

# **An Introduction to Spain's Social Economy Law**

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***Theme 4) Policy and Planning Beyond 2012***

## **1. Introduction**

In Spain the social economy currently has more than 45,000 organizations and provides more than 2,370,000 jobs. The 2009 turnover amounted to 92,157.16 million Euros, creating new employment despite the loss of jobs in other areas. This data indicates the positive progression of such sector, which each year gains importance within the economy as a whole. For this reason the bodies representing these organisations worked to raise awareness among political parties and the Government of the need to promote the creation and development of social economy entities, both for its beneficial effect on the economy and the maintenance of employment and for the value of the principles that inspire social economy enterprises and distinguish them from other companies.

This effort has had a satisfactory outcome, with the publication of the new law of Social Economy, unique in Europe<sup>2</sup>, which will allow this sector to obtain a legal framework and greater institutional recognition. In light of this, we highlight the most important elements of this new law and assess to what extent it promotes the social economy in Spain. This report is divided into three sections, in addition to this introduction. First, we analyse the history of the Social Economy law (“SE law”), as well as companies and organizations that are affected by the same. We then point out the most relevant elements of the SE law and finally, briefly refer to other recent legislation related to the Social economy (although not including previous cooperative laws, which have been in place for some time.)

## **2. Background to the SE law**

Since 2004 the Spanish Ministry of Labour and Immigration has developed various laws and initiatives to promote the development of the social economy. Most recently, the SE law has come into force (approved March 16, published March 30 and brought into force April 30, 2011) after a lengthy process.

The objective of the SE law<sup>3</sup> is to establish a common legal framework for social economy entities and to promote, develop and provide support to SE entities and their representative bodies, ideally resulting in recognition and visibility for the sector. It is important to note the SE law does not substitute existing legislation already in place in relation to the various organizational types, intending rather to provide a framework for the concept of social economy, as a concept that is of great relevance at both the EU and member state level.

The SE law provides for the tracking of social economy entities such that a typology may be developed and maintained by the ministry. With respect to the future, it provides for the setting up of a Council for the Promotion of Social Economy (with representatives from the state, autonomous communities and

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<sup>2</sup> Although other jurisdictions such as Italy, Belgium and the United Kingdom have specific social enterprise laws which have enabled the creation of specific entities.

<sup>3</sup> <http://www.boe.es/boe/dias/2011/03/30/pdfs/BOE-A-2011-5708.pdf>

from the SE sector)<sup>4</sup> which will be subject to the provisions of the SE law, to serve as an advisory body for activities related to the social economy. It will also facilitate communication between the central government and social economy actors.

Many years in the making, the first concrete institutional step in 2007 was a parliamentary sub commission to study the social economy, at the behest of CEPES (Spanish business confederation of the social economy)<sup>5</sup>. A commission of independent experts followed and a study was presented in 2009, complemented by that of CEPES. Based on this material a draft law was presented which gained the support of both the sector and the government. Concepts such as that found in the French "Charte de l'économie sociale" and the Belgian "Conseil Wallon de l'Economie sociale" provided material with which to start, as well as the social economy principles established by Social Economy Europe<sup>6</sup>.

## 2. Social Economy Entities

The SE law elaborates on the concept and definition of social economy and sets out orientative principles and/or characteristics that are shared by social economy entities. It defines "social economy" as the group of economic and business activities carried out in the private sphere, which in accordance with some principles; pursue the collective interests of its members, in terms of general economic or social interests, or both. Such principles include:

- Democratic characteristics, transparency and participatory nature.
- The emphasis of the individual and social objectives over capital.
- Benefits obtained by the business activity distributed in function of work and services done by the members and the social objective of the entity.
- Commitment to internal and external solidarity, local development, social cohesion and sustainability.
- Social cohesion and inclusion.
- Independence from public authorities.

According to this definition, Social Economy Entities include "traditional" organizations such as cooperatives, mutuels, foundations and associations in addition to entities that are creatures of specific regulation such as labour associations, special employment centers and labour insertion entities. Other specific entities, mostly as a result of historical circumstances, include agricultural societies in transformation, fisherman societies, etc. Finally, those that are categorized as such by the Ministry of Labour and Immigration will have such status, on the advice of the Council for the promotion of Social Economy, mentioned above.

The SE law provides for a special participative role for the associations that represent the social economy with public authorities, so that they can more easily voice their concerns and necessities and to collaborate in the development of the sector. The state inter-sectorial confederations which represent the sector will also have a key role. In such ambit, the Council for the Promotion of the Social Economy, in its consultative and advisory role on social economy, will be responsible for:

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<sup>4</sup> More precisely, it is composed of all ministry departments, all autonomous communities, the Spanish Federation of Municipalities and Provinces, representatives of social economy organisations and entities and as well, experts in the area.

<sup>5</sup> Noticias Boletín del Tercer Sector, "Cronología de la aprobación de la Ley de Economía Social en España" (17/03/2011)

<sup>6</sup> European Foundation Center, "Spain introduces Law on Social Economy" (05/04/2011).

