European action plan for social economy

Better regulation for social economy : the fruitful inspiration of the experience of cooperative law

Ius Cooperativum*

This document has been elaborated with the contribution of Prof. Hagen Henry (Finland), Prof. Dr. Manuele Cusa (Italy) and Prof. Dr. Ifigeneia Douvitsa (Greece), under the supervision of Prof. Dr. David Hiez (Luxembourg)

Ius Cooperativum is an international association of cooperative law.
Official address : 17-19, avenue de la Libération, L - 3850 Schifflange. RCS number : F12373,
Website : https://iuscooperativum.org/

In the process of elaborating an action plan for social economy, the European Commission launched a public consultation the 1st of March 2021. Considering that the first aim stated by the Commission in its communication is "to provide a coherent set off of measures" and that stakeholders' feedback suggests that the SBI areas of intervention, which first one was "regulatory and institutional environment", should be further deepened[1], Ius Cooperativum, which is an international association of cooperative lawyers[2], wishes to stress out that that the thus far development of cooperative law could be used as a basis for the improvement of social economy legislation in Europe.

Social economy has emerged, as a concept and as an institutional reality during the 1970s and 1980s, firstly in several EU member states[3], and secondly at the EU level[4]. At that time, the approach of the Commission to support its development was mainly based on the European acknowledgement of the legal status of enterprises included into social

[1] European Union action plan for social economy, 2021, p. 2.

[2] The IUS Cooperativum Association, community of co-operative lawyers, Registered Luxembourgish Association IUSCOOPERATIVUM, Registration date : 15/07/2019 under the RCS number F12373. Website : https://iuscooperativum.org/

[3] See for France : D. n°81-1125, 15 déc. 1981 portant création d'une délégation à l'économie sociale, art. 3.

[4] *« Les entreprises de l'économie sociale et la réalisation du marché européen sans frontière* », Communication of the Commission, 18 December 2009.

economy : European association[5], European cooperative[6], European foundation[7]… This way was paved of difficulties and only the regulation on European cooperatives passed[8]. In 2005, the Commission removed the other projects[9] and the try to reactive them at the beginning of the 2010s[10] did not succeed[11].

During the 2000s, a second period opened for social economy into the European institutions. Social economy had been strongly supported by France and Southern Europe, and the continuous extension of the EU changed the equilibrium. Many new member states did not know social economy as such, and their voices could join Northern European countries, who were not either familiar with it. The outcome has been the decrease of the institutional room allocated to social economy into the Commission. In the meantime, a new trend developed, studied and conceptualized by EMES[12] : social enterprise. If the two concepts do not contradict properly speaking, the actors advocating for one or the other were different, and some conflicts developed, firstly in some countries, and then gained the European arena. The European Commission had to trace a way and tried to marry the different traditions, with an increasing reference to social enterprise. The new pillar is conceptualized in the communication The social business initiative[13] and evidenced through the adoption of the regulation on the European fund for

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[5] COM (1991) 273, Procedure 1991/0386/COD, Proposal for a Council Regulation on the Statute for a European Association.

[6] Resolution on cooperatives in the European Community, OJ C 128, 16.5.1983, p. 51.

[7] COM (2012) 35, 2012/022, Proposal for a Council Regulation on the Statute for a European Foundation.

[8] Regulation of the EU Council n°1435/2003 on the Statute for a European Cooperative Society (SCE), 22 July 2003.

[9] COM (2005) 33, Communication from the Commission on the Social Agenda, 2005.

[10] COM (2011) 682, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Social Business Initiative : Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation, 2011. Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the regions, Single Market Act, 2011 : it is one of the twelve leverages. to be completed proposal of regulation European foundation 2012. European Commission, open consultation for the promotion of mutual societies in the EU, 2013.

[11] The European foundation was withdrawn from the agenda after 2012.

[12] EMES, "*L'EMergence de l'Entreprise Sociale en Europe*" – The Emergence of Social Entreprise in Europe, website : https://emes.net/

[13] See footnote 10.

social entrepreneurship[14]. Apart from that conceptual debate, this second period is characterized by a light normative ambition. Some paths were made through aside regulations, e.g. about public procurements[15].

