



MOVING FORWARD
TOGETHER

SOCIAL ENTREPRENEURSHIP IN UKRAINE

Economic
and legal analysis

EU4Youth -
UNLOCKING THE POTENTIAL OF
YOUNG SOCIAL ENTREPRENEURS IN
MOLDOVA AND UKRAINE

2020



ProNGO!



This report has been prepared for the Project: “EU4Youth – Unlocking the Potential of Young Social Entrepreneurs in Moldova and Ukraine” by the team of experts in the sphere of law, economy and socio-political sciences.

Edited by Ivan Kamenko, lawyer, PhD in public policy of the University of Sorbonne I.

This report has been prepared with the financial assistance of the EU4Youth Programme of the European Union. The contents of this publication are the sole responsibility of Egalite International and can in no way be taken to reflect the views of the European Union.

CONTENT

Introduction	4
State and contribution of social business in Ukraine	5
Definition	6
Number of social enterprises	7
The legal status of social enterprises	9
Employment in social enterprises	11
The economic activity of social enterprises	13
Social activities of social enterprises	16
Main problems in the activity of social enterprises	18
Remarks	20
Legislation and social business	22
European experience	22
Experience of Ukraine	25
Current legal and regulatory framework of Ukraine	27
Approaches to addressing the problem	30
Proposals for regulatory changes	32
Afterword	36

INTRODUCTION

This research was carried out by the expert team of the Public Organisation «Egalite International» within the framework of the implementation of the legal component of the project «EU4Youth: Unlocking the Potential of Young Social Entrepreneurs in Moldova and Ukraine», financed by the European Union.

The study aims to develop well-founded proposals for improving the regulatory status of social entrepreneurs in Ukraine based on an analysis of available economic indicators, the legal and regulatory framework of Ukraine and the positive European experience.

Task:

- To analyse the state, economic and social contributions of social business in Ukraine.
- To research and compare the main legal models, legislative and other regulatory acts regulating the functioning of subjects of social entrepreneurship, the relevant principles and bases of their practical activity (in particular, state and public support, financing) in the selected EU countries and Ukraine.
- To identify and substantiate the main areas of improvement of Ukrainian legislation and the development mechanisms for social entrepreneurs in Ukraine, taking into account European positive experience.
- To make specific propositions on amending the current legal and regulatory framework regarding social business in Ukraine based on the analysis of the best European practices and the current legal and regulatory framework of Ukraine.

The research methodology is a comparative and retrospective analysis of statistical, sociological materials, regulatory framework and practice of its application using methods of proportional extrapolation and statistical scaling, the approach of modeling regulatory impact on the subject of regulation which is social entrepreneurship.

Sources of research include legal and regulatory acts, analytical studies, scientific articles, media publications, statistical and sociological researches, creative and analytical reports. A large number of analytical studies, in particular the Green Book of Social Entrepreneurship of Ukraine¹, the Concept for the Development of Social Entrepreneurship in Ukraine² and others, are among the sources of the research. Also, this research uses the materials of the baseline study of the state of social entrepreneurship conducted in Ukraine in May 2020 by the company Wooden Horse Strategy for the project «EU4Youth: Unlocking the Potential of Young Social Entrepreneurs in Moldova and Ukraine».

¹ <https://socialbusiness.in.ua/news/zelena-knyha-sotsial-noho-pidpriemnytstva-druha-redaktsiia/>

² <https://www.osce.org/uk/project-coordinator-in-ukraine/417257>

STATE AND CONTRIBUTION OF SOCIAL BUSINESS IN UKRAINE

Despite the fact that in the expert, scientific and legal fields of Ukraine there are no consensus views and definitions of social business³, this phenomenon of the social and economic life of Ukrainian society exists and develops. The lack of a consensus view generates very large quantitative and qualitative differences in research and conclusions.

Differences in the definition of social business in the national legislation of European countries have not prevented the derivation of statistics on the scale of this phenomenon. Today, there are more than 2 million social enterprises in Europe with almost 11 million employees (6% of all those working in the region), which accounts for 10% of all European businesses.

The United Kingdom is considered to be the leader of the European region in the development of social entrepreneurship, where there are about 70 000 social enterprises providing jobs for almost a million Britons. Their total contribution to the economy is over £24 billion. According to the results of 2019, 68% of social enterprises support people from vulnerable groups, 44% employ people from vulnerable groups, 28% work in the most depressed areas of the country.

In Poland, in 2019 there were 29535 social enterprises with 428,700 employees, while in Serbia as of 2015, there were 4,273 employees in social enterprises (0.25% of the total number of employees in the country). According to the European Commission's report "Social Enterprises and their Ecosystems in Europe"⁴, the contribution of social business was in the following:

Italy - €37.3 billion

Netherlands - €3.5 billion

Portugal - €3.3 billion

Hungary - €2.3 billion

Ireland - €1.4 billion

Estonia - €52.4 billion

Unfortunately, it is impossible to obtain reliable statistical information about Ukraine. One of the major obstacles is the difference in the phenomenon's definition of social business.

³ <https://knute.edu.ua/file/NjY4NQ==/3aee82b71d8d28d590c3f27df309b94c.pdf>

⁴ <https://www.euricse.eu/social-enterprises-and-their-ecosystems-in-europe-mapping-study/>

DEFINITION

Analysing many interpretations of social entrepreneurship, the authors of this report used a broad definition of social entrepreneurship to highlight and research this phenomenon. Social entrepreneurship is the activity of enterprises or organisations that operate to make a profit and direct it towards accomplishing a social mission in the context of solving social problems or working in the field of non-commercial activities focused on achieving the social effect. Conditionally, social business and associated with its traditional business and charitable activities can be divided as follows:

Criteria	Social enterprise	Charitable Organisation	Traditional business
Business objective	Solving social problems	Providing support and assistance to vulnerable groups of the population	Making a profit
Sources of funding	Funds of JV participants, profit from own activities, grants, microfinance	Grants from international foundations and organisations, donations	Does not depend on external sources of funding
Distribution and use of profits	Profits are reinvested or financed in certain social projects	Doesn't make a profit	Profit is distributed among founders, investors and shareholders

Social entrepreneurship has the same criteria as traditional entrepreneurship, such as financial autonomy and initiative, innovation, scale and risk-taking. At the same time, it also has specific features, such as the priority of social goals, reinvestment of profits in social development, openness and transparency of activities and public reporting.

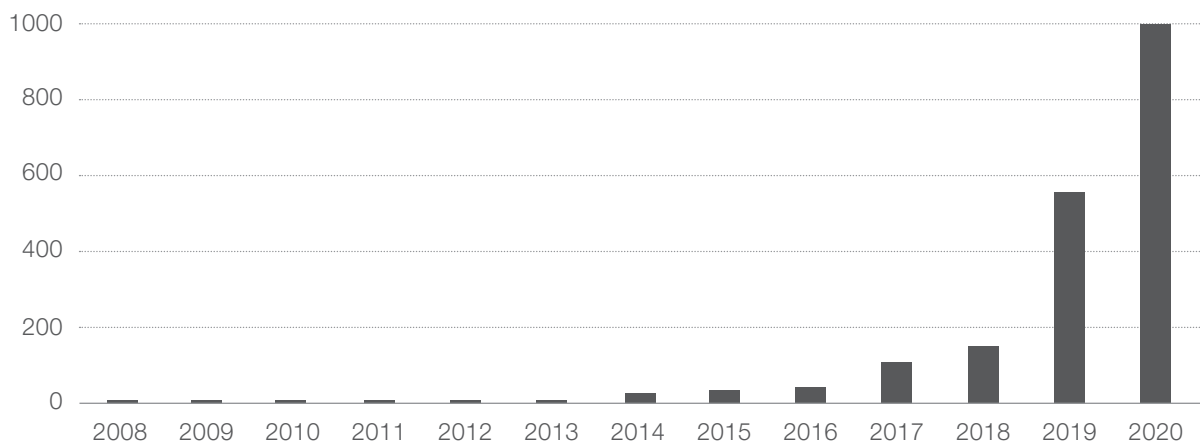
NUMBER OF SOCIAL ENTERPRISES

To date, there are no statistics that could describe this phenomenon on a national scale. Catalogue of social enterprises 2016-2017⁵, published within the project “Social Business in Ukraine” of the public organisation “Youth Center for Social Transformation” SOCIUM-XXI”, with the financial support of Western NIS Enterprise Fund, has 150 social enterprises in Ukraine. From 2008 to 2017, 112 social enterprises were established, of which 66 were registered in 2015-2016, 78 social enterprises had up to 5 people, 26 had between 6 and 10 people, in 15 there were between 11 and 20 officially employed. Only four social enterprises employed over 100 people. 10 social enterprises worked only with the support of volunteers. It should be noted that the Catalogue contains only self-declared entrepreneurial initiatives that consider themselves social enterprises. The major criteria by which enterprises were recognised as social enterprises and included in this Catalogue were the following:

- Employment of vulnerable groups of the population, such as ATO veterans, IDPs, people with disabilities, rural residents, etc.).
- Some or all of the profits from activities are used to support the statutory activities of public organisations, charity organizations, or charitable foundations.
- Some or all of the profits are used to finance certain services for socially vulnerable groups of the population or support social, cultural, or sports events and projects.

These criteria are narrower than those we determined in the previous section.

