

European Union Legislation for encouraging the Social Entrepreneurship for people with disabilities

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Abstract: The present study analyzes the legal framework, which regulates social entrepreneurship in the European Union and the Republic of Bulgaria. Over the last years, legislation in this area has been rapidly developing, providing better opportunities for economic and social realization of individuals with disabilities. The main goal of a social enterprise is to make a significant social impact on the standard of living of these persons providing them with employment and moral support. Social enterprises create suitable conditions for the professional development and social inclusion of individuals with disabilities.

In recent years social entrepreneurship has gained increased importance for the development of economic processes. EU and national institutions take different actions for social inclusion of people with disabilities by satisfying their social, cultural and legal needs. These actions are guided by strategies, which have been elaborated by institutions at national level. The implementation of strategies and actions for social inclusion of individuals with disabilities requires legal regulation at EU and national level. On the basis of different method of research (comparative analysis, legal analysis and others) the report investigates EU and Bulgarian legislation in the field of social entrepreneurship. The legal framework has been viewed as an institutional basis and opportunity for satisfying the cultural, social and legal needs of persons with disabilities in Bulgaria, which will contribute to the creation of new value added in economic and social context.

The newly adopted Law on the Social and Solidarity Economics, which was passed in 2018 and becomes effective as of 5th May 2019, creates in Bulgaria a new branch-the Social and Solidarity Economics with specific legal and organizational forms and structures to carry out businesses. The new

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Law is expected to be a game changer and substantially improve the opportunities for professional and economic realization of individuals with disabilities.

Key words: people with disabilities, legislation, social enterprise, social entrepreneurship
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Introduction

Globalization has a major impact on the modern economic, political and social environment, which leads to convergence of the various economies on a global scale. Inevitably, as a result of these processes within the European Union, the idea of the importance and the benefits of social entrepreneurship is developed as an opportunity for economic activity that mixes the ingenuity of the business with the social mission and establishes a balance of the social and the economic goals.

Social enterprises are relatively new economic structures for the Republic of Bulgaria. Their appearance should be considered in the context of European Union policy, which is related to the Communication from the European Commission of 3th March 2010, entitled “Europe 2020: A strategy for smart, sustainable and inclusive growth” and with “Social Business Initiative - Creating a favorable climate for social enterprises, key stakeholders in the social economy and innovation”. After adoption of the above-mentioned documents, the European Union continues with the legal regulation and implementation of relevant policies.

Social entrepreneurship creates a favorable environment for the integration of people from vulnerable groups, provides opportunities for their social integration, raising their standard and their quality of life. In general, it provides an opportunity for the social inclusion of people, who are socially excluded from society. The main challenge, which faces people with disabilities, is their employment in an integrated work environment and the provision of an adequate support for workers and employers. The difficulties of disabled people are actually the result of the interaction between a closed society and individuals. For example individuals who use a wheelchair, meet obstacles in finding a job because the urban environment is not sufficiently available to them.

The importance of the research should be emphasized because it focuses on the legal possibility of social inclusion of people with disabilities in social enterprises and the challenges they face. The paper is focused on the social practices and the legislation in the sphere of social and solidarity economy, seen as

key tools for implementing policies purposed to the basic needs, benefits and services of people with disabilities.

An important feature of all social enterprises is the particular symbiosis they bear between financial viability and the ability to cause a social impact. In this way, they achieve simultaneous realization of economic, financial and social goals, thus acquiring an even greater value for the society. Social entrepreneurship provides another insight into economic activity, in terms how to combine the desire to make a profit, and at the same time to achieve different social goals by skillfully searching a balance between social effect and economic goals. The social enterprises can organize a large group of people and via their work achieve results that are unattainable for other types of enterprises.

