

SBSM Legal, Regulatory, and Fiscal Framework

Germany

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1. Which is the legal framework for social enterprises in your country?

In Germany there's no specific legal framework for social enterprises. Due to its familiarity to the third sector policy and legal frameworks can be derived from this part. A relevant concept in there is the "public benefit" status. Associations which are mainly led by their social mission can be awarded with it, so they don't have to pay taxes on their earnings. On the other hand, they are restricted concerning the amount of accumulated earnings.

The delivery of social service in Germany is provided by law (Social Code). This law covers aspects of unemployment, work integration, child and youth care and support, care for the elderly etc. Municipalities are responsible for their delivery.

The further development of new-style social entrepreneurs is in the focus of the federal government. The national engagement strategy from 2010 (Bundesregierung, 2010) covers a very broad spectrum of civic engagement concerning "associations, foundations, volunteering, charities, welfare federations, hospice activities, neighbourhood initiatives, cultural projects, self-help groups – and 'new' social enterprises promoting social innovation" (Vincze et al., 2014, p. 10). It was published to improve the framework conditions for social enterprises and to raise awareness for social innovation through creating exchange forums.

2. How social enterprises are defined according to the country's legal framework?

The term of social enterprises is often linked to the third sector, which is showing a third way of organizing the economy. Next to that the concept of the so called "social economy" is describing social services to achieve a social mission. However, there's also the term of "solidarity economy", which refers to an altruistic approach to operations.

Nonetheless the Federal Ministry of Family Affairs has presented a definition of social entrepreneurs. After that, a social entrepreneur is someone "who, as part of their individual civic engagement, found social organisations that address social challenges with innovative and entrepreneurial approaches" (Bundesregierung, 2010, p. 5).

3. Which are the main types of social enterprises that exist in your country?

Four branches can be identified when looking at the third sector in Germany (Vincze et al., 2014, S. 1):

A. cooperatives and mutual associations of the early workers movement: Joint economic self- help organisations with democratic governance structures welfare organisations and citizens' responsibility initiatives:

B. Charitable organizations helping others directly through supplying clearly defined social services or on-the-ground activities with a social mission

C. Foundations, donations and socially responsible entrepreneurship: Philanthropy supplying ad-hoc or continuous finance and other support to the social economy

D. Civic and/or community associations: Voluntary community action and volunteering

Because of the wide definition for Social Businesses in Germany lots of different types of organizations belong to it. There are no specific forms designed for social enterprises. The proposed structure is depending on legal forms but also on the historical development.

Cooperatives (Genossenschaften) are historically set up to fight against poverty and social exclusion of certain vulnerable groups by engaging them in economic self-help. There are cooperatives for agriculture, workers, housing, consumers and savings. Many cooperatives changed their objectives into commercial ones, e.g. cooperative banks or agriculture cooperatives. Recently the original social objectives are emerging again in so called "social cooperatives". These are for example village/neighbourhood cooperatives or new energy cooperatives. Cooperatives distribute their earned profits to the members or to non-members beneficiary groups. The working procedures are based on self-governance and democratic decision-making. Famous commercial cooperatives in Germany are REWE, Raiffaisen-Genossenschaft or Volksbank.

Welfare organizations (Wohlfahrtsgenossenschaften) are the backbones of the 'social economy' in Germany. Their big financial part comes from public sources as regulated fees for certain services. New financial sources are coming from commercial activities (out-of-pocket payment of clients, donations and others). While they are under charity law they have to spend all earnings on fulfilling their social mission. They are independent from state, but some are controlled by churches: Caritas (Romanian-Catholic), Diakonie (Evangelic-Lutheran), Zentralwohlfahrtsstelle

der Juden (Jewish). Examples for fully independent ones are Arbeiterwohlfahrt or Patritätische.

Operational foundations (Stiftungen) are traditionally for offering grants and other forms of funding to initiatives or persons. They are also developing own projects and commercial activities. Foundations of the citizens (Bürgerstifungen) are booming now in Germany.

Traditional associations (Vereine) are historically non-economic but this changed nowadays. To avoid legal problems, associations have a part for their social mission and one part for entrepreneurial objectives. You could register an association for a whole public benefit (gemeinnütziger Verein). Associations must spend their earnings to their declared objectives, public benefit associations must spend them to the public mission, in return they can accept tax-free donations. They must be open to everybody who wants to support their objectives.

Volunteer agencies (Freiwilligendienste und –agenturen) are offering services for volunteers for work opportunities and help for social enterprises. They are financed by donations and fees. They can have no legal status and without legal status they are no social enterprise. The Main mission is to support civic engagement. Volunteer agencies are non-profit organizations, independent from state, membership-based and open to Stakeholders.

Socio-cultural centres are developing and supporting everyday culture activities. They are partly financed through public funding and partly through generated income from trading. They have to spend their earnings on their declared social objectives. They are independent from state, but often they work together with local authorities.

Other forms of social enterprises in Germany are: self-help enterprises, self-managed alternative enterprises of women's- and eco-movements, neighborhood and community enterprises, integration enterprises and work integration enterprises.

4. What is the process of registering a social enterprise in your country?

The founding phase consists of notarial registration of corporations and partnerships or rather the tax registration of companies of civil law (GbR).

Further steps depend on which legal form you choose. Generally speaking, there are a few registers and authorities you have to report to when founding a company or an association:

- register of associations
- trade register
- commercial register

- trade office
- finance authority
- chamber of crafts
- labor office
- social insurance
- employer's liability insurance association
- artists' social insurance

(sources: <https://www.fuer-gruender.de/wissen/unternehmen-gruenden/unternehmen-anmelden/>; <http://www.unternehmer.de/gruendung-selbststaendigkeit/664-existenzgruendung-wo-muss-ich-mein-unternehmen-eigentlich-anmelden>; <https://www.fuer-gruender.de/wissen/unternehmen-gruenden/unternehmen-anmelden/infografik/>; http://www.bmwi.de/Redaktion/DE/Publikationen/Mittelstand/praxisleitfaden-soziales-unternehmertum.pdf;jsessionid=9AE8A480AB307BA2A496637C4353F270?_blob=publicationFile&v=25)

5. How social enterprises are treated under tax law in your country? Are there any tax incentives for social enterprises? If yes, which?

Non-profit enterprises which are mainly led by their social mission can be awarded with the public benefit status, so they don't have to pay taxes on their earnings like commercial enterprises. On the other hand, they are restricted concerning the amount of accumulated earnings.

(source: http://www.bmwi.de/Redaktion/DE/Publikationen/Mittelstand/praxisleitfaden-soziales-unternehmertum.pdf;jsessionid=9AE8A480AB307BA2A496637C4353F270?_blob=publicationFile&v=25)

6. Procurement: Any special provision for social enterprises? Please describe.

No special procurement

7. Links and References

[Information graphic on registering a company in Germany](#)

[Practical Guide Social Entrepreneurship from Bundesministerium für Wirtschaft und Energie \(2016\)](#)