



INT/906
Strengthening non-profit social enterprises

OPINION

European Economic and Social Committee

Strengthening non-profit social enterprises as an essential pillar of a socially equitable Europe
(exploratory opinion)

Rapporteur: **Krzysztof Balon**

Referral	German Presidency, 18/02/2020
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	04/09/2020
Adopted at plenary	18/09/2020
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Outcome of vote (for/against/abstentions)	211/3/5

1. **Conclusions and recommendations**

- 1.1 Given the role of non-profit social enterprises in realising the social dimension of the European Union (EU) and in implementing the European Pillar of Social Rights (EPSR), including and especially in crisis situations, the European Economic and Social Committee (EESC) calls for the strengthening of and targeted support for social enterprises and other social economy organisations, particularly those that reinvest any profits fully in tasks in the public interest or for non-profit purposes as set out in their statutes. In addition, their visibility should be boosted across Europe.
- 1.2 The legal systems of many Member States already include rules that establish a non-profit status applying to social enterprises. The EESC would therefore encourage all other Member States to enshrine such rules in their national law.
- 1.3 Furthermore, a Protocol on diversity in types of enterprise should be annexed to the TFEU, along the same lines as Protocol No 26 on services of general interest (SGIs), including a separate definition of non-profit social enterprises. The EESC also calls on the Member States to include this revision in the upcoming reform agenda.
- 1.4 Non-profit social enterprises and similar non-profit organisations should be strengthened by granting them particular consideration in public procurement law over public or commercial suppliers in the provision of social services of general interest. Public tenders should above all take account of the specific areas of activity of non-profit social enterprises in the provision of social services in areas such as health and care.
- 1.5 The EESC also advocates the possibility of funding exclusively for non-profit organisations, without infringing EU state aid rules.
- 1.6 The current threshold of the SGEI de minimis Regulation of EUR 500 000 over three tax years should be significantly increased, to around EUR 800 000 per tax year.
- 1.7 The EESC believes that a general exemption should be introduced for the use of European funds with national co-financing. As with purely EU-managed programmes, State aid rules should not be applied in the case of national co-financing.
- 1.8 Support for non-profit social economy organisations should also be addressed in the Social Scoreboard linked to the European Semester.
- 1.9 Non-profit social economy enterprises are not only a sustainable business model; they also create and maintain quality jobs, promote equal opportunities, including for people with disabilities and other socially disadvantaged groups, ensure a high level of social participation and equity, and promote the digital and environmental transitions. The social economy is thus a strategic ally in strengthening the social dimension of Europe. Social economy activities should therefore be specifically supported by European funds and in particular become a separate, specific objective for ESF+ support.

1.10 The EESC is prepared to play an inspiring and coordinating role in the discussion on the role of non-profit social enterprises in the implementation of the post-COVID-19 recovery fund and in the context of the 2021 Social Economy Action Plan and the associated necessary reshaping of the legal and fiscal framework.

2. Introduction

2.1 On 18.2.2020, in preparation for the German Presidency of the Council of the EU in the second half of 2020, the Government of the Federal Republic of Germany asked the EESC for an opinion on "Strengthening non-profit social enterprises as an essential pillar of a social Europe". Here the German Government stressed the importance of the common good as a binding European value, including in economic activity, and the significant innovation capacity of social economy enterprises that are obligated to serve the common good with particular focus on the provision of social services.

2.2 The social economy is made up of a variety of enterprises and organisations, including cooperatives, mutual societies, associations, foundations and social enterprises, alongside other legal forms specific to each Member State, which are united by shared values and principles¹. The social economy in Europe has also proven to be extremely important and essential to systems in times of economic and social crises. It helps create, strengthen and sustain social cohesion. In particular, the model of non-profit provision of social services, with social objectives as an absolute priority, has proven to be highly flexible, close to the public, innovative, sustainable, democratically legitimate and efficient. Non-profit social enterprises also play a key role in creating equal opportunities for all, regardless of age, gender or origin. They address the social needs of society that are not already covered by public social services. In a previous opinion, the EESC already pointed out that the work of social economy enterprises should serve the public interest and not seek to maximise profits. In this way, the social economy creates quality jobs in socially responsible businesses² in, for example, healthcare, childcare and other forms of care.

2.3 Given the diversity of the social economy in Europe, there is no legally binding EU-wide definition of "social enterprise". The EESC describes social enterprises as having specific features such as:

- having primarily social objectives as opposed to profit objectives, producing social benefits that serve the general public or its members;
- being predominantly not-for-profit, with surplus profits principally being reinvested and not distributed to private shareholders or owners;
- having a variety of legal forms and business models: e.g. cooperatives, mutuals, voluntary associations, foundations, profit or non-profit companies; often combining different legal forms and sometimes changing form according to their needs;

¹ [OJ C 282, 20.8.2019, p. 1.](#)

² [OJ C 240, 16.7.2019, p 20.](#)

- being economic operators that produce goods and services (often of general interest), often with a strong element of social innovation;
- operating as independent entities, with a strong element of participation and co-decision (staff, users, members), and governance and democracy (either representative or open);
- often stemming from, or being associated with, a civil society organisation³.

