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POLICY PAPER

on

Legal environment of the SE sector, diagnoses and recommendations

January 2019

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INTRODUCTION

This document is prepared within the framework of the Project "Support the civil society organisations to develop Social enterprise in Albania, which is implemented by "The Centre for Competitiveness Promotion in cooperation with Regional Development Agency in Tirana, from April 2018-September 2020. The overall objective of the project aims to develop a new business model for socio economic development, with focus on social inclusion of vulnerable and marginalised groups.

This policy paper is analysing the legal framework of social enterprises in Albania, how the current legal framework supports the CSOs on the development of social enterprises/SE, what are the gaps and difficulties identified in the process of implementation of the Law, with regards to provide some policy recommendations regarding the development of social entrepreneurship in Albania.

The preparation of this document has gone through consultation processes. The Consultation' methodological guidance orientated the focus group meetings, in order to get by participants, the most relevant information for the above-mentioned matters regarding SE legal framework and the most relevant policies on social entrepreneurship. Delivery of focus group consultations/discussions held in Vlora and Tirana and through other individual interviews, aimed to get the real feeling of the main barriers of growing and prospering SE sector, as well as, an overview and analysis of the regulatory framework, the institutional support, the financing options and the available support structures.

The implementation of the Law on No.65/2016 "For Social Enterprises in the Republic of Albania" is in place, it is still fully implemented and none of the organisations have received SE' status, yet. The complementary bylaws/acts that facilitate the implementation of the Law, have been prepared by the Ministry of Health and Social Protection, but there is a lack of information on the real implementation of the Law and it is really hard to measure the real impact of the SE legal framework, in place.

From the focus group consultations in the two cities of Vlora and Tirana, was highlighted the need of information and promotion of the SE networking and cooperation. It was identifying the types of institutional support, financial mechanisms and the necessity in improving legislation. By proposing and organizing a policy framework, social enterprises would have more influence when advocating institutional changes.

The development of policies in support of SEs, will be more effective, if they are built through horizontal co-operation (working across government institutions) and vertical co-ordination (working across levels of local government) and in co-operation with many stakeholders. It is not enough to talk about the importance of SEs and for their impact in socio-economic development, but need to have some concrete policy actions. Beyond the improvements on the existing SE legal framework, it is needed to tailor a strategy for social entrepreneurship, with concrete measures that should bring concrete and efficient results in support of SE development.

The proposed strategy on social entrepreneurship aim to create an enabling environment and focusing on four priority policies areas for SEs:

(i) Developing and improving the legislative and institutional framework;

(ii) establishing an adequate and supportive financial framework;

(iii) promoting the importance and role of social entrepreneurship through formal and informal education;

(iv) and increasing the visibility of social enterprises all over the country.

The proposed participatory procedure, through the creation of the working group and later the institutionalization of the advisory council, will enable the multi-stakeholders' co-operation for the finalization of the policy document on social entrepreneurship.

I. THE CURRENT ECOSYSTEM OF SOCIAL ENTERPRISES

Since, two years when the SE law 65/2016 is in place, it is really hard to identify any of SEs that gained the SE status, due to the lack of statistics and information from responsible Ministry of Health and Social Protection.

The Ministry of Health and Social Protection has to prepare the last single obligation of the bylaw '' for the creation of SEs register, detailed regulations on its format and content'', according to article 15, point 2 of the SE law 65/2016 , which so far it's not yet in place.

Non-profit organisations (NPOs) that are potential to be considered under SE' status, are engaged in diverse fields of activities, created with the donor's support, most often in agricultural production, education, social and health services to people in need, vocational training employment intermediaries and tourism. Albanian NPOs with the features of a SEs are small entities on average less than 10 employees[1]. They mostly rely on grants and philanthropic funds for start-up investment and operational costs.

The available active employment measures are not always suitable as the SEs, often they don't have financial capacity to retain the employees for longer periods.

The SE' sector is dependent on donor financing, with few exceptions of some NPOs that have made attempts to adapt themselves for building of a sustainable business operating model.

Public sector support schemes for social enterprises still are missing in Albania. But it is considered as a positive step the creation of the Social Enterprise Fund[2].

The main goal of this state aid scheme from the state budget intents to increase the employment of the individuals from the most disadvantaged and vulnerables groups, which are actually supported by the Social Economic Aid Scheme. The objective of state aid scheme is to support the developement and transformation of the Civil society organisations with non-profit status to obtain the social enterprises status. The pre-condition to receive SE' status and to benefit from the state aid, a CSOs registered in the tax administration has to fulfil, basically, the social and economic criteria.

The state aid schemme with function as grant to be given in the form of subsidy from the state budget, with a total value of ALL 249,760,000, with a duration of 3 (three) years for the period 2019-2021.The grant scheme will cover 70% of the eligible costs, approved by the evaluation commission, but not more than 1,500,000 ALL, if the entity is able to finance the remaining investment. The eligible costs consider to be funding by state aid, are linked with three categories:

i) Investment in machinery and equipment for the realization of production/service;

ii) Qualification and training to increase the professional skills of new employees from the categories of disadvantaged groups, and

iii) cover up to 50% of the minimum wage for new employees from disadvantaged groups for a 6-month period.

There are couple of government financial schemes, grants for SMEs like: Compet-

1 Social Economy in Eastern Neighbourhood and in the Western Balkans Country report – Albania -*January 2018*

2 Gov.decree no.85,,date 25.06.2018, authorization of the state aid for establishing the SE Fund.

itiveness fund, Creative economy fund, Start-up fund and Innovation fund. Such government funds are managed by Albanian Investment Development Agency (AIDA), but so far, they are not eligible for SEs, and should become for SEs as well. It is necessary to make changes on the existing government decrees for the above-mentioned funds, by Ministry of Finance and Economy and on the existing bylaws implemented by AIDA, as well.

Social enterprises **need technical assistance and capacity building** to better understand available financing options and to be able to manage various forms of loans or investment. Capacity building is vital for developing the business and operational plans, including a detailed financial analysis and marketing plans, as well as testing and refining the business model.

