

***Social Economy public policy
framework and specific legislation
Recommendations by Euricse***

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Draft law: preliminary comments

- When compared to similar laws across Europe, the Romanian draft on Social Economy Law is confused
- Confusion between *social enterprise* and *Social Economy*
- Draft Law appears as a mix between the typical Social Economy laws (e.g. Spanish 2011 Social Economy law) and the Italian law 2006, which identifies two subtypes of social enterprises (social enterprises and social insertion enterprises)
- Preference for social enterprises as social inclusion strategy
 - support measures envisaged only for social insertion enterprises

Key contradictions

- On the one hand, the Law aspires to be a *social economy law*
 - includes coops
 - makes a clear distinction between goods and services which contribute to the welfare of local communities and goods and services that promote the interests of members

Key contradictions

- On the other hand, it aspires to be a law on social enterprise
- Art. 2, par. 1 makes a general statement which refers to the general interest of the community, which approximates the concept of *social enterprise*

Recommendation 1

- Clarify whether the draft law is meant to regulate the *social economy* or the *social enterprise*
- Once this aspect is clarified, the entire text should be harmonized

Recommendation 2

- In any event, whether the draft law is addressed to regulate the social economy or social enterprise,
 - Romanian organizational law should allow that each entitled entity takes advantage of the framework law (be it social economy or social enterprise).



Recommendation 3

- Qualification for social enterprise: the draft law is confused
- Articles 2, 3, and 5 show a bit of confusion as regards the nature of the subject matter to be regulated
- They should be re-arranged in a more consistent way



Recommendation 4

- Current draft: according to Art. 6 a certificate and social brand are expected to be granted by the competent public authority
- **A better solution would be to provide for social enterprise qualification as a automatic consequence of the registration of the social enterprise in a specific register**
- **Public control should follow *ex-post***

Recommendation 5

- Current draft Art. 3: the principles mentioned are too general
- **The meaning of the sentence “the convergence between the interests of associated members and the general interest” needs to be better clarified**

Recommendation 6

- Current draft Art. 2: The Social Economy is based on...the limited allocation of the profit for the associated members”.
- **What does “limited” mean is not specified**
- **The draft must be more precise in identifying the ways in which surplus is to be allocated, both short (annual base, maximum percentage) and long term (is there an asset lock envisaged?)**

Recommendation 7

- Art 5, par. 1, it is not clear whether the list of sectors indicated is closed or open



Recommendation 7

- Generally speaking, Romanian general coop law is well-designed and detailed.
- It is strongly rooted in the tradition of coops (see reference to coop principles)
- Establishment of cooperatives is not hampered
- However, the **law is very traditional: the regulation of coops is rather rigid and it fails to respond to the needs of coops as firms on the market**
- **Why?**

Recommendation 8

- Concerning financing, a way whereby equity capital can be attracted is through the admission of investor members.
- **Romanian coop law could be changed in order to provide for the admissibility of investor members. Their participation could be regulated so as to avoid that investors may exert control over the enterprise (e.g. maximum 25% of votes assigned to investor members in general assembly)**

Recommendation 9

- Governance: Romanian law does not provide for any exception to the rule one member, one vote
- **Membership heterogeneity could be dealt with by permitting derogation from the rule one member, one vote**
- Current law provides that all members of the board of directors must be members of the cooperative
- **To reinforce the professional character of governance, cooperatives could be allowed to hire directors who are not managers and representatives of other stakeholders (not members)**
 - A fine compromise could be to provide that only the majority of them must be members of the coop

Recommendation 10

- Building a strong cooperative movement
- The law could contribute to strengthening the internal cohesion of the coop movement by pushing or forcing cooperatives to unite themselves
- This could be done
 - By making it mandatory for coops to allocate part of their annual surplus to a federation of coops and for these federations to promote cooperation
 - By providing that federations of cooperatives, rather than the State or public bodies, exert control over individual associate cooperatives

Recommendation 11

- In Romania coops are not awarded specific tax treatment
- **Conversely, in light of the principle of equal treatment, the specificity of cooperatives requires a specific tax treatment**
- **The asset lock Romanian coops have to comply with justifies a specific tax treatment**
- **Evidence from other countries shows that when regulated by a tailored tax treatment, coops tend to prosper.**