

EASE&SEE Project
Enabling Actions for Social Enterprises in South East Europe

Feasibility study on SEs transnational cooperation between creative and sustainable enterprises
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INTRODUCTION

The City of Venice - through the EASE&SEE Venice team - promotes the development of this feasibility study on the creation of a *Social Enterprises Transnational Network*– SETN, in order to make sustainable the results achieved through the EASE&SEE project.

The present analysis of different development models for structured transnational cooperation aims at consolidating and reinforcing synergies between the public and private sector created within the EASE & SEE Project, as well as fostering cooperation between for-profit and not-for-profit businesses

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THE REASON OF THE STUDY

The idea of a transnational network of sustainable enterprises: social economy as a key driver of economic and social development in Europe

The present study is based on the idea that a common knowledge-sharing system could contribute to disseminating investment and development initiatives launched through the EASE&SEE project, providing evidence about public-private-social partnerships and their role in the development of economic clusters at a local level, as well as supporting the growth of new ideas of social sustainable transnational businesses.

EASE & SEE Project databases represent a precious collection of information about project partner countries, as well as about interesting cases of Public-Private-Social Partnerships (WP From State to Market), Financial Players, Instruments and Guidelines (WP Financing Social Sustainable Growth), Market Analysis Reports (Business Development).

But the real challenge, at the end of the Project, is to give sustainability to *Business Support Units* activated by the partnership in order to manage “on-demand service requests”: the mission of Business Support Units, in the EASE & SEE Project, was to support the start-up of new social enterprises and create business connection between SEs and for-profit companies, giving advice to public authorities on the ways to stimulate the creation of **innovative social business clusters where SEs, for-profit companies and financial players could contribute to adding value to the sectoral economic value chain**. In this context, Business Support Units have provided concrete and on-site advice also through “peer approaches” (entrepreneur to entrepreneur), in order to build concrete economic relationships between for-profit companies and social enterprises.

This kind of approach could find sustainability through the creation of a transnational cooperation network, in order to **stimulate mutual exchange and learning**, help increase skills of employees and entrepreneurs for applying new technologies and methods. This will enable social enterprises **to develop innovative products, services and/or processes** contributing to the respective regional smart specialization strategies.

Innovative learning systems, jointly developed at a transnational level, can contribute to the **targeted improvement of skills thus increasing regional competitiveness** especially in regions facing social challenges. Joint approaches developed at a transnational level will further support entrepreneurship by building technological and managerial competences as well as promoting entrepreneurial mindsets and initiatives. The improvement of skills and the fostering of entrepreneurship should contribute to **advancing social innovation** for the clusters connected to the transnational network.

Moreover, enforcing transnational SEs cooperation, can contribute to recognizing a crucial role of **social enterprises as guarantors of stability and sustainability for the local and national economies**, in the ongoing financial and economic crisis of Europe: the role of social enterprises and social cooperatives as a type of economic, non-profit organization is gaining an increasingly central role in Europe (as shown for example by the Social Business Initiative, recently launched by the European Commission), by contributing to its economic and social growth.

As the major goal of social enterprises is to serve members of the community rather than to seek profit, social economy relies on democratic decision-making processes, which represent a structural procedure to control the actual pursuit of the organization’s goals. Among the organizations belonging to the social economy one can find associations, cooperatives and mutual organizations and, more recently, also foundations and social enterprises.

The value of social relations generated by the specificity of social enterprises (based on inclusive and relational governance) is one of the specific advantages of this form of enterprise, an advantage that should

be strengthened through transnational organizational models, strategies and, possibly, adequate investments of resources.

In order to set this contribution to social cohesion and economic development, some substantial systemic actions still need to be implemented: many social enterprises in Europe would achieve a greater impact if their **specific solutions to meet social needs could be applied on a larger scale or geographical scope**.

A network structure to **support expansion of their capacity through transnational cooperation** (internationalization processes) with other enterprises (social or traditional for-profit enterprises), as well as practical support for **replicating successful business models** tested by other social enterprises, could both be useful approaches to develop in the present feasibility study.

1st STEP OF ANALYSIS: Analysis of business models and collaborative approaches

The definition of collaborative business approach to increase international competitiveness of social enterprises should necessarily start from **outlining the expressed and unexpressed needs which represent the potential unifying factor** for the network being set up.

This preliminary phase of the analysis is fundamental to the implementation of an instrument for cooperation which could allow to **improve skills and entrepreneurial competences** for advancing economic and social innovation.

Thus a formal agreement should be designed in relation to the following key factors:

- **Basic needs and in-depth reasons that lead to aggregation**
- **Benefits and risks** of the business
- Perception of the **network as value creation**
- Analysis of the **key roles for the network management** and definition of the skills and abilities required for the roles of organizational, administrative and marketing management / coordination.

The Network project will play a concrete role in **strengthening social business value chain**, if it will be able to put together the main actors of the social economic communities of the involved territories and namely Social Enterprises, traditional for-profit companies, actors of the financial industry, service providers and public bodies in charge of social and economic development of the territories of members.

Among those actors, the **essential driver of internationalization process is the Social Enterprise**, in his new role of **pioneer of social innovation, explorer of new territories** in order to share experiences, knowledge, goods and services with partners participating to EEIG in other Countries.

For a coherent grouping action, strong attention should be reserved to **preserve at network level the same motivations coming from the basis**, through a bottom up approach to internationalization of business.

For this reason it is useful to remember some essential characteristics of the **collaborative approach in social enterprises**.

According to the *European Commission's Social Business Initiative* (SEC (2011) 1278), "A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities".

In the last thirty years growing importance was attached to the concept of Social Enterprise, so much so that in Italy the same law-maker recognized it by law (Legislative Decree 155/2006).

The reasons **why the character of entrepreneurship spread in the non-profit** world are multiple¹:

- Belief that, when applied to the social world, some elements of market regulation (for example the fair keeping of accounting records, accounting for one's own choices, showing a result) may lead to a more efficient and effective use of resources than in the past.
- Search, by non-profit organizations, for a greater independence from traditional constituencies through a diversification of financing sources.
- Search for inexpensiveness understood as the search for the most appropriate methods to use resources in order to allow a company to work durably and independently.
- Change of attitude of donors who increasingly link the disbursement of funds with the proof of producing social value.
- Growing competition of non-profit organizations for the obtainment of funds which, also because of the public financial downturn, are increasingly less.

The concept of Social Enterprise goes beyond the legal status of the company and includes all those entities which look for new approaches to tackle social problems that this far did not find satisfactory solutions (they did not achieve hoped-for results, costs non-proportional to results, etc.).

If, for a traditional entrepreneur, creating value consists in serving, anticipating their needs, customers who may afford to pay a new product/service in order to take profit (to repay him-herself and the investors), a social entrepreneur addresses, on the contrary, parties who are excluded from the market because they do not have the resources to pay for what it offers.

The value is not strictly speaking ascribable to the creation of wealth to be re-invested in the business, but to the creation of social value. The SE is therefore defined as *mission-driven* unlike an enterprise that is *profit/market-driven*.

An undertaking, in order to be deemed as entrepreneurial, shall therefore be oriented to the creation of economic and social value, a value which distinguishes it from the other players and which generates well-being to be redistributed among its stakeholders.

The described process actually is not static, but dynamic: the social entrepreneur keeps innovating.

Innovation is not only understood as the invention of something that is radically different, but also as the application of an existing idea in a new way or to a different situation from what was done this far.

The value creation process is part of a social-economic context which requires, for the mission to be pursued and the value creation kept, that the corporate endeavours and their outcomes be economically and socially sustainable. Sustainability (deemed as the ability to be long-standing in an independent manner) of the enterprise is based:

- on the mission which distinguishes it;
- on its specific skills;
- on the collection and efficient and effective use of the resources it has.

¹ISEDE-NET Project, SOUTH EAST EUROPE (SEE), 2012 - Final report WP5: "Placing Value on Social Enterprises", article "Financing the social enterprise" by Niccolò Cusumano and Pierangelo Spano

It is therefore possible to identify an interval, as shown in table 1, on the opposite sides of which there are, on one side, **purely philanthropic initiatives** and, on the other side, **strictly commercial initiatives** on which the method of use of the mix of resources (economic, financial, human, skills-related, relational) which constitute every enterprise depends.