A third period is likely to start, because again the equilibrium has changed. For different reasons, more and more countries around the world elaborate legislations on social economy[16]. This is notably the case in Central and Eastern Europe. In 2015, several member states signed the declaration of Luxembourg[17] to boost again social economy based enterprises, despite the relative disinterest of the Commission. It is meaningful that, in the new Commission, the Commissioner in charge of social economy was Minister of social and solidarity economy in Luxembourg when the declaration was adopted. The Brexit facilitated maybe also the evolution, since UK did not know social economy but social enterprise. The Commission may also rely on the support maintained to social economy during the second period from other European organs, notably the Parliament and the European economic and social committee. In the new period, social enterprise will remain legitimately in the loupe of the Commission, but it will be probably considered more closely with social economy. And the mention by the Commission in its communication on the regulatory environment evidences its wish to find a new normative blow, which is unlikely to look like the deceiving statutory approach of the first period.

At a first glance, one can doubt that the experience of cooperative law could be valuable in this context. Indeed, cooperatives are precisely one of the legal status of social economy based enterprises in the traditional statutory approach And the Commission will probably have to elaborate a more sophisticated orientation. In such conditions, one may legitimately wonder if an association of academic cooperative lawyers can bring any new idea. Ius Cooperativum is strongly convinced by the contrary and will try to make the demonstration of the fruitful contribution of cooperative law. To do it, the first part of the document will focus on the reason why cooperative law and its experience may be

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14 Regulation EU 346/2013 on European social entrepreneurship funds (EuSEF).

15 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

16 *G. Caire & W. Tadjudje*, « *Vers une culture juridique mondiale de l'entreprise d'ESS ? Une approche comparative internationale des législations ESS* », *RECMA*, vol. 353, no. 3, 2019, pp. 74-88.

17 Luxembourg declaration - A roadmap towards a more comprehensive ecosystem for social economy based enterprises, 4 December 2015 after the conference "Boosting Social Enterprises in Europe".

profitable to the ongoing reflection. The second part will provide some concrete examples for which cooperative law may be source of inspiration.

1. Why the social economy legislation could benefit from the experience of cooperative law

One could argue that it is methodologically incorrect to examine the legislation applicable to some of social economy based enterprises (cooperatives) in order to make recommendations for the whole social enterprise. In the contrary, we firmly believe that cooperative legislation may be used as a basis for the social economy legislation improvement, for several reasons.

A. The proximity of cooperative principles and social principles

Social economy and cooperatives share two features related to these principles: they rely on principles before on legislation, and these principles are very close.

Legally speaking *stricto sensu*, it may be wrong to claim that principles are more important than the cooperative legislation, since in several jurisdictions cooperative principles are not directly acknowledged, and no one suggests that they could be stronger than legislative provisions. However, all the cooperatives worldwide refer to the ICA principles[18], sometimes named internationally acknowledged principles. Indeed, these principles have been integrated by the International Labor Organization in its recommendation R193[19].

Actually, each national legislation looks like a special kind of a general category defined by the cooperative principles, even the historically reality is precisely reverse. Therefore, all the national cooperative laws differ in their details, but they all are inspired by the same source.

The situation is similar for social economy legal framework, whereas the structure may appear different: there are no internationally acknowledged principles, and each social

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[18] International Co-Operative Alliance (ICA), Statement on the Cooperative Identity, 1995. Guidance note on cooperative principles 2016.

[19] International Labour Organisation (ILO), R193 – Promotion of Cooperatives Recommendation, 2002 (No. 193)

economy legislation is somehow original. The similarity is elsewhere : social economy is not a legal status for enterprises, but a constellation composed of various legal status, possibly including companies themselves. Therefore, each social economy legislation has to define some common principles that give the rationale for the inclusion of the various enterprises in social economy. Meanwhile, these principles provide guidance for the implementation of the provisions applicable to the various legal status. Surely, an important difference remains between social economy law and cooperative law, since in the social economy law principles are full legislative provisions. Nevertheless, through their very general and abstract dimension, opposed to the detailed and concrete provisions applicable to each special social economy enterprise, the social economy principles may rely in practice on a light normativity. Even social economy acts themselves, often programmatic, can be considered as less normative than traditional acts as well.

