

Introductory study on the figure of the social enterprise

Introduction

Given the growing debate and interest within the EU on the figure of the social enterprise as well as its possible future framework in community programs, it is considered relevant to introduce reflection on this subject in the Portuguese context.

Thus, and as provided for in the Cooperative António Sérgio for Social Economy (hereinafter referred to as CASES) 2021 Activity Plan, resumed in the 2022 activity plan, this document aims to address the figure of the social enterprise according to the following points:

1. Concept of Social Enterprise at European level and for the Organisation for Economic Co-operation and Development (hereinafter referred to as OECD);
2. Legal framework (comparison between various schemes);
3. Times Project;
4. Insertion Enterprises in Europe.

Some final considerations on the aforementioned topics are presented at the end of this document, the first version of which was completed in June 2021.

1. Concept of social enterprise at European level

This chapter reproduces the concepts of social enterprise in European Communications and Regulations, using the official English version (1.1 to 1.3, 1.6 and 1.7.). The remaining texts are excerpts of the original documents and web pages in English.

1.1. Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of the Regions - Social Business Initiative (SBI) - Building an ecosystem for promoting social enterprises at the heart of the social economy and social innovation - (COM/2011/0682 final)

“The Commission uses the term 'social enterprise' to cover the following types of business¹:

- 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 organisation or ownership system reflects their mission, using democratic or participatory principles or focusing on social justice.

Thus:

- businesses providing social services and/or goods and services to vulnerable persons (access to housing, health care, assistance for elderly or disabled persons, inclusion of vulnerable groups, child care, access to employment and training, dependency management, etc.); and/or
- businesses with a method of production of goods or services with a social objective (social and professional integration via access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation) but whose activity may be outside the realm of the provision of social goods or services.

The social economy employs over 11 million people in the EU, accounting for 6 % of total employment. It covers bodies with a specific legal status (cooperatives, foundations, associations, mutual societies), many of which are also social enterprises in terms of the characteristics referred to above, as well as social enterprises in the form of an ordinary private

¹ Within the scope of the rules of the Treaty on the Functioning of the European Union and the case-law of the Court of Justice of the European Union

or public limited company. The specific legal statuses of the social economy are particularly suited to social enterprises as their method of governance favours participation and openness.”

“In its approach to this varied sector, the Commission does not seek to provide a standard definition which would apply to everyone and lead to a regulatory straitjacket.

It offers a description based on principles shared by the majority of the Member States, while respecting their diversity of political, economic and social choices and the capacity for innovation of social entrepreneurs.

This is why the Commission will only adopt a more specific definition, as required, if regulatory measures or incentives require the scope of application to be precisely set out, with the representatives of the sector being closely involved in the process.”

1.2. REGULATION (EU) NO. 346/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 April 2013 on European Social Entrepreneurship Funds (EuSEF)

“(12) In order to ensure the necessary clarity and certainty, this Regulation should also lay down uniform criteria to identify social undertakings as qualifying portfolio undertakings. A social undertaking should be defined as an operator in the social economy, the main objective of which is to have a social impact rather than to make a profit for its owners or shareholders. It operates by providing goods and services for the market and uses its profits primarily to achieve social objectives. It is managed in an accountable and transparent manner, in particular, by involving employees, consumers and stakeholders that are affected by its commercial activities.

(13) As the principal objective of social undertakings is to have a positive social impact rather than to maximise profits this Regulation should only promote support for qualifying portfolio undertakings that have the achievement of a measurable and positive social impact as their focus. A measurable and positive social impact could include the provision of services to immigrants who are otherwise excluded, or the reintegration of marginalised groups into the labour market by providing employment, training or other support. Social undertakings use their profits to achieve their primary social objective and are managed in an accountable and transparent way. Where, on an exceptional basis, a qualifying portfolio undertaking wishes to distribute profits to its shareholders and owners, it should have predefined procedures and rules on how profits are to be distributed. Those rules should specify that such distribution of profits does not undermine the primary social objective of the qualifying social portfolio undertaking.

(14) Social undertakings include a large range of undertakings, taking various legal forms, which provide social services or goods to vulnerable, marginalised, disadvantaged or excluded persons. Such services include access to housing, healthcare, assistance for elderly or disabled persons, child care, access to employment and training as well as dependency management. Social undertakings also include undertakings that employ a method of production of goods or services which embodies their social objective, but the activities of which be outside the realm of the provision of social goods or services.

Those activities include social and professional integration by means of access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation. Those activities may also concern environmental protection with a societal impact, such as anti-pollution, recycling and renewable energy.”

1.3. REGULATION (EU) NO. 1296/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2013 establishing a European Union Program for Employment and Social Innovation ("EaSI") and amending Decision no. 283/2010/EU establishing a European Progress Microfinance Facility for Employment and Social Inclusion

“Article 2

Definitions

For the purposes of this Regulation:

- (1) 'social enterprise' means an undertaking, regardless of its legal form, which:
- (a) in accordance with its Articles of Association, Statutes or with any other legal document by which it is established, has as its primary objective the achievement of measurable, positive social impacts rather than generating profit for its owners, members and shareholders, and which:
 - (i) provides services or goods which generate a social return and/or
 - (ii) employs a method of production of goods or services that embodies its social objective;
 - (b) uses its profits first and foremost to achieve its primary objective and has predefined procedures and rules covering any distribution of profits to shareholders and owners that ensure that such distribution does not undermine the primary objective; and
 - (c) is managed in an entrepreneurial, accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities;”

1.4. Social Enterprises and their Ecosystems in Europe - Comparative Overview Report - January 2020

“The Communication on the SBI introduced a concept of social enterprise, referring to three key dimensions².

According to this conception, social enterprises run commercial activities (entrepreneurial/economic dimension) in order to achieve a social or societal common good (social dimension) and have an organisation or ownership system that reflects their mission (inclusive governance-ownership dimension). The SBI explained these three fundamental dimensions of social enterprises, but explicitly stated that it did not suggest a standard definition as a basis for harmonising regulations.

In its approach to this varied sector, the Commission does not seek to provide a standard definition which would apply to everyone and lead to a regulatory straitjacket. It offers a description based on principles shared by the majority of Member States, while respecting their diversity of political, economic and social choices and the capacity for innovation of social entrepreneurs.

The SBI, however, left the door open for the adoption of a more precise definition if it was needed to implement specific incentives or regulatory measures. This was done soon after the establishment of the SBI for the purpose of two EU-level measures: the EuSEF regulation, which established a European label for social enterprise funds, and the EaSI regulation, which set the rules for the EU funding programme for Employment and Social Innovation. In both cases, the adopted definition was consistent with the concept introduced in the SBI, but the wording was further elaborated to provide a clear basis for implementation.

While institutionally the SBI represented only the view of the Commission, the EaSI and EuSEF regulations were adopted by the co-legislators (the Council and the European Parliament) and therefore became part of the EU legislation. However, these definitions were adopted for the

² Such an approach to social enterprise based on these three dimensions was first elaborated by the EMES International Research Network, which studied the “Emergence of Social Enterprise in Europe” as early as 1996-1999 through a broad research project funded by the Directorate-General (DG) Research & Innovation 4th Framework Programme (Borzaga, C. and Defourny, J. [2001]. *The Emergence of Social Enterprise*. London and New York: Routledge). The present mapping study also draws on the findings of the “International Comparative Social Enterprise Models (ICSEM) Project” carried out under the coordination of Jacques Defourny (CES - University of Liege) and Marthe Nyssens (CIRTES - Catholic University of Louvain) at the worldwide level. For more information, see: <http://www.iap-soцент.be/icsem-project>.

purpose of the implementation of specific incentives, not to propose a definition to be applied by the Member States in their legislation.