Table 1: the mix of resources and the interval in which the enterprise is positioned

	Pure mission	↔↔↔↔↔↔↔↔↔	Pure profit
Reasons, Methods and Objectives	Justice Mission-driven Social value	Mixed reasons Mission- and market-driven Social and economic value	Personal interest Market-driven Economic value
Beneficiaries	Do not pay	Subsidized prices or mix of full prices and free services	Market prices
Capital	Donations and grants	Cost of capital below the market rate, or mix of donations and capital at market cost	Market cost of capital
Labour force	Volunteers	Wages below the market cost, or mix of volunteers and paid workers	Market wages
Suppliers	Payments in kind	Special discounts, mix of donations and full-price purchases	Market prices

A **general overview of EASE & SEE partners' and stakeholder's opinions about real needs, as well as opinions on key factors for the success of a transnational network** has been obtained through the administration of a questionnaire and short interviews, whose results are resumed in the 2nd step of the analysis.

The fast survey on **20 different organizations**, operating in EASE & SEE's partners Countries, may be collocated in a progressive way from "pure mission" to "pure profit", producing a **non-homogeneous panorama** which reproduces the same dynamics of the macro - scenario of social economy. In this situation, it becomes necessary to **redesign business models for those activities that are not ready for the involvement in a transnational network**, providing concrete actions to support and increase management capacities in order to approach the definition of an international business plan.

This relevant step for the evolution of structure and business capacity is, of course, more suitable for those organization that have chosen to become social enterprises and do not operate in sectors which are strictly focused on care and health services, which are **geographically limited at local level.**

2nd STEP OF ANALYSIS:

Analysis of questionnaires - "Fast Survey on SE Needs" - about needs and expectations of a group of social enterprises potentially interested in the creation of a transnational network

Short interviews were made in conjunction with the final event of the EASE & SEE project on 28th November 2014, with a group of 14 Italian social enterprises and 6 organizations working in project-partner Countries.

“The intangible value: the social impact of the enterprise” was the title of the EASE&SEE final conference. The **Gallery of Opportunities** for creative, ethical and sustainable enterprises was a part of the conference and an opportunity for the EASE&SEE stakeholders to meet and discuss ways to cooperate.

Interviews to partners and their stakeholders allowed to gather information and opinions about potential future involvement in the transnational network.

In this context, **many strengths could be identified for a collaborative business approach through the creation of a SEs transnational network**, such as:

- ↳ social enterprises are considered as creative and innovative economic players and the **creation of bridges and international relations** between them may **increase their development capacity**
- ↳ **social enterprise business models are built on the values of sharing and cooperation**, which facilitate transferring expertise, know-how and business practices from one established social enterprise to another that wants to achieve the same social and financial goals
- ↳ there is an evident increasing attention paid by **for-profit enterprises and financial players** to their **“social responsible role” in their community**
- ↳ **social enterprises and their “community-based model” of creating business has demonstrated to be more stable** than the business model of traditional private companies during the crisis.

On the other side, **weakness factors, with regards the start up of a transnational activity**, may be:

- ↳ Lack of technological and managerial competences, as well as entrepreneurial mind sets
- ↳ Lack of promotional and communication skills (public relation /use of foreign languages)
- ↳ Micro dimension of the business (structure and human resources)
- ↳ Local dimension related to HR (disadvantaged workers) or activity (health and care, catering)
- ↳ Distrust of competitors or potential foreign partners

Possible solutions or remedies to these and other weakness are proposed at 3rd step of the analysis, principally through the formalization of different levels of participation for the members of the network being set up.

Some summary data on the panel of surveyed companies are provided on the Annex 1 to this Study, which investigates Experience of business, Business dimension, Level of international relations, Needs and Opportunities expressed by social enterprises, while presenting the idea of creation of a transnational network.

INTERVIEWED ITALIAN STAKEHOLDERS:

1	Aeres (30 SEs, including 4 agrofood producers)	www.aeresvenezia.net	FOOD: SLOW AND SOCIAL
2	Campoverde - Consorzio in Concerto	www.consorzioinconcerto.it	FOOD: SLOW AND SOCIAL
3	Il Cerchio	www.ilcerchiovenezia.it	RE-USE UPCYCLING DESIGN
4	Il Filò cooperativa	www.coopfilo.it	RE-USE UPCYCLING DESIGN
5	Khorakhanè	www.khorakhanet.it	RE-USE UPCYCLING DESIGN
6	La Gagiandra	www.lagagiandra.org	RE-USE UPCYCLING DESIGN
7	Macramè	www.coopmacramevenezia.it	RE-USE UPCYCLING DESIGN
8	PRIMAVERA '85	www.primavera85.it	RE-USE UPCYCLING DESIGN
9	Qualità	www.leviealtino.it	FOOD: SLOW AND SOCIAL
10	Riesco	www.riescoincucina.it	FOOD: SLOW AND SOCIAL
11	Rio terà dei pensieri	www.rioteradeipensieri.org	RE-USE UPCYCLING DESIGN
12	SAMARCANDA "Progetto Reclò"	www.samarcandaonlus.it	RE-USE UPCYCLING DESIGN
13	Start up di Giovanni Frasson	giova.frasson@gmail.com	FOOD: SLOW AND SOCIAL
14	Uniamo Goldin Fantasia	www.uniamogoldin.it	FOOD: SLOW AND SOCIAL

INTERVIEWS MADE TO EASE & SEE PARTNER'S STAKEHOLDERS:

15	ARGE	www.arge.at	RE-USE UPCYCLING DESIGN
16	Ban - Okoservice	www.ban.at – www.okoservice.at	RE-USE UPCYCLING DESIGN
17	Ekobag	www.sites.google.com/site/ekobagserbija	RE-USE UPCYCLING DESIGN
18	Gardenika	www.gardenika.rs	FOOD: SLOW AND SOCIAL
19	Kek	www.kek.org.rs	FOOD: SLOW AND SOCIAL
20	Italian Chamber of Commerce In Bulgaria (cluster coord.)	www.camcomit.bg	

Layout of the short questionnaire which supported the interviews:

FAST SURVEY ON SOCIAL ENTERPRISE NEEDS

Feasibility study on SEs transnational cooperation between creative and sustainable enterprises

SHORT COMPANY PROFILE

NAME:

Web site:

BUSINESS SECTOR

- food / slow & social
 re-use upcycling design / production
 services
 other

PRODUCT DESCRIPTIONS

MAIN ACTIVITY /CORE BUSINESS:

.....

- goods:
 services:

Business experience

- 0 – 3 years 3 – 5 years
 5 – 10 years more than 10 years

Business dimension

SME	Employees		Turnover (Millions €)		Total budget (Millions €)
<input type="checkbox"/> Medium	< 250	&	≤ 50	or	≤ 43
<input type="checkbox"/> Small	< 50	&	≤ 10	or	≤ 10
<input type="checkbox"/> Micro	< 10	&	≤ 2	or	≤ 2

STATE OF THE ART ABOUT INTERNATIONAL RELATIONS OF SOCIAL ENTERPRISES

Does the company manage international relations of any kind?

- friendly cooperation
 cross border exchange of goods and services
 social media contacts / events
 international exhibitions

Has the company begun a systematic process of internationalization of the business?

- YES
 NOT yet, we manage occasional opportunities
 NO, we work at local level

Foreign Country partners

- UE:
 Third Countries:

Foreign-language speaking employees

- yes no

NEEDS, OPPORTUNITIES TO APPROACH, EXPECTATIONS OF SOCIAL ENTERPRISES

What services would you expect from a transnational network?

- Joint purchasing activity**(goods / services)
 selling / exchange of goods or services
 participating to conferences and events
 Joint selling agencies in third countries
 Operative cooperation between SEs(for training purposes, exchange of personnel, joint handling of clients, joint data processing)
 Shared system of legal assessment of advertising campaigns, Intellectual Property strategy
 Information / assistance on EU policies and funding programmes / tenders
 Best practices exchange, technology transfer
 business model transfer

The main task of a SEs transnational network is to represent and promote the common values of its members vis-à-vis European institutions.