Nonetheless principles exist in social economy law as well as in cooperative law and their legal status is comparable, but their content makes them also very similar. Looking at the various social economy legislations[20], it is visible that many principles are simply identical. This can be illustrated through the SE Portuguese law[21]. Among the guidelines provided by article 5, several are explicitly similar with cooperative principles : voluntary and open membership, democratic member control, autonomous management. Regarding the other principles set up by the law, they are strongly connected with cooperative values established by the ICA. Other examples would confirm that analysis[22]. This is not surprising in the European context, since cooperatives took part to the elaboration of the social economy charter[23].

To make these principles applicable legal provisions, the legislator faces the same difficulty about social economy and cooperative law, with a stronger difficulty for social economy, since its legal framework always contains several special acts applicable to

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[20] G. Caire & W. Tadjudje, loc.cit.

[21] Law n°30/2013, Framework Law on the Social Economy, 15 March 2013 – "*Lei de Bases da Economia Social*" (LBES).

[22] About French Law : D. Hiez, Cooperative Law and the Social and Solidarity Economy in France, Cooperativismo & Desarrollo, 27(1), 1-30, 2019.

[23] Social Economy Europe (SEE), Social Economy Charter : A different model of enterprise and organisation, a different type of entrepreneurship, 10 April 2002.

various legal status of enterprises. This national challenge is naturally stronger at the EU level. But it is interesting to stress out the questions that can be extracted from the experience of the cooperative law. We only provide here a short list of these questions :

- Should a cooperative act refer to cooperative principles ?
- Is it possible, appropriate, to complete a provision by a reference to principles ?
- Is it possible, appropriate, to include cooperative principles in the set of rules that cooperatives have to comply with, with the consequences on cooperative auditing?
- What are the consequences of the contradiction between a provision and a principle?
- What are the consequences of an evolution or amendment of principles on the law?
- Is it possible for a court to refer to a principle to complete or interpret a legal provision ?

All these questions, and others, will have to be considered by a social economy legislator, at any level, but, surely, they will be far trickier. However, the answers elaborated in cooperative law can be a very useful toolbox.

B. The context for elaboration of an EU SE legislation and the EU cooperative legislation

Since the very first law to which cooperatives were subject in 1852[24] until nowadays, the cooperative legislation has progressively developed and most countries have enacted cooperative provisions. Such knowledge and experience may be itself as a valuable lesson for the social economy, especially since social economy concept is still invisible from a legal and policy standpoint for a number of Member States. In many countries, cooperatives developed before a dedicated regulation was adopted. Likewise, countries where social economy legislation is lacking, and even when the concept of social economy is not familiar, the thing often exists before the word. To maximize the chance of success for a new legislation, the history of cooperative law gives some evidence about the minimum requirements to ensure the opportunity to pass an act.

[24] UK Public General Acts 1965 C.12, Industrial and Provident Societies Act, 1965.

Nevertheless, the legitimate concern of the Commission may be more focused on the specificity of the elaboration of an useful EU legislation. At this supra-national level, both cooperative law and social economy law have followed the same way, the latter later than the former. The cooperative legislation has been highlighted by a number of international documents. The social economy has not been so acknowledged so far, but it is likely to be on the way. At least, several less normative evidences allow that assumption[25].

At the EU level again, a cooperative regulation has been enacted and its success and failures provide rich lessons. To sum up, one may observe three main features of the approach to the EU cooperative legislation : its focus on the proper regulation of cooperative and not on public policies, its target limited to cross-border cooperatives by contrast with domestic ones, and its general approach with no consideration to the specificities of diverse cooperatives. A short assessment of this legislation is apparently not very positive, since the number of registered SCE remains very low. However, we strongly disagree with a so negative conclusion. Indeed, in our view, even if it was not the expected outcome, the major benefit of the SCE regulation has been to provide to all the cooperatives in the EU an official support, that has been very precious. Its most well-known outcome is the ECJ decision in favor of a special tax treatment (see below), but one cannot neglect less visible consequences. Cooperatives have been highlighted and this was very important for countries in which the history had sometimes given a false image of cooperatives. Meanwhile, that official support to cooperatives has been a strong counter-balance to the more neo-liberal orientation of diverse European institutions and policies. No doubt that this story is fruitful when thinking the elaboration of a EU legislation for social economy.

