SOCIAL ENTREPRENEURSHIP: LEGAL DIMENSION

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Annotation. Social entrepreneurship has emerged as one of the most significant hybrid phenomena at the intersection of commercial activity, civil society, and public policy, yet its legal regulation remains fragmented, conceptually contested, and structurally inadequate across most jurisdictions. This article conducts a comparative legal analysis of the principal models of legal and regulatory treatment of social enterprises, examining the social cooperative model as exemplified by Italy and Belgium, the special law model as implemented in Malta and Cyprus, and the integration model characteristic of Spain and France. Particular attention is devoted to two of the most influential common law constructs, the British Community Interest Company and the American benefit corporation, whose contrasting approaches to the balance between entrepreneurial freedom and the credibility of social identity reveal a fundamental regulatory choice that legislators worldwide are compelled to confront. The article further examines the OECD's 2022 Guide on designing legal frameworks for social enterprises and the EU Social Economy Action Plan (2021) as the principal international benchmarks against which national regulatory systems are assessed, identifying the systemic obstacles to effective regulation identified in the comparative literature: definitional vagueness, competing regulatory requirements, absence of standardized social impact assessment, and the risk of "purpose-washing."

Against this comparative background, the article analyses the current state of Ukrainian legislation on social enterprises, including the Law of Ukraine "On Social Enterprises" (No. 2710-IX of 2022), and assesses its conformity with EU standards and the obligations arising from Ukraine's candidate status and the Association Agreement. The study argues that the most appropriate regulatory model for Ukraine is the legal qualification model, which enables organizations of any existing form to acquire social enterprise status upon meeting established criteria, without requiring reorganization into a new legal entity. Drawing on the CIC experience, the article contends that the effectiveness of such a model depends critically on the introduction of mandatory annual reporting, an independent supervisory mechanism, and a prior public interest test — instruments that significantly reduce the risk of purpose-washing and enhance institutional legitimacy. The adoption of a dedicated law on social enterprises incorporating these elements is identified as a priority task of Ukraine's economic and legal reform agenda.

Key words: social entrepreneurship, social enterprise, legal qualification, hybrid organizations, community interest company, benefit corporation, European integration.

1. Problem statement.

Social entrepreneurship has emerged as one of the most dynamic and multifaceted phenomena at the intersection of economic activity, civil society, and public policy. Unlike traditional commercial enterprise, which is oriented primarily toward profit maximization, social entrepreneurship pursues a dual mandate: the generation of social value alongside financial sustainability. This hybrid nature, combining market mechanisms with social mission, creates a fundamental tension that existing legal frameworks, designed predominantly for either purely commercial or purely non-profit entities, are structurally ill-equipped to accommodate. The result is a regulatory environment characterized by ambiguity, fragmentation, and

institutional uncertainty, which in turn constrains the development of the sector and limits its contribution to the resolution of pressing social problems.

The absence of a universally accepted legal definition of social entrepreneurship is not merely a terminological inconvenience – it has direct practical consequences for the legal status of social enterprises, their access to public procurement, tax incentives, grant financing, and investor protection mechanisms. In many jurisdictions, social enterprises operate in a legal grey zone: they are neither fully recognized as commercial entities nor as non-profit organizations, and are therefore denied the regulatory benefits available to both. This ambiguity is compounded by the diversity of organizational forms through which social entrepreneurship is practiced – cooperatives, community interest companies, benefit corporations, social purpose companies, and hybrid structures – none of which is uniformly regulated even within the European Union, let alone at the global level.

For Ukraine, these challenges are further intensified by the imperatives of European integration. The Association Agreement between Ukraine and the European Union, and Ukraine's candidate status obtained in 2022, impose an obligation to align national legislation with EU standards in the field of social economy and social entrepreneurship. The EU's Social Economy Action Plan (2021) and the Council Recommendation on developing social economy framework conditions (2023) set a clear regulatory benchmark that Ukrainian law has yet to meet. The adoption of the Law of Ukraine "On Social Enterprises" in 2022 represented a significant legislative step, yet critical gaps remain in the areas of certification, supervision, tax treatment, and access to public support mechanisms. The legal dimension of social entrepreneurship in Ukraine is therefore simultaneously a question of domestic regulatory reform and of European integration strategy.