Moreover, interviews with SEs offer a wide range of suggestions about potential network activities:

- Match offers and needs (in terms of potential exchange of goods and services) of members in the sectors of cooperation (creative re-use and upcycling, restaurant industry and slow food)
- Implementation of Internal Regulation for Business Support Service (services offered to the members, roles and organization of the Support Service Committee)
- Development of internal collaboration and training platform
- E-learning courses addressed to business support services representatives
- Support on the implementation of transferable framework and guidelines for business acceleration
- Development of standards and business structure requirements for transnational cooperation
- On-line assistance services
- Transfer of best practices and exchange of common knowledge to encourage cooperation between EEG members and further development of new international business relations
- Collection of current legislation
- DB of Statistics and Research
- DB of case studies of businesses, initiatives and partnerships which have been activated in cooperation with for-profit, not-for-profit and public administration
- Public Procurement Handbook for S.E.
- Practical assistance on development of Public-Private-Social Partnerships

All suggested activities should be more thoroughly evaluated at the moment of formalizing the network through the most appropriated legal instrument.

An overview of the **most common legal instruments** for the management of collaborative business will be provided in the second part of the feasibility study.

3rd STEP OF ANALYSIS:

Participation in the network: two levels of involvement of members

The SEs transnational network aims at increasing the capacity of Social Enterprises and their entrepreneurs to play a relevant role in the business community thus increasing the overall social benefits that such organizations bring to the regional areas they operate in.

The results of the interviews showed **different levels of business experience**, as well as **different levels of openness to internationalization**, connected with structural problems or lack of availability of **appropriate skills** within the company staff.

For this reason, participation to the network should be organized at a different level of involvement for members, to **enable a quick start of the internationalization process for more structured businesses**, while offering training, information exchange and different services to social enterprises which are not ready for the internationalization of their business.

Membership could be based on the so-called **European Integration method through "enhanced cooperation"**: differentiation has in fact become the focus which characterizes the regional integration study since the second half of the 1990s. As it becomes increasingly difficult to reach a consensus between all of the members of an enlarging regional policy, differentiation has become an effective alternative to general integration as a method to integrate realities of neighboring countries.

Hypothesis of two-level membership could be designed as follows:

- a) **Basic membership level, as an ordinary partner of the network**, aimed at: exchange of information between SE members, training modules and use of information services such as: Info Europe, Info Erasmus for entrepreneurs, support tools to the formalization of the potentially transferable business model, paths for reinforcing the corporate capacity in perspective of future internationalization (business development tool) etc.
- b) **Operative partners: active cross-border membership** for SEs engaged in the process of internationalization, with the support of the network services (best practices sharing, legal instruments, standards for the exchange of goods and services in the context of Public-Private-Social Partnerships or in peer-to-peer relations with other social enterprises or between SEs and traditional for-profit partners).

Moreover, some **common services for both membership levels** could be created, such as:

1) **Erasmus for Entrepreneurs support service for members**

Erasmus for Young Entrepreneurs is a cross-border exchange programme which gives new or aspiring entrepreneurs the chance to learn from experienced entrepreneurs running small businesses in other Participating Countries.

The exchange of experience takes place during a stay with the experienced entrepreneur, which helps the new entrepreneur acquire the skills needed to run a small firm. The host benefits from fresh perspectives on his/her business and gets the opportunity to cooperate with foreign partners or learn about new markets.

The stay is partially funded by the European Union. The programme can offer strong added value to engaged businesses: possible benefits include exchange of knowledge and experience, networking opportunities across Europe, new commercial relations or markets abroad.

2) **Incubator for 'social impact enterprise' and business accelerator service**

The network can start partnerships with socially responsible companies interested in providing grants to set up and run social business incubators. They may also provide scholarships to social enterprise start-ups that also benefit from specific business advice, coaching and mentoring provided by the incubator, which also offers working space and access to a vivid community of social entrepreneurs.

An example: The SAP programme started in Germany, and its extension to other European countries is planned through a platform for social entrepreneurs, to assess their ideas and business potential at an early stage, and to find support for developing a social enterprise. The combination of a **one-stop-shop** and **incubator for 'social impact enterprise'** was designed and implemented by iq consult GmbH, which itself is a social enterprise, that also runs an extensive programme for assisting unemployed to make a living from self-employment, using microfinance to start a business.

Further information: <http://socialimpactenterprise.eu>

3) **Support service to replicate and scale business models through networking, partnerships and social franchising**

Many social enterprises in Europe would achieve a greater impact if their specific solution to meet social needs could be applied on a larger scale or geographical scope. Expanding their capacity is one answer, replicating and adapting by other social enterprises another. The latter approach could be developed and strengthened, especially considering that social enterprise business models are often built on the values of sharing and cooperation, which facilitate transferring expertise, know-how and business practices from one established social enterprise to another that wants to achieve the same social and financial goals.

Two approaches seem to be particularly effective²:

○ **Social franchising:** A recent study identified 140 business models in Europe that are already replicated in other locations. These are based on cooperation agreements ('franchise agreements') that specify provision of a range of services to transfer competence and to assure economic viability as well as service and product quality or a common brand name. Investing in social franchisors proves to be less risky than in new, stand-alone social enterprises, due to their low failure rates. European cooperation platforms such as the *European Social Franchising Network* (ESFN) or the *International Centre for Social Franchising* invest in developing social franchising through sharing of knowledge, identifying franchise models, developing a code of conduct for social franchisors, assisting social enterprises in getting franchise ready, and helping to replicate proven business models. The job creation potential of social franchise is not fully exploited. ESFN estimates that social franchisors have created 10 000 jobs in Europe over the last 10 years.

○ **Transferring and adapting proven solutions** to specific national or regional needs through a longer-term process of transnational learning.

An example: the 'Change Nation' Ashoka initiative acts to make real change happen, through raising awareness on social needs and solutions, engaging and empowering social entrepreneurs, activating supportive business and financial services, and creating confidence and sharing risks in new social enterprises. Based on an assessment of Ireland's greatest challenges in education, health, environment, economic development, civic participation and inclusion, in 2012, Ashoka invited fifty of the world's leading innovators and social entrepreneurs to share proven solutions in a three-day event that attracted more than 1 000 people. One year later, 42 innovative solutions are professionally adapted and developed by dedicated social entrepreneurs, each of them firmly assisted by experienced coaches and mentors working voluntarily, and further work to be funded through corporate sponsors.

The overall initiative secured political backing from the Prime Minister's Office, technical support from global consulting and communications companies, ongoing media coverage through partnership with the leading national newspaper, and access to finance through the establishments of a social innovation fund.

In the light of the preliminary assessments to the involvement of social enterprises or start-ups in the transnational network, outlined in the first three steps of analysis, the network management could be supported by the implementation of some technical tools, such as:

- Assessment checklist for the selection of eligible partners to the network (check in pre-analysis)
- Ten Steps – road map for the collaborative development of business (business development tool).
- The ten steps – road map for the internationalization plan

- ²Sources: Social Europe guide – Vol. 4 (29/04/2013) EC – DG Employment, Social Affairs & Inclusion. For social franchising: <http://www.socialfranchising.coop/>; <http://www.the-icsf.org/>; for Ashoka's 'Change Nation' initiative: <http://changenation.org/solutions/>; <http://ashoka.org>

4th STEP OF ANALYSIS:

Analysis of the legal instruments available in Italy and at a Community level for the collaborative business

Once defined the context and expected dynamics in the activity of transnational networking we proceed to survey theoretical legal instruments available in Italy and at a Community level, which can support the collaborative business.

Sometimes these legal instruments meet the distrust of the operators who fear losing their independence. This is a quite common limit in micro and small businesses culture. In fact, unlike companies, **forms of cooperation have a leaner structure, governed by a few mandatory rules**, which do not put too many constraints on the relationships between the participants.

These flexible instruments allow companies to engage informs of **collaboration in the same sector, or indifferent and complementary productive sectors, while remaining independent** and free to operate in other areas not covered by the partnership agreement. In the areas regulated by agreements of aggregation, companies can find the cheapest productive combination without engaging in more risky or expensive forms of concentration, such as the creation of groups or the realization of mergers. The creation of agreements can be useful to overcome the general crisis affecting many industries and in specific cases constitute the most elastic solution also available to social enterprises.