- Promoting the underlying principles of the SE law.
- Collaborating in the elaboration of regulatory and policy projects which affect the social economy.
- Drafting reports on the state of the social economy, its presence, both national and international.
- Maintaining a registry of social economy entities.
- Publicising/disseminating programs which develop and promote the social economy.

### 3. Specific contents of the Law

Below, we analyse the most important aspects of the provisions of the SE law, consisting of nine articles, seven additional provisions, two transitional provisions, a derogatory provision and four final provisions (translation by the authors).

Article 1 sets out the objectives, common judicial framework and applicable promotional measures.

Article 2 defines “social economy” as “the group of economic and business activities carried out in the private sphere, which in accordance with the principles set out in Article 4, pursue the collective interests of its members, in terms of general economic or social interests, or both”.

Article 3 sets out the scope of application of the law to SE entities that act in the public sphere, but without prejudice to the powers assumed by the autonomous communities.

Article 4 sets out the principles of the social economy: the primacy of people and the social purpose on the capital, which focuses on independent, transparent, democratic and participatory management which gives priority to the decision-making process based primarily on people and their contributions of work rather than in relation to their capital contributions. The benefits generated by the entity are primarily on the basis of the work performed by associates and partners or its members. The promotion of internal and societal solidarity that promotes commitment to local development, equality, social cohesion, the inclusion of people at risk of exclusion, the generation of stable and quality employment, the reconciliation of work and personal life and sustainability, and independence with regard to public authorities.

Article 5 of the SE law lists the entities that form part of the social economy. Cooperatives, mutual societies, foundations and associations which carry out economic activity, labour societies, inclusion companies, special employment centres, fishermen's associations, agrarian societies of transformation and singular entities created by specific rules that are governed by the principles of the particular law itself. Social economy entities that carry out economic and business activity and whose operations correspond with the above-mentioned principles are also included. In all case though, social economy entities are governed by the applicable specific substantive rules.

Article 6 regulates the “catalogue” of entities of the social economy, which will be drawn up and updated by the Ministry of Labour and Immigration on the prior advice of the Council for the promotion of the Social economy (although such recommendation does not have force).

Article 7 contains the principles of representation of the entities of the social economy, and the criteria of representatives of the cross-sectoral state confederations.

Article 8 recognizes as a general interest task the promotion, encouragement and development of institutions of social economy and their representative organizations. According to the text, the public authorities must have as objectives of its policy of promotion of the social economy, among others, the following:

- a) Remove barriers that prevent the creation and development of an economic activity of the entities of the social economy. Special attention will be given to the simplification of administrative procedures for the creation of social economy entities.
- b) Facilitate the various initiatives of social economy.
- c) Promote the principles and values of the social economy.
- d) Promote the training and retraining in the field of the entities.
- e) Facilitate access to the processes of technological and organisational innovation to entrepreneurs of social economy entities.
- f) Create an environment that fosters the development of the economic and social initiatives in the framework of the social economy.
- g) Involve the social economy entities in active employment policies, especially for the sectors most affected by unemployment, women, young people and the unemployed of long duration.
- h) Introduce references to the social economy in the curricula of different stages of education.
- i) Promote the development of the social economy in areas such as rural development, integration. The Government shall promote in its scope the realization of actions for the promotion, dissemination and training, while respecting the competences of the autonomous communities.

Article 9 creates and regulates the Council for the Promotion of the Social Economy, an advisory and consulting body.

The First Additional Disposition states that that the Ministry of Labour and Immigration will also adopt the necessary measures to ensure that statistical information of the entities of the social economy, as well as their organizations of representation, is regularly updated.

The Seventh Additional Disposition urges the Government to adopt, within a period of six months from the entry into force of the law, a programme to provide momentum to social economy entities, with special attention to the unique roots in their environment/local communities and to those which generate employment in the most disadvantaged sectors.

This programme will reflect measures such as eliminating the limitations of the entities of the social economy, so that they can operate in any economic activity without unjustified constraints; the referral to the courts of a Bill to update and review the law 4/1997 re: labour societies, and the revision of the rules of development of the law 38/2003, re: general grants, with the aim of simplifying the procedures regulated in the same.

#### **4. Other legislative initiatives**

In addition to the recent Social Economy law, it is worth noting other legislative initiatives that also support social economy entities, including cooperatives. We briefly set out some recent examples below. However, perhaps to put all of these initiatives, both recent and historical, reference to the Spanish constitutional provision should be made. It provides:

*Article 129.2 The public authorities shall effectively promote the various forms of participation in enterprise and facilitate cooperative enterprises by means of appropriate legislation. They shall also establish the means that will facilitate access by the workers to ownership of the means of production<sup>7</sup>.*

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<sup>7</sup> <http://www.boe.es/aeboe/consultas/enlaces/documentos/ConstitucionCASTELLANO.pdf>

**Labour Insertion Enterprise Law** intends to promote the insertion of socially excluded people, helping them transition to ordinary employment. The Royal Decree 49/2010<sup>8</sup>, January 22, creates an administrative registry of companies of insertion of the Ministry of Labour and Immigration, part of the public service employment, whose purpose is to channel the coordination and exchange of information between the records of the autonomous communities, which have the jurisdiction to register and qualify this type of entity.