Capacity building can be a form of risk mitigation for investors that want to see their capital repaid.

On the supply side, except for the Yunus Social Business Balkans-Albania, there is no other **financial support for SEs**.

- Microfinance institutions and mainstream financial institutions have not yet identified social enterprises as potential clients,
- Innovative long-term approaches based on public-private partnerships are missing in order to create a sustainable support infrastructure for different stages of social enterprise development.
- Commercial lending from banks does not exist.
- The private sector plays limited role in financially supporting the SE sector.
- Other funding sources such as angel funding does not exist or have shown little interest in the sector

Because of the lack of availability of financial resources, which have shrunk the interest of social entrepreneurship, and the lack of co-ordination and monitoring mechanism and SE networking, it brings the necessity that the **legislative framework** should provide the clear structure and transparency , regarding the coordinating institutional mechanism to the SE sector. Existing restrictions on the non-profit character of the SEs could be considered as an obstacle for the future growth in the SE sector as these restrictions dis-incentivise even impact investment. Until work is completed on a comprehensive legislative framework, the SE sector will continue to face difficulties and limited financial opportunities.

The unique example in Albania of a well-established as an SE, is **YAPS** (Youth Albania Professional Services). This is a profitable and growing social enterprise started, its life as a commercial enterprise outside the tradition of civil society. YAPS is a ‘social business’, a business enterprise operating under market rules but driven by social objectives. YAPS is the first social business in Tirana. The company works in the fields of parcel delivery, cleaning and fix-it services. It was founded in 2001 and currently employs 112 people. The employees are orphans, Roma, Egyptians or people coming from a difficult financial background. Before they start to work for the company, they receive training by YAPS. After some start-up financing they are now a commercially run company.

3.1 Short description of the SE Law 65/2016

Some highlights of the SE' Law are:

- The adoption of the SE Law 65/2016 is considered a positive step undertaken by the Albanian government. This law aims to regulate the activities and conditions for functioning of social enterprises, which is explicitly regulated in Albanian legislation.
- The legal form of SE-s is that of a non-for-profit organization, based primarily on the Law No. 8788, dated 7 May 2001, "On non-profit organizations". This is because the legal arrangements of the Albanian legislation on commercial companies and simple companies do not fit with the requirements and the general principles of functioning of the "social enterprise" subject.
- On the other hand, the law on non-profit organizations adequately regulates the criteria and principles of functioning of the "social enterprise", since non-profit making activities are defined as any economic or non-economic activity, with a condition that incomes or assets are used only for the realization of goals for the good with public interest.
- This law recognizes only non-profit organisations that provide goods and/or services in the following fields: social services, employment of marginalized groups, youth employment, health, education, environment, promotion of tourism, culture and heritage, sports activities and promotion of local community development.
- SEs must meet a minimum of economic and social criteria to obtain and maintain the status of a social enterprise A social enterprise has to have at least three full-time employees and at least 30% of its workforce from marginalized groups. The direct or indirect distribution of profit is prohibited. Furthermore, it requires collective participation in decision making by the employees and other stakeholders.
- The status of social enterprise is granted by the Minister of Health and Social Protection and the law is very restrictive when it comes to using the title "social enterprise." If a legal entity identifies itself as social enterprise without receiving the formal status from the ministry, they are subject of a fine of EUR 220-290.
- According to this law, the core features of a social enterprise are: the development of a continuous activity for the production and sale of goods and services, the promotion of social objectives, the non-distribution of profit, collective decision-making with the participation of founders, employees and even service recipients of goods, the investment of income generated by economic activity for the continuous expansion of its activity.
- The legal status of SE-s enables their funding from public and private sources. The law provides sources for securing financial means based on: (i) first incomes derived from the sale of goods and service fees, (ii) public

subsidies related to their social and employment, (iii) support missions and (iv) private donations. Also, the law leaves open the possibility of generating income from any other source recognized by the legislation in force.

- The law does not provide a special fiscal regime for social enterprises. They shall be subject to the implementation of fiscal legislation for the category of taxpayers to which they belong, in accordance with the legislation in force.
- Social enterprises can be supported by the state through subsidies. Public subsidies will be closely linked to their missions of social support and employment. The law provides that forms of subsidies for social enterprises are regulated by a decision of the Council of Ministers, by State Aid Authorization. SEs are subject to the implementation of fiscal legislation for NPOs.

3.2 General observations/considerations about the SE's Law 65/2016.

General observations and considerations are listed based on the overall analysis of the Law, the information gathered in the focus group meetings, individual interviews[3] with some other organisations, potential to establish Social enterprises in Albania, etc.

- The Law helps social entrepreneurship, as a vehicle for social and economic integration of disadvantaged people through their employment, rather than empowerment of SEs, for the delivery of various societal relevant goods and services.
- The SE law looks like as an appendix of NPO-s law, as under the law, only NPOs can establish social enterprises; It provides social enterprise status only to non-profit organisations. This kind of legal form leaves out other legal forms such as: social business and cooperatives without official recognition and may exclude them from future public support programmes. This could affect the entrepreneurial spirit of many individuals to be involved in social business.

  At present, the adopted Law on Social Enterprises is limiting, narrowly seen as a social policy instrument, and does not address the larger picture of the sector. Furthermore, it can jeopardize public recognition and growth of the existing social enterprises. Some of the stakeholders interviewed believe that even though the law seeks positively for the employment of marginalized groups, in overall it is restrictive and can hamper the development of any innovative SE sector.

  It would be welcomed if the law takes a broader view and encourage the proliferation of social enterprise in all sectors and give a specific "legal form" model rather than a "status"
- Generally, the law creates the impression that SEs are structures that fulfil the defined economic and social criteria, but it does not specifically divide the economic activity of SE from the normal activity of an NPO. E.g. the law stipulates that since the first day that a SE opens its activity, must declare at least **three employees**, which considered impossible for a social enterprise, even taking into account the modest economic activity of the

3 Social business " Design by Pana" and Yunus Social Business- Albania / YSB etc

initial SE/ NPO; Are these figures calculated only for the economic activity or for the whole activity of the Organisation. Also**, in case of failure**, the assets will be taken by the state or given to another enterprise. If an SE fails in its economic activity it can continue as an NPO, but the Law consider the SE as a sole structure.