The study aims at interrogating the relationship between different legal frameworks in European Countries and **new governance models needed for a SEs transnational network**, reflecting on how law and legal processes are implicated in the operation of new regulatory approaches.

The concept of new governance is a construct which has been developed to explain a range of processes and practices that have a normative dimension but do not operate primarily or at all through the formal mechanism of traditional command- and –control - type legal institutions. The language of governance in itself signals the **absence of any traditional framework of government**, as in the case of EU and in the case of any **transnational context**. In a practical sense, it results from the sharing of experience by practitioners across a variety of policy domains, in favour of **regulatory approaches, which are less rigid, less prescriptive, less committed to uniform outcomes and less hierarchical in nature**.

This is the context of development of **private not-for-profit economic activities**, as they have revitalised traditional social-economy organisations and given rise to innovative organisations. These bottom-up initiatives are concrete expressions of an increasing sense of responsibility on the part of citizens and as an **‘endogenous response’ of society to the failures of the market** and the shortcomings of public policies.

All of these organisations are based on **motivations, behaviours, and principles** (such as solidarity, reciprocity and direct participation in management, quest for justice and equality, accountability for achieving social impact) which appear particularly well suited to face the challenges related to the responsible management of collective assets, where the right of ownership must be balanced with the duty of custody for the benefit of current and future generations.

The analysis of different opportunities should combine an assessment of the strengths, weaknesses, opportunities and the risks involved in each instrument, according to the target “social enterprise”, which can have different interpretations depending on the legal framework of the partner countries involved.

The overview of the legal instruments that follows considers three groups of legal instruments:

GROUP A) - International Non-Governmental Organisations / Not-for-profit Associations

GROUP B) - At a EU / international level, 4 instruments for transnational cooperation:

- Consortium agreement
- Contractual joint venture
- ERIC - European Research Infrastructure Consortium
- EEIG – European Economic Interest Grouping

GROUP C) - 4 legal instruments for entrepreneurial collaboration, under Italian law:

- Consortium for internationalization
- Temporary Association of Companies (ATI)
- Contract Network – agreements for aggregation of small enterprises and SMEs
- EEIG - European Economic Interest Grouping- Italian Law (implementation decree D.lgs No. 240/1991)

GROUP A) – INTERNATIONAL NGOs / NOT-FOR-PROFIT ASSOCIATIONS:

NGOs are the oldest tool, since the Union of International Associations (UIA) was founded in 1907.

The European Commission – DG Enterprises and Industries provides a definition of Associations as “a permanent grouping of natural or legal persons whose members pool their knowledge or activities either for a purpose in the general interest or in order to directly or indirectly promote the trade or professional interests of its members”. The main characteristics of associations are:

- voluntary and open membership
- equal voting rights - resolutions carried by majority
- members' fees - no capital contribution
- autonomy and independence
- service providers, voluntary work, sports and advocacy/representative
- important providers in health care, care for elderly and children and social services

The **Draft Statute for a European Association (EA) was proposed in 1992** to enable associations to take advantage of the single market in the same way as companies can, without having to forego their specific character as groupings of people. The Draft Statute provided for general characteristics of the European Association:

- Subject to the application at a national level of the legal and administrative rules governing the performance of an activity or the exercise of a profession, the EA could freely determine the activities necessary for the pursuit of its objectives, provided they were compatible with the objectives of the Community, Community public policy and the public policy of the Member States. It pursued them in accordance with the principles which derive from its character as a grouping of persons and in a disinterested fashion.
- The profits from any economic activity would be devoted exclusively to the pursuit of its objects, and may not be divided amongst the members. The definition covered all categories of "associations" by reference to those who benefit from the services, (i.e. those aimed at the promotion of members' interests, and those aimed at meeting the needs of third parties).

The Draft Statute was withdrawn by the Commission in 2006 due to lack of progress in the legislative process. Legislative proposals for European foundation and association statutes have enjoyed considerable support in the non-profit sector. It is true that non-profit organizations, like many for-profit entities, face structural obstacles when they seek to operate on a cross-border basis across the EU. These obstacles take the form of **differing legal and fiscal regimes that operate in each of the 28 Member States**, with which non-profit organizations must comply if established in any of these States. The diverse

laws of the Member States create the greatest difficulties in the treatment of capital-asset movement and tax treatment of donations, particularly cross-border donations. In general, EU Member States agree that there are justifications for granting special tax privileges to charities. The ability to tax, however, is seen as a sacrosanct **power of a sovereign nation. It is an element of sovereignty that Member States have been extremely resistant to sharing with the EC.** The resulting lack of harmonization has meant that Member States have remained free to develop their own legal criteria for what constitutes public benefit for tax purposes. Of the 28 Member States, only the Netherlands, Poland and Slovenia allow a resident's donations to a foreign-based public benefit organization to be income-tax deductible.

It remains difficult, therefore, to see how the introduction of a European Statute — even one tailored to the specific characteristics of non-profit associations or foundations — could hope to resolve the central structural problems encountered by such entities. **Attempts to develop parallel non-profit-friendly facilitative regulation to date have failed.**

Institutional support for an EA had sprung from the **European Parliament's** adoption of the Committee on Legal Affairs and Citizens' Rights' **Report on Non-profit Making Associations in the European Community in 1987**: it included for the first time those organizations **with legal status of "international" associations, having members outside the Community and not necessarily having a specific European focus.**

With a suggested Treaty base in Articles 7 and 12 EC's prohibition of discrimination on grounds of nationality, as well as Articles 52 to 66 of the Treaty on rights of establishment and free exchange of services, the idea behind the European association was to facilitate transnational transactions by non-profit membership associations, allowing recognition in other Member States. Despite its enthusiastic beginnings, the EA proposal made little progress for almost 15 years.

Another legislative reference is offered by the **European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations**, an international treaty that sets the legal basis for the existence and work of international non-governmental organizations in Europe. It was adopted by the **member states of the Council of Europe**, meeting in **Strasbourg on 24th April 1986. It entered into force on 1st January 1991**; signatory states were Austria, Belgium, France, Greece, Portugal, Slovenia, Switzerland and the United Kingdom. The treaty has been ratified (status: 28th May 2013) by Austria, Belgium, Cyprus, France, Greece, Macedonia, The Netherlands, Portugal, Slovenia, Switzerland and the United Kingdom, and has been extended to Guernsey, Jersey and the Isle of Man. The important point of the Convention is that there is no requirement for activities to be carried on in at least two Council of Europe member states, but **simply in two different states.** Therefore NGOs established in a member state and carrying out their activities in another State which is not a member of the Council of Europe (for example, to fight famine in a third-world country) are not excluded.

Art. 1.8 of the Convention provides a **useful definition of "Non-profit-making aim of international utility"**: "An NGO must not have a profit-making aim. This condition distinguishes NGOs from commercial companies or other bodies which exist to distribute financial benefits among their members. However, an NGO may make a profit, without altering its character, in connection with a given operation (for example, by renting a property, selling a publication etc.) if that operation is to serve its non-profit-making aim. Furthermore, the aim of an NGO must be of **international utility and not simply of national or local utility, that is, it must be of benefit to the international community.** This would therefore exclude political parties and other political organisations whose aims and activities are centred on the domestic problems of a given country".

The Preamble to the Convention refers to the expression "international utility" as **"work of value to the international community"**, as the NGO should contribute to achieving the aims and principles of the United Nations Charter and the Statute of the Council of Europe, and the scientific, cultural etc., nature of the activity. This last-mentioned element also makes it easier to circumscribe the concept of "non-profit-making aim".

►► **Evaluation of the tool, in relation to the feasibility study focus:**

*Even if the hypothesis of a SEs Transnational Network in the form of an International Association could have a strong communication effect to catalyze new members attracted from the added value of the international community (joint external communication, network events, best practice exchange, strong lobbying potential), **this legal basis seems not to be adequate to the regulatory dimension needed to govern legal processes implicated in the transnational network**, principally aimed at facilitating economic activity for members and at improving their own results. The Association manages economic activity for itself, which is not related to economic activities of its members, and it cannot have any profit.*

GROUP B) - At a EU / international level, 4 instruments of transnational cooperation:

⊙ **Consortium Agreement**

The consortium agreement is a special form of contract, which has a wide application among international trade contracts, especially contexts based on common law, which is used for the execution of contracts of significant size and complexity, for the construction of works or installations, as well as for participation in EU calls for tender or proposal.