➤ INDICATIVE GROWTH DYNAMICS OF SOCIAL ENTERPRISES



⁵ <https://drive.google.com/file/d/151INaCLownZVph-lAgcZpk3Esp79sicw/view>

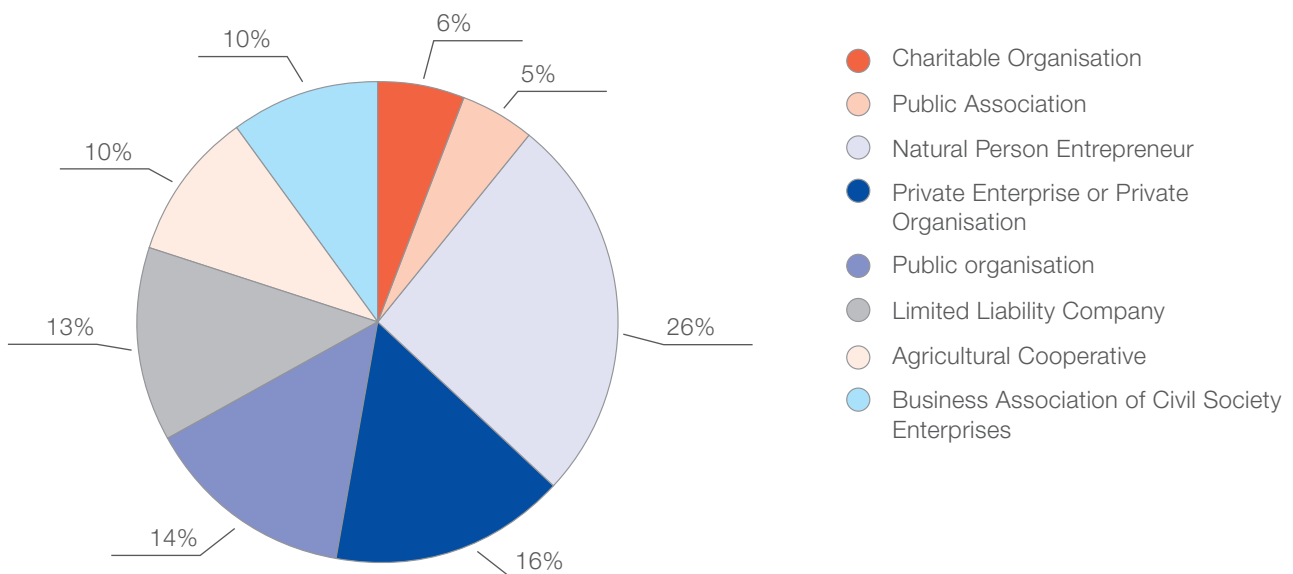
According to the baseline research from 2020 and the analysis of other analytical and statistical sources, there are currently about 1,000 enterprises in Ukraine that can be classified as social enterprises. The progressive increase in the number of social enterprises in the last 6 years (82%) is a peculiar reaction to the manifestations of social and economic crisis, became a consequence of political and geopolitical crisis which are military conflict in the East of Ukraine, the annexation of Crimea, the emergence of new categories of people in need of social support, such as refugees from the Crimea and Donbas and ATO veterans, economic stagnation, inflation growth, etc. That is why there is an urgent need to find alternative sources of financing and assistance in solving social problems of the most vulnerable categories of citizens. Newly formed social enterprises have become a tool with which it is possible to partially solve these social problems. The main mechanism for establishing new social enterprises was the economic self-cohesion of new socially vulnerable segments of the population - internally displaced persons, immigrants from Crimea, ATO veterans, united by the desire to solve their own social and economic problems.

The geographical distribution of social enterprises covers the whole of Ukraine. The largest number of social enterprises are located in the city of Kyiv (20%), Lviv (10%), Poltava (6%), Donetsk (6%), Kyiv (5%), Zaporizhia (5%) and Kharkiv (4%) regions. The least social enterprises are registered in the Volyn region.

THE LEGAL STATUS OF SOCIAL ENTERPRISES

Social enterprises are not limited in their choice of organisational forms of activity as subjects of entrepreneurial activity. If to analyse social enterprises of Ukraine in the context of their organisational and legal form, most of them have the organisational form of the following economic entities: natural person entrepreneurs (PE) 26%, private enterprises 16% and public organisations 14%. Social entrepreneurs also register their activity in the form of 13% of limited liability companies and 10% of agricultural cooperatives and other forms.

» ORGANISATIONAL AND LEGAL FORMS OF SOCIAL ENTERPRISES

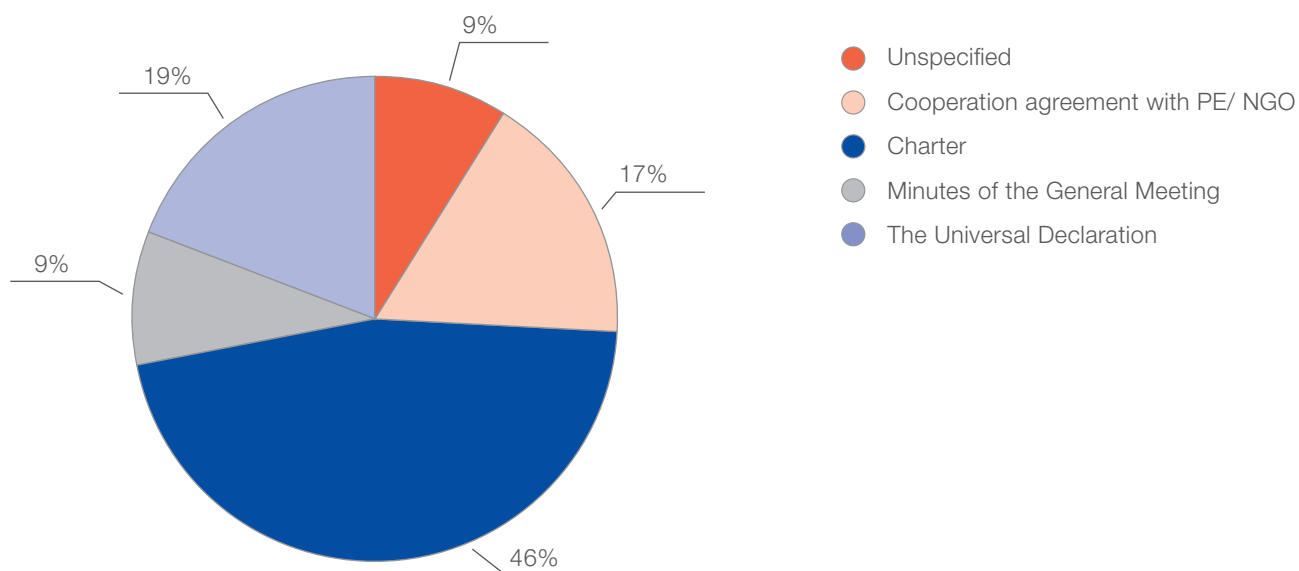


Organizational and legal forms of social enterprises are chosen based on the optimal business model and tax systems. Therefore, most social enterprises work in the form of natural person entrepreneurs, which greatly facilitates business administration, accounting and taxation. It should be noted that almost 82% of social entrepreneurs PE work in close cooperation (under direct agreements and memorandums of cooperation) or are somehow connected in their economic activities with non-profit public organisations that implement social projects. Thus, we can conclude that over 56% of social enterprises in Ukraine are created by civil society institutions, work in their structure, closely cooperate, or are somehow associated with them. This situation creates a mutually beneficial symbiosis between public organisations and social enterprises. The first ones can significantly improve their economic stability and consistency, depend less on donors and grants, and receive additional independent sources of financing for their social project activities. The second ones receive some tax benefits, a broad client (project beneficiaries) and

partner base, sustainable marketing in the addressed communities of the projects, qualified specialists and so on.

One of the decisive signs of social business is the official declaration of its social mission in regulatory documents. Most social enterprises formulate their social mission in their charter (46%) or make an open public declaration about it (19%). It is also quite common practice to declare the social meaning of work (cooperation) in various contractual documents (agreements on cooperation, memorandums, contracts, etc.), about 17%. It should be noted that 9% of social enterprises admitted that they have not declared their social mission yet.

DOCUMENT, INDICATING THE MISSION OF SOCIAL ENTERPRISES

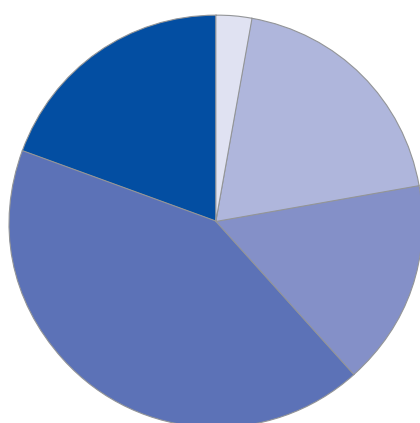


The vast majority of declared missions of social enterprises relate to social activities in the sphere of the social and economic integration of persons from socially vulnerable groups.

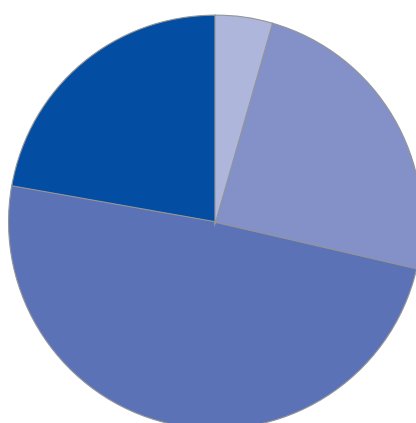
EMPLOYMENT IN SOCIAL ENTERPRISES

The majority of employees at social enterprises are young people (69%) and women (54%). The vast majority of enterprises employ persons from socially vulnerable categories of the population.