- In practise, law enables the SE status, but does not offer any concrete support or fiscal incentives.
- The law provides opportunities for participation in public procurements, but on the other hand, the public procurement law prohibits NGOs participating in the tenders; and in general, the law provides more limitations rather than benefits;

  The public procurement policies [4]do not anticipate contracts for SEs and CSOs, nor include any social and environmental criteria. SEs, are disadvantaged in the tendering processes as those processes do not take into consideration the unique nature of SEs nor they do not consider social benefit when allocating contracts. SEs and CSOs are however reluctant to participate in public procurement processes partly because they frequently are uninformed about such calls and partly because they doubt the impartiality of the process. It doesn't refer to provisions of secured contracts or any preferential treatment in public procurement or any specific tax benefits.
- Public subsidies may also be provided by local government units, but they should be provided in their budgets and should be governed by municipal council decisions.
- VAT treatment mostly for SEs is not fully clear. NPOs are automatically registered for VAT and they have to request exemption from the Tax authority.

3.3 Specific observation and gaps on the SE's Law

- **Article 5 (SE Promotion by the State),** in the point 1 related to the supportive measures are included: *other financial measures*! From legislative point of view, this provision does not provide responsibility who is in charge (institution) to execute them. Even the Order on Manual for Promotion the development of Social enterprises and its Action Plan does not dedicate specific budget for that. (So far, apart from the state budget, the promotion will be done through projects or other donors).
- **Article 6 (The role of local government units),** in the point 2, indeed the basic obstacle is the current public procurement law, which do not provide access to CSO/SEs. It brings the necessity to revise the law and include the principles of social procurement.
- **Article 8 (economic criteria), point 2**, it is clearly mentioned that a SE continuously should operate in the field of producing goods and services. At least 20% of incomes should be generated after the second year of its activity and at least 30% of incomes generated after the third year. In this situation, the law in itself creates a contradiction with the law of NPOs that benefit from the VAT exemption under the point 3 of DCM no. 953, dated 29.12.2014. In the item 3 of this Government Decree, has determined

4 Social Economy in Eastern Neighbourhood and in the Western Balkans, Country report – Albania *January 2018*

that one of the three criteria that an NPO has to fulfil and to obtain the exemption from VAT is: "*Supplies performed by non-profit organizations should not compete with profit commercial sector".* The income generated from the economic activity shall not exceed 20% of the total annual income of the organization. In this case, the law opposes with the law of NGOs that benefit from the VAT exemption under the DCM no. 953, dated 29.12.2014. And further this Government Decree states that the economic activity of NPOs is considered as e *secondary activity*, while for a SE should be as primary activity. **In this case for SEs (NPO), VAT exemption creates problems to gain this benefit.**

- Again, from the **point 2,** it is not clear, the moment when an NPO can obtain the status. As, it is stated that the SE can reach at least 20% of the revenues after the second year of activity, means that it can obtain the status on the year when the revenue is less than 20% of overall revenues, with condition to reach 20% in the second years?

- Another problem stems **from point 2** of this article, when the minimum threshold set by the second or third year (20-30%) are met, but for e.g. at the end of the third year the SE received a large grant (as it earns revenue also from various projects, donations or subsidies), which can decrease the percentage of economic activity under the threshold defined in the Law. It would happen that from the total annual income of SE (NPO), incomes derived from economic activity may be less than the share specified in point 2 of this article. In this situation, it is not clear if the SE in this case could lose the "Status".

- **Article 8, point 3**, it is not clear if the contribution of the volunteers is a requirement of the Law.

- **Article 10 (scope of activity),** apart from article with a government decree nr.16, date 12.01.2018, has been approved the SEs operating in economic activities in different sectors. This brings the necessity to add in this article, a new point 3, as a need for establishing a coordinating institutional mechanism for the support of SEs, because the SE activity is cross sectorial, and not relying only at Ministry of Health and Social Protection.

- **Article 12 (juridical form),** based on the current situation the potential NPOs operating in Albania, to create SE, will leave out other legal forms such as social business, cooperatives without official recognition. During consultation process with focus group, there is scepticism that only with NPOs the SEs could be developed, and both claimed to have other legal forms with a social mission and should benefit from public support programmes.

- **Article 13** (**recognition and refusal of status**), there is a perception that many documents are needed to receive the status. Regarding the status, in case that SE do not receive the confirmation within 30 days, the "**silent as consent principle**" should be applied.

- **Article 14 (loss of status**) in the point 5, in case when the SE losses its status. Again, the law cannot consider the fact that a SE, if it loses the status can continue as NPO. It foresees that after the loss of the status, the created wealth during the status period could be used for public interest or moving to another SE-s! The proposal is: **"Only, in case the wealth is created by public funds, could be used for public interest or moving to another SE".**

- **Article 17 (no delivery of profit),** referring to the point 4, for indirect profit and the remuneration received has a threshold value over 20%. it is not clear in which piece of legislation it is find this such reference.

- **Article 23 (administrative violations and sanctions**), in the point 1 (a) is mentioned that: when SE during the status period breaks the economic criteria (under article 8), is going to have a penalty. In this point of article, should be clarified the case when the SE during the specific year, the generated incomes from economic activity are lower than 20%, because of receiving other sources of financing (subsidies, donor projects) that in overall the percentage goes lower than 20%. And in this case the SE is going to be penalised?

  Also in the point 2 of this article it is mentioned:" the competent body for the punishment of the administrative violation, is the body that has noticed". In this article should be defined who is in charged as a competent body?

- **Article 25 (fiscal regime),** it should clear clarify the fiscal regime. Based on the Tax Procedures, the NPOs are not subject of V.A.T.

- **Article 26 (the support forms),** in the point 3 of this article, related with other support forms, it is not referred to the SE law but to other laws like Tax, state aid, and NPO legislation. This legal provision should be regulated only by addressing to the SE law.