2. Analysis of recent research and publications.

The scholarly literature on social entrepreneurship spans economics, management, sociology, and law, though legal-theoretical contributions remain comparatively underdeveloped relative to the broader interdisciplinary field. The foundational conceptual work was undertaken primarily by management scholars: J. Gregory Dees, whose 1998 essay The Meaning of Social Entrepreneurship established the entrepreneurial model of social value creation, and C. K. Prahalad, whose work on market-based approaches to poverty alleviation contributed to the theoretical legitimation of hybrid organizational forms. In the European context, the EMES Research Network, and in particular the work of Jacques Defourny and Marthe Nyssens, developed the multi-stakeholder cooperative model of social enterprise that has substantially influenced EU regulatory policy.

The legal dimensions of social entrepreneurship have received increasing attention in the comparative law literature. A. Fici, in his comparative study of social enterprise law in Europe (Social Enterprise Law: A Comparative Overview, 2017), documented the significant divergence in national legal frameworks across EU Member States and identified the principal regulatory challenges: the definition of social purpose, profit distribution constraints, governance requirements, and the relationship between social enterprise law and general company law. The question of legal form has been examined in depth by L. Heckman and others, who argue that the emergence of hybrid legal forms, such as the Community Interest Company in the United Kingdom, the Società Benefit in Italy, and the Benefit Corporation in the United States, represents a structural legislative response to the inadequacy of traditional binary classifications of commercial and non-profit entities.

The EU regulatory framework for social entrepreneurship has been analysed extensively in the context of the Social Business Initiative (2011) and subsequent policy developments. R. Addari and others have examined the implementation of the EU Social Economy Action Plan (2021), identifying the principal normative gaps that Member States are expected to address. The Council Recommendation of 27 November 2023 on developing social economy framework conditions has generated a new wave of comparative legal analysis, particularly regarding public procurement preferences, social labelling, and access to finance for social enterprises.

In Ukrainian legal science, the study of social entrepreneurship remains at an early stage. O. Sydorchuk, V. Yevtushenko, and T. Vasyltsiv have examined the economic dimensions of social entrepreneurship

development in Ukraine, while contributions to its legal aspects have been made by O. Kibenko and N. Kuznietsova in the context of corporate law reform. The adoption of the Law of Ukraine "On Social Enterprises" (No. 2710-IX of 21 July 2022) has prompted initial commentaries in the legal literature, though a comprehensive legal-theoretical analysis of the act, including its conformity with EU standards and its interaction with adjacent legislation on cooperatives, civil society organizations, and public procurement, remains absent from the scholarly record.

The comparative experience of Central and Eastern European states that have undergone EU accession is of particular relevance for Ukraine. Poland's Act on Social Cooperatives (2006) and its subsequent amendments, Slovakia's framework for social enterprises introduced in 2018, and the Czech experience with social enterprise certification have each been examined in the regional literature as models of legislative adaptation to EU social economy standards. These studies collectively highlight that successful legal regulation of social entrepreneurship requires not merely the adoption of a definitional framework, but the construction of an integrated system of institutional support, fiscal incentives, and public procurement preferences – a system that Ukraine has only begun to develop.

Notwithstanding the growing body of literature, a significant gap remains at the level of legal theory: the absence of a systematic examination of social entrepreneurship as a legal category in its own right, one that addresses its legal nature, its place within the system of legal persons, the normative basis for its special regulatory treatment, and the constitutional dimensions of state support for the social economy. The present study seeks to address this gap within the framework of Ukrainian and comparative European law.

3. The purpose of this article

3. The purpose of this article is a comparative legal analysis of models of legal and regulatory regulation of social entrepreneurship in leading legal systems, identifying their systemic advantages and disadvantages and formulating conclusions regarding the prospects for improving the relevant legislation in Ukraine.