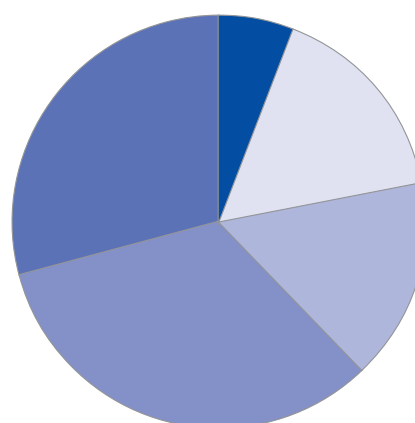
PERCENTAGE
OF PEOPLE AGED
15 TO 35 WORKING AT
SOCIAL ENTERPRISES



PERCENTAGE
OF WOMAN WORKING
AT SOCIAL
ENTERPRISES



PERCENTAGE OF
PEOPLE FROM SOCIALLY
VULNERABLE CATEGORIES
WORKING AT SOCIAL
ENTERPRISES

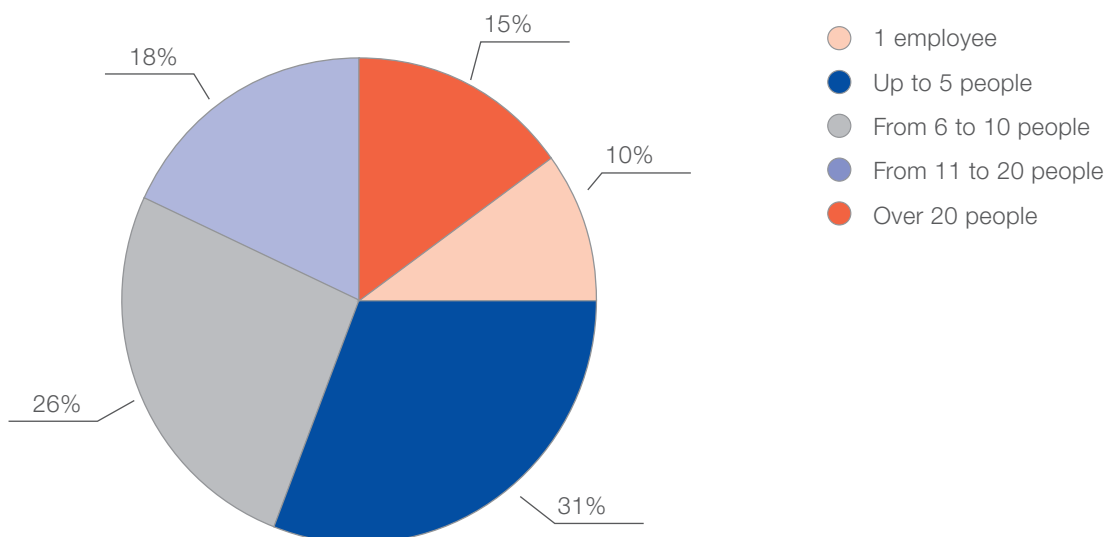


● All
 ● Over 50%
 ● From 10% to 50%
 ● Less than 10%
 ● No employees

Most social enterprises employ up to 5 people (31%). 26% of social enterprises employ between 6 and 10 people, and 18% of social enterprises officially employ between 11 and 20 people. Only 15% of social enterprises employ over 20 employees. There are also social enterprises with one employee (10%). On average, one social enterprise employs 12 people, excluding volunteers. Therefore, these enterprises provide jobs for about 12 thousand people.

It should be also noted that only the Ukrainian Society of the Deaf (UTOG) includes 22 regional and 103 territorial organisations UTOG, which generally unites almost 42000 members. For professional training

» NUMBER OF PEOPLE WORKING IN SOCIAL ENTERPRISES



and employment of persons with hearing impairment in the UTOG system, there are 31 production enterprises. With the addition of employed persons at UTOG enterprises, we can say that social enterprises in Ukraine cover almost 0.41% of the total labor market for able-bodied persons. The number of employees in social enterprises is 5.5% of all employees in the field of health care and social services in Ukraine.

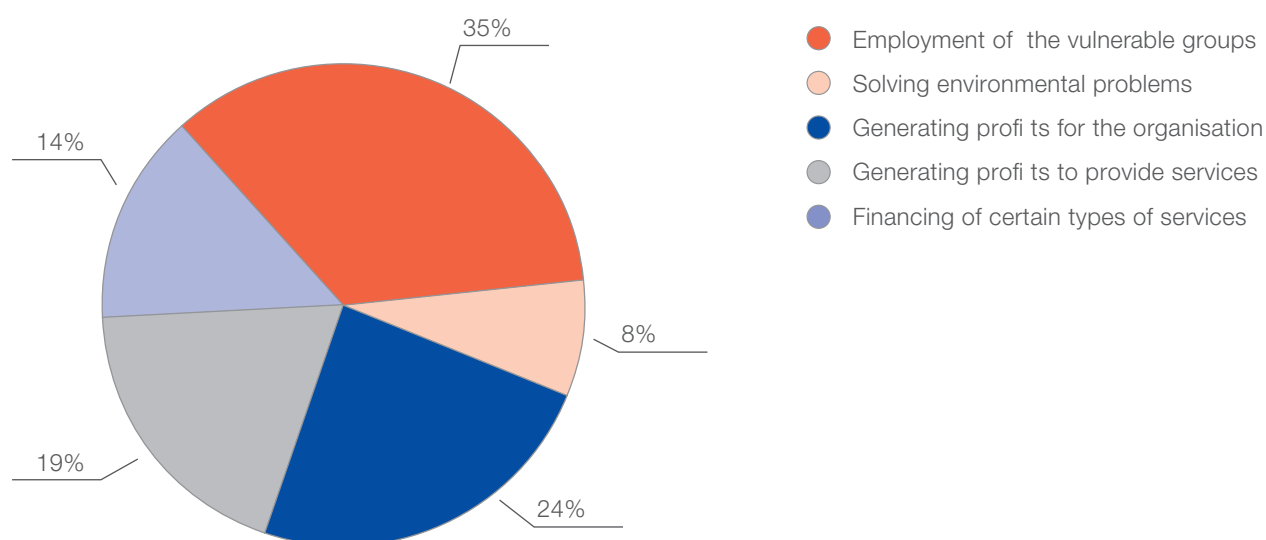
Having considered certain indicators from budget expenses saving (excluding those employed at UTOG enterprises), provided that the minimum amount of unemployment benefits is 1800 UAH. From 01.07.2020 (for the unemployed, whose insurance experience for the last 12 months before registration at the labor exchange exceeds six months or having a break in work for good reasons), the budget savings is 21 600 thousand UAH for one month. During the year the saved amount is already 259 200 thousand UAH or almost 4,5% of the annual budget financing of unemployment benefits in the country.

Assuming that all officially employed at social enterprises receive a minimum salary (5000 UAH from September 1, 2020), the approximate amount of received taxes and other mandatory payments will make up 11 700 thousand UAH per month. As a result, the number of revenues will make 0.12% of the total annual amount of state budget revenues from taxes and fees on personal income.

THE ECONOMIC ACTIVITY OF SOCIAL ENTERPRISES

Most social enterprises are engaged in the employment of socially vulnerable groups of the population, generating finance for social activities and the reinvestment in their activities. Besides that, they pay great attention in their activities to the involvement of young people and the resolution of gender issues, etc. At the same time, there is no strict distribution by type of activity among social enterprises, so one enterprise may engage in various types of activity simultaneously.

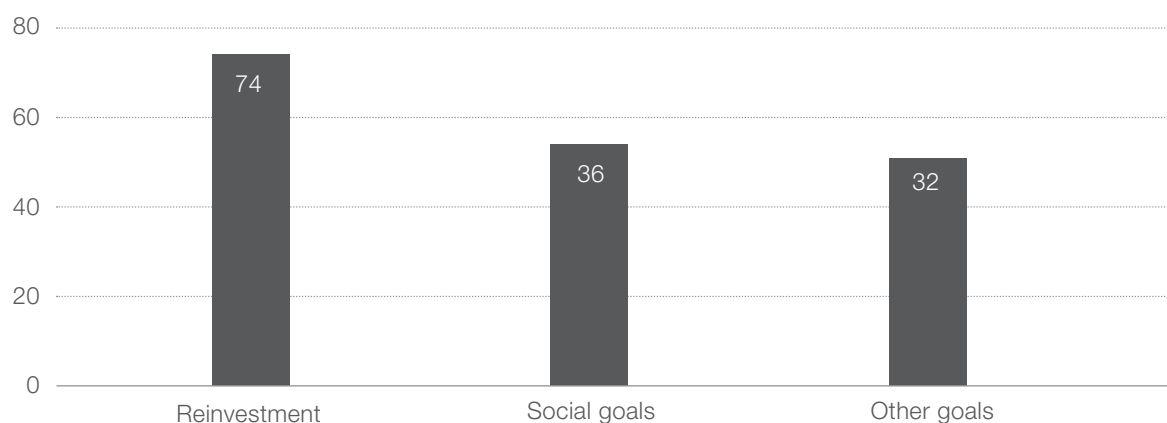
THE MAIN ACTIVITIES OF SOCIAL ENTERPRISES



The sources of financing for social enterprises are income from their business activities, grants, attracted loans, sponsorship contributions, etc. Analysis of funding sources indicates that about 75% of funding for social enterprises are own funds, 15% of the funds of social enterprises are made up of grants and sponsorship contributions. This trend shows a tendency towards the European system of social entrepreneurship and is quite effective. Although there is some opinion that the provision of non-refundable funds slows down the motivational component, as well as the desire of social enterprises to increase profits and expand their activities. Credit resources account for only 10% of all financing sources. Despite high-interest rates on loans, businesses are reluctant to involve them in their business turnover. At the same time, the provision of low-interest loans will, in our opinion, encourage businesses to work better and more efficiently. Other sources of financing include charitable contributions, intangible support from partners, investments of founders, etc.

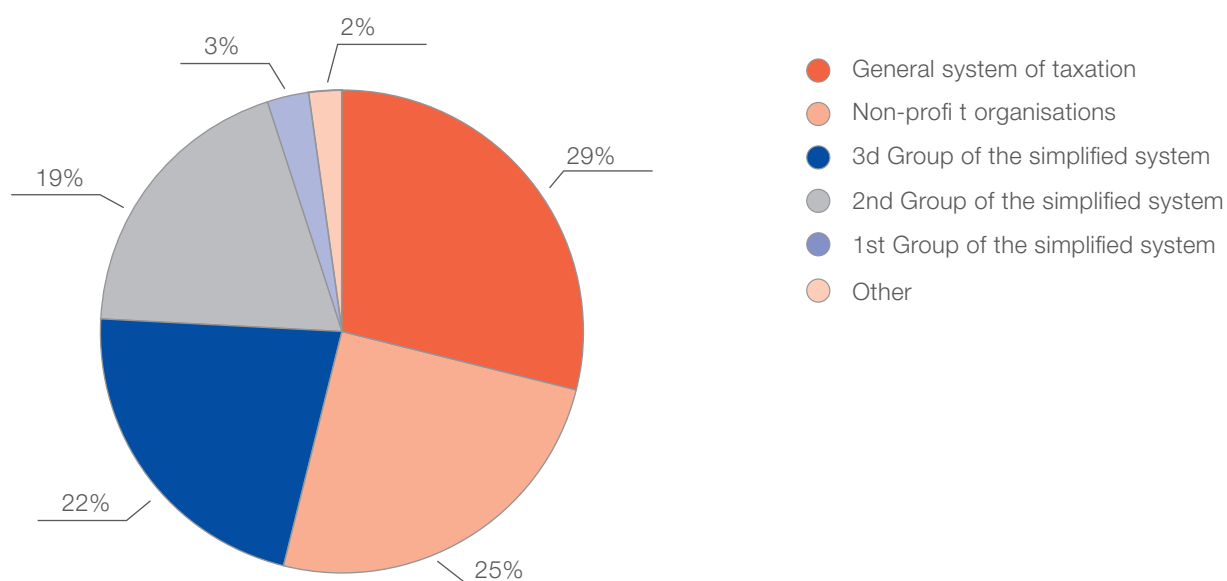
Unfortunately, only 31% of social enterprises officially publish their reports on financial results, arguing for lack of profit, commercial secrecy, etc. Thus, the average amount of profit received by one social enterprise in 2019 was 40,179 UAH.