The scientific literature is increasingly plentiful on social economy, including social enterprises, but this development concerns only a very little legal thinking, at least at the

[25] The United Nations inter-agency task force on social and solidarity economy was established in 2013.
The Social and solidarity economy will be the general discussion of the 110th session of the International Labour Conference in 2022.

EU level[26]. In the contrary, and notably thanks to the EU focus, European cooperative law may rely on more elaborated developments[27].

A last connection between cooperatives and social economy concerns the tricky question of social enterprises. Indeed, first social enterprises were social cooperatives and many of them still use that legal status. The difficulty to find the appropriate relationship could be found there.

If cooperative law is promising for the elaboration of a legal thinking on social economy, we would like to show some examples of these fruits.

II. How SE legislation could benefit from cooperative law ?

Many crucial issues that the social economy legislator faces are similar or even common to those that have been discussed in the cooperative law field, and it is profitable to take advantage of that experience. This occurs in several domains, and we will take three examples: the identification of enterprises, the public control, and the elaboration of public policies.

A. The identification of social economy based enterprises

The definition of social economy has always been controversial[28] and we will not enter again into these debates[29]. By their persistence, these tricky discussions led most people

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[26] National exceptions are Italy and Spain.

[27] See notably : G. FAJARDO, A. FICI, H. HENRY, D. Hiez, D. MEIRA, H. H. MUENKNER, I. Snaith, *Principles of European cooperative law*, Intersentia, 2017.

[28] Even the different organs of the EU are not perfectly on the same line.

[29] European Economic and Social Committee, by Ciriec-international, *Recent evolutions of the social economy in the European Union*, CES/CSS/12/2016/23406 ,2016. United Nations, Department of Economic and Social Affairs, Satellite account on non-profit and related institutions and volunteer work, Series F, No. 91, Rev. 1, 2018.

to consider them as ideological. In that sense, the emphasis of legislations on principles can also be understood like an alternative to a precise definition on which an agreement could not be reached. This is surely legitimate and an inclusive approach of social economy must be favoured. However, a methodological point cannot be overcome.

When a legislator plans to apply some rules exclusively to a set of things or of persons, it must necessarily make possible their identification. The assessment may be considered trivial, but it is a methodological starting point. To put it more technically, any rule can be logically divided in two parts: its conditions and the effects attached to the situation in which the conditions are met. And no rule can establish a consequence if it does not state before the conditions to meet. Only thereafter comes the choice of the conditions to state, i.e. the way to identify the concerned persons. And this identification raises several points: the kind of criteria for the definition, the persons in charge of the final identification of the enterprises, the access to the list of qualified enterprises… These diverse aspects are inter-connected, and none of them can be put aside. This will not be developed here.

The expected precision of the answer depends on the consequences attached to the rule. When a legislation is purely programmatic, it is possible to be less strict for the diverse criteria of the definition. However, the difficulty is only delayed, since, in the end, someone will have to implement these loose criteria to achieve the qualification and include or exclude enterprises from the effects of the rule. In other words, the less the legislation will provide with a substantial definition, the more the identification will rely on the organs in charge of the implementation. In the EU matter, the less a European legislation will state, the more each Member state will be free, unless the EU legislation attributes the competence to achieve the identification to another authority.