4. Presentation of the research material.

Determining the legal nature of a social enterprise is the initial and at the same time the most debatable issue of the entire regulatory discourse. Most researchers agree that a social enterprise is neither a traditional commercial organization nor a non-profit structure, but rather occupies an intermediate, hybrid position between them. Fleischer G. and Pendl M. note that different models of thought in Europe and the USA fundamentally conceptualize this phenomenon differently: if the American tradition tends to see a social enterprise as a business that produces social value along with economic value, then in Europe there is a more widespread emphasis on democratic governance and the priority of the social mission over profitability [1, p. 272].

Vicente L. questions the very validity of the slogan "doing well by doing good" as a basis for social entrepreneurship, emphasizing that market logic inevitably limits the ability of corporations to do good for the sake of good itself, not for profit [2, p. 156]. In the same study, the author draws attention to the groundbreaking nature of the 2019 Business Roundtable Statement, in which 181 CEOs of large American corporations declared their commitment to taking into account the interests of all stakeholders, not just shareholders, which indicates a general transformation of ideas about the corporate purpose [2, p. 158]. The key feature that distinguishes a social enterprise from a regular business entity is hybridity, that is, the combination of financial sustainability and social mission as equal constituent elements of the organization. It is this duality that complicates the legal qualification and definition of the appropriate regulatory regime: traditional categories of corporate law, developed under the shareholder value maximization model, are poorly adapted to the needs of hybrid organizations. Fleischer G. and Pendl M., in turn, state that corporate law in this area is in a state of gradual but irreversible rethinking [1, p. 282].

According to the author, the uncertainty of the legal nature of a social enterprise is not just a theoretical problem, but also a practical one, since it is on it that the choice of organizational and legal form,

management system, conditions for attracting financing and mechanisms for protecting the social mission from erosion under the pressure of commercial interests depend.

Analysis of the legislation of the EU member states allows us to identify three fundamental models of legal regulation of social enterprises, which differ not only in the technique of norm-setting, but also in the conceptual approach to defining the essence of a social enterprise.

The first model, the social cooperative model, is the most widespread and involves the use of a cooperative legal form as the organizational basis of a social enterprise. It has its roots in Italy, which was the first country in the world to adopt a special law on social cooperatives in 1991. Fajardo G. gives an illustrative example of Belgium: this country introduced the concept of a "social purpose company" back in 1995, but in the new Code of Societies and Associations of 2019 it radically changed the approach, allowing only cooperative companies to qualify as social enterprises [3, p. 68]. The second model, the model of a special law, involves the adoption of a separate regulatory act that defines the concept, requirements and legal status of a social enterprise regardless of the specific organizational and legal form. Fichi A. establishes that the latest national laws, in particular those adopted in Malta in 2022 and Cyprus in 2020, implement this model, introducing the so-called legal qualification: an organization of any form can acquire the status of a social enterprise provided that it meets the established requirements, and also lose this status without the need for liquidation or reorganization [4, p. 175]. This model is considered the most flexible, as it reduces transaction costs and does not tie the social mission to a specific corporate form. The third model, the model of integration into the law on the social economy, is characteristic of states that have adopted framework laws on the social and solidarity-based economy. This model covers a wider range of entities: cooperatives, mutual societies, associations, foundations and social enterprises themselves, and normatively provides their systemic support. Spain, which does not have a specific law on social enterprises, but regulates social initiative cooperatives within the framework of the general law on cooperatives of 1999, occupies an intermediate position between the second and third models [3, p. 74].

The OECD in its 2022 guide states that although some legislation on social enterprises exists in 16 EU countries, and explicit strategies for their support - in another 11, legislators recognize that without high-quality legal regulation, social enterprises face obstacles in attracting investment and accessing public resources [5, p. 15]. At the same time, the guide emphasizes that the effectiveness of the legal framework depends not on the very fact of the existence of a special law, but on the quality of its substantive requirements and mechanisms for supervising their implementation [5, p. 22].