PROFIT DISTRIBUTION OF SOCIAL ENTERPRISES (%)



Distribution and use of profits by social enterprises are carried out according to the founding documents. As a rule, the profits of these enterprises are directed towards reinvestment, social programs and activities, or partly towards the first and second. Social enterprises, which have published their reports for 2019, noted that at the beginning of their establishment, they spent a large share of profits on reinvestments and only 24-26% on social purposes or other statutory activities.

TAXATION SYSTEMS FOR SOCIAL ENTERPRISES



Based on the generalised reporting data and the estimated amount of the received income, we can predict the average amount of annual turnover per one social enterprise is 1500 thousand UAH. If we take the level of the tax burden of 35%, then for the year, on average, the budget from one social enterprise is projected to receive 525 thousand UAH in the form of taxes and mandatory fees and payments. Overall, of all social enterprises, the estimated amount of annual tax payments is already 525 million UAH. (0.08% of all annual tax revenues to the State budget).

The largest number of social enterprises have chosen the general system of taxation (29%), 25% are taxed under the status of “non-profit organisation”, the third place is occupied by the simplified system of taxation (single tax) - the third group (22%) and the second group (19%). Only 3% of social enterprises are on the simplified taxation system - the first group. Also, there were social enterprises that showed a different answer: benefits, a fixed agricultural tax, etc.

Analysing the amount of taxes paid by social enterprises, it should be noted that only 41% of enterprises published their data. Most companies have paid taxes in 2019 of 10-15 thousand UAH. 22% of social enterprises paid taxes of 20 to 50 thousand UAH and 21% up to 10 thousand UAH to the taxes.

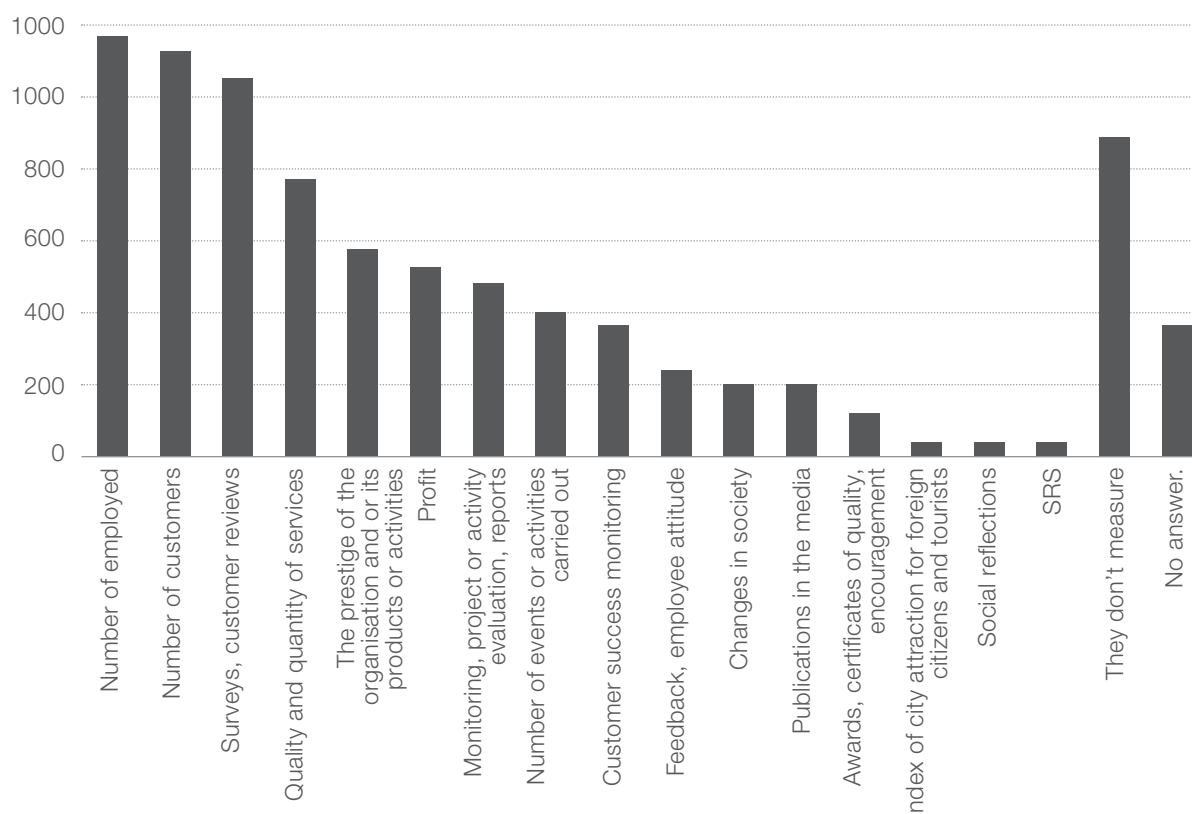
Besides, there are 3% of social enterprises, which by 2019 have paid over 500 thousand UAH. The largest amount of taxes paid for 2019 is UAH 1,307,600.

Through correlation forecast and proportional extrapolation of indicators of approximate amounts of annual gross volumes, amounts of tax and other necessary deductions, amounts of approximate profit, it is possible to predict the estimated average amount of an annual contribution of one social enterprise in the economy of Ukraine in the average amount of 2850 thousand UAH. On the scale of the whole sector of social business, approximate and indicative projected contribution to the economy of the country may be almost 3 billion UAH per year. (More than USD 106 million, or almost EUR 90 million). This contribution equals 0.08% of Ukraine's GDP. But if we compare the share of labor force participation and the resulting projected national product, it turns out that the estimated productivity of economic activity of the social business in Ukraine is 9% higher than the national average. It must be borne in mind, however, that the main purpose of social business activity is not to make a profit and achieve high economic indicators.

SOCIAL ACTIVITIES OF SOCIAL ENTERPRISES

The main mission of social business activity is to determine the achievement of certain social goals. Each social enterprise forms its measurement of its activity. The diagram below shows the share of social enterprises with a certain indicator of achieving the social effect.

In particular, most enterprises showed the number of employed persons as an indicator of their productivity, followed by the number of customers, surveys and feedback on the services and goods they offer, the quality and amount of services provided.



Not all indicators are quantitative, so it is quite difficult to conduct a comparative analysis of the social activities of social enterprises.

According to the leading indicator of the quality of the social activity of the social business, employment, the approximate annual indicators reach on average 250 employed persons per year per specialised social enterprise. Hence, the estimated annual indicators of all social enterprises will be 87500 employed persons. This is 21% of the total number of employed people per year all over the country.

Social enterprises in the vast majority of cases are engaged in the employment of persons from socially vulnerable categories of the population. Based on this, social enterprises employ an average of 2% of such persons per year (persons with disabilities, internally displaced persons and ATO veterans).

According to research, social enterprises provide social services, such as information, consulting, legal and other per year to an average of 80 vulnerable persons per month. That is, an average of 960 people become clients of one social enterprise per year. The average annual customer base for the entire social business is 960,000 people. This is 16.5% of the registered persons from the categories of socially unprotected (persons with disabilities, internally displaced persons, ATO veterans, persons in difficult living conditions and homeless persons).

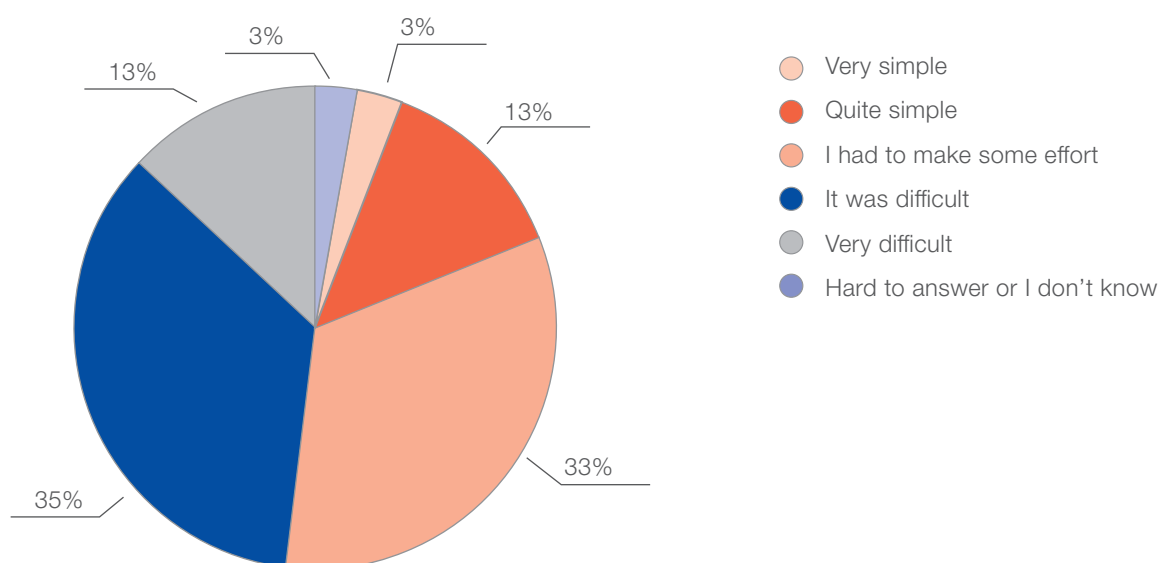
As it was mentioned above, 36% of social enterprises direct their income to social purposes. Based on the estimated average annual income of the social enterprise of 40179 UAH (see above), we can make an indicative conclusion that social enterprises annually direct their income to social purposes in the average amount of 14 465 thousand UAH. This amounts to 0.05% of all expenses of the state budget of Ukraine envisaged for financing social protection of the population, or 0.3% of the total volume of international technical donor assistance aimed at projects to support and protection of socially vulnerable categories of the population. For comparison, the only active social investment banking program in Ukraine WNISEF⁶ for 5 years of its existence was invested in social project 28586538 UAH, i.e. on average 5717 thousand UAH per year. This is 60% less than the estimated annual social business contribution for social purposes.