The SBI social enterprise concept was further operationalised and refined during the Mapping Study. Operationalising the definition is an important methodological step that allows for the application of a shared definition in all national contexts in a coherent way. The definition needs to be precise enough to guide national researchers when collecting and systematising information and data in their respective countries.

For this reason, the operationalisation classifies the three key dimensions with concrete guidance for their application, as illustrated in table 2.

“Table 2. An attempt to operationalise the SBI-based concept of social enterprise

Main dimension	General Definition	Minimum requirements
Entrepreneurial/economic dimension	<p>Continuous and stable production of goods and services</p> <ul style="list-style-type: none"> ➤ Revenues are mainly generated either by the direct sale of goods and services to private users or members, or through public procurement contracts. <p>(At least partial) use of factors of production functioning in the monetary economy (paid labour, capital, assets)</p> <ul style="list-style-type: none"> ➤ Although relying on both volunteers (especially in the start-up phase) and non-commercial resources to become sustainable, SEs normally also use production factors that typically function in the monetary economy. 	SEs must be market oriented (commercial activity incidence should be ideally above 25%)
Social dimension	<p>The aim pursued is explicitly social. The product supplied/activities run have a social/public interest a connotation.</p> <ul style="list-style-type: none"> ➤ The types of services offered or activities run can vary significantly from place to place, depending on unmet needs arising at the local level or in some cases even in a global context. 	Primacy of social aim must be clearly established by national legislations, the statutes of SEs or other relevant documents
Inclusive governance-ownership dimension	<p>Inclusive and participatory governance model</p> <ul style="list-style-type: none"> ➤ All concerned stakeholders are involved, regardless of the legal form. ➤ The profit distribution constraint (especially on assets) guarantees that the enterprise’s social purpose is safeguarded. 	The governance and/or organisational structure of social enterprises should ensure that the interests of all concerned stakeholders are duly represented in the decision-making processes.

Social enterprises may fulfil all three dimensions - entrepreneurial, social and inclusive ownership-governance - in different ways. It is the interplay among the three dimensions that determines whether an organisation may or may not qualify as a social enterprise."

1.5. Study on the Impact of the European Commission's Social Business Initiative (SBI) and its Follow-up Actions - Final Report - November 2020

"In this study, the terms 'social enterprise' and 'social business' are equivalent, understanding that apart from the SBI communication 'social business' has been used much less in practice and research than other terms. The term 'social economy' describes a broader set of organisations, notably foundations as well as cooperatives, associations and mutual aid societies for which the primary objective is to serve their members; they are aimed at pursuing collective interest aims. Social enterprises are a specific part of the economy and of the social economy, which concerns also any other legal form that complies with specific criteria set by the SBI operational concept. Another frequently used term is 'third sector'³ that consists of non-governmental and other non-profit organisations. 'Social entrepreneurship' describes broadly the work with (new) endeavours with social impact. 'Social entrepreneur' describes the individual (or groups of individuals) who starts up or runs a company or organisation with social impact social impact.⁴"

"While social enterprises exist in all countries, the degree of understanding and acceptance of the social enterprise concept by policymakers, practitioners and researchers varies to a significant extent across EU Member States. Diverse notions and different names in different languages are used to describe various traditions of social economy and/or social enterprises. Different names for similar traditions sometimes add to conceptual confusion, when seen from a European perspective. Key terms that are sometimes used to describe related phenomena include the following: social and solidarity economy (SSE), alternative economy, social entrepreneurship and social entrepreneur, social start-up and social innovation. These terms are sometimes used by stakeholders interchangeably with that of social enterprise. Even the SBI used various of these terms to describe the same phenomena. However, each approach was developed to capture a specific notion in the mind-set that involves civil society engagement and social impact. Some terms describe specific traditions and legacies in given territories that might be rather unknown in other countries. This sheds light on a particular set of actors and/or beneficiaries that only

³ Besides the private and the public sector.

⁴ See again the Mapping Study Summary Report for more in-depth discussion of terms and definitions. (European Commission 2020c:19).

partially overlaps with that of social enterprises but are still connected to the wider sphere of the ‘social economy’.”

1.6. REGULATION (EU) 2021/1057 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 establishing European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013

“Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:

[...]

(13) ‘social enterprise’ means an undertaking, regardless of its legal form, including social economy enterprises, or a natural person which:

(a) in accordance with its articles of association, statutes or with any other legal document that may result in liability under the rules of the Member State where a social enterprise is located, has the achievement of measurable, positive social impacts, which may include environmental impacts, as its primary social objective rather than the generation of profit for other purposes, and which provides services or goods that generate a social return or employs methods of production of goods or services that embody social objectives;

(b) uses its profits first and foremost to achieve its primary social objective, and has predefined procedures and rules that ensure that the distribution of profits does not undermine the primary social objective;

(c) is managed in an entrepreneurial, participatory, accountable and transparent manner, in particular by involving workers, customers and stakeholders on whom its business activities have an impact;”

1.7. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Building an economy for people: ACTION PLAN FOR SOCIAL ECONOMY - COM/2021/778 final

Traditionally, the term social economy refers to four main types of entities providing goods and services to their members or society at large: cooperatives, mutual benefit societies, associations (including charities), and foundations. They are private entities, independent of public authorities and with specific legal forms.

Social enterprises are now generally understood as part of the social economy. Social enterprises operate by providing goods and services for the market in an entrepreneurial and often innovative fashion, having social and/or environmental objectives as the reason for their commercial activity. Profits are mainly reinvested with a view to achieving their societal objective. Their method of organisation and ownership also follow democratic or participatory principles or focus on social progress. Social enterprises adopt a variety of legal forms depending on the national context.

1.8. OECD/LEGAL/0472 - Recommendation of the Council on the Social and Solidarity Economy and Social Innovation, adopted on 10/06/2022

On the proposal of the Directing Committee of the Co-operative Action Programme on Local Employment and Economic Development:

I.AGREES that, while national, subnational and local definitions may vary in terminology and substance, for the purposes of the present Recommendation, the following definitions are used:

[...]

- A social enterprise is an entity, which trades goods and services, that fulfils a societal objective and whose main purpose is not the maximisation of profit for the owners but its reinvestment for the continued attainment of its societal goals.

1.9. Relevant websites:

- According to the OECD website <https://www.oecd.org/cfe/leed/social-economy/social-entrepreneurship.htm>, consulted on 18.05.2021:

“Social enterprises are identified by the OECD as “any private activity conducted in the public interest, organised with an entrepreneurial strategy, whose main purpose is not the maximisation of profit but the attainment of certain economic and social goals, and which has the capacity for bringing innovative solutions to the problems of social exclusion and unemployment.”

- According to the OECD website https://ec.europa.eu/growth/sectors/social-economy/enterprises_en, consulted on 19.05.2021:

Social enterprises combine societal goals with an entrepreneurial spirit. These organisations focus on achieving wider social, environmental or community objectives. The European Commission aims to create a favourable financial, administrative and legal environment for these enterprises so that they can operate on an equal footing with other types of enterprises in the same sector. The Social Business Initiative, launched in 2011 identified actions to make a real difference and improve the situation on the ground for social enterprises.

What are social enterprises?

A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.

The Commission uses the term 'social enterprise' to cover the following types of business

Those for who 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 whose profits are mainly reinvested to achieve this social objective

Those where the method of organisation or the ownership system reflects the enterprise's mission, using democratic or participatory principles or focusing on social justice

There is no single legal form for social enterprises. Many social enterprises operate in the form of social cooperatives. Search for available translations of the preceding link EN•••, some are registered as private companies limited by guarantee, some are mutual, and a lot of them are non-profit-distributing organisations like provident societies, associations, voluntary organisations, charities or foundations.