The question was simplified for the SCE, because they could rely on a minimum homogeneity of national approaches thanks to the long tradition established by ICA and legally stated by ILO. Moreover, if there are many kinds of special cooperatives, they are not considered as such by the SCE, which subsume them in the general category and a common regulation. Nevertheless, the model provided by the Eu cooperative regulation shows the range of questions to be considered. Indeed, like in the national legislations, the EU regulation on the SCE states a visible distinction between SCE and other entities[30]

[30] Reg.(CE) N° 1435/ 2003, art. 1 3.

and draws two major effects[31]: on one hand the obligation for SCE to advertise their status of SCE, on the other hand the prohibition for other identities to use the word SCE in their denomination. But above all, and apart from that traditional protection, the SCE regulation refers to pre-existing registers on which the SCE have to register. Luckily, as the SCE is , stated in parallel to SE, it may rely on the national registers established for companies. The same solution can technically be extended to social economy based enterprises, but it is unsure that the solution would be accepted by member states, because of the distance of many social economy enterprises from companies[32].

B. Public control on SE

Like cooperatives, social economy based enterprises are characterized by principles and possibly values. Moreover, their definition aims mainly at distinguishing them from companies. In other words, social economy based enterprises are submitted to a special regime which compliance must be ensured, above all for the protection of its members and public interest at large. Regarding companies, the attention is only paid to creditors. Shareholders run an economic risk whose rationale is the expectation to make gains, and that limits the necessity of their protection. The rationale of social economy based enterprises' members engagement (including their possible investment), as well as the consideration of public interest, are substantially different, so that the law aims at a stronger protection. To achieve that goal, a suitable control must be implemented, and the experience of cooperative law provides some possible solutions, about both the way to control and the consequences of non-compliance.

Cooperatives have developed their own control, and public bodies have the possibility to rely on it : cooperative audit[33]. With a variable attention to financial questions, the characteristic of this audit is to focus on the substance of cooperative principles[34]. To put it differently, the cooperative audit consists in examining the management of the

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31 Reg.(CE) N° 1435/ 2003, art. 10.

32 Italy could be a counter-example, at least for social enterprises, that have to be registered in the same register like companies.

33 The EU regulation does not provide special solutions about it but mentions it explicitly, referring to national legislation.

34 G. Fajardo, A. Fici, H. Henrÿ, D. Hiez, D. Meira, H.-H. Münkner, I. Snaith, *Principles of European cooperative law*, 2017, Intersentia, pp. 97 f.

cooperative in order to analyse the respect of cooperative principles. In that sense, its first goal is not to sanction non-compliance but to provide the co-operators with suitable information in order to allow them to hold the best decisions. However, the concrete outcome of the audit is the elaboration by the auditor of a report that assesses the compliance with cooperative principles. Therefore, it may also be used as the basis for sanctions.

Such a mechanism can be extended to social economy based enterprises. Surely, some cautions have to be taken, and some difficulties may arise. The first problem is the elaboration of a set of principles concrete enough to allow the assessment of the compliance with them of social economy based enterprises. The principles stated in any existing social economy legislation does not meet that requirement, and an European legislation could not do better since a regulation cannot enter into such details. Therefore, another authority should be designated to draft these detailed principles. The second problem is the designation of the persons in charge of the audit. Many solutions are possible, but the legislator has to keep a point in mind: the heavier sanctions may be held, the stronger has to be the public control on the auditors.

The sanctions are the second aspect of the control that has to be considered. The determination of their consistency shall take into account that their final purpose is especially the protection of members and public interest. The major risk for any of the members is the grabbing of the assets by one or many members. Meanwhile, the public interest could be damaged as well, either because the enterprise benefited of a special legal treatment, or because its development relied on the consideration of the clients for its specificity. And this second aspect is predominant in enterprises which are not membership-based organisations, such as foundations. One of the major lessons in that respect is that, as members are variable and public interest diffuse, the protection may only succeed through the protection of the enterprise itself. Indeed, even an unanimous decision of all the members of today could damage the inheritance of past members and affect the possibilities offered to future members, to say nothing about public interest. Therefore, it is not enough to control the financial rights of the members, notably when quitting the enterprise, it is also necessary to regulate the liquidation of the enterprise, considering as well the hypothesis of its conversion.