The model form of consortium agreement is intended for use when two or more companies agree to cooperate on a specific project. The consortium tenders for and, if the tender is successful, performs the contract with the customer. The consortium is dissolved once the project has been completed. Among the important items are the project manager's authority (consortium leader), and members' liability toward the customer, each other and third parties.

The model is written for what is generally referred to as an open consortium, i.e. the consortium acts as such towards the customer, but the model may also be of some help in negotiating a contract for a "silent" consortium.

Each company participating in the consortium agreement takes the obligation and responsibility to perform a specific part of the work corresponding to its area of specialization, and therefore bears the costs related to its performance and receives the compensation provided by the contract in proportion to the part of the work performed.

In international practice, the consortium agreement is often executed even before the participation in the tender, in order to govern the procedure for submitting joint supply and contract negotiation. In these cases, the consortium agreement serves as a preliminary agreement, the effects of which will cease if the tender for the execution of the work should not be awarded to the participating companies.

In other cases, the procedures for participation in the international tender are governed by an autonomous agreement, called the pre-bid agreement, different from the consortium agreement, which will therefore be only executed in case of award of work.

The consortium agreement in the international arena is not governed by the reference to rules laid down by individual states, but essentially traced to private autonomy, referring to international commercial practice, rules of good faith, as well as principles deduced from pronouncements Courts of arbitration (on liability, damages, application of penalties, liquidated damages etc.).

►► **Evaluation of the tool, in relation to the feasibility study focus:**

*The consortium agreement, despite being aimed at collaboration with several companies, each with specific technical and organizational resources, does not lend itself to a stable and continuous collaborative relationship, but is useful for regular reports related to a specific contract.
It doesn't fit the management of a stable transnational network among SEs.*

⊙ Contractual Joint Venture

An international joint venture is a structured cooperation between two or more companies from different countries in which the members combine some of their resources for a common undertaking while remaining economically independent.

In a *contractual joint venture*, cooperation between joint venture parties doesn't necessarily lead to the creation of a new corporation, as in the case of an *incorporated joint venture*.

More frequently, the parties to a joint venture simply organise their cooperation on a contractual basis, without forming a new corporate body. This type of cooperation is described as a contractual joint venture. A contractual joint venture is generally characterized by two important features: **greater flexibility** and **greater exposure of the parties to liability**.

Flexibility: in most legal systems, contract law allows considerable freedom for the parties to regulate contractual relationships, including contractual joint venture relationships, which are not governed by the more stringent company law regulations. Contractual joint ventures can thus be structured and adapted to the particular needs of the parties.

Liability: since a contractual joint venture does not lead to the creation of a new legal entity, it cannot shield the parties to the joint venture contract from being directly liable for the debts and losses of the joint venture. Generally, parties to a contractual joint venture are jointly and severally liable.

Moreover, as in the context of a contractual joint venture, no new corporation is created; **profits and losses of the joint venture arise directly with the parties**, and are taxed there. One of the reasons for selecting the contractual structure rather than the incorporated joint venture structure relates to avoidance of double taxation (incorporation creates a new legal entity that will normally be taxed separately, tax being imposed on an entity basis).

There is **no restriction with respect to the type of parties** entering into the joint venture: individuals may be party to a joint venture as well as corporations (in most cases small and medium-sized enterprises). Contractual joint ventures are designed for **medium-term or long-term cooperation**, as opposed to short-term or single-activity operations such as the tender for and performance of a construction contract. Some Contractual Joint Venture Model Agreements were drawn up in 2004 by the ITC - International Trade Centre UNCTAD/WTO ³ (as well as their next-of-kin: the ITC Incorporated Joint Venture Model Agreements) in response to high demand from the trade sector - especially small and medium-sized enterprises - for reliable, balanced and universally applicable international model contracts: while great care has been taken to take into account differences between legal systems so that the model agreements can be used in all countries, it is recommended that the parties seek legal advice when using a model agreement.

- ³International Trade Centre UNCTAD/WTO 2004 F-03.10.02 - Contractual joint venture model agreements, Geneva: ITC, 2004

It is an essential feature of any Joint Venture that the Parties make contributions in the interest of achieving the common Object of the Joint Venture. These contributions may be in the form of money or in any other form, such as real estate, technical know-how, access to a market, a brand name, services or other in-kind contribution.

It is important that the Parties give careful consideration to the Object of the Joint Venture and the methods by which this Object is to be pursued, as well as governance structure (for example, the decision to create a Management Committee depends on the needs and size of the Joint Venture) and the rules about Representing the Joint Venture, considering that in a contractual joint venture with no legal personality, it means representing the Parties taken collectively (more precise rules are to be decided by the Parties). Where applicable, it could be wise to define **the territorial scope** for the activity, for instance in a joint venture contract concerning the distribution of goods.

When entering into a Joint Venture Agreement and during its performance, the Parties continue to have their own priorities, interests and objectives. While there is no reason to deny these, the Parties must bear in mind, protect and promote the interests of the Joint Venture.

While the Joint Venture Agreement can be expected to regulate the most important aspects of the Parties' cooperation, there may always arise issues which have not been settled by the Agreement. For this purpose, the choice of applicable law is necessary component of the Joint Venture Agreement.

Some parties to international contracts choose 'general principles of law', the *lex mercatoria* or other similar rules or principles as the 'applicable law' to their contract.

►► **Evaluation of the tool, in relation to the feasibility study focus:**

While the network contract offers an open structure, as it pursues a common purpose through a common program which can be join by other parties at a later date, in Contractual joint venture and consortium agreements the contractual relationship remains limited to the contracting parties. This is because the cooperation is based precisely on the specific technical, commercial and organizational party making up the joint venture.

For this reason, it cannot be the suitable legal instrument for a transnational network of social enterprises, which has wider purposes and provides for the possibility of accession by new stakeholders.

⊙ **ERIC - European Research Infrastructure Consortium**

(Council Regulation (EC) No. 723/2009 of 25th June 2009 on the Community legal framework for a European Research Infrastructure Consortium (ERIC), OJ L 206, 8.8.2009)

The legal framework for a European Research Infrastructure Consortium (ERIC) has been designed to facilitate the establishment and operation of research infrastructures of European interest with the involvement of several European countries. Complementing national and inter-governmental schemes, the ERIC Regulation provides a common legal framework based on Article 187 of the Treaty on the Functioning of the European Union (TFEU).

An ERIC is a legal entity with legal personality and full legal capacity recognised in all EU Member States. Its basic internal structure is very flexible, leaving the members to define in the statutes, case by case, membership rights and obligations, the bodies of the ERIC and their competences. The liability of the ERIC's members will generally be limited to their respective contributions.

An ERIC is recognised by the country hosting its seat as an international body or organisation for the purposes of the directives on value added tax (VAT) and excise duties. It also qualifies as international organisation for the purpose of the directive on public procurement.

An ERIC may therefore, under certain limits and conditions, benefit from exemptions from VAT and excise duties on its purchases in all EU Member States and it may adopt procurement procedures respecting the principles of transparency, non-discrimination and competition but not subject to the directive on public procurement as implemented in national law.

The ERIC framework is a legal tool which is only appropriate for high-profile research infrastructures with a European dimension. Therefore, only a limited number of ERICs are expected to be set up in the coming years.

An ERIC set up under the ERIC Regulation should have as its principal task the establishment and operation of a research infrastructure on a non-economic basis and should devote most of its resources to this principal task. In order to further promote innovation as well as transfer of knowledge and technology, the ERIC is allowed to carry out limited economic activities.

In interpreting the notion of “non-economic”, the Commission relies on the definition of “economic activities” as developed on the basis of the case law of the Court of Justice in competition matters. An economic activity consists of offering goods and/or services in a given market. “The activity in question must be capable of being carried on, at least in principle, with a view to profit”. Consequently, “in principle no economic activity is involved where the State carries out activities that the market could not provide”.

According to the Community Framework for state aid for research and development and innovation, collaborative R&D is normally not considered to be an economic activity.

