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GUIDE TO THE WRITING OF LAW FOR THE SOCIAL AND SOLIDARITY ECONOMY

David Hiez

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GUIDE TO THE WRITING OF LAW FOR THE SOCIAL AND SOLIDARITY ECONOMY

DAVID HIEZ



SSE INTERNATIONAL FORUM

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SSE International Forum is an international network of actors in the Social and Solidarity Economy on four continents. Its main areas of action are: 1. Influence policies and agendas in favour of the SSE; 2. Jointly build innovative, sustainable and inclusive projects; 3. Convene leaders and players in the SSE; 4. Extend and disseminate analyses and knowledge of the SSE.

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GUIDE TO THE WRITING OF LAW FOR THE SOCIAL AND SOLIDARITY ECONOMY

DAVID HIEZ



SSE INTERNATIONAL FORUM



EDITORIAL

BY SSE INTERNATIONAL FORUM

Recently, the news has been filled with national legal endorsements of the Social and Solidarity Economy (SSE)¹. One instance is Tunisia, where on 17 June 2020 the draft law on the Social and Solidarity Economy was passed by the Assembly of the People's Representatives with 131 in favour, no objections and a single abstention². One year earlier, Cameroon had also taken a step in that direction by enacting Law 2019/004, known as the Framework Law on the Social Economy of 25 April 2019³. On 6 June 2019, the Republic of Djibouti enacted a Law on the Social and Solidarity Economy⁴, while Uruguay voted its own Social and Solidarity Economy Law on 4 September of the same year⁵.

While remaining consistent with the history, context and idiosyncrasies of each country, the writing of law relating to the Social and Solidarity Economy is a political task. Indeed, without in the least nursing political ambitions, the SSE wears its political mantle with pride. Indeed, in many cases such as that of the recent Tunisian law, the relevant authorities display political approval, in that national

1. In this Guide to the Writing of Law for the Social and Solidarity Economy, I have systematically replaced the expression "Social and Solidarity Economy" with its three-letter acronym "SSE", save in exceptional cases, particularly quotations, in which the author's choices are adhered to. The expressions "social economy" and "solidarity economy", which are more commonly used in a number of geographical contexts, are also used.

2. International Labour Organisation, The Tunisian Parliament adopts a bill on the social and solidarity economy. [Click here.](#)

3. Republic of Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun Loi 2019/004 du 25 avril 2019*. [Click here.](#)

4. Republic of Djibouti, *Loi no 044/AN/19/8e relative à l'Économie Sociale et Solidaire, du 23 juin 2019*. [Click here.](#)

5. Republic of Uruguay, D.O. 8 ene/020 Social and Solidarity Economy Law – No. 30353 of 4 September 2019. [Click here.](#)

legal endorsements are voted more or less unanimously. In this way, the public authorities display their position in the face of the need to acknowledge and promote an economic model that places human beings and their environment at its centre. In view of the current crisis, this need is acquiring an ever greater urgency. The enactment of SSE law is therefore a strong political signal to all socio-economic and political players at all levels. It is also a political-economy project, in that it democratises development and works towards the redistribution of the wealth generated.

The SSE is only one facet of a multidimensional and polymorphous economy in which several economic models coexist. As it unites companies and organisations with social and solidarity-based values, the activity of which benefits all, and as its operation subjects it to requirements that are somewhat different from those of the dominant entrepreneurial model, the SSE requires special treatment in order to be acknowledged as a specific form of entrepreneurship in its own right. Lawmakers – in the wider sense of the term – therefore need to define the key concepts and map the perimeter of the SSE, identify and acknowledge its various forms, and specify their legal implications. Only if the SSE is acknowledged, promoted and strengthened by the drawing-up of a legal and institutional framework that emphasises and encourages the many economic, social, societal and environmental benefits it can generate, can this sector develop and scale up.

WHY A GUIDE

TO THE WRITING OF LAW FOR THE SOCIAL AND SOLIDARITY ECONOMY?



The purpose of this Guide is to supply useful analyses and references to assist with the writing of law for the Social and Solidarity Economy. SSE law covers both the legal and institutional frameworks, as well as the public policies a State may wish to implement in order to encourage and empower the development of the SSE on its territory.

Its aim, therefore, is to chart a course, record all progress in this area, identify the whys and wherefores as well as the consequences of the design and enactment of legal measures relating to the SSE, so as to trace its perimeter and shed light on the options available to the relevant public authorities and institutions for the enactment of legislation to underpin the Social and Solidarity Economy.

As well as decision-makers interested in the design and enactment of a legal and institutional framework that favours the development of a SSE, this Guide is also intended for public decision-makers in the States that already have laws and institutions that acknowledge and enable the SSE as a sector in its own right. Its purpose is to supply them with a tool which helps them take supporting measures that enable the Social and Solidarity Economy and its players to flourish.

The early readers of this Guide also made us realise that it had another, unexpected target audience: the SSE players themselves. It could nourish their debates on the best ways of inciting public authorities to promote the SSE, and its many international references and contextualisations could prove a valuable resource for these players.



The various pointers supplied in the document are intended as a flexible toolkit that can be adapted to all legal contexts. It is up to lawmakers in the wider sense to pick legal provisions. It is also up to the various States to adjust these pointers according to their specific characteristics, their socio-economic, political and cultural environment.

The development of the Social and Solidarity Economy is the result of many converging factors, not least entrepreneurial vitality. However, it is obvious that SSE enterprises and organisations multiply and grow more easily in a favourable regulatory context. Bearing in mind the relevance of the SSE to the challenges of our time, the reader needs to contribute to its development. Moreover, lawmakers also need to point the sector in a certain direction, and therefore retain a measure of control.