C. The public policies for social economy

Logically, the elaboration of public policy comes in second, after the definition of the beneficiaries of these policies. Nevertheless, it is necessary to have first ideas about the possible measures at the stage of definition, because the purpose and content of the policies may impact the scope of the definition or the kind of criteria utilized. To take a simple example, when the policy-makers plan to focus only on not-for-profit organizations, it is useless to engage in the elaboration of a precise definition of social economy, even if not-for-profit organizations are considered as part of it.

Cooperative law provides some examples of measures that have been frequently considered about them and could be duplicated for social economy. They are a good starting point. The major concern expressed by cooperatives has been its financing, and unsurprisingly public policies focused on that question. Apart from the support to private initiatives, public bodies looked for answers to this concern through two main tools : suitable taxation, and public procurements. The opportunity to rely on public bodies as economic agents is old, and this position has been utilized (or not) to provide business to favoured enterprises, and sometimes cooperatives benefited from it. The regulation has strongly evolved with the inclusion of competition in public procurements, but the last EU regulation[35] shows that it is still in the loupe for social economy.

Taxation is particularly touchy and has concentrated many controversies about cooperatives, from their competitors but also among them. The discussion is articulated nowadays about the notion of competition, the beneficiaries of suitable tax treatment being suspected of unfair favour, discriminatory measures. Actually, there is simply at stake an aspect of rule of law: any person in a similar solution must be submitted to the same rule, and only people in a distinct situation is submitted to different rules. The question is to decide what should be considered like similar and distinct, and the ECJ provided some answers about cooperative taxation[36]. To decide that the Italian production cooperative was not in a similar factual and legal situation than companies, the ECJ notes several functioning principles that distinguish them from other economic agents. The court mentions first the preeminence of person, concretized by provisions on

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[35] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

[36] CJUE, 1re ch., 8 sept. 2011, *Ministero dell'Economia e delle Finanze et Agenzia delle Entrate c/Paint Graphos Soc. coop. arl. et al.,* aff. C-78/08 à C-80/08, *JOUE* 311, 22 oct. 2011, p. 6; *Rev. sociétés* 2012. 104, note G. Parleani.

membership and disinterested liquidation (§56). It refers then to a management not in favor of external investors, evidenced by the equal control of its members, common and indivisible assets allocated to the common members' interests (§57). Comes thirdly the purpose of mutual benefit for members, who are also users, clients or providers, so that each one profits of cooperative business in proportion to its transactions with the cooperative (§58). The fourth specificity is that their development can only rely on their own assets or on loans, since their shares are not marketable and investment in a cooperative is not attractive because of its legally low return (§59). To sum up its position (§61), the ECJ requires to acknowledge the special tax treatment that cooperatives act in the interest of their members and that they have with them a personal relationship in which the members are actively involved and are entitled to a fair distribution of economic outcomes (§61).

Several lessons can be drawn from that important decision and provide key points to elaborate an *a pari* reasoning for social economy. First, it provides some elements to decide if an enterprise is in a similar factual legal situation like companies, but this is only an orientation since it has been elaborated from the special case of cooperatives. However, even if the situation is different for other SE enterprises, it could be demonstrated that they also oppose to companies by close features, at least for most of them. To draw the parallel, the general assessment of ECJ should be emphasized i.e. the preeminence of person, concretized by provisions on membership and disinterested liquidation. But another conclusion can be drawn: the core of the argumentation of the ECJ consists on an analysis of the specificities stated in the EU regulation on SCE. In other words, the specificities of cooperatives have been scrutinized through the ones established for the cooperative designed for EU. It means that the acknowledgement of a legal form at the EU level is very important to be able, later on, to allow a special treatment regarding the EU legislation.