The access of universities or research organisations to a research infrastructure in a collaborative R&D manner may therefore be seen as “non-economic”. Collaborative R&D can be assumed if there is an integrated approach, characterised for example by joint definition of the project and joint ownership of results.

To the extent that’s needed to allow an ERIC to engage in cooperation with industry, carry out technology transfer and contribute to innovation, it may carry out economic activities under particular conditions. The limited character of these activities means that they must remain secondary and must not prevail over the execution of the main task of the ERIC, as defined in Article 3 of the Regulation. Quantifiable elements may be used to analyse the relationship between the non-economic operation of the ERIC and the limited economic activities, such as the respective costs and incomes, use of human resources or the share of access to the facility for economic and non-economic purposes.

If an economic activity is successful enough to be no longer considered to be secondary, the ERIC may consider creating a spin-off company for example.

States and intergovernmental organisations can apply to set up an ERIC. An ERIC must include at least three EU Member States as members. Its statutory seat has to be in a EU Member State or in an associated country.

The future members of an ERIC should prepare and agree on all the documents referred to below in “content of the application”. The national procedures required to ensure the formal agreement and commitment of the individual members may vary from country to country and the stakeholders of the future ERICs are advised to work, well in advance, with their national authorities when preparing the necessary documents.

The Commission will try its best to assist potential applicants at all stages of the preparation of an ERIC.

The application must be sent in electronic format to the following email-address: RTD-ERIC@ec.europa.eu

An international non-profit association (for example, under Belgian law - AISBL), can be the intermediate step to promote the sustainable development of research infrastructure, support the coordinated implementation of the research facilities, and gradually organise the establishment of an international consortium in the form of a European Research Infrastructure Consortium (ERIC).

► **Evaluation of the tool, in relation to the feasibility study focus:**

The structure of ERIC has been designed to facilitate the establishment and operation of research infrastructures of European interest. The model provides good inputs for a preliminary analysis of organization aspects of operative network formalization, but the “social enterprises” target needs some more flexibility of the agreement, in order to be ready to follow the voice of consumers and improve activities of the members.

⊙ **European Economic Interest Grouping (EEIG)**

The European Economic Interest Grouping, in short: **EEIG** is an interesting company structure based on EU law on the basis of Council Regulation (EEC) No. 2137/85 (Official Journal of the EEC L199 of 25th July 1985) as well as on the national laws regarding EEIG regulation.

This Regulation meets the need for a harmonious development of economic activities throughout the EU and the establishment of a common market offering analogous conditions to those of a national market. To achieve this, and alleviate the legal, fiscal and psychological difficulties encountered by natural persons, companies, firms and other bodies in cooperating across borders, the EU decided to create a suitable legal instrument at a Community level in the form of a European Economic Interest Grouping.

EEIGs are on par with limited partnerships in most European countries. They have to be comprised of at least two members from two different European countries.

Members of an EEIG have to be legally independent; however the owners may be identical. Hence, subsidiaries can establish an EEIG amongst themselves or with the parent company, as seen for example with the 12 Italian subsidiary companies of IMI Bank together with an IMI subsidiary in Luxemburg. Jointly, they established an EEIG in Brussels for the following purpose: flow of information and lobbying with respect to the EU. Another example would be the auditing departments of the respective national subsidiaries of Winterthur Insurance in Switzerland, which have jointly established an EEIG.

Furthermore, members of an EEIG are not required to be homogeneous. Hence, an EEIG can be founded in any **combination by freelancers and self-employed persons or a one-man business, limited companies or stock corporations as well as associations and public bodies** (e.g. universities, chambers of commerce and industry, municipalities etc.). **It is therefore open to collaboration with non-profit-making organizations and suitable to Public-Private-Social Partnership activities.**

There are no limits to professions. It would for example be possible that tax advisors, consultants, lawyers and possibly a data centre (hosting of accountancy software), all from different EU countries, could establish an EEIG in order to offer respective services to their clients.

EEIGs themselves are not subject to tax. The EEIG's net income is subject to taxation at members' level, where net income is distributed on par to the members according to their participation.

It is important to note in this context that an EEIG should, according to EU regulation, assist its members in the realisation of their goals and must not pursue profits in its own name. This is because one of the EEIG's main features is the fact that it does not accrue any profits and is not tax liable.

For persons employed by an EEIG income tax and insurance have to be paid. EEIGs are liable to VAT.

The purpose of an EEIG is the realisation and implementation of the common objectives of its members. Thus, **the line of business must always refer to the cooperation of the members and must not replace their activities of a single member.** Well-known EEIGs are for example the European TV channel ARTE.

It is not intended that the grouping should make profits for itself. If it does make any profits, they will be apportioned among the members and taxed accordingly (no taxation of reserves on members, if profits made at the EEIG level are not distributed to the members)

Its activities must be related to the economic activities of its members, but cannot replace them.

Members of an EEIG are not required to be homogeneous: an EEIG can be founded in any combination by freelancers and self-employed persons or a one-man business, limited companies or stock corporations as well as associations and public bodies (e.g. universities, chambers of commerce and industry, municipalities etc.).

Even if non-profit-making associations cannot be defined as being members of an interest grouping, they may come under the definition, contained in that regulation, and of other legal persons governed by public or private law pursuing long-term aims such as research and development.

Some practical aspects to consider for the building of the agreement:

- › An EEIG must have **at least two members** from different Member States.
- › A grouping's official address must be within the EU
- › An EEIG must have **at least two bodies:** the members acting collectively and the manager or managers. The managers represent and bind the EEIG in its dealings with third parties.
- › **An EEIG does not necessarily have to be formed with capital.** Members are free to use alternative means of financing.
- › As a counterweight to the contractual freedom which is at the basis of the EEIG and the fact that members are not required to provide a minimum amount of capital, each member has **unlimited joint and several liability for its debts.**
- › **Advantages of an EEIG:**
- › EU-wide standardized legal form, hence no discrimination.
- › EEIGs are particularly attractive to SMEs since EEIGs have a simple and flexible structure and since **no authorised capital required** when setting up;
- › **Simple formal incorporation requirements:** written incorporation contract and entering in the company register
- › **Profits of an EEIG are distributed equally** or proportionally to the shares of the members; the same applies to taxation.
- › Also possible: **setting aside reserves**(no taxation on members).
- › EEIGs do not have to prepare balance sheets and are not required to publish results.
- › **Members maintain their economic and legal autonomy,** yet at the same time the EEIG maintains legal capacity;
- › **Legal liability lies primarily with the EEIG itself.**
- › **Disadvantages of an EEIG:**
- › Limited suitability for new entrepreneurs;
- › **Unlimited legal liability of members** (although only subsidiarily). However, the liability of companies with limited liability as members of an EEIG is limited to their capital.
- › The search for suitable cooperation partners is often laborious;
- › In some cases there are problems with regard to the **distribution of deficits** or allocation of additional contributions if this has not been properly sorted out prior to such event.
- › An EEIG may not be shareholder in any of the member companies

► **Evaluation of the tool, in relation to the feasibility study focus:**

All the characteristics of the EEIG legal instrument are suitable for the intent to formalize a transnational social enterprises network, which can support members in their internationalization process.

By stimulating mutual exchange and learning, transnational cooperation will help increase skills of employees and entrepreneurs for applying novel technologies and methods. This will enable SEs to develop and implement innovative products, services and/or processes contributing to the respective regional smart specialization strategies. Innovative learning systems, jointly developed at a transnational level, can contribute to the targeted improvement of skills thus increasing regional competitiveness especially in regions facing social challenges.

The flexible structure is an advantage of the EEIG: indeed, while consortiums must have a common fund, this is not necessary for EEIG (it is a voluntary provision).

Compared to the ATI, the flexibility of the EEIG make possible participation also for physical persons. Moreover, the EEIG constitution has not complex advertising obligations imposed by the public procurement directives (indeed ATI is mainly used to the sectorial).

For this reason the last step of the analysis provides a focus on the technical aspects of EEIG, trying to give useful indications for the formalization of the Statute and the Internal Regulation of a new EEIG, as sustainable, operating and funding structure for cooperation after the end of the EASE&SEE project.