Despite their diversity, social enterprises mainly operate in the following 4 fields

- 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, neighbourhood 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

2. Legal framework of social enterprises

The characteristics of social enterprises vary greatly from country to country with regard to their size, legal forms, areas of activity, as well as in terms of quantity. To have a clearer image of this universe, the European Commission promoted a set of studies by mapping the reality of social enterprises in several European countries, using a common definition and approach. Thus, the synthesis report published in 2020 - “Social enterprises and their ecosystems in Europe - Comparative synthesis report” (<https://ec.europa.eu/social/main.jsp?catId=738&langId=pt&pubId=8274>) – brings together the main findings of the individual country reports, including the legal framework for social enterprise.

Based on this study, both the synthesis report and the detailed country report⁵, and also by researching the legislation, it is intended to focus the present analysis on the comparison between the legal frameworks of the following countries: Spain, Italy, France and Portugal. It should be noted that, in a previous phase, the reality of the United Kingdom was analysed, given its development in this area. However, it was considered that it was not justified to introduce it in the present approach, considering that the legal systems are rather diverging.

In accordance with the aforementioned study, in a comparative perspective, two groups of countries can be identified:

- a) Countries that have introduced specific legislation for social enterprises with a view to promoting their development;
- b) Countries where social enterprises are not regulated.

The first group includes countries that have established a social enterprise status, qualification or accreditation scheme that can be adopted by a variety of both profit and non-profit legal entities. Examples include: France and Italy.

In the second group, which includes countries such as Portugal, no specific legislation on social enterprises has been implemented, notwithstanding the reference in the Portuguese Public Procurement Code, as will be seen below.

⁵ Portugal - <https://ec.europa.eu/social/BlobServlet?docId=21136&langId=en>;
Spain - <https://ec.europa.eu/social/BlobServlet?docId=16383&langId=en>;
France - <https://ec.europa.eu/social/BlobServlet?docId=16378&langId=en>;
Italy - <https://ec.europa.eu/social/BlobServlet?docId=16380&langId=en>.

2.1. Spain - Legal framework

In Spain there is no formal definition of what constitutes a social enterprise, however, the concepts of social enterprise and social entrepreneur are gaining importance. In parallel to this evolution, the concept of social economy still prevails in public debate, in the academic field and in public policies, in particular since the publication of the Law 5/2011 on Social Economy.

There is a conceptual debate in Spain on the relationship between the concepts of social economy and social enterprise, and divergent movements have emerged between, on the one hand, social economy entities and, on the other hand, social entrepreneurs and other entities not included in the social economy sector. The former felt that entities such as cooperatives, WISEs (Work Integration Social Enterprises), mutual insurance organisations, foundations or associations (all related to the field of social economy) can be defined as social enterprises. The latter often prefer not to be linked to the traditional sector of the social economy and see themselves as part of an innovative field with new rules.

This evolution in the relationship between the terms "social economy" and "social enterprise" can be seen in the evolution of the legal framework in Spain. In relation to this last perspective of understanding social enterprise as a new domain, it should be noted that a regulatory initiative was proposed to the Spanish Parliament in 2013⁶, with the support of entities that were not included in the social economy sector but were related to the ecosystem of social innovation and social entrepreneurship.

The initiative sought to establish a legal form of social enterprise called *Sociedad Limitada de Interés General* (SLIG) and focused mainly on the establishment of a legal framework to promote investments in these companies with social objectives, not implying the establishment of a new legal form (but a subtype of company), as the SLIG would continue to be regulated by the *Ley de Sociedades de Capital*, but would facilitate the knowledge by third parties of its statutory commitment: (i) develop a specific corporate object; (ii) generate general interest impact on society and the environment, based on principles different from a traditional *sociedad limitada*; (iii) distribute 30% of dividends, while the remaining 70% should be reinvested in its social mission. Thus, a SLIG differs substantially from companies that adopt a social responsibility strategy. Its purposes, the way of measuring results and the respective management are, in fact, different.

⁶ Cf. Proposal: https://www.congreso.es/public_oficiales/L10/CONG/BOCG/B/BOCG-10-B-140-1.PDF

This initiative was inspired by the European Commission's Social Business Initiative (SBI), aiming to increase the visibility, credibility and recognition of social entrepreneurship. However, it was not approved by the Spanish Parliament, which prompted a national debate on whether social enterprise should be developed under Law 5/2011 on the Social Economy.

The Spanish Parliament resolution indicated Law 5/2011 on Social Economy as the legal framework for social enterprises in Spain. This law creates a legal framework for all entities that are part of the social economy. This law does not establish (nor regulate) a new type of legal entity (the social economy entity), but simply groups together (for the purposes of identification and promotion) entities with specific legal forms that existed previously (Article 1). Nevertheless, it stipulates that all entities within this sector must follow values based on certain principles, such as the primacy of the person/social objective over capital, the distribution of profits that does not depend on the capital invested, commitment to social sectors and independence from public power (Article 4).

Law 5/2011 recognises entities that traditionally form part of the social economy, such as cooperatives, mutual insurance companies, WISEs and associations and foundations that develop economic activities, among others. However, it also includes in the social economy "all companies whose economic activity is based on the principles set out above" (Article 5) (emphasis added)⁷.

According to the report for Spain, several models of social enterprise can be identified in the country:

- a) Cooperatives of social initiative (CIS) (acting in sectors of collective interest) - provided for in Law 27/1999 on Cooperatives, constituting a new form of cooperative, which follows "the social demands of solidarity and the new activities [developed] to solve unemployment problems," (Preamble of above-mentioned Law). Each autonomous community uses different terms to refer to this type of cooperative, including social initiative cooperative, social assistance cooperative, social integration cooperative and social cooperative, among others;
- b) WISE, including two organisational models - employment integration companies (EIs), which target socially excluded groups; and special social initiative employment centres (CEEs), which target people with disabilities. Both are qualifications awarded by the respective regional governments to limited liability companies that officially apply for the qualification, subject to the applicant companies meeting specific characteristics;

⁷ Cf. Article 5 of Law 5/2011 on Social Economy - <https://www.boe.es/buscar/pdf/2011/BOE-A-2011-5708-consolidado.pdf>

- c) Associations and foundations carrying out economic activities - entities involved in various sectors of economic activities (e.g. social services, care provision, education, fair trade, among others). Profits from economic activity shall be used in accordance with its statutory object;
- d) Cooperatives that have general interest objectives - development of activities with environmental and social impacts and participative management process;
- e) Emerging forms of social enterprises - operate in various sectors, notably culture, social innovation, rural development, Corporate Social Responsibility (CSR) consulting, and use legal forms other than those traditionally related to the social economy, including limited liability companies. This category also includes the new process of collaboration between public administrations and civil society organisations (public-private partnerships) which may evolve into new forms of social enterprise.

It should be noted that Spain does not have a formal certification scheme, brand or label for social enterprises.

2.2. France - Legal framework

The Framework Law (2014-856) on the Social and Solidarity Economy SSE)⁸, adopted in July 2014, constitutes the latest legal development in France. The law includes the following new features:

- a) Within the scope of SSE, as well as a broad concept of SSE - Articles 1 and 2 open the field of SSE to companies whose economic activity aims to pursue social utility (support for people in situations of fragility, fight against exclusion and inequalities, education for citizenship, sustainable development) and whose management corresponds to social requirements (reinvestment of a portion of surpluses, more restrictive purchasing conditions, etc.);
- b) The status of "solidary company of social utility" or "socially useful company" (*entreprise solidaire d'utilité sociale* - ESUS) which can be adopted by all legal forms of SSE pursuing a specific social purpose. The definition of ESUS cuts across legal forms. In addition to the organisations traditionally considered part of SSE due to their legal status (associations, mutual societies, cooperatives, foundations), the law also includes commercial

⁸ It is worth noting that the law uses the term social and solidarity economy enterprises (*entreprises de l'économie sociale et solidaire*). Cf. Framework Law (2014-856) on the Social and Solidarity Economy: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000029313296/>

companies that observe certain requirements such as democratic governance, social utility, limited distribution of profits by statutory rules, etc. Social utility, as defined in the law, is related to the fact that its main social mission is focused on supporting people in situations of fragility, fighting exclusion and inequality and promoting education for citizenship, social cohesion and sustainable development.