1. European Union legislation for encouraging the social entrepreneurship for people with disabilities

The mission of the **United Nations Convention on the Rights of Persons with disabilities** is primarily to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for human dignity. The Convention aims a change in attitudes and approaches to persons with disabilities. They are not regarded as "object" of charity, treatment and social protection, but as subjects with rights, who are capable of claiming those rights and making decisions for their lives, based on their free and informed consent, and be active members of society. Convention gives universal recognition of the dignity of persons with disabilities.

The Convention was formed based on the basic principles and accordingly the corresponding rights and obligations. A basic principle is the full and effective participation and inclusion in society of the people with disabilities. Another fundamental principle in the field of human rights, acting in full force is the prohibition of discrimination (direct and indirect). To put this principle into practice, important are the reasonable facilitation, made for the benefit of persons with disabilities. Reasonable facilitation is all necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden to the others, where needed in each case to ensure to the persons with disabilities full and equal basis with others enjoyment or exercise of all human rights and fundamental freedoms. People with disabilities should be given equal access to justice, education, health, rehabilitation, independent living and inclusion in the community, freedom of expression and opinion, freedom of access to information, work and employment, adequate standard of living and social protection, participation in political and public life, participation in cultural life, sports, recreation and leisure.

Following EU membership of the Republic of Bulgaria, European law is relevant in our country. The regional development policy is one of the European Union's most important policies which have been developing vigorously in the last two programming periods and it is implemented through legislation. This trend is particularly strong in 2013, just before the start of 2014-2020 financial frameworks and the Europe 2020 strategy. All things considered, there has been a remarkable growth in social enterprise. For this reason, much of the European legislation for the regional development, particularly the European Investment Funds there, has been legally regulated in the last 10-15 years. As a part of this investment policy, the European Union gives the opportunity to develop social enterprises in its underdeveloped regions by legal regulation.

One of the possibilities for social inclusion of people with disabilities is the social enterprises, whose sustainable development is promoted by EU policies. Some of the European regulations that govern social enterprises are: Decision No 283/2010 / EU of the European Parliament and of the Council of 25 March 2010 establishing a European Progress Microfinance Facility for employment and social inclusion. In accordance, "The ongoing efforts of the Union and of the Member States need to be strengthened to increase the access to, and availability of, microfinance to a sufficient scale and within a reasonable time-frame so as to address the high demand of those who need it most in this period of crisis - that is, those who have lost their job, those at risk of losing their job or who have difficulties entering or re- entering the labour market, as well as those who are facing the threat of social exclusion or vulnerable people who are in a disadvantaged position with regard to access to the conventional credit market and who want to start or further develop their own micro-enterprise, including self-employment - whilst actively promoting equal opportunities for women and men. And it continues with: “underlined the need to offer a new chance to unemployed persons and open the road to entrepreneurship for some of Europe's most disadvantaged groups who have difficulty in accessing the conventional credit market... The Commission therefore announced a proposal for a new EU-wide microfinance facility (hereinafter the Facility) to extend the outreach of microfinance to particular at-risk groups and to further support the development of entrepreneurship, the social economy and micro-enterprises.

The Decision No 283/2010/EU of the European Parliament relates specifically to disadvantaged people: “An increasing amount of microfinance to vulnerable people who are in a disadvantaged position with regard to access to the conventional credit market in the European Union is provided by non-commercial microfinance institutions, credit unions and banks implementing corporate social responsibility. The Facility should help these providers, which supplement the commercial banking

market, by increasing the availability of microfinance to meet the current levels of demand.” "(Bencheva, H 2016, Vunova, K. 2013, Vunova, K. 2017).

Apparently, the Decision No 283/2010/EU of the European Parliament establishes a pattern for the financing of disadvantaged people enterprises. This Decision was amended by Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (Text with EEA relevance) in order to relate the social policy to Europe 2020.

The next series of legislations are from 2013. Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 lays down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006. In accordance to this Regulation „Support for traditional sectors is more necessary because it enables them to remain competitive on the Union market in relation to competition from third countries."