⁶ <https://wnisef.org/uk/impact-investing/>

MAIN PROBLEMS IN THE ACTIVITY OF SOCIAL ENTERPRISES

Social business, as the youngest one, however, is developing very dynamically. Of course, this cannot but cause problems in the activities of this type of entrepreneurship. So, the first problems arise when creating a social enterprise.

» HOW DIFFICULT WAS IT TO ESTABLISH YOUR SOCIAL ENTERPRISE?



Most social entrepreneurs noted that it was difficult to start their own business. This was primarily due to the difficulties in the formation of start-up capital and the unavailability of financial resources - 24%. 17% of social enterprises face difficulties due to competition in the market with non-profit public organisations because beneficiaries tend to receive free assistance and services, to participate in a guaranteed social project with sustainable donor funding, rather than to become clients of unsustainable social business. Social expectations are limited and public distrust has become an obstacle for 11% of social enterprises. Lack or insufficiency of knowledge and skills in business management complicates the development of 10% of social enterprises. For 9% of social enterprises, the obstacle is the low level of employee compensation. Other obstacles included a narrow and unprepared market, difficulties in recruiting and training staff, low motivation levels, bureaucratic obstacles, and others.

The largest support to social business in Ukraine comes from non-governmental non-profit organisations (92%), which involve entrepreneurs in social projects, provide free training, information and consulting assistance. Other businesses provide only ad hoc support.

Local government support for social business is mainly provided through programs to support medium and small businesses. In particular, such support in some regions includes:

- Reimbursement of interest rates on entrepreneurial loans.
- Providing “marketing vouchers”, which is the reimbursement of 50% of the payment for participation in city, national and international exhibitions.
- Work of business support centers, consulting centers to assist both new and existing businesses.
- Public procurement and social order.
- Rental of premises for public organisations at reduced rates.

Leaders among regions in this regard are Lviv and Vinnytsia regions. Vinnytsia City Authorities have even adopted a separate Social Entrepreneurship Development Program for 2020-2022. However, the real opportunities for social entrepreneurs to use these programs are quite limited. The main obstacle here is bureaucratic obstacles and imperfection of regulatory budget mechanisms. For example, in the performance of social orders and public procurement there are restrictions on advance payments for budgetary funds (Resolution No. 1070 of the Cabinet of Ministers of Ukraine⁷).

At the state level, social business support is also provided within the framework of small and medium business support. Today in Ukraine there are 17 bank lending programs, 18 budget lending and support programs, and 13 donor assistance programs for small and medium-sized businesses⁸. But there is only one targeted social investment program - WNISEF. During the 5 years of its existence, within the framework of this program, it was granted loans to social entrepreneurs in the amount of 24556455 UAH, that is, an average of 5911 thousand UAH per year, which is only 0.4% of the estimated projected value of the total annual turnover of social business in Ukraine. Under other support programs, social enterprises feel in unequal conditions, where it is difficult for them to compete with traditional businesses due to the social burden.

As a future partner in the promotion of social entrepreneurship, 37% of social entrepreneurs consider representatives of other traditional businesses, 34% traditionally see the main role of the non-governmental sector here, and 17% would like to see central government authorities as leading partners. 6% of social entrepreneurs see local authorities and donors as their partners in this matter.

⁷ <https://zakon.rada.gov.ua/laws/show/1070-2019-%D0%BF#Text>

⁸ https://sme.gov.ua/support_programs/

REMARKS

Social business in Ukraine is a relatively young activity with rapid development dynamics. High and abrupt rates of development of social entrepreneurship in Ukraine are caused by the reaction of society to crisis phenomena in social, economic and political spheres. Under such conditions, the state shows limited opportunities against the background of an unlimited number of unresolved problems in the social sphere. Low level of material security, mass unemployment and the high proportion of vulnerable groups of the population are all factors trigger a search for alternative sources of financing for the social sector.

One of the innovative tools to address these issues can be the activities of social enterprises. Moreover, there is a social demand in the society and a high level of expectations from this type of activity. Only in May 2020 in the Ukrainian information field social entrepreneurship, enterprises and social business in Ukraine were mentioned 82 times.

The rapid development of social business brings quite powerful results and makes a significant contribution to both the country's economy and the social sphere. The main activities of this sector are social and economic integration into the social life of socially vulnerable groups, overcoming unemployment and poverty, and implementing social measures. Activities in these areas of social business show the positive dynamics of both economic and social indicators.

But the lack of a legal definition and differentiation of social entrepreneurship leads to the fact that social business operates practically in the statistical, legal and organisational "shadow". Economic and social achievements of social business have to be calculated using the methods of forecasts, assumptions and extrapolations. Therefore, the social and economic contribution of social business is practically unknown to either the state or society. In the public consciousness and the perception of the authorities, there is an impression of Ukrainian social business as an amateur, fragmented, meager and very unstable activity.

Meanwhile, social enterprises are booming. This process takes place in two ways: by the self-organisation of economic activities of the united representatives of socially vulnerable groups of the population and by the establishment of authorised business activities based on non-governmental non-profit organisations. The latter option is the most widespread and mass one.

It is non-profit public organisations that provide the greatest support to the social business by involving them in social projects free of charge, providing training, information and advice on all business matters, creating business incubators, hackathons, administering micro-grants for startups.

But if in the field of achieving high social indicators social entrepreneurship is developing dynamically, the development in the purely economic sphere is still slow. This is influenced both by objective (negative market conditions, unfavorable economic situation, inflation, price increases, the declining purchasing power of the population, undeveloped financial services market, etc.) and subjective factors (low level of economic training and skills in business administration of social entrepreneurs, competition from traditional business, etc.). Therefore, the issues of achieving financial stability, economic growth and intensification, optimisation of administrative processes, business scaling, accumulation of resources and material reserves are now coming to the foreground. In this regard, the main problems are the lack of access to financial resources in social business (especially low-cost credit) and the reduction of the tax burden (at least temporarily, while achieving economic sustainability).

Based on this, social business is now seeking to strengthen partnerships with traditional businesses to work together to protect itself from economic crises. Another immediate need for social entrepreneurs is the strengthening of the role of the State in the development of social entrepreneurship. The development of social business in Ukraine has objectively significantly overtaken the state of the legal and regulatory framework, the position of the state policy in the social and economic spheres. Despite the dynamic development of social business, the State does not recognise it at the legal level and the level of policy-making and development strategies, nor does it recognise its contribution and its high social and economic mission.

The first necessary step from the state should be to introduce the concept of social business into the legal field and the normative definition of this concept and its qualifying features. This will help to differentiate social entrepreneurial activity and keep an accurate record of its contribution. Besides, the normative definition is a necessary condition for starting unified and transparent lending under beneficial special conditions only for social enterprises. The existing lending systems for traditional businesses put a social business in unequal conditions: while traditional business carries only economic risks, the social business additionally assumes social obligations, intending to fulfill a social mission rather than profit. Therefore, social business is more vulnerable economically than traditional.

Besides that, it is necessary to introduce a system of state support for social business, primarily through reducing the tax burden. It will also have a positive impact on economic sustainability and the dynamics of social entrepreneurship.

It's obvious, today there is a need to implement changes in existing legislation to maintain the positive dynamics of social business.

LEGISLATION AND SOCIAL BUSINESS

The concept of social entrepreneurship has not yet been introduced into the Ukrainian national legislative field. However, in European countries, social business is actively developing through regulation. Therefore, it makes sense to conduct a normative analysis of social entrepreneurship in Ukraine through the prism of European legal experience. Moreover, Ukraine has declared its aspirations to harmonise its own legislation towards integration into the European Union.

EUROPEAN EXPERIENCE

One of the pioneers in the area of social entrepreneurship development in the EU is Italy. There were created the first mutual aid organisations to provide social services - social cooperatives, which formed the basis of Italian social enterprises (one of the first such cooperatives was the consumer cooperative “Magazzino di previdenza”, opened in Turin in 1854). In 1991 Act No. 381 was adopted, which regulated the mechanisms of creation and activity of social cooperatives, which were divided into two groups: “A” - providing social, educational, medical services to the needy categories; “B” - creating opportunities for employment and social integration of vulnerable groups (at least 30% of their members must be employed in the workplace). The conditions for granting the status of the social cooperative are limited profit distribution and development of its own assets. Since then, Italian legislation has set an example for developing similar bills in other European countries. This is illustrated by the Portuguese Law on Social Solidarity Cooperatives (1998), the Greek Law on Social Cooperatives with Limited Liability (1999), the legal definition of “cooperative society with collective interests” in France (2001), the Finnish Act on Social Enterprises Recognised as Market Oriented Cooperatives (2003). It is important for Ukrainian legislation that the Italian legal system guarantees a high level of control and quality standardisation, dialogue between producers and consumers.

Speaking about the British legal framework for social entrepreneurship, we note that British law has a pronounced casual nature and is characterised by the prevalence of case law. Therefore, there is no single legal model of social entrepreneurship in the UK, and the status of a social enterprise may be granted to various firms and companies. In 2005 the Law No. 1788 “Regulation of Community Interest Companies” was adopted in 2005. They belong to non-profit organisations and must operate in the interests of a particular local community.

In Germany, social entrepreneurship does not have a specific legal form, which is enshrined in the regulatory framework. Social enterprises operate in the form of cooperatives (Genossenschaften), foundations (Stiftungen), associations (Vereinen) and limited liability companies (GmbHs).