- **Article 27 (participation of procedures of public procurement),** in the point 1 of this article, on the rights of SEs to participate in the public procurement procedures, the e-Procurement Platform does not allow NPO/SE to participate in public procurement.

- **Article 30** (**complementary adjustments),** In fact, this article of law is the essence of the law in itself. It would have been drafted with a clearer legislative technique and would be more complete in its provisions, and to bring it as a full "organic" law for SEs, and not by referring to NPO law, tax law or state aid law.

III. FINDINGS FROM FOCUS GROUPS CONSULTATIONS

65 participants from the regions of Vlora, Fier, Tirana and Shkodra participated in the two rounds of focus groups consultations organised in the cities of Vlora and Tirana. All the participants shown interest and discussed on the issues related to the legal framework and the results of these meetings by issues are concluded:

Information, Awareness and coordination

- Most of the audience do not have knowledge about the SE law and its sub-legal acts, only few of them know or read the law, especially identified in the areas of Vlora;
- NPO's representatives claimed that in the Vlora and Fier region, since the law was adopted in 2016, no any activities were conducted regarding the **information and awareness** on the legal framework of SE-s.
- There is a lack of awareness about the legal framework, mostly related in rural areas;
- There is no information about the existing SE-s that gain the status of "Social Enterprise" in Vlora or Fier.
- There is no a coordinating body/agency/structure to support the network of SEs and all the promotion, regulations;

NPO Capacities to develop SE

- Most of their economic activities is based on volunteer work.
- Some of the NPO that has developed economic activities are faced with the lack of support to find premises, staff, know-how, the facilities for tax on income for rent, even when it was donated by private companies
- The NPO still need orientation and know-how on how to develop an economic activity, although they have some good ideas and even human resources.

Financial issues and Incentives

- The legal framework in itself does not provide any tax incentive or preferential treatment comparing with NPO-s.
- There is a lack of information regarding the Gov. Decree, nr.85, date 25.06.2018, on the State Aid authorization "For the creation of a social enterprise fund".
- NPO-s are facing a lot of difficulties with regards to finding the sources of financing, through the donors and also, the banking system is not supporting the SE start– ups.
- There are a lot of difficulties to compete in the competitive market with commercial companies, when the human resources, as required from the Law are not competitive in skills to be able to produce goods or services considerable competitive for the open market.;

- The SE laws do not correlate with other laws like NPOs, Tax and Local Self-Government law, etc. Thus, the Local Self-Government law does not allow local units (municipalities) to provide funds to SEs. There are few social activities described for local government units in support of SEs, because of the lack of funds;

Legal issues and ambiguities

- The public procurement law does not provide accession of the SEs in public procurement tenders and it is needed to include the concepts on social procurement under the public procurement law;

- The need for the approximation of the SE law with EU legal framework;

- The article 8 of the SE law needs more clarifications, related with economic criteria, when incomes derived from economic activity may be less than the share specified in point 2 of this article. 20% of generated incomes from economic activity, creates ambiguities envisaged by the law, in terms of total annual turnover from the NPO or by SE and the link with SE status;

- The law in itself including by laws needs more improvements and clarifications.

Practical operation of SEs

- The mode of operation of the NPOs, when they are involved in economic activity raised some questions. Thus, for the social economic activities, it was proposed the usage of a secondary NIPT/ identification number of the taxable person, as a separate social economic activity from the primary operation of the NPO.

As the conclusions from the focus groups consultation process in both regions Vlora and Tirana resulted that this law which comprise of 31 articles, at least 11 articles needed substantial improvements, referred to the quoted articles above. The legal form of social enterprises, based on article 12 of the law, inevitably links the legal form of social enterprises with NPOs. Consequently, this is reflected in the way how SEs are established, registered, organized and in their internal management. **This legislative solution is deemed to be restrictive and does not promote the development of SEs and leaving out other legal forms.**

Based on best practices in EU countries, the SE legal forms could be different, even beyond the classical form of an NPO. For example, social enterprises could be:

- Commercial companies owned by employees (in Germany is a widespread this business model and encouraged by the legislation);
- Cooperatives, or like in Albania, agricultural co-operation companies, (Law 38/2012)
- Credit unions (the term social enterprise itself was born by Nobel Prize Muhammad

  Yunus, on microfinance to poor people);
- Enterprises created by local communities (community businesses), widely spread in

  UK and Anglo-Saxon countries;
- Affiliates of charitable organizations that engage in commercial activity to cover their costs;
- Development funds (trusts);
- and Commercial companies as profit organizations, but with clear social objectives.

The most sensitive aspect is that, in many countries it is recognized that both social enterprises and commercial companies are eligible to realize profits, but with certain conditions, generally economic and social criteria are met.

Referring Communication from the European Commission[5]: these conditions are mainly related to the following aspects:

- Social purpose is a common (public) good;
- Profits are reinvested with a goal of achieving the social objectives of enterprise;
- The way of the organization or ownership system reflects their mission, using democratic principles of participation and decision-making;
- Providing goods and services to groups in need; housing, health care, as-

5 Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation, 25 October 2011 COM(2011) 682)

sistance for the elderly or persons with disabilities;

- The purpose of the production of goods or the provision of services has as social objective the social and professional integration of disadvantaged groups.

Also, restrictions regarding the legal form of SEs, which are inevitably linked only to the form of NPOs, avoid additional opportunities for the contribution that could come from other forms of legal entities. Thus, for example, the above-mentioned entities, such as employee associations, cooperatives, credit unions, community companies, affiliates of charitable organizations and trusts, are excluded to obtain the SE status.

As far as traditional businesses are concerned, often they want to contribute in social activities through their managerial practices, combined with social objectives (for example the creation of social enterprises, branches, subsidiaries or enterprises related to the main traditional business). In this way, they can use the existing administrative and human capacities available of their staff, who are capable and skilled in exercising economic activities that generate profits and merging with staff dedicated to disadvantaged people and achieving social objectives.