- c) It recognises the specific condition of " entrepreneurs salariés associés" involved in an activity and employment cooperative (CAE).

In terms of brands, labels and certification systems, a new system has been included in the law: ESUS accreditation as a specific status, which gives access to specific support and financial schemes, such as access to solidarity savings (solidarity funding) and tax benefits.

Social economy enterprises, whatever their legal form, are eligible for ESUS accreditation if they meet a number of criteria, including:

- a) territorial cohesion or sustainable development), which must be explicitly mentioned in the articles of association;
- b) The obligation established by the social utility object must significantly impact the income statement;
- c) Adoption of a wage policy that limits wage disparities.

Some SSE companies, such as WISE, may be automatically recognised as ESUS according to their field of activity.

The PACTE (Action Plan for Corporate Growth and Transformation) law, adopted in May 2019, recognises the "société à mission"⁹, applying exclusively to commercial companies, which, in addition to the profit-making purpose, is statutorily defined as having a social or environmental purpose (their *raison d'être*/mission). The "société à mission" must comply with certain requirements, in particular, (i) its articles of association must specify the procedures for monitoring the performance of its social or environmental mission, providing for a commission (*comité de mission*), separate from the governing bodies (which must include at least one employee), responsible exclusively for carrying out such monitoring and submitting an annual report attached to the management report; (ii) compliance with the social and environmental objectives is subject to verification by an independent entity, in accordance with the procedures and publicity defined by order of the Council of State.

⁹ Cf. Article n.º 176.º Article no. 176 of Law no. 2019-486 of 22 May 2019 on the growth and transformation of companies - <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000038496102>

2.3. Italy - Legal Framework

The first key action that set the conditions for the progressive emergence and widespread development of social enterprises in Italy was the Constitutional Court decision 396 of 1988. This decision established the unconstitutionality of the *Crispi Law* (Law 6972/1890), which provided that social assistance activities should be organised exclusively by public entities and stated that support for the needy would be the responsibility of all citizens. The Constitutional Court has pressed Parliament to identify the appropriate legal forms for the management of social assistance services.

In 1991, Law 381/1991 recognised, after several years of unregulated development, a new type of cooperatives, the "social cooperatives", thus introducing a new type of company with an explicit social objective: the pursuit of the general interest of the community in human promotion and the social integration of citizens. This type of cooperative, unlike the others, does not aim to promote the interests of its members.

Law 381/1991 regulates two types of social cooperatives:

- a) Type A social cooperatives - provide social or educational assistance services;
- b) Type B social cooperatives - carry out any other activity (agricultural, industrial or commercial), or provide services (except social) for the integration of disadvantaged people into the labour market.

Both types are entrepreneurial in nature and the revenue from the activity comes only or mainly from the sale of products and services. The former can act only in the provision of social and educational services, while the latter have a specific focus on hiring disadvantaged workers, who must represent at least 30% of their workforce and for whom they are exempt from the payment of social security contributions.

The law prohibits changes in legal form: social cooperatives cannot become profit-making enterprises, nor can they adopt a different cooperative form.

The impressive development of social cooperatives has not prevented the emergence of other types of non-profit organisations. Over the years, several organisations (volunteers, associations and foundations) that were previously mainly engaged in advocacy and volunteering activities have started to provide social services or have turned social service provision into one of their core activities, which have undergone a progressive transformation into de facto social enterprises.

With the approval of the law on voluntary organisations (266/1991), the legislative decree introducing the tax category of non-profit organisations (ONLUS) (460/1997) and the law on associations for social promotion (383/2000), there has been a progressive recognition of the potential of associations and foundations to develop economic activities consistent with their institutional activities.

The desire to recognise and regulate these transformations explains the introduction of a more general law on the organisations that can carry out activities as a social enterprise, as well as the areas of activity allowed. The main innovation of the new legal regime of the "social company" - Law 118/2005 and Legislative Decree 155/2006 - consists in the enlargement of the legal forms that can be used for the incorporation of a social company. The new legal framework does not consider legal form a condition for eligibility as a social enterprise. The law introduces the legal category of "social enterprise", which takes the form of a voluntary "qualification", allowing any organisation to be qualified and legally recognised as a social enterprise, regardless of its legal form, provided it meets the following criteria:

- a) To be a private legal entity;
- b) To produce goods and services with "social utility" (i.e. it develops its activity in one of the sectors provided for by law) and to aim for public benefit rather than profit. An organisation is considered a social enterprise if 70% of its revenue derives from business activities (i.e. production and exchange of goods and services with social utility);
- c) It can make a profit, but cannot distribute it to its members or owners (non-distribution restriction). All profits must be reinvested to further its main statutory object (public benefit) or to increase assets;
- d) To be registered in the Social Companies Section of the Companies Register managed by the Chamber of Commerce; and
- e) To publish financial and social balance sheets.

In addition to these criteria, social enterprises need to comply with a number of principles of good governance, particularly transparency, openness and participatory decision-making.

The law also provides for the following activities that can be developed by social enterprises: social assistance; health; education and vocational training; environmental and ecosystem protection; cultural heritage development; social tourism; academic and post-academic training; cultural research and services; labour integration; and support to social enterprises.

The law allows various types of organisations - associations, foundations, religious institutions, cooperatives, commercial companies - to obtain the legal status of social enterprise, also establishing that associations and foundations wishing to register as social enterprises must provide proof of their entrepreneurial nature. Conversely, commercial companies applying for social enterprise status have to comply with certain requirements regarding the distribution of benefits (in particular, to respect the total distribution restriction) and the participation of stakeholders.

However, the law has met some resistance from eligible organisations due to cultural prejudices, in particular associations that do not want to qualify as companies.

Additional resistance resulted from restrictions on the presence of volunteers and the participation of public and private for-profit entities in the governance of social enterprises. Two other issues are also worth highlighting: the increased costs faced by associations and foundations wishing to register as social enterprises and the lack of tax benefits, including those already granted to social cooperatives.

In addition, the law does not automatically grant the status of social enterprise to social cooperatives. It allows their registration provided they change their articles of association: they have to comply with the new obligations to issue a social balance sheet and to promote stakeholder participation. As a consequence, most cooperatives, associations and social foundations continued to operate as before the application of the law and decided not to register as social enterprises.

At the same time, recently established organisations operating de facto as social enterprises have preferred to opt for traditional legal forms, ignoring the new opportunity offered by the law to acquire the legal status of social enterprise.

In 2012, mutual aid societies were included in the Register of Social Enterprises through Legislative Decree 179/2012 and the Decree of the Ministry of Economic Development of 6 March 2013.

Recently, Law 106/2016¹⁰ reforming the "third sector" and Legislative Decrees 117/2017 (Third Sector Code)¹¹ and 112/2017 (Revision of the Law on Social Enterprises)¹² have introduced relevant changes in this regard.

¹⁰ Cf. Law 106/2016: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2016-06-06;106>

¹¹ Cf. Third Sector Code: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-07-03;117!vig=>

¹² Cf. Legislative Decree 112/2017: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-07-03;112!vig=2019-09-18>

The objective of Law 106/2016 was, firstly, to define a common framework for the sector, with a view to overcoming its fragmentation from different perspectives, both in types of organisation and in terms of constraints and support measures, as well as tax benefits; and secondly, to promote the development of social enterprises by removing some of the main obstacles that have hindered their development.