GROUP C) - 4 LEGAL INSTRUMENT FOR BUSIENSS COLLABORATION, UNDER ITALIAN LAW:

⊙ **Consortium for internationalization of small and SMEs:**

The Italian Civil Code defines the Consortium of enterprises as a common organization for the discipline or for the performance of certain phases of the respective companies (Article 2602 of the Italian Civil Code)

Legislative Decree no. 83/2012, converted into Law no. 134/2012, established in Italy consortia for internationalization: these are subjects that relate to the “international diffusion of products and services for small- and medium-sized enterprises, as well as support of their presence in foreign markets, including through collaboration and partnership with foreign companies”.

They do not need a minimum number of members or capital requirements; consortia for internationalization may include: SMEs in the industrial, handicraft, tourism, agri-food and service sectors based in Italy, creating consortia or cooperatives; public entities, banks and large companies (previously excluded), but without being able to rely on contributions to cover up to 50 % of expenditure on projects of business networks (SMEs consortium, for a period of several years).

The Ministry of Economic Development, to promote such initiatives, has issued a call for the granting of special benefits: **the grants are intended to support the conduct of specific promotional activities of national importance, for the internationalization of small- and medium-sized enterprises.** These initiatives must be implemented by the Consortia for internationalization, **including through network contracts with small- and medium-sized non-consortium enterprises**, provided their number is not higher than that of the associated companies involved.

Law 134/2012 establishes the **possibility to access benefits and contributions** and specifies all the requirements; incentives can reach up to 50% grant for all expenses for the implementation of the internationalization projects. The activity must relate to the diffusion of products or services through international collaborations and partnerships with foreign companies.

To form a consortium a company may use the individual opportunity of Articles 2602 and 2612 of the Italian Civil Code, or to form a **consortium or cooperative society of SMEs** (less than 250 employees, annual turnover below € 50 million or annual balance sheet below 43 millions) operating in industrial, artisan, tourism, agri-food and services sectors and based on the national territory.

Consortia are divided into two categories: those with internal activity and those with external activity.

In the former case (consortia with control and coordination functions), the consortium should have a written contract in place, with information on duration (if not specified, 10 years), office headquarters location, conditions for the admission of new associates, information on penalties and on the power of the bodies involved in the consortium and on admitted withdrawal causes.

In the latter case, i.e. for consortia with external activity (art. 2612 and following of the Italian Civil Code), assumption of obligations on behalf of the consortium may be involved, according to the mandate without representation.

The following features are needed in order to obtain grants:

- Inclusion in the statute of a clause prohibiting to distribute the remaining operating profits to associated companies and members even if the consortium were to be dissolved.
- Presence of a fund consisting of a minimum of 25% with shares not exceeding 20% of the fund itself, but with a value of minimum € 1,250;
- Not to be under liquidation or bankruptcy proceedings.

The eligible costs will be between 50,000 and 400,000 Euros for a project that must include **at least 5 SMEs from 3 different regions**, operating in the same sector or industry. Companies must comply with the provisions for *de minimis* contributions, i.e. each firm cannot get contributions exceeding a total amount of € 200,000 over 3 years.

Consortia may also find support to foreign trade initiatives within annual promotional programs funded by Regional governments.

►► **Evaluation of the tool, in relation to the feasibility study focus:**

Consortia for internationalization represent an effective solution for businesses that want to face the challenge of new markets, but the architecture of Law 134/2012 and requirements to access grants and contributions may fit better the reality of for-profit SMEs, rather than social enterprises and non-profit organizations. Moreover, SMEs taking part in a consortium for internationalization must all be based in Italy, therefore the legal tool is not useful for the management of transnational cooperation networks.

⊙ **Network Contracts - based on IT Laws no. 33/2009 and no. 122/2010:**

With a network agreement a group of entrepreneurs undertake to cooperate in order to increase, both individually and collectively their innovative capacity and competitiveness in the market.

Network contracts are **stable forms of collaboration between companies, intermediate between the market and hierarchy**, aimed at a common goal: **stability distances networks from the pure market** (where relations between businesses focus basically on the exchange of goods and services) while **coordination**, in which the participants have retained their autonomy, make the governance of networks different from the hierarchical organization of enterprises.

European institutions, in the last decades, seem to have focused more on organisational devices to conduct business activities rather than on contractual forms of coordination. In April 2009, Italy adopted a law on network contracts to promote the development of **inter-firm cooperation strategies to foster**

enterprises' innovation and growth. Even if this law represents a novelty in Europe and may offer new challenges and hints, it still presents some lacks in its formulation.

Network contracts offer an hybrid business tool that **allows each company to reach an adequate size to compete in global markets** by developing the innovation required to make it competitive on international markets or to approach a *strategic technology partnering (STP)*, without establishing a new subject.

Network contract is an agreement by which **two or more entities can exercise together one or more activities falling within its social objects**: members are committed to work jointly to increase the **innovative capacity** and **enhance the competitiveness** of their companies in the global market. The production chain may be either horizontal or vertical.

The instrument of the network contract refers to article 3 paragraph 4-ter of the "Incentives" Decree (Law no. 5/2009) converted into Law no. 33/ 2009 - regulation of the network business - together with Law no. 99/09 on the development and internationalization of companies. This legal instrument responded to the EU Commission Communication of 25th June 2008 on the "Small Business Act", proposing a strategic framework designed to exploit the potential for growth and innovation of SMEs.

Network contracts, with Law No. 221 of 17th December 2012, can choose to become a legal entity and a tributary subject: if the network contract creates a common fund and a common body, member companies can register the contract in the ordinary section of the Company Register at the Chamber of Commerce and request the issue of VAT. Financial liability is limited to the common fund.

Recently the possibility to draw up the contract not only by public deed, but also by private deed with **digital or electronic signature** has been introduced. Moreover, the *Italian Public Contracts Code* provides for the **participation of Contracts Network in public tenders**.

Foreign companies can participate in the network contract through their permanent establishments in Italy, in order to comply with disclosure requirements (Company Register). The participation of foreign entrepreneurs in the network contract, albeit subject to Italian law, characterizes it as an international contract.

Out of the strengths of network contracts, growing attention is given by banks in the form of innovative credit lines and lower spread granted to member companies.

Strategic opportunities are related to easier access to new markets through a wider size, as well as to shared experiences, knowledge in a protected environment, in order to innovate processes, products, services.

Financial opportunities also come from fiscal benefits and public grants at a Regional and National level. On the other side, weaknesses and risks may be generated by:

- Distrust of other entrepreneurs (if competitors) can generate possible opportunistic behavior within the network.
- Management unsuitable for lack of skills to make the business model "active"
- Lack of adequate leadership (credibility) causes unstable relationships among members.

►► **Evaluation of the tool, in relation to the feasibility study focus:**

*The network contract allows the structuring of **stronger partnerships between companies in the international arena than the bonds of a consortium or temporary association of companies (ATI), which refer to a specific contract under a tender.** These forms of contract, in fact, limit collaboration between companies in the execution of their tasks, the coordination with the client and the breakdown of the final results. The relationship among companies participating in a network contract, instead, aims at **actively***

collaborating in order to foster competitiveness of goods and services offered by the network, thanks to information exchange and technology transfer, or through the joint exercise of one or more activities falling within their social objects.

*Today the network contract is also an important factor in the Italian social and economic reality, able to reach one of the main objectives of the reform of the Third Sector, which is to foster cooperation. However, network contract represents nowadays a scheme of arrangement whose **participation is limited to entrepreneurs**, thus also social enterprises, whereas non profit organizations are currently excluded. For this reason, it is a useful instrument for sharing innovation projects or to coordinate common internationalization processes, but it is inadequate to develop public-private- social partnerships, for example, or to work together with NGOs.*

⊙ **Temporary Association of Companies(ATI)**

Temporary grouping of companies is expressly ruled by the Italian legal system, in the form of temporary association of companies (ATI), under Law no. 406/1991, in application of EEC Directive no. 89/444. Applicable legislation has developed with the **contractual practice in the field of cooperation between companies for the building of public works**. The ATI legislation only applies to the contract sector. Under an ATI agreement even small companies have the possibility to take part, in joint form, in the building of major works or, in any case, in those economic deals that are burdensome or complicated under a technical, organisational or financial point of view that, in consideration of the relevant risks, can only be built by large companies. The ATI allows a group of companies to jointly participate in a tender., avoiding the costs of foundation of a common company or a consortium, because by this kind of association each company maintains its own legal personality.