Generally speaking, businesses do not seek to engage in organizing such legal forms as NPOs, whose organization and structure do not reflect the typical forms of commercial companies.

There is a low level of knowledge and understanding of the SE law, which brings the necessity to organize some seminars and workshops on this field.

There is a need to organize promotional activities, well designed in support of NPOs for better orientation towards sustainable SEs and tailoring specific programmes /projects for the developments of seed ideas of CSOs towards the SE start-up economic activities.

The number of SEs providing social services has grown rapidly across the world, and is reaching sizeable populations. SEs bring dynamism to local economies by developing new products and services, taking risks that traditional public and private service providers are unable to take, and creating local capacity. In light of this, many governments took the opportunity to recognize and support SEs as partners in a shared mission to improve service delivery[6].

International experience demonstrates that decentralization of public services provides a window of opportunity for these new actors (SEs) to enter in the service delivery market with the following benefits:

- Fill access gap to social services,
- Improve quality and equity of services and employment, and
- Increase social cohesion and economic benefits. However, the hybrid nature of SEs may lead them to be more severely impacted by business environment constraints, and may subject them to difficulties not faced by mainstream enterprise[7].

These include:

- Limited access to appropriate capital. While this is also true for SMEs, early-stage capital for SEs is even scarcer for SEs. SEs often struggle to secure available funding because they do not meet investor requirements due to the hybrid nature of their business models.
- Legal and regulatory constraints. Lack of clear legal status for SEs can limit their ability to secure both government contracts and investment capital. Even when there is a legal framework and legal form for SEs, many continue to operate as company, NGO, association, cooperative, etc.
- Capacity constraints. Many SEs face capacity constraints due to the dual nature of their business model, limited financial resources and lack of qualified human resources (including management).

Moreover, insufficient collaboration and engagement between governments and SEs can lead to the development of a growing, yet fragmented sector that does not necessarily align with government priorities or focus on areas where there is greatest need. Governments can play a critical and continued role in market-shaping, supporting, and in some cases, a regulation on SEs.

In this situation, in case of Albania, adopting a coherent legal framework to support SEs is essential to maximise their social and economic impact. The development of policies in support of SEs, will be more effective if they are built through horizontal co-operation (working across government institutions) and vertical co-ordination (working across levels of local government) and in co-operation

6 Creating competitive markets for service delivery, policy options and country experiences by Natalia Agapitova, senior economist, world bank group April 27, 2017Agapitova
7 Social enterprise: constraints and opportunities, evidence from Vietnam and Kenya
Author; William Smith and Emily Darko, March 2014

with many stakeholders. It is not enough to talk about the importance of SEs and for their impact in socio economic development, but need to have some concrete policy actions.

Beyond the improvements on the existing SE legal framework, it is needed to tailor a strategy with concrete measures that should bring concrete and efficient results in support of SE development. From the consultation process and as a lesson learned from it, is that in Albania still there are some bottlenecks like:

- lack of overall understanding of social enterprise;
- overall lack of public recognition of social enterprises, they are marginalised and it seems that they are in low-priority position in the political agenda;
- small size of existing social enterprise sector;
- limited capacity of social enterprises to apply and use financial resources;
- lack of human managerial capacities for sustainable development of the SE sector;
- majority of existing SEs may struggle to meet socio –economic criteria of the law;
- lack of SE register, creates gaps in providing insights on the sector's size and structure;
- lack of availability of financial resources has shrunk the interest of social entrepreneurship;
- lack of co-ordination and monitoring mechanism and SE networking.

Advocacy efforts should focus on creating conditions where in the development of social enterprise will be seen as one of priorities of socio-economic development.

In this situation, it is important for SE sector to bring it up at the national policy agenda.

It is necessary to design a strategy: "**On the development of Social Entrepreneurship**" which in itself should clearly define social enterprises as "*businesses based on the principles of social, environmental and economic sustainability, where profit/surplus is, wholly or in great part, reinvested for community benefit"* [8].

SEs should create a network to clearly articulate their needs and interests, as well as identify the types of institutional support, financial mechanisms or legislation they need. By proposing and organizing a policy framework, social enterprises would have more influence when advocating institutional changes.

The main objective of the strategy could be based on creating an enabling environment and focusing on four priority policies areas for SEs:

1. Developing and improving the legislative and institutional framework;
2. Establishing an adequate and supportive financial framework;
3. Promoting the importance and role of social entrepreneurship through formal and informal education;
4. Increasing the visibility of social enterprises all over the country.

7. 1 Legislative and regulatory measures

The regulatory measures involve:

- conducting an in-depth analysis of the needs of existing social enterprises and the current legal framework, to revise and harmonise legislation with EU directives,
- introduce benefits and incentives for social enterprises;
- providing unused public spaces and buildings for use by social enterprises;
- developing partnerships between public bodies to support social entrepreneurship;
- developing support for qualitative and quantitative research, and social-impact measurement methodology.
- Standards and certifications allow recognition of SEs that can receive benefits, such as priority in public procurement, tax reduction, social insurance premium and financial assistance.

8 Strategy for the Development of Social Entrepreneurship in the Republic of Croatia for the period 2015-2020"

- Tax incentives for SEs allow to lower the cost of doing business for SEs and make their models more sustainable. It also allows the SEs to offer more affordable services to their customers. Sometimes tax incentives are associated with a particular type of SEs: sectoral (e.g. preventive medical services), by organization types (e.g. non-profits) or age (e.g. startups under a certain threshold of revenue).

These measures tend to produce evidence-based findings on the overall impact of social enterprises and additionally to foster a supportive framework for **public-private partnerships.** Creating databases, statistical reports, and good practice examples and other knowledge products related to social enterprises in Albania.

Enabling Demand for SE Goods and Services

Reaching and serving marginalized populations can be challenging, and the barriers at entry into new markets can often be higher. Government can foster the demand for SE services through:

- **Social procurement**. Public services contracts that take into account the social and

  environmental well-being in connection with the value for money. The objective is to incentivize public sector collaboration with SEs and work jointly to maximize social and financial return on investment.