So, as we can see, none of the three models is absolutely optimal: the choice between them is determined by the legal tradition, institutional capacity and socio-economic priorities of each state. At the same time, it seems quite logical to observe a pan-European trend towards a gradual transition from the social cooperative model to a more flexible model of legal qualification.

In the common law tradition, two of the most influential special legal constructs for social enterprise have been formed, the British Community Interest Company (CIC) and the American benefit corporation, which are the subject of active comparative research and normative borrowing.

The CIC was introduced in the UK in 2005 and is currently the most detailed legal form of social enterprise in the world. Liptrap J.S. in his study analyzes the CIC through the prism of four constitutive differences from the traditional corporation: the public benefit regime (including the "public interest test" upon registration), specific duties of directors, limited rights of shareholders and the "asset lock" mechanism, which makes it impossible to distribute assets to the detriment of the social mission [6, p. 601]. There, the author argues that there is a causal relationship between welfarist state policy and the special profile of CIC, which has remained out of the attention of legal doctrine [6, p. 596].

The scientist develops this analysis in the context of a broader discussion about the corporate purpose, arguing for the need to borrow from the CIC regime a mechanism for prior state verification of the declared corporate purpose in order to prevent "purpose-washing" - a situation when companies formally declare a social or environmental purpose without supporting it with real activities [7, p. 770]. Unlike American benefit corporations, whose accountability system is criticized for its weakness, CIC provides for

mandatory annual reporting to a special regulator, which significantly increases the level of trust in this form [7, p. 785].

Andreadakis S. points to a paradoxical situation: despite the fact that the UK is the country with the most developed social enterprise sector in the world, there is no legislation on benefit corporations in it, and B Corps certification has not yet become widespread [8, p. 796]. The main explanation for this is the flexibility of the Companies Act 2006, which already imposes on directors the obligation to take into account the interests of a wide range of stakeholders. At the same time, the author states that this obligation is not provided with real enforcement mechanisms, which devalues its practical significance [8, p. 800]. Sorensen K.E. and Neville M. in a comparative study of the American benefit corporation, the British CIC and the Danish certification regime found that these three systems balance the flexibility attractive to entrepreneurs and investors and the requirements of the credibility of the social enterprise status in radically different ways [9, p. 270]. Benefit corporation is distinguished by its simplicity of registration and broad entrepreneurial freedom, but is criticized for its lack of accountability mechanisms. CIC, on the other hand, provides a higher level of credibility at the cost of higher transaction costs [9, p. 285].

Thus, a comparison of CIC and benefit corporation reveals a fundamental regulatory choice between two values: freedom of entrepreneurial initiative and credibility of social identity. Logically, the optimal legal model should find a balance between them, providing for both an accessible procedure for obtaining the status of a social enterprise and effective mechanisms for supervising compliance with the social mission.

The effectiveness of the legal framework for social enterprises is determined not only by the presence of appropriate legislation, but also by the quality of management mechanisms and the ability of social enterprises to obtain and maintain legitimacy in their institutional environment. Pratippornnarong D. notes that the management of social enterprises through a special regulatory framework is only one of the possible modes of corporate governance; the effectiveness of this regime depends on the consistency between legal requirements and the organizational culture of the enterprise [10].

Singh N.K. and Kumar P. in a critical analysis of the legal and regulatory frameworks of social entrepreneurship identify five systemic obstacles to effective regulation: the general nature of legal norms that do not take into account the specifics of social enterprises; vague terminology; competing regulatory requirements; lack of resources for law enforcement; lack of standardized mechanisms for assessing social impact [11, p. 5]. To overcome these obstacles, they propose a model of adaptive regulatory design with the involvement of stakeholders in the formation of legal norms [11, p. 9]. Spanus T. et al. in their work established that the legitimation of social enterprises depends on the institutional context and target stakeholders: different legitimation strategies are applied depending on whether the key stakeholders are the state, market actors or civil society [13, p. 8]. Researchers focus on the gap in the analysis of the role of incubators and accelerators of social enterprises in the process of legitimation [13, p. 12].