Particularly, the activity of social enterprises is regulated by the Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (Text with EEA relevance). Art. 1 of this Regulation defines the objective of funding (supporting) social enterprises: “Increasingly, as investors also pursue social goals and are not only seeking financial returns, a social investment market has been emerging in the Union, comprising, in part, investment funds targeting social undertakings. Such investment funds provide funding to social undertakings that act as drivers of social change by offering innovative solutions to social problems, for example by helping to tackle the social consequences of the financial crisis, and by making a valuable contribution to meeting the objectives of the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled ‘Europe 2020: A strategy for delivering smart, sustainable and inclusive growth’. Art. 2 of this Regulation states: “This Regulation is part of the Social Business Initiative established by the Commission in its Communication of 25 October 2011 entitled ‘Social Business Initiative - Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation’.” The Regulation introduces common rules for the financing of social enterprises throughout the European Economic Area and encourages their development. Art. 13 defines the aim of the social enterprises: “As the principal objective of social undertakings is to have a positive social impact rather than to maximize profits this Regulation should only promote support for qualifying portfolio undertakings that have the achievement of a measurable and positive social impact as their focus. A measurable and positive social

impact could include the provision of services to immigrants who are otherwise excluded, or the reintegration of marginalized groups into the labour market by providing employment, training or other support. Social undertakings use their profits to achieve their primary social objective and are managed in an accountable and transparent way. Where, on an exceptional basis, a qualifying portfolio undertaking wishes to distribute profits to its shareholders and owners, it should have predefined procedures and rules on how profits are to be distributed. Those rules should specify that such distribution of profits does not undermine the primary social objective of the qualifying social portfolio undertaking.” Art. 14 determines the social enterprise: “Social undertakings include a large range of undertakings, taking various legal forms, which provide social services or goods to vulnerable, marginalized, disadvantaged or excluded persons. Such services include access to housing, healthcare, assistance for elderly or disabled persons, child care, access to employment and training as well as dependency management. Social undertakings also include undertakings that employ a method of production of goods or services which embodies their social objective, but the activities of which be outside the realm of the provision of social goods or services. Those activities include social and professional integration by means of access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalization. Those activities may also concern environmental protection with a societal impact, such as anti-pollution, recycling and renewable energy.”

In accordance to Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing Decision No 1639/2006/EC (Text with EEA relevance): “Small and medium-sized enterprises (SMEs) should play a crucial role in reaching the Europe 2020 Strategy objectives.”.

The above-mentioned regulations establish tendency to influence on the EU economy and the engagement with social functions through the law.

2. Bulgarian Legislation in the sphere of social entrepreneurship for people with disabilities

According to the UN Convention on the Rights of Persons with Disabilities 'people with disabilities are people with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' The word "cripple" is removed from the Bulgarian legislation and this contributes to the overcoming stereotypical thinking about people with disabilities as people - unable, cripple, unfit.

Thus society would make a positive step towards social inclusion of people with disabilities and their realization as full citizens, as in the presence of a demographic crisis, every measure of inclusion of all people in Bulgaria should be supported and encouraged. The **Law on People with Disabilities** has introduced a legal definition of the term "person with a permanent disability".

For persons with disabilities in Bulgaria, the right to independent living is not fully respected. The majority of them live with their families and cannot choose where and with whom to live. Those who have no families or who cannot live with them are moved to social care institutions or residential community-based services where they are placed either involuntarily or without any right to choose. A slowly growing tendency is for persons with disabilities to live in “protected homes” or “family-type accommodation centres” (small group homes that are meant to be an alternative to large institutions) in the community, which do not provide more opportunities for independent living in practice. Access to community-based services is not guaranteed to all potential users and the quality of care provided in them is generally low, with a few exceptions.

Persons with disabilities are not provided with real opportunities for vocational training or employment on the open labour market. State funding and attention are mainly focused on specialized enterprises and the promotion employment measures (subsidized employment) on the open labour market which do not prove to be effective.