2.4 There is no legally binding EU-wide definition of charitable status either. Rather, as the EESC pointed out in a previous opinion, EU law takes little account of the intrinsic nature of the social economy, in particular its different approach to profits. Article 54 of the Treaty on the Functioning of the European Union (TFEU) has so far been interpreted as drawing a distinction between financially altruistic (i.e. not-for-profit) entities and companies whose operations are rewarded by financial gain. The latter category thus comprises all companies, without distinction and regardless of their legal form, which make a profit, whether or not that profit is distributed⁴. However, the legal systems of many Member States include rules that establish a non-profit status applying to social enterprises. A distinction should therefore be made between three types of economically active operators: purely profit-oriented enterprises, limited-profit social economy enterprises as previously discussed in EESC opinion INT/871⁵, and purely non-profit social enterprises. The latter are the target group of this opinion.

2.5 In view of these national rules, social enterprises may be considered to be non-profit social enterprises if they have the features listed in point 2.4 and, in addition, are obliged under national legislation to reinvest any profits fully in tasks in the public interest or for non-profit purposes as set out in their statutes.

2.6 In a previous opinion, the EESC already complained that Court of Justice of the European Union (CJEU) case law and European Commission decision-making practice demonstrate that there is insufficient interest in companies which are referred to as being "non-profit" in their respective national legislations or which, irrespective of such a designation, meet the above-mentioned criteria. The EESC therefore believes that a Protocol on diversity in types of enterprise should be annexed to the TFEU, along the same lines as Protocol No 26 on services of general interest (SGIs), including separate definitions of non-profit and limited-profit social enterprises, and calls on the Member States to include this revision on the upcoming reform agenda⁶.

3. **Non-profit social enterprises as providers of social and health services of general interest in the implementation of the European Pillar of Social Rights (EPSR)**

3.1 The EESC already stressed in a previous opinion that the EPSR cannot be effectively implemented without the contribution of social economy enterprises and that many of these by their very nature reflect the objectives of the Pillar, such as promoting secure and adaptable

³ [OJ C 24, 28.1.2012, p. 1.](#)

⁴ [OJ C 282, 20.8.2019, p. 1.](#)

⁵ Ibid.

⁶ [OJ C 282, 20.8.2019, p. 1.](#)

employment, social dialogue and involvement of workers, and a healthy, safe and well-adapted work environment, or offering innovative responses to certain basic social needs⁷. The visibility of these non-profit organisations should be boosted across Europe. It is necessary to promote innovation and to ensure easier access to funding so that they can continue to operate both in their daily work and in crisis situations. Best practices should be exchanged between the Member States.

- 3.2 Depending on the design of the social model in the individual EU Member States, it is the responsibility of the nation state to ensure that their citizens can benefit from comprehensive and effective social and health services of general interest that are accessible, affordable and of high quality. The EESC has already pointed out that services of general interest are an essential part of the system of social justice and that people have a right of access to high-quality "essential services", including social and health services, as described by the EPSR⁸.
- 3.3 In some countries, these services are provided primarily by non-profit initiatives, institutions and services, and then by the government, in such a way that the state ensures the framework conditions for the provision of services, users choose the service providers and social security bodies fund these services. Service provision must be based on the interests of the beneficiaries and involve them by ensuring some participation on their part. This both user-oriented and competitive way of providing services by non-profit social enterprises could serve as a basis for discussions on a pan-European model and be strengthened, for example, in relation to procurement procedures that deprive users of their freedom of choice.
- 3.4 The EESC advocates the possibility of targeted funding or funding exclusively for non-profit organisations without there being a risk of breaching EU State aid rules. This is more important than ever in crisis situations, since non-profit organisations do not have reserves to fall back on. However, it is particularly in crisis situations that social and health services are essential and it is necessary to ensure that the quality thereof is maintained at high levels.
- 3.5 To this end, and more generally to strengthen the non-profit social economy in the provision of social and health services of general interest, fundamental changes to the European legal framework are needed, in particular by:
 - 3.5.1 introducing the primacy of non-profit over public or commercial suppliers in public procurement law;
 - 3.5.2 significantly increasing the threshold, from the current EUR 500 000 over three tax years to approximately EUR 800 000 per tax year, in the SGEI de minimis Regulation; such an increase helps improve the applicability and thus the effectiveness of the SGEI de minimis Regulation, while at the same time the risk of actual cross-border distortions in competition remains limited;
 - 3.5.3 making exemptions more widespread when European funds with national co-financing are used. As with purely EU-managed programmes, State aid rules should not be applied in the case of

⁷ [OJ C 282, 20.8.2019, p. 1.](#)

⁸ [OJ C 282, 20.8.2019, p. 7.](#)

national co-financing. Member States' authorities should in certain cases be able to determine, in a legally binding manner – and with the protection of legitimate expectations of recipients of the State aid – that these cases are such that State aid rules do not apply. The Commission or the ECJ should have the power to monitor abuse here.