In turn, Mair J. and co-authors open an often ignored dimension - advocacy activities of social enterprises aimed at influencing public policy and legislation. The authors prove that the choice of management model and organizational and legal form directly affects the ability of a social enterprise to perform the function of an agent of change in the normative environment [12, p. 8]. Thus, law not only regulates social enterprises, but is also indirectly formed through their collective actions in the public space. Legal regulation of social enterprises is not self-sufficient: its effectiveness is inextricably linked to the quality of the institutional environment, the readiness of the state for dialogue with stakeholders and the ability of social enterprises themselves to defend their place in the legal system through advocacy activities.

It should be noted that the OECD 2022 Guide "Designing a Legal Framework for Social Enterprises" is currently the most authoritative international document systematizing practical recommendations on this issue. The document is based on the extensive definition of a social enterprise proposed by the European Commission's 2011 Social Business Initiative: a social enterprise is a social economy operator whose primary objective is to achieve social impact rather than to generate profit for its owners; the enterprise carries out entrepreneurial and innovative activities in the market, and the profits are mainly directed to achieving social goals [5, p. 18]. The OECD distinguishes three categories of legal approaches: legal forms that provide a special type of legal entity for social enterprises; legal qualifications that give a special status or label to existing organizational

forms; and hybrid approaches that combine these two methods [5, p. 25]. The analysis of each of them is carried out through the prism of the ability to ensure clarity of legal status, protection of social mission, accessibility for various organizational forms and minimization of regulatory costs.

For Ukraine, these recommendations are of practical importance in the context of the implementation of obligations stipulated by the Association Agreement between Ukraine and the EU, and the benchmark of European integration reforms. Currently, domestic legislation does not contain a special regulatory definition of a social enterprise and does not provide for a separate organizational and legal form for it.

Given the experience of the EU, the most acceptable for Ukraine seems to be a model of legal qualification that does not require existing organizations to reorganize into a new legal form, but introduces a special status of a social enterprise for entities that meet the established criteria. Such a model is less costly for the regulator, more flexible for business entities and, at the same time, is able to ensure a sufficient level of transparency and accountability, provided that a properly developed mechanism of qualification supervision is in place. In turn, the CIC experience shows that the key element of such a mechanism is mandatory annual reporting and independent regulatory supervision, which significantly reduces the risks of "purpose-washing" [7, p. 782].

We believe that the development and adoption in Ukraine of a special law on social enterprises with the introduction of a legal qualification model and effective supervision mechanisms is a priority task of economic and legal reform in this area.

5. Conclusions.

Thus, in our opinion, a social enterprise as a legal phenomenon is a hybrid entity that combines the features of a commercial organization and a non-profit structure and does not fit into traditional corporate law categories. The uncertainty of its legal nature is a source of practical problems: the impossibility of clear identification in legal relations, the risk of "purpose-washing" and legal uncertainty regarding the distribution of profits and supervision of compliance with the mission.

In the EU member states, three main models of legal regulation of social enterprises have developed: the social cooperative model, the special law model, and the integration model into the law on the social economy.

In the EU member states, three main models of legal regulation of social enterprises have developed: the social cooperative model, the special law model and the integration model into the law on the social economy. There is a general trend towards a transition from the first model to a more flexible model of legal qualification, which allows acquiring the status of a social enterprise without changing the organizational and legal form.

In addition, a comparative analysis of the CIC and the benefit corporation reveals a fundamental regulatory choice between entrepreneurial freedom and the credibility of social identity. Thus, the British CIC provides a higher level of credibility due to mandatory reporting, a public interest test and an asset lock mechanism; in turn, the American benefit corporation is distinguished by the accessibility of registration, but is criticized for the weakness of accountability mechanisms.

The effectiveness of the legal framework for social enterprises depends not only on the availability of special legislation, but also on the quality of management mechanisms, the institutional environment and the ability of social enterprises to maintain legitimacy in relations with the state, the market and civil society. Advocacy activities of social enterprises are an important factor in the formation of a favorable regulatory environment.

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