The main priorities of the Bulgarian National Strategy for Persons with Disabilities 2016-2020 are:

- Providing an accessible living environment, to transportation and transportation services, to information and communications
- Ensuring equal access including educational environment at all levels and opportunities for lifelong learning
- Ensuring effective access to quality health services
- Providing conditions for employment of people with disabilities
- Providing adequate support for community living
- Providing access to sports, recreation, tourism and participation in cultural life

The integration on the labor market of people with disabilities is one of the main tools for their integration in all areas of public life. Employment is linked with the provisions of art. 27 "Work and employment" of the Convention on the Rights of Persons with Disabilities. The main activities under this priority include:

- Providing appropriate forms of training and retraining.

This means that for people with disabilities to participate more actively in the labor market, it is necessary that they be granted access to the education system.

Some of the actions, according to Priority 4 are:

- Analysis of employment opportunities for people with various disabilities.
- Determining the types of activities that people with disabilities can carry out, depending on their disability.
- Preparation and implementation of training programs.
Construction of training centers.
- Adapting existing centers of adequate training process.
- Providing places for practical training.
- Incentives to employers, who conduct training and retraining courses for people with disabilities.
- Training of employers and employees to work with people with disabilities.

Implementation of the strategic and operational objectives of the strategy can be achieved by introducing and developing three forms of employment for people with disabilities- **protected employment, supported employment and independent business activity** of people with disabilities, as well as through continued implementation of the planned in the National Plan for employment actions, projects, programs and measures.

Protected employment is suitable for providing jobs for people with severe and complex disabilities, and sheltered workshops are places excluded from the competitive market. The **measures include:**

- Creating conditions for the introduction of protected employment.
- Developing a mechanism for determining economic sectors for working in protected enterprises.
- Determination of programs to create protected employment within which contracting authorities may reserve contracts (pursuant to Directive 2009/81 / EC of the European Parliament and of the Council of 13 July 2009 .; Directive 2014/24 / EC of the European Parliament and the Council of 26 February 2014 .; Directive 2014/25 / EC of the European Parliament and of the Council of 26 February 2014).

- Determination of programs to create protected employment for people with disabilities via reserved concessions (pursuant to Directive 2014/23 / EC of the European Parliament and of the Council of 26 February 2014 for appointment of concession contracts).
- Developing a system of incentives for municipal administrations to introduce this type of employment.
- Obtaining protected employment.
- Introduction of individual approach in determining the type of work for each person with a disability.

Specialized enterprises and cooperatives are equal in the labor market as an essential form of providing permanent employment to the target group. Despite the fact that they enjoy tax preferences and receive state subsidies, the number of employed people with disabilities at these enterprises is constantly decreasing. This fact brings forwards the question of the need to diversify the forms of employment in this aspect, taking into account the interests of all stakeholders in this process.

Employment in common work environment suggests fastest socialization of people with disabilities, but it is very difficult to apply it in times of crisis. It is, therefore necessary to lay down clear and binding rules on employment of people with disabilities by quotas. The experience of the European countries shows that within the social economics, the so called social enterprises exist and they offer employment and representing innovative practices, Similar enterprises could be developed in Bulgaria. The measures include:

- Discussing the possibilities of introducing a quota system for the employment of people with disabilities to all employers from the common working environment, including state and municipal administrations.
- Implementation of employment programs at national and local level to create jobs by providing permanent employment for people with disabilities in the labor market.
- Implementation of incentives for employers to provide more long-term and quality employment.
- Expanding the scope of services, offered by labor offices employers including social enterprises.
- Conducting media campaigns to change the attitudes of employers regarding employment of people with disabilities in the labor market.

- Providing additional incentives for employers hiring people with disabilities.
- Provide additional incentives for employers to adapt the workplace to the needs of people with disabilities.