In Belgium, the concept of social entrepreneurship has no clear legal boundaries. In 1996, legislation on a social purpose company was introduced, which outlined the variety of legal forms of social enterprises. Federal legislation does not limit the amount of entrepreneurial activity and does not provide profit distribution among founders (allowing for separate mechanisms to reduce their expenses). The Belgian legal framework for its regulation of companies with social missions brings Belgian social enterprise closer to the Italian model.

In Greece, all issues of social entrepreneurship are regulated by Law No. 4019 of 2011 “Social Economy, Social Entrepreneurship and Other Provisions.” The law provides for three categories of social enterprises: integration social cooperatives (the basis of activity is the social and labor integration of people who find themselves in a difficult life situation); social guardianship cooperatives (producing goods and services for the disabled, elderly, persons with chronic diseases, etc.); social production cooperative enterprises (working for their region in the areas of culture, ecology, housing and utilities, maintaining local traditions, etc.).

In Poland, an important impetus for the development of social entrepreneurship was the adoption by the Sejm of the new Constitution (1997) and the country’s accession to the EU (2004), including the implementation of certain provisions of the EU EQUAL Programme valid in 2000-2006, as well as other social programs. The legislative framework consisted of the Laws “Socially Useful Work and Volunteering” (April 24, 2003), “On Social Employment” (June 13, 2003), “Employment Promotion and Labor Market Institutions” (April 20, 2004), “Social cooperatives” (July 6, 2006). The last of these laws provides for three ways to establish a social cooperative: institutional (through the Center for Social Integration); by a non-profit organisation or local government; individuals. The founder is exempt from paying the registration fee and can receive lump-sum cash assistance in certain amounts. Local authorities have the right to order certain services from social cooperatives without tendering.

In the Czech Republic, social enterprises are governed by the Acts “Business Corporation”, “Commercial Enterprises and Cooperatives” (2012) and some others.

In Latvia, social entrepreneurship issues are also not regulated by law, although the first bill was drafted at the end of 2015. This is the reason for many problems with taxation (in particular, funds received from European funding), training of specialists, attracting functional capabilities and resources for work, state support, etc.

Based on trends in the development of the EU legal framework, it can be argued that the main organisational and legal forms of social enterprises in them are a cooperative or non-profit association. The second form prevails where its legal definition gives certain preferences in the sale of goods and services. Where it does not exist (Spain, Sweden, etc.), cooperatives are prevailing. Most of the socially oriented laws and regulations of the EU countries were adopted within the framework of the project launched in October 1998 to develop recommendations for promoting the development of social enterprises (mainly according to the Italian cooperative model).

Proper legal regulation of social entrepreneurship is the key to the success of social enterprises, their public and state support. In Great Britain, since the late 1990s, there have been actively created organisations supporting social entrepreneurship such as “ Social Enterprise London” (1998), “ Social Enterprise UK” (SEUK). Among the banking organisations that lending social businesses are leading “Futurebuilders England” (the government lending fund that provides support to organisations working under contracts with government agencies), “Charity Bank”, “Unity Trust Bank” and others. In 2002, the Association of Social Entrepreneurs (SEU) was founded, in May 2006, the Office of the Thirdtor (OTS) was established under the Cabinet of with the status

of a ministry. It has a Social Enterprise and Finance Divisions. The long-term program “Social Enterprises: Success Strategy” starts to be implemented. In 2012 a social banking institution called “Big Society Capital” was founded, which finances the activities of social enterprises and charitable organisations. As of 2019, the total annual contribution of social enterprises to the national economy was about £24 billion.

In Germany, the development of modern practical approaches to social entrepreneurship is linked to the opening of a branch of the Schwab Foundation in 1998, as well as the formation of the Academy of Social Entrepreneurship in 2010. The beginning of state support can be connected with the government support of the competition of social entrepreneurs in 2000 and the establishment of a registered association in 2003. State support is provided in two main directions: stimulation of successful entrepreneurs and development of the strategy of interaction between social entrepreneurs and the Ministry of Family, Senior Citizens, Women and Youth. At the non-governmental level, social entrepreneurship is supported by the organisations “Ashoka” and “BonVenture”. The German city of Wiesbaden has the official status of a “City of Social Business”, which was granted to it by the creative laboratory “Grameen Bank”.

In Belgium, social enterprises were most actively established in the 1990s, and since 1996 European Research Network institutes have been actively working in the country to study the phenomenon of social entrepreneurship. A serious impetus for the development of social entrepreneurship was given by the branch of the Dutch bank Triodos Bank, which during the financial crisis of 2007-2008 stimulated organisations that worked exclusively in the social sphere. The practical work of Belgian social enterprises is aimed at saturating the market with goods and services that do not provide ordinary business and the public sector.

So we can conclude that most of the EU countries have adopted fundamental legislative and regulatory acts defining the leading organisational and legal form and the principles of social enterprises’ activity, in particular: in Italy these are social cooperatives (Law 381 of 1991, as amended in 2005), in the United Kingdom they are companies of public interest (Law 1788 of 2005), in Germany, they are cooperatives, association, limited liability companies, in Belgium they are companies with a social mission (Federal Laws of 1996 and 1999), in Greece, they are social cooperatives with limited liability (Law of 1999), in Portugal, they are social solidarity cooperatives (Law of 1998), in Poland, they are social cooperatives (Law of 2006).

Currently, many EU governments have legislated the operation of social enterprises in the form of cooperatives, whose main feature is a democratic form of government and the mandatory distribution of company shares among the founders, volunteers and beneficiaries. Other countries prefer the form of the non-profit association.

Separate normative regulation of social business is the basis for the creation of mechanisms for stimulating and supporting the social component of business, the formation of social order and mobilisation of business potential to solve social problems.

EXPERIENCE OF UKRAINE

The first attempt to legitimise social business was made in 2012 by the people's deputy of the faction "Batkivshchina" A. Feldman by introducing the bills "On Social Enterprises"⁹ and "On Amendments to Article 154 of the Tax Code of Ukraine (concerning the support of social enterprises)".¹⁰

The first bill introduced the concept of "social enterprise" and defined the criteria by which an enterprise could be recognised as "social". Another bill proposed to exempt social enterprises from taxation of profits derived from the sale (supply) of goods and performance of social works and services.

It was also proposed to establish an Interdepartmental Commission for the Support of Social Enterprises, which would determine the status of "sociality" of a particular enterprise and its compliance with the conditions for obtaining tax benefits. The first bill was rejected by the Economic Policy Committee of the Verkhovna Rada of Ukraine in 2013, which led to the withdrawal of the bill on benefits for social enterprises. Feldman's repeated attempt in 2015 to legally regulate social business was also unsuccessful.¹¹

During 2019, social entrepreneurship at the national level was officially mentioned in two decrees of the Cabinet of Ministers of Ukraine. The first decree approved the Action Plan for the implementation of the Strategy for the Development of Small and Medium-sized Enterprises in Ukraine up to 2020¹², with a separate paragraph providing for the "conduct of a study on the development of social entrepreneurship in Ukraine and the preparation of proposals for the development of draft legal and regulatory acts to support social entrepreneurship, taking into account international best practices". The executors of this paragraph are the Ministry of Economic Development, the Ministry of Social Policy, the Ministry of Finance and other central and local executive authorities.

Another decree "On the approval of the plan of measures for 2019 on the implementation of the National Strategy for the Promotion of the Development of Civil Society in Ukraine 2016-2020"¹³ provides "to promote, in particular through the infrastructure to support small and medium entrepreneurship, training courses, training and information campaign on the development of social entrepreneurship with the involvement of civil society institutions". The Charity organisation "Ukrainian Forum of Philanthropists" and other public organisations are listed as executors of this paragraph of the Plan along with the Ministry of Economic Development and regional state administrations by consent. Analytical materials on the role of social entrepreneurship in the reintegration of Donbas¹⁴, prepared by the National Institute for Strategic Studies, testify to a certain interest in the issue of social entrepreneurship as one of the ways to solve urgent problems at the national level.

In the current Program of the Cabinet of Ministers of Ukraine (CMU Decree 12 June 2020 № 471¹⁵) social entrepreneurship is mentioned in section 10.4. Support for people with disabilities: "Introduction

⁹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=43720

¹⁰ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=10623&skl=7

¹¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?pf3516=2710&skl=9

¹² <https://www.kmu.gov.ua/npas/deyaki-pitannya-realizaciyi-strategiyi-rozvitku-malogo-i-serednogo-pidpriyemnictva-v-ukrayini-na-period-do-2020-roku>

¹³ <https://zakon.rada.gov.ua/laws/show/657-2019-p>

¹⁴ <https://niss.gov.ua/doslidzhennya/regionalniy-rozvitok/rozvitok-socialnogo-pidpriyemnictva-v-ukraini-ta-yogo-rol-u>

¹⁵ <https://www.kmu.gov.ua/npas/pro-zatverdzhennya-programi-diyalnosti-kabinetu-ministriv-t120620>

of new mechanisms to promote employment and employment of people with disabilities, including through the development of social entrepreneurship and starting their own business.” The implementers of this paragraph are the Ministry of Social Policy and the State Employment Service.

The regional policy for the development of social entrepreneurship is mainly formulated in regional programs for the development of small and medium-sized enterprises. For example, the Program for the Development of Small and Medium-sized Enterprises in Kyiv region for 2019-2020 years provides for “the development of social entrepreneurship to attract people with disabilities, women, youth, ATO participants, internally displaced persons”.¹⁶

Some local councils and their executive bodies consider social entrepreneurship as one of the priority areas of their activity. Quite often the impetus for the development of local programs for the development of social entrepreneurship is the participation of local governments in international technical assistance projects that support the development of social business.

Thus, the active involvement of local government officials in the cities of Zaporizhia and Vinnytsia in social entrepreneurship activities under the PROMIS Project of the Federation of Canadian Municipalities has improved their awareness and ability to develop social business.

In 2020, the Vinnytsia City Council approved a separate “Program for the Development of Social Entrepreneurship of the Vinnytsia City United Territorial Community for 2020-2022”.¹⁷ This is the first example of the adoption of a separate normative document on social business at the regional level. In the absence of an official normative interpretation of the concept of “social entrepreneurship”, the authors of the Programme took as a basis the definition, which was developed by a working group of experts in the framework of the OSCE Project Coordinator in Ukraine “Preventing Trafficking in Human Beings in Ukraine by strengthening the economic opportunities of representatives of risk groups”. The result of their work was the project “Concept for the development of social entrepreneurship in Ukraine”, which is currently under consideration by the Cabinet of Ministers of Ukraine¹⁸.