- **Specific measures include**: preferential treatment of SEs when bidding for public service contracts (e.g. automatic shortlisting), incorporate social considerations as part of the public contracts (e.g. 25% of public service contracts incorporate social considerations); revision of public procurement criteria to incorporate social externalities that the enterprises bring.

Social procurement is gaining interest from different institutions like in health, education, etc.~~,~~ because it provides an opportunity to generate greater value for through the procurement process and:

<u>For government</u>, the added value is created through the delivery of social benefits beyond those conferred by the products and services being purchased, allowing governments to get better deal for taxpayers and public-service users and finding solutions. Moreover, government can play a catalytic role by using their financial power to create new markets that benefit both the economy and society.

<u>For social enterprises</u>, this new type of procurement creates a level playing field to bid for contracts and scale their business models. It also helps to grow and attract investments thanks to government collaboration and longer term government contracts.

<u>For society</u>, social procurement aligns with the increasing focus on a more sophisticated and multi stakeholder understanding of the solutions available to government to address demanding social problems. It also aligns with an increasing demand from consumers and taxpayers for socially responsible products and service delivery chains.

7.2. Institutional support measure and networking platforms for social enterprises[9]

National laws and regulations may introduce institutional mechanisms, such as:

- **advisory councils**,
- support agencies
- institutional unit and making operational the official register of social enterprises

In addition, some countries have national networking platforms that allow social enterprises to advocate for their interests more effectively and facilitate the implementation of national policy measures on social entrepreneurship.

> Box 1: Example
>
> Laws in France and Spain established councils for the promotion of social economy that are directly linked to the government and other local and regional government representatives. The High Council of the Social and Solidary Economy in France is a special body placed before the Prime Minister and chaired by the Minister of Social Economy. The Council is consulted on legislative plans related to social economy and contributes to the development of the national strategies of the development of social and solidary economy.
>
> The Council is composed of diverse representatives, such as for example representatives delegated by the National Assembly, Senate, Economic, Social and Solidary Council, representatives of public services, but also employees of social enterprises.
>
> In Spain, the Council for the Promotion of Social Economy is an advisory and consultative body for activities related to social economy. It is integrated, through the Ministry of Labor and Immigration, within the Central Government. The Council acts as a body for collaboration, coordination and dialogue between the social economy actors and the Central Government.
>
> In addition, some country laws introduced special bodies to facilitate the establishment and operation of the social enterprises. For example, in Spain there is a network of the "Points of Access and Start of Procedures" that helps with the administrative requirements for creation of new companies. In addition, the points provide consultancy services to disadvantaged/marginalized people, including young people and women, to set up a social enterprise.

7.3 Financial framework measures

Access to finance, through grant schemes (linked to EU and public funds) to stimulate employment of vulnerable groups, as well as innovative social services and products, a guarantee mechanism/fund to facilitate access to banking system for loans, innovative instruments tailored to social enterprises, and other financial incentives to foster the employment of vulnerable groups, as well as social innovation, community social services and solidarity exchange.

Interventions in the financial, regulatory and capacity development area of the ecosystem are the most common. Financial mechanisms to stimulate supply of SE solutions to service delivery include:

9 Comparative Analysis of the Regulatory Framework for Social Enterprises/European Center for Not-for-Profit Law August 2015

- Concessional Loans (Social Finance) help pursue sustainable financial management of social services through recoverable investments.
- Grants, returnable grants and matching grants can support SEs, especially at early stages of development.
- Guarantee Funds facilitate the financing of SEs and stimulate sound credit transaction by extending credit guarantees (often backed by the government) for the liabilities of promising SEs, which lack tangible collateral.

7.4 Measures pertaining to education

These measures should be focused on promoting social entrepreneurship at all levels of education, by supporting (both financially and non-financially) educational programmes and lifelong learning projects, and producing informative publications promoting social entrepreneurship; replicating innovative educational programmes; and encouraging further education in social entrepreneurship for teachers, adults, public servants and social entrepreneurs.

Educational activities, through both formal and informal educational programmes at different levels of education, as well as trainings, knowledge and skill transfer, and research activities can be supportive measures.

7.5 Promoting a culture of social entrepreneurship

Positive attitudes towards can be a preliminary step towards social enterprise creation. One of the ways to be achieved, among others, is to attract young talents into the sector. A good policy example of this approach is the French Jeun'ESS9 initiative[10] that was launched in 2011 as a public-private partnership between a number of ministries, enterprises and foundations from the social economy sector. It promotes the social economy among young people through three channels:

- firstly, through the education system;
- secondly, through initiatives for young people in the social economy; and
- thirdly, through integration of young people in the enterprises of the social economy.

SEs require ***business support*** and to benefit from ***integrated support strategies and structures***. A "braided" system of support, which includes both generic business support and specialist social enterprises components is an interesting model. Hubs and incubators are important tools that are developing and a good example is the NESsT[11] incubators, operating in 10 countries (http://www.nesst.org).

Capacity development can also help to build the pipeline of new SEs and enhance the capacity of SEs already operation on service delivery market. Extension services can help to build a pipeline of start-up social ventures into the social investment market (e.g. training and skills development programs for SEs, business development services, SE incubators).

10 Author: Antonella Noya OECD senior policy analyst and manager of the OECD /leed forum on social innovations

11 NESsT/ Nonprofit Enterprise and Self-Sustainability Team. NESsT is a part of a growing, global social enterprise movement

- Strengthen SE skills to bid for public service contracts. These can include tools and techniques (understanding of public procurement processes, proposal writing, how to communicate with public servants) to win and deliver public service contracts;

- Create incentives and platforms for SEs to coordinate and collaborate and harnessing

  community, stakeholder and volunteer involvement;

- Support intermediary organizations to provide capacity building to SEs. In addition to specific instruments, strong coordination and institutional arrangements are often needed to implement the policies at national and sub national levels.