Homeworking and distance working, according to the Bulgarian Labor Code are very suitable for people of working age with a high degree of reduced capacity. Home-based form of employment for people with disabilities is used in specialized enterprises and cooperatives for people with disabilities since their creation. This form has proven its effectiveness, but unfortunately in recent years is limited due to the lack of appropriate orders and workload of production capacity. Distance working in modern society of rapidly developing information technology is a very promising form of work, especially for people with severe disabilities. On the one hand, these forms are avoided because of architectural barriers, the need for specialized transportation, etc. The measures, according to the strategy are:

- Creating conditions for expanding opportunities for homeworking and distance working.
- Developing a mechanism for determining the appropriate economic sectors.
- Developing a system of incentives for employers providing homeworking and distance working.
- Informing the public about home-based and distance form of employment.
- Introduction of individual approach in determining the type of work for each person with disability
- Providing incentives for people with disabilities who can cope with themselves

Independent business activity should be encouraged, developed and funded by both the state and local authorities. Local government has incentives to promote microenterprises for people with disabilities by facilitating the licenses (permits) and the coordination regimes that are carried out.

In Bulgaria the main regulation is the new Law on Persons with Disabilities (December 2018), which replaced the **Law on Integration of Persons with Disabilities**

The motives for the new law are that it provides all measures of support to be carried out from one body, to adequately support people with disabilities and enables the state to more effectively organize and coordinate the policy on their inclusion. It also emphasizes that the rights of people with disabilities should be ensured in a manner that respects their human dignity by applying individual approach and assess their needs.

It provides the establishment of a specialized body to prepare individual assessment of the needs of people with disabilities. The body will start working from the beginning of 2021 and will coordinate the work of different institutions.

A Monitoring Board is created to ensure protection of the rights of people with disabilities. According to the law there will be two representatives, appointed by the Ombudsman and the Commission for Protection against Discrimination, four representatives of the representative organizations of and for people with disabilities, and one - determined by the Bulgarian Academy of Sciences. To assess the individual needs for independent living, mechanism for providing the type of support will change. The goal is the budget to be spent with greater benefits for the individuals in need.

It is envisaged that all financial aid granted now (social disability pension, allowances for transport, communications, medicine, etc.) to unite into a single monthly payment, which will be tied both to the degree of disability, and to the poverty line. Thus it is ensured that the amount will be indexed each year. Targeted funds for aids and medical devices (hearing device, strollers, car retrofitting, etc.) that have so far been disbursed by the Social Assistance Agency, since the beginning of 2020 are transferred now to the Ministry of Health, which is better able to assess quality range of medical devices.

The Law introduces a "quota workforce", which aims to increase the employment of people with disabilities. The project texts remained challenged by the Bulgarian Industrial Association, according to which an employer with 26 to 50 employees is obliged to employ a person with a disability, those with up to 99 workers - two, and an employer with more than 100- 2% of the workforce. If the employer has not fulfilled its quota, he/she will pay each month to the State 30% of the minimum wage. A quota principle is introduced for employing people with disabilities, according to which employers with 20 to 49 workers, should assign at least one person with a disability, with 50 to 99 - two, 100 and more than 100 - four percent of the average composition of employees. If these quotas are not met, the employer pays each month to fund the Agency for Persons with Disabilities fee of 80 percent of the minimum salary for each non-designated person with a disability. At the same time, it is proposed, the requirements of the Labor Code requiring dismissal of a person with a disability to be agreed in advance with the labor inspectorate should be dropped off. The reason is that the text is an obstacle for the recruitment of such people by the employers.

According to Art. 47 of the Bulgarian Law on Persons with disabilities - the state and local authorities support and encourage the employment of persons with disabilities by creating conditions for the activity of specialized enterprises and cooperatives of people with disabilities and the labor-treatment bases via

appropriate economic incentives, financial relieves under the current legislation and other supportive incentive measures.