¹⁶ <https://www.koda.gov.ua/wp-content/uploads/2019/03>

¹⁷ <https://www.vmr.gov.ua/ContentLibrary/b5ae2f52-4d95-4717-a301-c3132844360e/1149/%D0%9F%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%B0%20%D1%80%D0%BE%D0%B7%D0%B2%D0%B8%D1%82%D0%BA%D1%83%20%D0%A1%D0%9F%20%D0%BF%D1%80%D0%BE%D0%B5%D0%BA%D1%82%20%D0%B2%D1%96%D0%B4%2013.03.pdf>

¹⁸ <https://www.osce.org/uk/project-coordinator-in-ukraine/417257>

CURRENT LEGAL AND REGULATORY FRAMEWORK OF UKRAINE

The legislation of Ukraine does not define a social enterprise and does not contain any specific normative acts regulating the activity of such enterprises. Today, in terms of legislation, social enterprises exist within the limits of general entrepreneurship.

The current legal and regulatory framework regulates the establishment and operation of enterprises, which according to international standards can be considered social. In particular, these are such norms:

- Articles 85 and 86 of the Ukrainian Civil Code¹⁹ regulate the activities of entrepreneurial societies (cooperatives other than production cooperatives, citizens' associations, etc.), which are not intended to generate profits for its further distribution among participants. Such activities shall be consistent with the purposes for which the organisation was established. In terms of economic activity, non-entrepreneurial societies have the same rights as commercial enterprises.
- Article 42 of the Economic Code of Ukraine²⁰ defines that entrepreneurship is an independent, proactive, systematic and at its risk economic activity that is carried out by business entities (entrepreneurs) to achieve economic and social results and profit.
- Article 112 of the Economic Code of Ukraine²¹ governs the establishment of enterprises of citizens' associations to carry out economic activities to fulfill their statutory tasks.
- Article 14 of the Law of Ukraine "On the Fundamentals of Social Protection of Persons with Disabilities in Ukraine"²² the average monthly wage of workers with disabilities in full-time equivalent shall not be less than the minimum wage.
- The products of enterprises of social organisations of persons with disabilities may be included in public procurement.
- regulates the economic activities of public organisations of persons with disabilities and the establishment of economic entities by these organisations, products of which may be included in the State order.

Enterprises established by public organisations of persons with disabilities are entities to which legislation provides certain tax benefits. Article 14-1 of the Law of Ukraine "On the Principles of Social Protection of Persons with Disabilities in Ukraine" provides that tax benefits may be applied to enterprises established

¹⁹ <https://zakon.rada.gov.ua/laws/show/435-15>

²⁰ <https://zakon.rada.gov.ua/laws/show/436-15>

²¹ <https://zakon.rada.gov.ua/laws/show/436-15>

²² <https://zakon.rada.gov.ua/laws/show/875-12/ed20130804>

by the society for persons with disabilities. The company must obtain permission to use tax exemptions. It is issued according to the Rules Governing Tax Exemptions for Enterprises and Organisations of Public Associations of Persons with Disabilities²³, which have been approved by a resolution of the Cabinet of Ministers of Ukraine.

According to paragraph 2 of the Rules for obtaining a permit, an enterprise must meet the following criteria:

- The average number of persons with disabilities who worked in the company during the previous reporting (tax) period (usually a calendar quarter) must be at least 50% of the number of full-time employees.
- The salary of persons with disabilities working at the enterprise must be at least 25% of the total salary fund.
- The number of costs of processing enterprises (machining and other activities) for raw materials, components, parts and other purchased goods (services) that are used for the production of goods (services) must be at least 8% of the selling price of such goods (services).
- The average monthly wage of workers with disabilities in full-time equivalent shall not be less than the minimum wage.
- The products of enterprises of social organisations of persons with disabilities may be included in public procurement.

According to the Law of Ukraine “On the Fundamentals of Social Protection of Persons with Disabilities”, employment quotas for persons with disabilities are mandatory for the private and public sectors, as well as for individuals who employ persons with disabilities. Quotas should be 4% of the total number of staff . If the number of employees is between 8 and 25, the enterprise must employ at least one person with a disability (Article 19).

The Law of Ukraine “On Social Services²⁴” considers non-governmental organisations as providers of social services (Article 13) and provides a mechanism that allows public organisations to gain access to the field of social services. It sets out the criteria by which an NGO can be recognised as a service provider (Article 16).

The Law of Ukraine “On Amendments to Some Laws of Ukraine on Strengthening Social Protection of Internally Displaced Persons²⁵” aims at solving the problem of employment of IDPs, in particular:

- Employers hiring IDPs receive compensation for up to 6 months or up to 12 months, depending on the situation in the regional labor market.
- Registered unemployed are compensated for the costs associated with relocation to their place of employment, as well as for the costs of medical examination or drug testing if the conditions of employment so require.
- The list of persons entitled to a voucher to maintain their competitiveness through retraining, specialisation and advanced training in professions and specialties for priority economic activities.

²³ <https://zakon.rada.gov.ua/laws/show/1010-2007-n>

²⁴ <https://zakon.rada.gov.ua/laws/show/2671-19#Text>

²⁵ <https://zakon.rada.gov.ua/laws/show/245-19>

As mentioned above, organisational social business, in most cases, is formed and exists as an entrepreneurial component of the social activities of non-governmental non-profit public organisations and associations. Paragraph 2 of Part 2 of Article 21 of the Law of Ukraine “On Public Associations” allows public organisations to carry out an entrepreneurial activity directly if it is provided by the statute of the public association or through legal entities (societies, enterprises) established in the manner prescribed by law if such activity corresponds to the purpose (goals) of the public association and contributes to its achievement. Such cooperation is mutually beneficial. Non-governmental organisations receive a source of funding to achieve their statutory goals. At the same time, social enterprises receive grants for the development of the entrepreneurial activity, which they could not get without cooperation with public organisations, expand their customer and partner bases, have an opportunity to improve the skills of their employees based on public organizations and more.

But such a situational symbiosis carries risks for social business. These risks are related to the authorities’ desire to introduce state control over the project activities of civil society institutions. For example, the legislative initiative²⁶ of the deputy of the faction “Servant of the People” Alexander Dubinsky provides for the disclosure of all financial and personal information of employees of public organisations that receive grants from foreign donors in the amount of more than 50% of annual funding, as well as prohibits organisations and businesses founded by public organisations, and persons who perform work and provide services to such public organisations, to pay taxes under the simplified taxation system. Of course, such a discriminatory law, on the one hand, considerably complicates the normal project activities of public organisations, and on the other hand, makes the activities of a social enterprise associated with a public organisation unprofitable. Of course, this initiative has already received negative assessment and feedback from the expert community.²⁷

So, it should be noted that social entrepreneurship in Ukraine has found itself in a dual position. Formally, from the point of view of the law, social entrepreneurship in Ukraine is regulated by the norms of general entrepreneurship within which it is not prohibited or limited by law. But in practice, in its essence, the state and origin of social business are closer to the institutions of civil society than to the sphere of commercial entrepreneurship. This type of business, in most cases, was born by commercialising the social activities of public organisations. So far, social businesses and institutions of civil society are organisationally, institutionally, programmatically, informationally and instrumentally considerably connected and dependent. The sphere of activity of institutions of civil society is characterised by variability and dependence on grant revenues and state intervention through fear of external impact.

Therefore, the problem of introducing social entrepreneurship as a unique, separate and guaranteed type of business into the regulatory field is very relevant today. This will make it possible to distinguish social business entities among other business entities and institutions of civil society, to ensure sustainability and transparency of social entrepreneurship, including by informing the public about these activities, as well as to encourage entrepreneurs to participate in addressing social issues.

²⁶ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=69609

²⁷ http://www.ucipr.org.ua/index.php?option=com_content&view=article&id=1422:anal-z-zakonopro-ktu-3936-pro-vnesennya-zm-n-do-podatkovogo-kodeksu-ukra-ni-schodo-zabezpechennya-oprilyudnennya-nformac-pro-f-nansuvannya-d-yalnost-gromadskih-ob-dnan&catid=16&lang=ua&Itemid=186&fbclid=IwAR32-JlaraJiy-iMvdQsJBM-VhQE4RZALUjBvBood3tN4XNr_AXZfCAdiFY

APPROACHES TO ADDRESSING THE PROBLEM

Despite the lack of a normative definition and regulation of social entrepreneurship, social business in Ukraine is developing. For several years in a row there has been a discussion about the advisability of introducing and content of a relevant law that would regulate the activities of social enterprises.²⁸ There are two opposite approaches to this issue.

The traditionalist approach is based on the belief in the need to develop and implement a special separate law, which would regulate the activities of social enterprises in the form of a separate legal form of organisation, following the example of European legislation. Such a view is introduced by people's deputies (in particular, members of the faction "Servant of the people", who initiated the relevant bill) and representatives of the central government. The lack of normative regulation of social entrepreneurship, of course, creates a legal gap, limits the possibilities of social business (especially investment), creates conflicts, differences in interpretation of this phenomenon, causing risks of speculation and unfair competition.

However, the creation of a single normative act on social business carries the risks of over-regulation of this type of activity, the creation of additional regulatory obstacles in the form of small-scale conditions for the opening, operation and closure of social enterprises, close government control. This can significantly reduce the development of social entrepreneurship.

Avoiding these risks is based on the opposite approach (conditionally liberal), which considers the lack of regulation of social business as an opportunity for the free development of this type of activity.²⁹ Based on the constitutional principle of freedom "what is not prohibited by law is allowed" (part 1 of Article 19 of the Constitution of Ukraine) and the existing legal and regulatory framework, social enterprises in Ukraine may develop as a form of general entrepreneurship. They may develop in an organisational and legal form that is convenient for themselves, receive a State or municipal social order, have certain privileges and preferences. Only the market and the competitive environment remain the main regulators of social entrepreneurship development.