**Law of the European cooperative society Domiciled in Spain**<sup>9</sup> allows the intensification of transnational activities to cooperative societies and, in the case of large Spanish cooperatives, alliances with other cooperatives in other countries of the European Union.

**Promotion of employment in cooperatives and labour societies** has been also incentivized. The Royal Decree 1300/2009<sup>10</sup>, July 31, created urgent employment measures, in response to the economic crisis, for self-employed workers and cooperatives and labour societies, which specifically includes the following provisions:

- Elimination of the current 24 months term to be able to qualify for unemployment benefits for those employees who become worker partners or members of cooperatives and labour societies work. This measure helps employees of labour and cooperative societies of labour associations to establish themselves as worker members with the same rights as a worker in the company.
- Other measures which were crisis driven included the raising of the amount of total employment benefits, funds for professional education and a reduction of social security contributions by companies, including cooperatives, who provided stable employment positions. Other programs included actions taken to improve employability, encourage entrepreneurship, and encourage activity in the social economy.

As well, changes to the Spanish accounting standards, based on international standards, have required the modification the cooperative law. Hence, a modification was made to the Law of Cooperatives 27/1999, to adapt it to International accounting standards and order EHA/3360/2010<sup>11</sup> which approved the regulations on the accounting aspects of cooperative societies, with the aim of keeping it line with both the general accounting framework and the SME accounting rules as well as with the international financial reporting standards adopted by the European Union. This is still problematic, as social capital is classified as debt and not equity and is the source of much discussion and disagreement within the Spanish cooperative community. The modification of such law, among other things, permits cooperatives to issue non refundable capital to the members, such that it can be classified as equity according to the new accounting criteria.

Finally, the **Law on Sustainable Economy**, approved March 4, 2011<sup>12</sup>; provides various favourable conditions for agricultural cooperatives modifying the previous 1999 cooperative law (Law 27/1999 of 16 July), including lifting some limitation on dealings with third parties and taxation of rural lands. As well, it allows credit cooperatives to integrate obligatory reserve funds into social capital upon transformation in other credit entity<sup>13</sup>.

## 5. Financial support for the Social Economy

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<sup>8</sup> <http://www.boe.es/boe/dias/2010/02/03/pdfs/BOE-A-2010-1660.pdf>

<sup>9</sup> <http://www.boe.es/boe/dias/2011/03/08/pdfs/BOE-A-2011-4288.pdf>

<sup>10</sup> <http://www.boe.es/boe/dias/2009/08/19/pdfs/BOE-A-2009-13664.pdf>

<sup>11</sup> <http://www.boe.es/boe/dias/2010/12/29/pdfs/BOE-A-2010-20034.pdf>

<sup>12</sup> Para más información <http://www.economiasostenible.gob.es/>

<sup>13</sup> <http://www.boe.es/boe/dias/2011/03/05/pdfs/BOE-A-2011-4117.pdf>

The support for the promotion of social economy in Spain in 2010 included 62 projects of dissemination and promotion of the social economy for an amount of 1,346,613 Euros. Support costs of the representatives of social economy organizations (11 organizations) have been subsidized for an amount of 1,154,570 Euros. Although for the year 2011 the General State budgets reflected a decrease of 12%, which is focused on the activities of dissemination and promotion, aid for the expenses of representative organizations of the social economy were maintained in amounts equal to that for 2010<sup>14</sup>.

## 6. Conclusions

Numerous laws published in the last several years demonstrate the growing recognition by the Spanish Government of the importance of the social economy in the economic and social development of the country. The new legislation offers for the first time a legal definition of social economy entities, creating a specific body to meet their needs and to improve communication with the Government.

In addition, there have been efforts to address the diverse needs of certain types of organizations such as cooperatives and the labour enterprises, ensuring that relevant legislation adapts to changing situations, thus favouring the creation of employment and the improvement of the economy. However, the SE law is new and has just started to be implemented. Critics point to its lack of substance and its overly general treatment of the social economy. As such, it is necessary to wait and see if it is effective and if such measures have a real and positive effect on the creation and development of the social economy in Spain.

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<sup>14</sup> Balance del programa de fomento de la Economía Social, Ministerio de Trabajo e Inmigración [http://www.mtin.es/es/sec\\_trabajo/autonomos/economia-soc/EconomiaSocial/docs/Balance\\_Economxa\\_Social.pdf](http://www.mtin.es/es/sec_trabajo/autonomos/economia-soc/EconomiaSocial/docs/Balance_Economxa_Social.pdf)