A common framework was established for the entire third sector through Legislative Decree 117/2017, which defines the meaning of "non-profit" and "general interest", identifies the activities that third sector organisations can carry out and sets out the rules they must comply with to be recognised as part of the sector (third sector entity). The law defines and regulates the following forms: voluntary organisations, associations for social promotion, philanthropic entities, social enterprises (including social cooperatives), the networks of third sector organisations and mutual aid societies. The same legal instrument regulates each of these forms individually, except for social companies, which are the exclusive object of Legislative Decree 112/2017.

Consistent with Law 118/2005 and Law 106/2016 - and in line with the EU operational definition - a social enterprise is now defined as a "private organisation that carries out business activities for civic purposes, solidarity and social utility and allocates profits primarily to achieving its social object by adopting responsible and transparent management arrangements and favouring the widest possible participation of employees, users and other stakeholders interested in its activities".

The new regulations safeguard the non-profit mission of the social enterprise (and its belonging to the third sector)." At the same time, it introduces some important new features, including:

- It replaces the total distribution restriction with a combination of remuneration limitation and rules similar to those applied to social cooperatives. More specifically, cooperatives, limited liability companies or shareholding companies that are social enterprises are now allowed to distribute up to 50% of the profits generated in a given year to investors (or to donate them to other third sector organisations), and at least 50% of the profits generated must be reinvested in the social enterprise.
- It allows the appointment of representatives of private companies and public authorities on the boards of social enterprises without allowing them to direct or chair the same boards, with the aim of encouraging the adoption of more inclusive governance models;
- It expands areas of engagement and categories of integrated disadvantaged workers, and provides for recognition of benefits according to the level of disadvantage these workers face.

- Compared to the 2005/2006 regulation, additional sectors of activity include community broadcasting, development and cooperation, fair trade, social housing, services for migrants and refugees, micro-credit services, social agriculture, organisation and management of non-professional organisations, sports, and re-use and rehabilitation of premises seized from organised crime.

- It recognises *ope legis* the qualification of social enterprise to all social cooperatives (without changing their status), but expands their activity to only some sectors (health and training) without allowing them to operate in all sectors where other social enterprises can operate. In other words, social cooperatives remain specialised in providing social welfare services.

- It establishes tax exemption for non-distributed profits (in line with the tax regulations for social cooperatives already in force) and introduces other measures to attract investment.

While the adoption of the social enterprise qualification remains voluntary, the law provides that third sector organisations that operate as companies (i.e. commercial revenue exceeds revenue from other sources, such as donations and grants) must comply with the rules applied by the Civil Code for all types of companies.

During the process of passing Law 106/2016, a new legal form was introduced by Law 208/2015 (referred to as the Stability Law 2016). This new law introduced the qualification of "benefit company" (*società benefit*). According to this law, the qualification of "benefit company" can be attributed to all companies that pursue, in parallel, a profit objective and one or more common benefits. As "benefit companies" do not comply with the restriction on profit distribution and are not required to have inclusive governance, they cannot be included in the universe of social enterprises.

As they are regulated by law, they can be considered a type of brand designed to communicate adherence to certain standards of corporate social responsibility. The main difference with other private labels (such as, for example, B Corporations) is that in "benefit company" cases, failure to comply with commitments can lead to a court report.

There are no brands, labelling schemes or certification systems for social enterprises in Italy. There are, however, social reporting systems, which are specifically targeted at *ex lege* social enterprises and social cooperatives. Social cooperatives and social enterprises must draw up an annual social balance sheet (*bilancio sociale*), in accordance with the guidelines of the Ministry for Labour and Social Policy. The reports - to be filed with the Register of Companies of the Chambers of Commerce - aim to provide information on the social enterprise's compliance with its social objectives and to identify the added value generated and its distribution in the

community. The report not only describes the organisation's mission, but also the resources used, the results achieved and the impacts generated by the organisation's activities.

2.4. Portugal - Legal framework

In Portugal, the legal figure of the social enterprise is not regulated, although some entities mentioned in the Social Economy Framework Law (LBES) may fall under the EU's operational definition of social enterprise.

Since the LBES came into force, some changes have occurred in the legal regimes of IPSS, cooperatives, mutual associations and others, both to adapt to the said law and to solve previously identified issues. It should be noted that IPSS can develop instrumental commercial activities and some cooperatives with more than 20 members allow the figure of the member-investor and a distribution of votes according to the capital.

The framing of certain legal figures within the concept of social enterprise is addressed in this document within the scope of the study of the TIMES project - Institutional Trajectories and Models of Social Enterprise in Portugal, so this matter will not be detailed in this section.

It is worth noting that the Public Procurement Code (CCP)¹³, in its Article 250-D, as amended, provides as follows:

"Contracts reserved for certain services

Contracting entities may launch reserved contract formation procedures when health services, social services, education services and cultural services that are included in annex x to this Code, of which it is an integral part, are concerned.

2 - Any organisations that fulfil, cumulatively, the following requirements may be candidates or competitors to the procedures referred in the previous paragraph:

a) To have as their object the pursuit of a public service mission linked to the provision of the services referred to in the previous paragraph;

(b) to reinvest their profits with a view to achieving the organisation's purpose or, if they are distributed or redistributed, to do so on the basis of participatory considerations;

c) To incorporate the participation of workers in the share capital of the organisation performing the contract or to base their management structure on participatory principles requiring the active involvement of workers, users or stakeholders;

(d) not to have awarded, during the previous three years, a contract covered by this Article with the same contracting authority.

¹³ Cfr: <https://dre.pt/web/guest/legislacao-consolidada/-/lc/163767113/202106291147/74175733/diploma/indice>

3 - The contracts covered by this article cannot have a term longer than three years.

4 - When the participation in the procedure is reserved under the terms of the previous paragraphs, the announcement must make reference to this article.

5 - The requirements provided for in paragraph 2 shall be considered to be fulfilled when the organisations indicated therein are constituted or participated in, in accordance with legally admitted terms, by entities that individually or jointly fulfil the said requirements.

6 - The regime envisaged in this article is also applicable to social companies, incorporated under the terms of the law, provided that the requirements envisaged in paragraph 2 have been met.

7 - For the purposes of the provisions of this article, social enterprises are considered to be those engaged in the production of goods and services with a strong social entrepreneurship or social innovation component, and promoting integration into the labour market, through the development of research, innovation and social development programs, in the areas of the services set out in paragraph 1." (emphasis added)

Thus, for the purposes of public procurement, social companies are considered to be the entities:

- 1) Engaged in the production of goods and services;
- 2) With a strong social entrepreneurship or social innovation component;
- 3) Promoting integration into the labour market through the development of research, innovation and social development programs;
- 4) In the areas of health services, social services, educational services and cultural services which are included in Annex x of the CCP

And that meet the following requirements:

- 1) Have as their object the pursuit of a public service mission linked to the provision of the aforementioned services;
- 2) Reinvest their profits with a view to achieving the organisation's purpose or, if they are distributed or redistributed, to do so on the basis of participatory considerations;
- 3) Involve workers in the share capital of the organisation performing the contract or base their management structure on participatory principles requiring the active involvement of workers, users or stakeholders;
- 4) have not awarded, during the previous three years, a contract covered by this Article with the same contracting authority.

Moreover, the CCP, in its Article 54-A, also in its current wording, states that:

"Reserved contracts

Contracting authorities may reserve to the following entities the right to be a candidate or tenderer:

a) Entities whose main object is the social and professional integration of disabled or disadvantaged people, provided that at least 30% of their employees have a disability duly recognised under the terms of the law or are disadvantaged, regardless of the object and value of the contract to be signed;

(...)”.