As practice shows, without state and public incentives, regulations and support mechanisms, business is very slow to assume its social role. The lack of a unified normative definition of the social business significantly limits its development opportunities. When placing a social state or municipal order, each state institution, local government can interpret the concept of social business at its discretion, which does not exclude speculation and manipulation. International donor organisations, institutions of civil

²⁸ <https://uacrisis.org/uk/eksperty-obgovoryly-neobhidnist-zakonu-shho-b-zahyshhav-sotsialne-pidpryyemnytstvo>

²⁹ <https://delo.ua/business/5-mozhливостей-dlja-rozvitku-socialnogo-pidprijemnictva-v-ukraji-341252/>

society, projects and programs aimed at supporting social entrepreneurship should independently develop criteria for determining their beneficiaries. That is why there is only one program of targeted lending of social enterprises in Ukraine, implemented by the Western NIS Enterprise Fund (WNISEF) in cooperation with Sberbank and Kredobank.³⁰

The compromise approach to the development of legal and regulatory regulation of social business in Ukraine is the most appropriate today. It consists in rejecting the creation and adoption of a single regulation (law) on social entrepreneurship, as a separate type of activity specialised in the organisational and legal form of persons and the gradual amendment of existing legal and regulatory instruments. This will make it possible to distinguish these entities from other business entities, ensure the transparency of social entrepreneurship, in particular by informing the public about these activities, as well as encourage entrepreneurs to participate in addressing social issues. Moreover, this approach will create conditions for the formation and implementation of state policy in the field of social entrepreneurship, as it will be possible to analyse these activities based on real indicators and develop measures for its further development. The gradual amendment of legislation will make it possible to assess the regulatory impact of legal innovations on rule-making practice and to correct subsequent waves of changes.

There is an ongoing discussion in the expert community about the form of State support for social business. There is an opinion that state support for social business in the form of tax benefits and preferences is not effective and harmful. This, they say, will lead to the creation of fake enterprises to receive tax exemptions for doing business and, as a result, will negate the idea of solving social problems.³¹ According to these experts, grants are a more effective way for the government to help social enterprises. But, as we know, the government's grant policy is quite limited. Today the state budget of Ukraine provides grants only for young artists for the creation and implementation of creative projects in the field of cinematography (but their volume was reduced from 3.9 million UAH to 200 thousand UAH per year). No grants for business are planned in the State budget of Ukraine. In this situation, government grants for social business become a rather ghostly form of support. The only real possibility for the State to support social entrepreneurship is through legislation to reduce the tax burden, but with introducing an open and transparent mechanism for State and public monitoring of the compliance of the social mission by social enterprises.

³⁰ <https://wnisef.org/uk/impact-investing/>

³¹ <https://knute.edu.ua/file/NjY4NQ==/3aee82b71d8d28d590c3f27df309b94c.pdf>

PROPOSALS FOR REGULATORY CHANGES

The first step is to introduce into the Ukrainian regulatory field a unified definition of the concept and understanding of the content of social entrepreneurship.³²

To this end, the following should be included in the Economic Code of Ukraine:

in Chapter 4 should be added articles defining the characteristics of social entrepreneurship: “Social entrepreneurship is the entrepreneurial activity of an economic entity that meets the following criteria:

- The social purpose of the enterprise must be established in its founding documents or contracts or other documents confirming the social purpose of its activities.
- The business entity fully or partially (but not less than 30%) directs its profit (income) to a social purpose, conducts its activities for social purposes, provides its goods, works, services for social purposes, employs persons belonging to vulnerable categories of the population.
- The business entity voluntarily reports publicly, at least once a year, on the results of its social entrepreneurship by its defined indicators and projected results.
- The business entity adheres to a democratic form of government (legal entities) or directs part or all of its profits (income) for a social purpose to the entity which carries out the activities for this purpose and adheres to a democratic form of government.
- The business entity employs permanently persons belonging to vulnerable categories of population in the amount of not less than 50% of the average number of full-time employees of the registered staff, provided that the compensation fund of such persons shall be not less than 25% of the total wage during the reporting period...

Note: Vulnerable categories of population include:

- Orphans, children deprived of parental care, street children.
- Persons with disabilities.
- War veterans and combatants.
- Internally displaced persons.
- Elderly persons.

³² This definition bases on the developments of the working group on regulatory framework in the sphere of social entrepreneurship implemented by the OSCE Coordinator’s office in Ukraine withing the Project “Countering human trafficking through the development of economic environment for vulnerable groups in Ukraine”. Moreover, this definition has already been in use for local regulations.

- Victims of domestic violence.
- Persons with alcohol or drug addiction.
- Persons released from detention facilities.
- Victims of human trafficking.
- Persons affected by natural disasters, catastrophes, and hostilities.
- Refugees.
- Homeless persons.
- Other persons in difficult circumstances (DLS).
- Persons who, in accordance with the legislation of Ukraine, need to be provided with social services.
- Other categories of persons defined by acts of central and local executive authorities and local self-government “.

Chapter 7 should be added:

“Management of a social enterprise” as follows: “An economic entity that carries out social entrepreneurship shall have a form of management based on the principles of democratic (collective) decision-making, assuming at least one of the following criteria:

- An electoral authority and holding regular elections to this authority.
- Transparent procedures for decision-making on issues related to social entrepreneurship and the participation of employees (labor collective) of the entity in the adoption of these decisions.
- A supervisory board with the authority to control and regulate issues related to the implementation of social entrepreneurship by a business entity”.

“Report of a social enterprise” with the following content: “Intending to inform citizens, society and authorities, a business entity voluntarily publishes a report on its social entrepreneurship, in which it notes:

- Areas of activity carried out for a social purpose.
- Social issues for which the activity was carried out.
- Categories of persons regarding whom social issues were solved.
- The achieved result of social entrepreneurship (with an indication of its value equivalent) according to the indicators and the degree of achievement in comparison with the forecasted result.

It can specify:

- A step-by-step description of how social issues were addressed, in particular, circumstances that facilitated and impeded their resolution.
- The forecasted result of social entrepreneurship (indicating its cost equivalent) for the next period, as well as the indicators by which this result will be evaluated.
- The name of the auditor (the subject of the auditing activity) or other supervisory authority that verified the results of the social enterprise and the rationale for why it was selected for the audit.

- Summary of the opinion of the auditor (the subject of the auditing activity) or other supervisory authority and comment on the suggestions and comments specified in the opinion.”

Section III of the Law of Ukraine “On Public Associations” should be supplemented by norms that specify the types of entrepreneurial activity of a public association corresponding to the purposes of its creation: “Public associations may engage in social entrepreneurship carrying out statutory activities with such a social purpose:

- Creation of conditions for children in the realisation of creative, cultural and sporting opportunities.
- Providing affordable housing to low-income citizens, orphans and children deprived of parental care, young people, and families with many children.
- Overcoming poverty and reducing social stratification.
- Creating conditions for a dignified life for elderly people and people with disabilities.
- Overcoming citizen homelessness, abandonment, neglect and vagrancy among children.
- Preventing all forms of violence, including domestic violence.
- Preventing the involvement of children in criminal activities.
- Combating human trafficking and rehabilitating victims of human trafficking.
- Preventing and solving problems related to alcohol, drug, and other addictions that have negative consequences for people and society.
- Facilitating the employment of unemployed persons, in particular by providing them with knowledge and skills for employment and seeking employment
- Implementing measures to protect the natural environment and ensure environmental safety.
- Combating the spread of socially dangerous diseases.
- Resolution of other social issues determined by acts of central and local executive authorities and local self-government bodies.”

The second stage should indicate the possible mechanisms of State support for social business.

In Part 2 of Article 6 of the Law of Ukraine “On State Aid to Business Entities” to the list of criteria for assessing the eligibility of certain categories of state aid, which is determined by the Cabinet of Ministers of Ukraine to add “support for social entrepreneurship.”

Section I of the Law of Ukraine “On Development and State Support of Small and Medium-Sized Entrepreneurship in Ukraine” should be added norm that the action of this law also applies to business entities of social entrepreneurship.

The list of organisations entitled to the lease of State and communal property without holding an auction should be supplemented by entities of the economy of social entrepreneurship (Part 2 of Article 15 of the Law of Ukraine “On the Lease of State and Municipal Property”).

Article 16 “Qualification criteria for procurement procedures” of the Law of Ukraine “On Public Procurement” add a norm: “The results of social entrepreneurship (their value equivalent) are the criteria

that are used to determine the most cost-effective proposal, or are indicators (criteria) used to determine the winners of competitions (trade or tenders) using State and municipal property or budget funds.

The third stage is to introduce a mechanism of state incentives for the development of social entrepreneurship through the introduction of tax benefits. To do this, make the following changes to the Tax Code of Ukraine:

- To Article 142 add part of the following content: “Exempt from taxation of profits of social enterprises, received from the sale (supply) of goods, works and services, except for excisable goods, services for the supply of excisable goods received under commission (consignments) contracts, sureties, power of attorney, trust management, other civil law agreements authorising such a taxpayer to supply goods for and behalf of another person without transfer of ownership of such goods”.
- To Article 197, which concerns the collection of value-added tax, add a part of the following content: “Exempt from transactions in the supply of goods (other than excise goods) and services (other than services for lotteries and entertainment and services for the supply of excisable goods received under commission (consignments) contracts, sureties, power of attorney, trust management, other civil law agreements authorising such a taxpayer to supply goods for and behalf of another person without transfer of ownership of such goods which are directly produced by enterprises and organisations of social entrepreneurship”.

Such an approach of gradual change of the legal framework from the introduction of a separate definition of “social entrepreneurship” to the introduction of mechanisms for substantive state and public support and recognition of social and economic contributions can be a stimulus to the development of effective and successful domestic social business. This approach harmoniously combines European best practices with Ukrainian realities.

These proposals are the basis for a broad public discussion with the participation of all interested parties and public hearings with the prospect of creating specific bills.

AFTERWORD

Of course, legal norms alone will not make social business in Ukraine more successful. Regulatory and legal support forms certain legal frameworks and conditions for the positive and progressive development of the sector. The development itself depends on the practice of applying these norms, the interaction and cooperation of all interested parties. However, the absence of legitimisation of such a social phenomenon as social entrepreneurship leads to a considerable legal loophole, gap and lag between the state legal reality and the social and economic development of Ukraine.



Funded under the EU4Youth
Programme of the European Union