The Bulgarian legislation, in the social sphere, by 2018 has not given any clear and precise, legal definition of the term "social enterprise". This legislative omission had a negative effect both on the legal status of the "social enterprise" as a legal entity and on the issues concerning the conditions, the organization and the order in which it can interact with the central and local authorities. However, without the necessary legal regulation, which contains the relevant characteristics of the activity of the social enterprises, it was extremely difficult and unreliable to define a certain legal entity as a social enterprise.

The draft **Law on Enterprises of the Social and Solidarity Economy** was voted at second reading at the end of the 2018 year and after its approval by the Bulgarian Parliament was promulgated on 02.11.2018 and will enter into force on 04.05.2019. By its adoption, the discussion on which legal entities could be defined as social enterprises was terminated and the practice of self-determination of enterprises as social ones ceased. Social enterprises are defined as subjects of the social and solidarity economy, along with cooperatives and non-profit legal entities. Last but not least, the new principle of division of two classes should be mentioned: class A and class A + and the creation of a special register for the social enterprises as well.

The law regulates the social relations, related to the social and solidarity economy, the types of subjects and the measures for their promotion, as well as the terms and conditions for the activity of the social enterprises. The new legislation aims to stimulate enterprises that provide employment to specifically listed groups of individuals in the Art. 7 of the **Law on Enterprises of the Social and Solidarity Economy**, specifically those with permanent disabilities and those who raise children with permanent disabilities; long-term unemployed individuals entitled to monthly social assistance, individuals under the age of 29 who have no previous professional experience and unemployed over 55 years of age; individuals who have been subjected to a term of imprisonment of not less than five years, homeless, as well as drug-addicted individuals or alcohol dependent; children placed outside of a family, foreigners who have received protection in the Republic of Bulgaria as victims of trafficking and those, who are victims of domestic violence.

The new law aims to promote the development of the social and solidarity economy as an economic sector. According to the report on the overall preliminary assessment of the impact of the law, social enterprises are expected to generate approximately 2% of Bulgaria's gross domestic product as well as to improve access to employment and training, to acquire or improve professional qualifications, to create

conditions to support those already listed for their social inclusion. It is essential to achieve a reduction in social inequality and sustainable territorial development of social enterprises, as promoted by good European practices in this field.

In the law, the "social and solidarity economy" is defined as a form of entrepreneurship, targeted at one or more social activities and / or social objectives performed by enterprises, including the production of different goods or the provision of services in cooperation with state or local authorities or independently.

The basic principles of the law are: domination of social over economic objectives; association for public and / or collective benefit; publicity and transparency; independence from the state authorities; participation of the members and the employees in making managerial decisions.

Conclusion:

A key point concerning the nature and importance of the social enterprise is its legal regulation. Despite the single policy and legislation of the European Union, each Member State alone makes an assessment exactly what legislation and policy to create in terms of social enterprises and how an effective, sustainable inclusion of people with disabilities will be achieved. It is necessary to implement more measures to encourage employers to hire people with disabilities.

Although some efforts had been made the Bulgarian disability legislation is still far from the philosophy of the UN Convention as it mainly considers persons with disabilities as nonable and object of social assistance schemes. Far more radical and holistic approach needs to be applied in elaboration of legislation and policies especially in the field of personal and social assistance, independent living, support in decision making, education, and employment of persons with disabilities. A challenge is the establishment of coordination between different institutions in implementing the mainstreaming approach in policy and the strengthening of municipal and regional authorities.

Hopefully the enactment of a specific new legislation will foster the development of opportunities in the area of social entrepreneurship through the stimulation of social enterprises. The new legislation is promising a friendly policy environment, which is crucial for the development of the social insertion activities for people with disabilities. The new legislative framework will definitely bring positive changes, but profound changes are necessary in the political vision, as well as in the manner in which public authorities support social entrepreneurship (Lambru, 2012). It is necessary and of crucial importance to coordinate the efforts of the state, the non-government entities, the civil entities, the representatives of the private sector, and the representatives from the academic community.

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