These articles were introduced in the CCP as part of the transposition of the 2014 European Directives, in particular Directive 2014/24/EU of the European Parliament and of the Council of 26 February¹⁴, which set requirements of an environmental and social nature and encourage innovation in contractual procedures. Recital 36 and Articles 20 and 77 of that directive provide for the possibility for Member States to reserve the right to participate in public procurement procedures to such entities or social undertakings or to reserve performance of contracts to them in the context of protected employment programs.

In view of the above, any regulation of the social company in Portugal should take into account the provisions of the CCP.

¹⁴ Cfr.: <https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:32014L0024&from=PT>

3. TIMES - Institutional Trajectories and Models of Social Enterprise in Portugal

Despite the international scientific and political relevance of social enterprises and the various discussions about their concept, in Portugal the existing knowledge on this field is still limited. This gave rise to the TIMES project - Institutional Trajectories and Models of Social Enterprise in Portugal, funded by the Foundation for Science and Technology (FCT/MEC) and FEDER, through the Operational Program for Competitiveness and Innovation COMPETE 2020 and coordinated by Professor Sílvia Ferreira, assistant professor in Sociology at the Faculty of Economics of the University of Coimbra (FEUC), researcher at the Centre for Social Studies and the Centre for Cooperative Studies and Social Economy at FEUC.

This project currently constitutes the most profound reflection in Portugal on the meanings, organisational characteristics, trajectories, institutional frameworks and roles of social enterprises in Portugal in response to social and societal challenges.

It should be noted that this study is framed within the European perspective of social enterprises, adopting the analytical framework developed within the EMES - International Research Network, more recently articulated by the international project ICSEM - International Comparative Social Enterprise Models, coordinated by Jacques Defourny and Marthe Nyssens, which involved around 200 partners from 50 countries around the world.

Although the construction of a decisive concept of social enterprise is not the objective, the TIMES project presents elements that allow the identification of the institutional trajectories of social enterprises in Portugal; the organisational characteristics of different social enterprise models from the social, economic and governance dimensions; a synthesis of data on the contribution of social enterprises to a range of social and societal challenges; and some components relevant for a favourable ecosystem for social enterprises.

Below some of the most significant features of this study are summarised, which may help to outline future decisions around this theme.

3.1. The institutional trajectory of social enterprise models

According to the TIMES study, it was possible to identify a trajectory of the emergence of different types of social enterprise in Portugal, mostly originating in the social economy, guided by different historical-institutional events, in particular:

- The Democratic Revolution marks the emergence of CERCI as an organisational innovation emerging from the cooperative movement in the context of a strong social mobilisation to build the welfare state;
- The establishment of the Status of Private Institutions of Social Solidarity (IPSS) and the formalisation of the relationship between these institutions and the State;
- The focus placed in the 1990s on social enterprises of insertion through work, or WISE (Work Integration Social Enterprises), in the face of employment challenges and the refocusing of European and national policies on inclusion through work and employment generation;
- The emergence, also in the 1990s, of local development and poverty alleviation initiatives anchored on territorial and community approaches strongly supported by programs such as the European Social Fund;
- And finally, more recently, and by influence of international movements around the concepts of social innovation and social entrepreneurship, the protagonism of European policies and of some governments such as the Portuguese, the emergence of a new type of organisations, not necessarily anchored in the social economy, the so-called social businesses.

3.2. Organisational dimensions of social enterprise models

By applying a European perspective, the project sought to investigate how three dimensions manifest themselves in the different models of social enterprise in Portugal: social, economic and governance.

From this analysis, and although it was not the aim to categorically define what social enterprises are, **five models of entities were identified** - 1) Social Cooperatives; 2) Entrepreneurial non-profit organisations; 3) Work Integration Social Enterprises (WISE); 4) Solidarity economy enterprises; and 5) Social businesses. The characteristics of these five models, considering the different organisations studied, are summarised in the following table:

	Social Cooperatives*	Entrepreneurial non-profit organisations	Work Integration Social Enterprises (WISE)	Solidarity economy enterprises	Social businesses
Predominant legal form	cooperatives, mutual societies, associations	associations, coop. Social Solidarity	without legal form (production unit), cooperative	association or cooperative	fluidity, commercial company or association
Tradition	ethical, mutualistic, community	altruistic or community	altruistic, mutualistic	ethical, community	private, commercial
Origins (social entrepreneurship)	groups of workers, citizens, social movement, SEOs	citizen groups, social movement	Social Economy Organisations (SEOs)	groups of inhabitants, citizens, workers	individuals
Mission	social protection, capacity building, sustainable energy	education and culture, youth at risk, social services, disability, families, etc.	social inclusion via productive inclusion of vulnerable people	community development, education, environmental sustainability	equity and empowerment, education, environment
Status with influence	Cooperative accreditation, general interest, IPSS	General interest, IPSS	Do not have or IPSS	Cooperative accreditation	Sometimes B-Corp
Surplus distribution	prohibited or limited (reinvested in the activities)	prohibited (reinvested in the activities)	prohibited (reinvested in the activities)	depends on the legal form and status, it may exist	depends on the legal form, exists in commercial forms
Participation	participatory (1 person = 1 vote)	participatory (1 person = 1 vote)	non-existent or depends on legal form	extended participatory and other mechanisms (sociocracy)	may depend on the capital
Stakeholder management	beneficiaries, workers	weight of employees/professionals	SEOs, multi-stakeholder	workers, beneficiaries, community	founders, investors, beneficiaries
Economic risk	sales or contributions (>50%); public subsidies (<50%)	combination of cooperation agreements; co-participations; subsidies; donations; and sales (<50%)	subsidies and a significant part of sales (>50%)	sales or contributions (>50%); public subsidies (<50%)	sales (>50%) and philanthropic subsidies
Commercial activities	mission-related, instrumental non-related	mission-related or instrumental non-related	geared towards sales to third parties at market price	related to the mission in a perspective of alternative practices	related to the mission, using the market for social objectives

*The social cooperative model has its initial expression in social solidarity cooperatives, resulting from the CERC movement and the recognition of this new cooperative branch. However, the legal form should not be considered deterministically, nor should their membership in the branch of cooperatives of social solidarity.

3.3. Social enterprises and social and societal challenges

The organisations investigated have as a common characteristic that they contain within themselves an alternative model of society, often providing new or creative solutions, which shapes and, at the same time, influences the way in which they perceive social problems and the

way in which they seek to respond to them: Thus, it is common for them to act in the fields of **social inclusion**, often through **employment and employability** (generating employment and work opportunities as the main mechanism for social inclusion or the promotion of employment and employability as a strand of action within a broader scope of intervention); they are also focused on the field of respect for constitutional rights to health, education, social protection, with the aim of ensuring equality and dignity of people, **sustainable development and environmental protection**, as well as the promotion of **art and culture**.

In general, public policies have shaped the form and action of organisations. The emergence and development of various organisations, particularly those linked to the IPSS status, reflects the emergence of the Welfare State in Portugal, as well as its development in the provision of social services within the scope of disability, childhood, senior citizens and, more generally, people at risk of social exclusion. In this path, we can also identify the development of policies to support employment and policies to fight poverty, influenced by European priorities and support frameworks (such as in the environmental field).

In the case of more recent organisations, there has been less appetite on the part of the state to develop more stable relationships with organisations within the scope of cooperation agreements, which is related to a certain retraction of social policies. In the case of some organisations, it is the lack of institutions at their origins and of specific support for the problems they address that motivates the emergence of organisations and the development of the specificity of their responses and forms of financing.