The ATI is a securer grant for the contracting party of due and integral execution of the work.

In this way the associated companies can submit a bid to the contracting party, which is presented by only one of them: the company presenting the bid undertakes the role of group leader and takes care of relations between the contracting party and other companies of the ATI.

By presenting the bid the associated companies of the ATI take joint liability towards the public administration (contracting party). After the presentation of the bid by an ATI, the composition of the participating companies cannot be altered. A company taking part in an ATI set up for the presentation of a bid for a tender cannot take part in another ATI offering a bid for the same tender.

Under IT Law no. 109/1994 an ATI can present a bid for a tender before its foundation provided that the bid is signed by all the companies that then shall constitute an ATI, and provided that both the leader group and the other companies meet all the requirements provided under the tender regulation.

A temporary association of enterprises ATI can be founded by a notarized certificate of incorporation or by a private contract.

Under taxation profile, the constitution of an ATI does not establish a new entity subject to taxation: the company's members of an ATI are only subject to taxation for the amount of income under their participation shares.

The ATI is usually divided into two types: horizontal and vertical. The horizontal one exists in case of co-operation of some companies, carrying out the same activity, which decide to associate in order to share the works and obtain the requirements to take part in the tender. The vertical one happens when a company takes the role of group leader gathering other companies carrying out secondary activities. All the companies taking part in a horizontal ATI are liable towards the contracting party of the due execution of the work and its division among them is not relevant towards third parties; in the case of a vertical ATI, instead, the group leader is liable for the complete execution of the work towards the

contracting party, while the other companies are liable for their own share of work (Sentence of Council of State, section V, 4th November 1999no. 1805)

Mixed ATIs are also possible. In such case, the ATI combines within a single organisational structure the typical features of the horizontal ATI, for the execution of the primary works, with those typical of the vertical ATI for the execution of the secondary works.

► **Evaluation of the tool, in relation to the feasibility study focus:**

ATI is a temporary solution to needs of transnational cooperation. It is an aggregation limited to a specific business, which attributes specific tasks to each participant. It doesn't put at the core the exchange of social sustainable development models or the support of social entrepreneurship or the creation of opportunities by matching social enterprises at a transnational level.

It only represents a technical means through which each company pursues its own interest, different from that of other participating companies.

◎ **EEIG - European Economic Interest Grouping - Italian Law (implementation decree Dlgs No. 240/1991)**

Council Regulation (EEC) No 2137/85 of 25th July 1985 entered into force July 1, 1989, providing that the Member States adopted a series of measures necessary for the adaptation of national legislation to Community EEIG.

Italian legislature has fulfilled these obligations with delay and precisely with the legislative decree 241/1991, published in the Italian Official Gazette no. 182 of August 5, 1991. As the EC Regulation prevails over national law, the Group will be governed primarily by Community law. The national law is for adapting to the EEIG company law and taxation, as well as to complete the operational choices left to the individual member countries in the Regulations.

5th STEP OF ANALYSIS:

Community rules on the EEIG and their application within Italian Law (legal, administrative, fiscal and financial framework)

The legal framework for EEIG set in Italy is regulated by decree of July, 23rd 1991, n. 240, implementing Council Regulation (EEC) No 2137/85 of 25th July 1985 on the institution of European Economic Interest Grouping (EEIG).

As the official address referred to in the contract for the formation of grouping must be situated in the Community, it is important to precise the choice of location of EEIG make it applicable to the contract and its statute, **the law of the State in which it is attached.**

Main features for Italian EEIGs are:

- No legal personality
- No compulsory public notary's intervention
- Publishing communications to Trade Register, *Gazzetta Ufficiale* and EUOJ are directors' duties
- Legal person as a director is allowed
- Automatic expulsion when member has been declared insolvent
- Directors must draw up annual balance sheets to be filed in Trade Register
- Minimum capital is not required

- Profit of the EEIG are distributed equally or proportionally to shares of the members and the same applies to taxation (“fiscal transparency”);
- Legal liability lies primarily with the EEIG itself, but unlimited legal liability of members is prevue as well, although only subsidiarily (However, the liability of companies with limited liability as members of an EEIG is limited to their capital).

Costs for an Italian EEIG		
<p>Constitution and running:</p> <p>No public notary fees</p> <p>€200+ annual Trade Register fee</p> <p>€ 120 “diritto di segreteria”</p> <p>€65 “imposta di bollo”</p> <p>€168 “imposta di registro”</p>	<p>No compulsory contribution is Needed</p> <p>Two kinds of costs</p> <p>↔ ↔</p>	<p>Taxes:</p> <p>No direct taxes are due</p> <p>EEIG can still be a VAT subject</p>

It should be noted that the transposition of EU legislation has not properly introduced a new legal concept of collaboration between companies, but it is supported, depending on the circumstances of the case, in one of the forms of association typical of the Italian (partnerships and capital, consortia, ATI, joint ventures).

The decision to report the EEIG Community to similar forms in force in the member states has prevented to give a comprehensive legal framework to the EEIG, which thus represents an atypical contract.

Finally, note that the EC Regulation has recognized the EEIG, regardless of its possession or not of a legal personality, a full and unlimited legal capacity: that is, the right to be the holder of the EEIG in its own name of obligations and rights, to perform legal acts and to sue and be sued.

In Italy, it was chosen not to award the legal personality of the EEIG, as the doctrine and jurisprudence Italian admit that a person is endowed with legal capacity, without owning a real legal personality.

Moreover, in this case, the recognition of the legal personality of the EEIG would be contrary to the principle of unlimited liability for the obligations of the contracting parties of the EEIG and the taxation of profits, placed on the part of members.

For these reasons, the establishment of an EEIG must be done after a careful assessment of the governance structure within the group, together with a complete planning of activities, and with a focus on the company law and tax legislation of the host Country, where is set the headquarters of the EEIG.

6th STEP OF ANALYSIS:

Feasibility study conclusions and focus on priority transnational cooperation sectors

The outcome of the present feasibility study highlights the strengths and weaknesses with respect to the formalization of a transnational network involving social enterprises working in the clusters emerged from the evidence of WP5 and WP6 Project EASE & EEA, referred to **creative reuse and up -cycling and catering and slow food**.

Among the activities realized in WP6, partners and stakeholders set up **Local Support Units**, which have provided technical support to business partnerships and their new business activities; the creation of an EEIG could give sustainability to the network of Business Support Units, keeping active their connection via web platform.

Moreover, the combination of businesses around an EEIG shared project can indeed **increase their capacity and competitiveness on the local and international market**.

EEIG will try to accelerate the identified opportunities by **matching social enterprises at transnational level** and by facilitating business and entrepreneurs meetings in the participant Countries.

The goal of EEIG is to valorize the experience and practices developed by social entrepreneurs thus **accelerating development of innovative business ideas** through cooperative enterprise action learning and **gradual support to internationalization processes**.

To better represent the grouping idea, analyzing it from the **point of view of the market**, but also **organizational**, hereinafter we refer to the **hypothesis of an EEIG denominated:**

“GO EASE– EEIG:

Trans European network for the sustainable growth of social and responsible businesses”

Whose purpose should be the development of a sustainable structure for transnational cooperation after the end of the project “EASE&SEE Project Enabling Actions for Social Enterprises in South East Europe”.

As annexes to the feasibility study, there are a **draft of Statute** for the creation of *GO EASE – EEIG* and a draft of **Internal Regulation**, which allows to make changes, in consultation with members, the faster and more easily.

The flexibility of EEIG, through Internal Regulation, must be appreciated in light of the possibility of future entry by new members, as well as the ability to change the venue of the EEIG or expand the activities for the benefit of members, according to the future needs.

Annexes to the Study:

- 1) Results of the “Fast Survey on SEs Needs” (slides)
- 2) Draft of Statute: “GO EASE – EEIG”
- 3) Draft of Internal Regulation
- 4) Short analysis on Test Clusters of creative reuse / up -cycling and catering and slow food.