7.6 Measure to promote Social entrepreneurship

In contexts, where SEs are relatively new to the service delivery market, government endorsement of SEs can stimulate demand for SEs solutions from the beneficiaries. It can also create more understanding about the advantages of working with SEs among public servants. Additionally, government campaigns for new service areas can increase awareness about the availability and use of new social services and pave way for SE activity (e.g. counseling services for unemployed).

It is also important to raise the visibility of social enterprises, by informing the media and public of their importance; producing promotional materials and highlighting examples of good practice; fostering joint promotion of social enterprises and their products in the market; and developing social-enterprise market labels. ***Access to the market***, is important tool of increasing visibility, through specific labels and product declarations, such as the Eco-label and the Eco-Management and Audit Scheme.

The following steps might be helpful to identify the scope of support to build supply and demand of SEs that will support the implementation of the law.

- Workshop to discuss various policy options with international experts and prioritize the most promising instruments.

- Map the SE sector in Albania to understand the demand and supply for service provision, and the current state of the SE sector including the level of activity, capacity of SEs, sectoral attribution, etc.

- The mapping could be further deepened though the ecosystem analysis that will take into consideration the enabling environment for social enterprises in Albania (policy and regulations, financing solutions, human capital and culture, information and networks).

- Design the program and conduct pilots in 2-3 municipalities to test the validity of policy approaches, which will be important in the context of relative lack of evidence about impact of SE support.

- Activities in each area needs to be converted in a concrete action plan, defined indicators for measuring implementation, as well as specific time frames and dedicated financial resources.

- The document in itself could have also monitoring and evaluation, and establishing **SE Advisory Council,** monitoring meetings and a mid-term evaluation leading to a possible revision of the proposed policy measures.

- Based on the existing legal framework for SEs, there is a need to make a general assessment of the impact of the SE law, and sub legal acts, evidencing the real number of CSOs that have received SE status, or are potential to receive the status, and for the difficulties that SEs are facing in the implementation phase of the law;

- The law needs to undergo revisions in line with the above-mentioned concerns and gaps on some articles of the SE law, to allow and remove restrictions on legal form and including certain types of companies and cooperatives to enable them to obtain social enterprise status.

- One of the key lessons learned from focus group meeting is that SE legal framework is not a clearly defined concept. Therefore, it is recommended a clear and objective definition can be agreed with a revision of the SE law. Poor regulation is worse than no regulation. Any potential benefits or preferences that may arise from legal recognition as a social enterprise could be disputed and abused, if eligibility criteria are not clear and transparent.

- Policy makers need to implement relevant EU and regional experience and best practice on SE sector for the implementation of social entrepreneurship principles based on EU's Social Business Initiative (SBI) as well as through continuous technical assistance;

- Administrative burden and controls have to be balanced with tax incentives and new public funding schemes that need to be introduced;

- Public procurement legislation should be revised to introduce reserved contracts and social/environmental criteria to facilitate SEs' access to market;

- Existing SME financial instruments to be made available to SE as well. Beyond additional grant funding, it is necessary to put in place new financial instruments such as loans or equity funding and to be linked with improvements on knowledge on financial management skills;

- Local governments (municipalities) sometimes assist social enterprises through public support to their organisation or validation of their products, helping the enterprises to gain trust of local communities. Financial support to a social enterprise venture which enabled it to succeed: state support for investment in different service or production sector;

- At these stages of development of SEs, the government should promote and increase public grants, to encourage philanthropic support or seed funding;

- The government should establish a **cross sector coordination body** (SE Advisory body) in support of development of the SEs and to support the expansion of SE networking;

- Strengthen cooperation between Ministry of Health and Social Protection with different stakeholders to encourage and support implementation of the social enterprise strategy and in this framework to recognize social enterprises as part of the SME spectrum and integrate suitable policy measures within the SME development strategies. The proposed policy approaches in support of SE development to become integral part of the SME strategy.

- **Establish a highly participatory procedure** in the process of developing and implementing the Strategy: the working group, and later the advisory council, including multi-sector stakeholders; they should also conduct public consultation to ensure the final policy document's legitimacy. Multi-stakeholder co-operation under SE advisory council may ensure transparency, inclusiveness and a long-term commitment, based on a sense of "ownership".

- **Closely connect the strategy with EU documents and policies**: such an approach will

  ensure coherence with broader national strategic priorities, as well as within the European Union; it may also open doors to EU structural funds and facilitate access to financial resources, possibly boosting the sector's size and capacities.

Annex 1: Methodology on organisation the focus group meetings

The main theme of the focus group meetings was: **The legal environment of the SE' sector, diagnosis and the main challenges"**

1.1 Objectives of the roundtables/consultations:

a. To gather direct perceptions and experiences about the legal environment of SE and the reality of NGO-s facing when trying to establish an SE in the selected locations (Vlora and Tirana), complying with all the requirements imposed by the law or not.

b. To assess the need of SE-s in Albania and the institutional support. For that purpose, a set of issues actions has been discussed among the participants in order to get their impressions regarding how easy or difficult they are operating.

c. Highlight main obstacles for establishing SE such as funding sources, legislations, and other modalities for NGOs to work for this sector.

1.2 The methodological approach used for the consultation process with focus Group

Participants:

NPO/SEs from Vlora and from Tirana participants.[12], representatives from NGOs, stakeholders, local & central government representatives, financial institutions, SE ecosystem, actors and start- ups, operating in the different fields of the SE sector. 65 representatives of non-profit organisations participated in the Consultation sessions. 26 **Non-profit organizations/NPO** were present in the consultation process **in Vlora, held on October 25th 2018 and 39 Non-profit organizations/NPO** participated in the consultations held in f**ocus group in Tirana, on December 13, 2018**

Duration and schedule:

The duration of the rounDtable took of **3 hours**, including the introduction and presentation of the activity, and the discussion among participants.