3.4. An ecosystem promoting social enterprises?

According to the TIMES project, unlike other countries, the concept of social enterprise in Portugal does not emerge from the mobilisation of organisations on the ground and its use remains scarce and sometimes associated with tensions related to different interpretations of the concept and its dimensions.

Although the main stakeholders studied point to the need for a framework by social actors, they are distributed between three possibilities: a legal status, a label (e.g. a B-Corp certification), or a new legal figure. They also diverge between those who consider that social enterprises should only exist within the social economy, those who consider that they should exist outside the social economy or those who consider that they should be transversal.

Also among the social enterprises studied, identities are diverse and fluid, structuring themselves around concepts such as social enterprise, social economy, cooperativism, social innovation,

social entrepreneurship, on which they build their own definitions. However, names and labels are considered relevant by organisations only insofar as they can impact their mission and day-to-day operations.

4. Analysis of European Insertion Companies

Considering that in most European countries insertion or work companies, known as WISE (Work Integration Social Enterprises) are integrated, expressly or not, in the social economy and/or social enterprise field, a synthetic analysis on the expression of this figure in the different European countries is presented:

Country	Name	Legal Framework	Characteristics
Germany	Social Enterprises and Cooperatives	With its own status - framework as a partnership	<ul style="list-style-type: none"> - Aims to create self-financed permanent jobs - With the conclusion of an employment contract of indefinite duration - With training limited to the job function - For disabled people, long-term unemployed professionals, low-skilled young people - With own revenues and access to public procurement
Belgium	Insertion companies	Without a legal status of its own - it can be a commercial company or an economic interest group	<ul style="list-style-type: none"> - With the conclusion of an employment contract of indefinite duration - With training limited to the job function - For long-term professionally inactive people - With own revenues and access to public procurement
	Adapted Work Companies	Recognition as such provided that the company is registered and complies with the following: <ul style="list-style-type: none"> - Principles of the social economy; 	<ul style="list-style-type: none"> - Aims at professional integration with a permanent subsidy - With the conclusion of an employment contract of indefinite duration - With training limited to the job function - For disabled people - With own revenues and access to public procurement

Country	Name	Legal Framework	Characteristics
Belgium	Work Training Companies	- Criteria for recognition of the entity associated with the status of the typology and the contractual relationship of vulnerable workers	- Aims at creating internships - With competence training - For low-skilled young people - With public subsidy (majority)
Spain	Social Integration Enterprises	With its own legal status - Law 44/2007 - Regulating the regime May be promoted or participated in by non-profit entities: public entities, non-profit associations and foundations	- With the conclusion of an employment contract of indefinite duration - With skills training in addition to on-the-job training - For people with social problems, long-term unemployed professionals, low-skilled young people, disadvantaged minorities - With own revenues and access to public procurement
Finland	Social Enterprise Cooperatives for people with disabilities	Integrated in the concept and legal forms associated with the concept of Social Enterprise (1351/2003)	- With the conclusion of an employment contract of indefinite duration - With skills training in addition to on-the-job training - For disabled people, people with social problems, long-term unemployed people, low-skilled young people, disadvantaged minorities - With own revenues and access to public procurement

Country	Name	Legal Framework	Characteristics
France	Empresas de Integração – <i>Entreprises d’insertion</i>	With own legal recognition They take the form of an association, but integrate entities that have different statuses: associative and commercial	<ul style="list-style-type: none"> - Aims to provide work experience or training for vulnerable groups - With the conclusion of an employment contract of indefinite duration - With skills training in addition to on-the-job training - For people with social problems - With own revenues and access to public procurement
	Insertion Enterprises – <i>Entreprises Insérentes</i>		<ul style="list-style-type: none"> - Aims to create self-financed permanent jobs - With the conclusion of an employment contract of indefinite duration - With competence training - For long-term professionally inactive people - With own revenues and access to public procurement
Italy	Type b Social Cooperative)	With legal recognition within the cooperative sector	<ul style="list-style-type: none"> - With the conclusion of an employment contract of indefinite duration - With skills training in addition to on-the-job training - For disabled people, people with social problems - With own revenues and access to public procurement

Country	Name	Legal Framework	Characteristics
Ireland	Local Development Insertion Social Enterprises	<p>No legal recognition of its own - not recognising a legal form tailored specifically for social issues. Associated to the WISE concept - Work Integration Social Enterprises</p> <p>Integrated in the concept of social enterprise, which can take on any of several forms, with the overwhelming majority being structured as companies limited by guarantee, combined with charitable status.</p>	<ul style="list-style-type: none"> - With the conclusion of an employment contract of indefinite duration - With on-the-job skills and function training - For disabled people, people with social problems, long-term unemployed people, low-skilled young people, disadvantaged minorities, vulnerable female groups - With own revenues, access to public procurement and public subsidy
	Social Insertion Enterprises that are part of a Social Economy program	<p>The legislation governing companies limited by guarantee (CLGs) was amended in 2015, which places different requirements on CLGs (including social enterprises)</p>	<ul style="list-style-type: none"> - With the conclusion of an employment contract of indefinite duration - With on-the-job skills and function training - For disabled people, people with social problems, long-term unemployed people, low-skilled young people, disadvantaged minorities, vulnerable female groups - With public subsidy (majority)

Country	Name	Legal Framework	Characteristics
Portugal	Insertion Enterprises	<p>Applicable to mainland Portugal: No legal status of its own</p> <p>Recognition attributed within the scope of eligibility for the Insertion Enterprises Measure - Ministerial Order 348-A/98, of 18 June</p> <p>Only non-profit entities (associations, cooperatives, foundations and IPSS) could access this recognition</p> <p><u>Discontinued</u></p>	<ul style="list-style-type: none"> - Aims to provide work experience or training for vulnerable groups - Corresponds to an internship - With skills training in addition to on-the-job training - For disabled people, people with social problems, long-term unemployed people and people with disabilities who can enter the labour market - With public subsidy (majority)

Country	Name	Legal Framework	Characteristics
Portugal		<p>Applicable in the Azores Autonomous Region:</p> <p>No legal status of its own</p> <p>Application to the Status under Regional Regulatory Decree 29/2000/A, of 13 September, amended by Regional Regulatory Decree 3/2013/A, of 21 May</p> <p>This status can only be attributed to non-profit entities (associations, cooperatives, foundations and IPSS)</p> <p>No information on implementation and no list of candidates/recognised bodies</p>	<ul style="list-style-type: none"> - Aims to provide work experience or training for vulnerable groups - With a fixed-term contract - With skills training in addition to on-the-job training - For people with social problems, people with disabilities likely to enter the labour market - With public subsidy (majority) - application for financial support

Country	Name	Legal Framework	Characteristics
Portugal		<p>Applicable in the Madeira Autonomous Region:</p> <p>No legal status of its own</p> <p>Application to the Status under Ministerial Order 164/2003, of 2 December, amended by Ministerial Order 4/2008, of 22 January, Ministerial Order 242/2016, of 28 June and Ministerial Order 624/2018, of 18 December - Applications to Employment Awards</p> <p>This Status can only be attributed to non-profit entities (mutual associations, cooperatives, charities, associations with altruistic purposes, foundations, IPSS, entities covered by the community and self-management sub-sectors and other entities endowed with legal personality that respect the guiding principles of the social economy)</p>	<ul style="list-style-type: none"> - Aims to provide work experience or training for vulnerable groups - With a fixed-term contract - Trained for the job function - For people with social problems, disabled people able to enter the labour market, long-term unemployed people, young people at risk - With public subsidy (majority) - application for financial support

Country	Name	Legal Framework	Characteristics
		<p>With integration bonus upon recruitment</p> <p>No information on implementation and no list of applicants/recognised entities</p>	