The framework is very different for public procurements and the two examples open an useful discussion. Whereas the ECJ deals with taxation to a legal status, the public procurement regulation does not consider any legal status. On one hand, it allows set-aside[37] for sheltered workshops and work integration social enterprises, but these notions

[37] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, art. 21.

are defined by criteria related to its employees and its purpose, without any reference to a legal status, that is perfectly in line with the European competition law and its competitive neutrality principle. On the other hand, the new regulation nuances the key focus on the lowest price (art. 67), with for example the reference to the cost of life cycle (art. 68), or environmental requirements, including by the exigence of specific labels (art. 43). The freedom given to the contracting authorities through the procedure of selection should be precised, but at least it appears that only characteristics external to the enterprise itself should be taken into account. The contrast is interesting with the tax matter. One may claim that the absence of reference to the legal status flows from the necessity to have only neutral approach, and that any special treatment to a legal status would be discriminatory *per se*. The reasoning of the ECJ has demonstrated that the argument is wrong: the reference to a legal status may certainly comply with the requirement of neutrality if the legal status contains original features that legitimate the special treatment.

These two orientations are worth to be discussed, since they fit with an important choice for public policy. By reference to the time periods that we have proposed for the development of social economy in the EU, the legal status seems to fit only with the past and to have been put aside few years ago after several fails. Therefore, only the . sectorial approach could be seriously considered nowadays. Again, the experience of cooperative law provides some elements for reflection. Whereas cooperatives are themselves a legal status, they are submitted as well to the attraction of the sectorial approach. If the EU regulation on SCE did not succumb, many national legislations have multiplied special cooperative legislations related to the various activities that a cooperative may run. The attention paid to their specificities can be very useful, since a general provision can miss some details. But the dispersion is another risk, weakening the general rule and the feeling of common identity. This question is far more central for social economy, which is essentially composed by enterprises with diverse legal status. That diversity makes more difficult their feeling of common identity, and the strengthening of a common regulation could be a stone it that development. But the sectorial approach brings another danger: it emphasizes the activity of the enterprise, sometimes through its goal, instead of considering the way its activity is ran. This creates a distortion in the distinction between companies and social economy. On one hand, capitalist enterprises are defined by their profit maximization goal, suitable with any activity under the condition that there is a client to pay the good or the service. On the other hand, the sectorial approach for social

economy limits its scope, which nonetheless should not be profit maximization oriented, but could also only develop in the designated sectors. This does not mean that the sectorial approach should be given up, but it is an argument in favour of combining sectorial and statutory approach.

Many other points could be developed but Ius Cooperativum chooses to limit its attention to these few examples, remaining available for more detailed studies. Few words will only be stated about the valuable recent proposal of the European Parliament. Its major suggestion is the establishment of a label for social and solidarity economy based enterprises. That initiative is based on the necessity to overcome the variety of national legal status to be considered and the probable impossibility to draft a unique European legal status for all these enterprises. The previous developments allow to highlight some points requiring a further elaboration.

Firstly, if the resolution insists rightly on the importance of drafting detailed criterion for this label (§5), it does not consider the determination of the person in charge of the attribution of the label. However, this question is very sensible and requires a strong attention. Secondly, the European Parliament stresses out the necessity to protect the use of the label to avoid false social and solidarity based enterprises, and calls for the establishment of national penalties . to enforce this protection (§12). However, the proposal does not consider the existence of possible national legal denominations that could compete with the new label or create some confusion. It must be highlighted in that regard that previous European regulations do not provide any model, since they concerned entities at a strict European level.

Thirdly, and maybe it is the most severe weakness of the resolution, the European Parliament does not consider the concrete purpose of this label. In absence of such a determination, the label is likely to have only a symbolic impact. Surely, the recognition and advertising can be precious for social and solidarity economy based enterprises (§17), but such European mechanism may appear a disproportionate effort. Therefore, it would be useful to have a and make visible an approximate orientation on the possible acquisition of the label. The parliament states that these labelled enterprises should enjoy the same benefits, rights and obligations as enterprises incorporated under the law of the Member State in which they operate (§13). That minimum requirement of non-detrimental

measures should be surely completed. The call to « mainstream the social and solidarity-based enterprise dimension in relevant policies, programmes and practices » (§27) is only a starting point. The reference to tax law, competition law, and public procurements (629) is more promising but The optional feature of the proposed label (§4) may conflict with an harmonized approach, and notably the connection with existing nationally qualified social and solidarity based enterprises.

Ius Cooperativum looks forward the new engagement of the European Commission in strengthening its support to the development of social economy. It will bring its scientific legal analysis when appropriate.