4. **Fiscal framework for the activities of non-profit social enterprises**

4.1 The EESC has repeatedly called on the European Commission to establish, in cooperation with the Member States, an enabling and sustainable ecosystem for the social economy⁹. Improving the financial framework of the activities of non-profit social enterprises requires, inter alia, sufficient co-financing rates, administrative simplification such as a needs-based indicator, and the use and recognition of flat rates.

4.2 For non-profit social enterprises that provide social and health services, support from European funds, including the European Social Fund Plus (ESF+), is of particular importance:

4.2.1 In its opinion on the draft ESF+ regulation¹⁰, the Committee has already called for support for social economy activities to become a separate, specific objective of the ESF+, given the growing importance of the social economy for the social dimension of the EU¹¹.

4.2.2 The EESC has also drawn attention to the often insufficient financial resources of non-profit social enterprises and, in this connection, has already called for equal treatment of contributions in kind and financial contributions in the provision of own resources for activities supported by the ESF+¹².

4.2.3 Non-profit social enterprises include smaller, local organisations, such as ones which started out as self-help groups. The EESC has previously called for a suitable share of ESF+ funding to be made available to such organisations¹³. It should also be possible to provide targeted support for volunteering in social and health service provision.

5. **Social Economy Action Plan: Non-profit social enterprises as key players in the post-coronavirus recovery fund**

5.1 The coronavirus crisis has demonstrated that national measures are only effective through coordinated action. As the EESC's position paper (ECO/515) on the Regulation concerning the Coronavirus Response Investment Initiative has already pointed out, alongside support for public healthcare systems and SMEs, non-profit social enterprises and civil society organisations should not be overlooked and should also be given greater support. Non-profit social enterprises and civil society organisations have very limited reserves that they can use in

⁹ [OJ C 13, 15.1.2016, p. 152](#); [OJ C 62, 15.2.2019, p. 165](#).

¹⁰ COM(2018) 382 final

¹¹ [OJ C 62, 15.2.2019, p. 165](#).

¹² [OJ C 62, 15.2.2019, p. 165](#).

¹³ [OJ C 62, 15.2.2019, p. 165](#).

crisis situations. However, it is precisely during a crisis that they are essential, for (health) systems to be able to continue to function. The EESC thus calls for these roles and organisations to receive more support, not only for tackling the urgent crisis, but also for implementing the EPSR, the common social and health policy, the European Social Fund (ESF) and the social scoreboard during the European Semester process¹⁴.

- 5.2 The EESC supports the European Commission's stance, set out in the letter the Commissioner for Employment and Social Rights, Nicolas Schmit, sent to the governments of the Member States on 24.4.2020¹⁵, that the social economy should be supported especially in these times of crisis. According to the Commission, social economy organisations in practice already contribute in many ways to cushioning the effects of this crisis: they provide a wide range of social services, particularly for the most vulnerable in society, in conjunction with and supplementing measures taken by public authorities. They are also key employers for vulnerable groups and play a crucial role in labour market integration and the provision of skills.
- 5.3 Non-profit social economy and other "not-for-profit" organisations should be better connected in terms of communication, policy and operational networks. This should be supported by the EU and Member States through permanent promotion of regular cross-border cooperation and by better links between civil protection, emergency, and social and health services. Reversion to border closures and purely national approaches during the coronavirus crisis is counterproductive and is out of line with EU goals and values.
- 5.4 Social economy organisations, particularly non-profit social enterprises, in Europe, because of their inclusive nature and their aim to support those who are most disadvantaged, contribute in particular to the provision of assistance to migrants. As the EESC already called for in its opinion INT/785, social economy organisations must also receive greater recognition in this context¹⁶.
- 5.5 Referring to its opinion on the external dimension of the social economy¹⁷, the EESC reiterates that the Commission has not included the social economy in its proposal for a new European Consensus on Development. The non-profit social economy in particular has special potential, based on self help and organised civil society input, to develop a lasting, "bottom-up" effect for solving social and environmental problems. A strong non-profit social economy in Europe stands available to contribute with its experience in best practice. The established non-profit approach, in the form of full reinvestment of profits in the social enterprise sector, can prevent the privatisation of public funds as well as unchecked profit maximisation outside Europe too, if corresponding state and democratically legitimate control mechanisms are in place.
- 5.6 There is a need for broad societal consensus between employers, workers and other civil society organisations on the role of non-profit social enterprises and the civil society organisations that

14 EESC Position Paper ECO/515, point 1.11.

15 <https://twitter.com/NicolasSchmitEU/status/1254685369070530560>.

16 [OJ C 283, 10.8.2018, p. 1.](#)

17 [OJ C 345, 13.10.2017, p. 58.](#)

support them, in the implementation of the post-coronavirus recovery fund and in the context of the 2021 Social Economy Action Plan and the associated necessary reshaping of the legal and fiscal framework. The EESC is ready to play an enabling and coordinating role in this process.

Brussels, 18 September 2020.

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The president of the European Economic and Social Committee
