European practice shows that the bulk of revenues for both work integration social enterprises and those which provide social services, derive from public procurement or direct

contracts/agreement with local government. The regulation of these two instruments is considered as of utmost importance to give a boost to social enterprises to compete in the market, taking into account their disadvantages in comparison to conventional enterprises.

→ **The use of profit entirely for the development and expansion of social enterprise' activity** without determining the forms, moreover **being subject of profit tax** (regardless that the profit is reinvested) is an essential constraint for social entrepreneurs. According to European practice, social enterprises are exempted from profit tax for all the reinvested profits used for the expansion of social enterprise' activity, employee' bonuses, and reserve funds. On the other hand, the legal framework in the European countries allows social enterprises to distribute a certain percentage of their profits to their shareholders. Furthermore, other incentives are applied with the purpose of promoting investments in newly created social enterprises.

In principle, a legal framework is approved to regulate the practice of social enterprises, in order to encourage entrepreneurship and innovation, consequently leading to an increase of employment rate, and economic development. However, the current legal framework has created a skepticism stream in the sector and among the field experts, which may cause discouragement of the entrepreneurial spirit and distortions of social enterprises' models in the future. Thus, it is necessary to undertake measures for reviewing this legal framework, in order to create a conducive environment for all existing and potential social enterprises.

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Partners Albania and Social Entrepreneurship

Partners Albania works for the development of social entrepreneurship and social enterprises (SEs) through *research* to better understanding features and models of SEs along with their development challenges, aiming to *educate* all relevant stakeholders in supporting the role of SEs as a significant factor for the socio-economic advancement of the country. These instruments are in function of advocacy efforts for an enabling institutional and financial environment for SEs. PA has created a *supporting mechanism model* for start-ups providing seed funding, know-how, and networking opportunities.

The research has covered issues of sector mapping, understanding its challenges and opportunities in local markets, existing funding and institutional support, the potential for growth and the role of state and non-state actors in social entrepreneurship development. Partners Albania has been part of several initiatives, researching social enterprises and social entrepreneurship in the Western Balkans. Its research findings make the basis of advocacy at national and European level, backed up by participation in diverse networks such as EMES, EUCLID, Balkan Social Enterprise Research Network, etc.

Partners Albania provides support in capacity building, mentoring, financing and intermediary between the business sector and social enterprises, as part of various programs with the support of donors such as European Union, US Embassy in Albania, Rockefeller Brothers Fund, Balkan Trust for Democracy, Telecom, Credins Bank etc.

This publication is in the continuity of the international conference “Social Enterprises – Toward an Inclusive Policy and Practices”, where important stakeholders such as social enterprises, supporting organizations, donors, representatives of local and central government joined together and discussed among other topics, issues concerning the sector related to the legal framework. The consultations and discussions during the conference brought up several issues related to the legal framework representing essential barriers for social enterprises. A group of practitioners and organizations supporting the SE sector submitted a [Statement](#) to the respective public institutions and several donors, requiring the creation of a joint ad-hoc working group for the revision and completion of the legal framework.