Country	Name	Legal Framework	Characteristics
Portugal	Protected Employment	<p>No legal status of its own</p> <p>Integration in a support measure - Protected Employment - Decree Law No 290/2009, of 12 October 2009</p> <p>This measure could only be accessed by persons belonging to the following entities: collective persons under public law that are not part of the direct administration of the State or collective persons under private law that are non-profit-making</p> <p><u>Discontinued</u></p>	<ul style="list-style-type: none"> - Aims at professional integration with permanent subsidy - With the conclusion of an employment contract of indefinite duration - Trained for the job function - For disabled people - With own revenues and public subsidy
Sweden	Network of protected workshops	<p>With its own legal framework</p> <p>According to the law of 12 September 2003 on people with disabilities the Protected Workshop is a structure set up and managed by any organisation</p>	<ul style="list-style-type: none"> - With on-the-job skills and function training - For disabled people - With own revenues and public subsidy

Country	Name	Legal Framework	Characteristics
		<p>with a social and economic vocation and which meets the following conditions.</p> <p>Approval is granted in accordance with the provisions of the law of 8 September 1998 regulating relations between the State and organisations operating in the social, family and therapeutic fields.</p>	
Sweden	Social Integration Enterprises - <i>WISE</i> <i>- Work Integration Social Enterprises</i>	<p>No legal framework of its own</p> <p>They mainly take the form of "social work cooperatives" and "community development enterprises", among others, and involve local private and public actors (municipality and county). These local interventions vary greatly depending on the organisational details of the companies established.</p>	<ul style="list-style-type: none"> - With skills training, job role training and co-ownership schemes - For people with social problems and disabilities - With own revenues and public subsidy

Final remarks

The establishment in Europe of different organisational forms that articulate the economic, social, cultural and environmental dimensions, among others, with missions oriented towards problems of poverty, unemployment, ageing, sustainability, etc. has led to several discussions about their concept as Social Enterprises. These discussions also indicate the complex transformations and articulations in the field of the social economy and the relationships between these organisations, the state, companies and the market.

Within the scope of this approach to the social enterprise figure, the main conclusions are listed:

1. At European level, and taking into account the diversity of national realities, the European Commission does not intend to provide a normative definition of the concept of social enterprise that would be binding on all and would constitute a regulatory straitjacket. Instead, a description is proposed based on principles common to most Member States.
2. However, operational concepts of social enterprise have been adopted in European regulations, for the purpose of implementing specific incentives, and which are based on three dimensions to which social enterprises must respond: business/economic dimension, social dimension and inclusive governance/ownership dimension.
3. As regards the comparison between the Spanish, French and Italian legal systems, social economy entities and commercial companies, which meet certain criteria, are included in the universe of social enterprises.
4. Spain: does not develop the concept of social enterprise, however, the Spanish parliament concluded that any establishment of the figure should fall under Law 5/2011 on Social Economy, as it provides in its Article 5 "all companies whose economic activity is based on the principles presented above" (Article 5) (emphasis added).
5. France: the Framework Law (2014-856) on the Social and Solidarity Economy presents a broad concept of social and solidarity economy, integrating within its perimeter both traditional social economy entities and commercial companies that meet certain requirements. The law also provides for the ESUS status (*entreprise solidaire d'utilité sociale*), which can be adopted by all legal forms of ESS pursuing a specific social purpose, including commercial companies that meet certain requirements. Moreover, recently, the "société à mission" has been recognised by the PACTE Law, applying exclusively to commercial companies, which, in addition to the profit-making purpose, is statutorily defined as having a social or environmental purpose (their *raison d'être*/mission).

6. Italy: there is a legal regime for social enterprises, and it is noted that the Third Sector Code itself includes social enterprises as an entity in this sector, whose regime is developed and regulated in specific legislation (Legislative Decree 112/2017). This regulation safeguards the non-profit mission of the social enterprise, and its qualification is voluntary.
7. Portugal: the legal figure of the social enterprise is not regulated, despite an express reference in the Public Procurement Code.
8. As far as the TIMES project is concerned, although it was not intended to construct a decisive concept of social enterprise, it constitutes in Portugal the most profound reflection on the meanings, characteristics, trajectories, institutional frameworks and roles of social enterprises in Portugal in response to social and societal challenges and is therefore a useful tool for understanding this reality.
9. According to the TIMES study, the emergence of different types of social enterprise in Portugal occurred mostly in the context of the social economy, which includes five classifications guided by different historical-institutional events: the cooperative movement of social solidarity (1 - Social cooperatives); the establishment of the Status of Private Social Solidarity Institutions - IPSS (2 - Entrepreneurial non-profit organisations); the social enterprises of insertion through work (3 - WISE); and various initiatives, mainly associative, of local development (4 - Solidarity economy enterprises). Only more recently, through the influence of international movements for social innovation and social entrepreneurship, and the protagonism of some public policies, does the phenomenon of social enterprises tend to emerge from a new type of organisations, not necessarily anchored in the social economy (5 - Social Businesses). This was, however, the most difficult group to exemplify in the study, both because of the scarcity of the number of organisations and because those contacted, particularly those with a commercial company form, did not identify with the concept of social enterprise.
10. Although the group of organisations identified have in common the fact that their activities are centred on a social mission and on the response, often alternative and innovative, to social challenges, thus generating great social impact, they assume different characteristics, such as different legal frameworks; distinct levels of participatory governance; varied sources of financing; different levels of limitation in the distribution of surpluses; and heterogeneity at the level of partnership with the State.
11. In addition, this project concludes that the concept of social enterprise in Portugal is associated with tensions related to different interpretations of the concept and its dimensions. Even among the organisations studied, identities are diverse and fluid,

structuring themselves around concepts such as social enterprise, social economy, cooperativism, social innovation, social entrepreneurship, on which they build their own definitions. However, names and labels are considered relevant by organisations only insofar as they can impact their mission and day-to-day operations.

12. The insertion enterprises, commonly known as WISE - Work Integration Social Enterprises, despite presenting different characteristics in the various European countries, and within each country, taking into account their scope of action (training, internship and professional integration) as well as of their addressees, assume different legal figures, from non-profit entities to commercial companies. In addition, in most countries they are part of the social economy sector and/or the universe of social enterprises.
13. Considering the recent disclosure of the Action Plan for Social Economy, it is relevant to mention that social enterprises are broadly covered by the Plan and are even understood to be part of social economy, very specifically in the sections of the Plan referring to financing.

In view of the above, and taking into account the different conceptual and legislative experiences that have been pointed out in this document, we can infer that there is a plurality of approaches that may be adopted in Portugal.

It is important to mention that the establishment of a status or new legal figure is normally anchored on two essential vectors:

- Need to legally enshrine existing practices;
- Need to define a sector or sub-sector for the purpose of applying public policy measures, whether wide-ranging, such as tax benefits or others, or within the framework of specific support programs.

Although in Portugal there is apparently no identified need to regulate this figure - which may lead us to conclude that there are no existing practices that require a specific legal framework -, should it be deemed necessary to regulate the social enterprise figure, it is believed that this could take the Italian system as a starting point, as it is more suited to the national reality.

Nevertheless, and subject to a more detailed analysis of the Italian experience, it seems relevant to us to obtain additional information on the other schemes presented, in order to allow a more thorough analysis.

Thus, in the pursuit of the objective established in the CASES Activities Plan for 2021, with continuity in that of 2022, given the technical-legal complexity of the matter in question, the low density of the debate on the same involving social economy entities and academia, we propose to continue the work started with this document in the second and third quarters of 2022. To this end, whenever deemed necessary, officials from the public authorities and academia in the countries listed (Spain, France and Italy), from the TIMES project and from the confederations of the Portuguese social economy may be involved.

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¹⁵ 1.8 was introduced in 28th June 2022