<u>**Topic 1**</u>**: Challenges of SE regarding legal environment and the barriers imposed by the legal**

framework

The purpose of this part of the discussion is to get as much information as possible from participants on legal environment of SE-s, challenges, by laws on SEs and existing barriers on establishing new ones in Albania. **The aim** was trying to validate or reject the following ideas and to get examples from the participants and following the question: **How does the legal environment shape the way for NGOs that would do to establish SE and how does it influence their business decisions and their attitude?** *And following with issues addressed to participants:*

12 Annex of the list of participants from Vlora and Tirana

- How familiar are you with the by-laws (DCMs and guidelines) of the SE law in question, do you think that with these provisions the legal framework is complete and facilitates their creation and development?
- The legal form, economic and social criteria are considered as easy criteria for obtaining the status of SEs?
- Regardless of the law, if on the market exists other legal forms of SEs?
- If the existing fiscal legal framework affects the development of SEs?
- How much funds have you received from local and central government dedicated to social services according to public procurement procedures?
- Since the adoption of Law 65/2016, how many NGOs have received the status of SE?
- Law enforcement regarding SE and the role of institutions at local and central level?
- What kind of legal improvements (where and what) are needed for their support in creation and development?

Topic 2: Problems encountered in the creation and sustainability of SEs

The purpose of this part of the discussion is to get as much as information possible on how easy / difficult it is to establish a SE, what is offered so far as financial support by the government, the budget of SEs, and how much derives from economic activity. To get feedback from participants and learning about examples that are facing currently. Issues addressed to participants:

- How easy / difficult is to create or develop an SE?
- Is your organization ready and capable to become social entrepreneur?
- Do you have appropriate expertise for the sector you represent, or difficulties to provide it?
- Is it easy / difficult with or without subsidies to compete in the market?
- What is the size of the SE, the employed number of disadvantaged persons in relation to other employees?
- Based on the SE's budget how much incomes as a percentage are coming from economic activity against other sources?
- If it is any concrete incentive for enterprises employing individuals from disadvantaged groups?

Topic 3: Financial support for SE-s

The purpose of this part of the discussion is to get the opinion of the participants regarding the following issues:

- What kind of financial support does the market provide to SEs?

- Products and services provided by the banking and financial market for SEs, financial instruments (grants, loans, equity), value, technical assistance etc?
- Legal barriers to SEs when it comes to financing?
- What can be improved in terms of the financial legal framework in order to increase access to finance?
- What can do the government, local government and NGOs for SE start-ups?
- If there are financing projects or programs in support of SEs?

Topic 4: Further steps & actions to follow

- What should be done better for awareness and dissemination of information about SEs' full legal package?
- If the SE law would be upgraded, the legal form restrictions and other concrete proposals in the articles of law?
- Proposals for tax incentives, subsidies, changes in public procurement law, and other forms of SE support by the government and the local government?
- SEs how they could benefit from financial instruments offered to SMEs, from lending, public funds, banking system etc.?
- If it is needed to establish any institutional coordination mechanism to support the development and networking of social enterprises?
- Other measures?

Annex 2: The list of participants in Vlora

Nr	Name Surname	Institution
1.	Velina Hoxhaj	Center for Development and Promotion
2.	Pjerin Dema	Development Regional Center
3.	Klarentina Osmenaj	Green 2000
4.	Liljana Breshani	Protect Me
5.	Ylli Aliaj	SHKMGV - Vlora Branch
6.	Violeta Marko	BPA2
7.	Eno Koleka	DRSHSSH
8.	Pajtim Shpata	Blue Expedite
9.	Fatos Koçi	Voice of Roma
10.	Afije Shanaj	Shgm
11.	Nasip Xhelilaj	Amantia Foundation
12.	Dritan Doda	Amantia Foundation
13.	Alketa Dervishi	Youth Center
14.	Ani Binaj	Albanian Parliament

15.	Alma Binaj	The Prime minister representative office
16.	Ina Islamaj	SHSSH
17.	Ylldise Brahimi	Vlora RDA
18.	Ariel Habazaj	SED Albania
19.	Edlira Kapllanaj	Albania Association
20.	Xhensila Berdellima	"Ismail Qemali" University
21.	Ana Sheraj	" Ismail Qemali" University
22.	Romina Likaj	" Ismail Qemali" University
23.	Marlind Rodi	Local authority
24.	Gerion Treska	YSB
25.	Ervista Bejtaj	SHKMGV –Vlora Branch
26.	Alba Bejtaj	Green Vision

Annex 3: The list of participants in Tirana

Nr.	Name Surname	Institution
1.	Albana Hasmeta	ANRD
2.	Edmond Sheshi	Net RDA
3.	Vasjan Broka	Smart ED
4.	Gerion Treska	YSB
5.	Enriko Hajdaraj	Business Consulting
6.	Fize Korvini	SHKIZH
7.	Melisa Zenelaj	SHKIZH
8.	Silvia Dervishi	Beyond resources
9.	Arber Hetollari	Beyond resources
10.	Vladimir Thono	National Council C.S
11.	Viola Thoma	AWP
12.	Stela Toslla	Handcraft
13.	Roberto D'Nato	ENGIR
14.	Oltion Hyso	Expert of CCP
15.	Kejsi Lushnjari	Tirana Municipality
16.	Fabiosela Cekaj	Tirana Municipality
17.	Jonida Deviodhi	Tirana Municipality
18.	Sotiraq Shore	Tirana Municipality
19.	Marsela Aliaj	Tirana Municipality
20.	Pranvera Marku	Hope for Future
21.	Ardita Shehu	SHKBSH
22.	Meri Koca	Union of Albanian Manufacturers
23.	Nertila Mecani	Act for Society
24.	Kevin Rapa	Start Up
25.	Blerina Doracaj	ACER

26.	Nevila Xhindi	Mediterranean University
27.	Mimoza Hajdarmataj	WPS Albania
28.	Sonila Necaj	YSB
29.	Etleva Shehu	Observata
30.	Meireme Zyberi	Handcraft
31.	Feoris Patroni	ENGIM
32.	Elsa Gega	WPS Albania
33.	Bledar Meta	NGO
34.	Marsida Thartori	Tirana Municipality
35.	Alida Kondi	CCP
36.	Arjan Ymeri	Oficina
37.	Alda Dhamo	Idea Project
38.	Ilir Rrembeci	RDA
39.	Faola Hodaj	RDA

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