FOREWORD

BY DAVID HIEZ

As a member of the Scientific Committee of the Mont Blanc Meetings, now SSE International Forum, and as a professor of law whose main area of research is cooperative law and more generally Social and Solidarity Economy law, it was natural that I should agree to write the first draft of this ambitious guide. This Guide is ambitious in its purpose, which is to make a contribution that cannot be found elsewhere; and also in the eyes of its author, since it has led him out of his habitual academic pathways.

In view of the excellent presentation supplied by the Editorial, I shall not dwell on the content and purpose of this Guide. Nevertheless, it may be useful to emphasise its specific nature compared with other available sources. The will to supply advice and information arose at the same time as the laws on the Social and Solidarity Economy were being developed. To my knowledge, the most successful productions were first the work of Yvon Poirier¹ of RIPESS. More recently, UNRISD has issued an extensive guide to local public policies largely based on case studies². Similar work has also been carried out by CIRIEC on Europe³. At the same time, scientific papers are also being written that improve our knowledge of the contours and major trends of Social and Solidarity Economy legislation⁴. Special mention

1. Y. Poirier, *Reconnaissance juridique et politique de l'économie sociale solidaire (ESS). Un aperçu de l'état des lieux et éléments d'orientation*, 2016, RIPESS. [Click here](#).

2. UNRISD, *Promoting SSE through Public Policies: Guidelines for Local Governments*, 2021. [Click here](#).

3. R. Chaves, J. L. Monzon, *Best Practices in Public Policies Regarding the European Social Economy post the Economic Crisis*, Working Paper No. 2019/25, 2019, CIRIEC.

4. G. Caire, W. Tadjudje. "Vers une culture juridique mondiale de l'entreprise d'ESS? Une approche comparative internationale des législations ESS", vol. 353, n° 3, 2019, RECMA, pp. 74-88.

must be made of a long-term documentary undertaking, the quality of which makes it indispensable: the *socioeco.org* website, which has collected all legislation on the Social and Solidarity Economy⁵. Yet, although all of these are valuable works, they do not supply a practical perspective on SSE legislation or regulations. Despite the groundbreaking paper by Gilles Caire and Willy Tadjudje, which is anything but practical in intent, one is struck by the fact that all approaches are based on public policy. This is partly due to the undeniable importance of the latter, but may also reside in the lack of involvement by legal specialists in such work. This Guide therefore stands out in several ways: its main focus is the actual worldwide legislation and regulations, from which it draws examples and ideas, and it has been written by a legal expert, so that its tone is unquestionably legal. Although it does not claim to be any better than other works on the subject, it does hope, in a modest way, to fill a gap.

The author's second ambition – or rather, challenge – was to draw on his theoretical knowledge and competencies to issue practical advice. It is never easy for an academic to transition from scholarly writing to the production of practical know-how, in so far as these are two very different styles of writing. However, a challenge can also prove to be an opportunity, since

5. Socioeco.org, which has collected all Social and Solidarity Economy legislation. [Click here.](#)



practical advice can be usefully underpinned by information or analysis that is more abstract in nature. Advice is not a recipe one merely needs to follow. Players in the Social and Solidarity Economy who wish to resort to law are not keen to have their choices dictated by a presentation of the scarce solutions available; rather, they require information concerning the spectrum of existing measures, the contexts in which the latter were taken, and the results achieved. In other words, they require practical, usable tools that also supply enlightenment and context. And this is where academic skills can usefully support practical undertakings. Only time will tell whether I have fully succeeded; at any rate, this author would never have managed without the help of the other people involved in this project, especially Eva Cantele, and previously Anne-Lise Barberon.

PREFACE

ALAIN COHEUR, CO-CHAIR OF SSE INTERNATIONAL FORUM

This Guide is a world first. It is also the result of intensive collaboration between the members of SSE International Forum under the guidance of Professor David Hiez. May I thank Professor Hiez for his unfailing commitment and for the quality of his work, as well as Eva Cantele, who supplied the indispensable coordination required to manage the various participants' contributions.

The publication of this Guide is an outstanding opportunity to remind us all of the contribution of the Social and Solidarity Economy to our societies on all continents. SSE operates differently from capital-based enterprises and has, over the years, been able to graft its DNA on to many activity sectors, both for-profit and nonprofit. SSE companies and organisations are constantly expanding their share of the market economy, with which they are connected and coexist. By harnessing economic efficiency in the service of social goals, the SSE has generated a true interdependence between the economy and society rather than a dependence of the latter on the former, so that our economy can no longer be summed up as a mere adjustment variable in the capitalist economy.

With this publication, SSE International Forum is helping to lift a major obstacle: the low level of knowledge and/or acknowledgement by lawmakers and institutions, which inhibits the development of social-economy entities and thus limits the role they could play in the necessary diversification of entrepreneurship.

History and recent events have shown that the SSE is a resilient model in times of crisis and has continued to grow, develop and go from strength to strength while other economic sectors are struggling to extricate themselves from their difficulties. Although some would like it to be otherwise, it is not a marginal phenomenon. Our enterprises and organisations reflect a need

for the emergence of an economy in which the social, environmental, economic and financial aspects, while able to create wealth, are not only measured in terms of financial capital, but also and especially in terms of their social capital. Although it is necessary to balance the books, two-digit profitability and profits should not be the ultimate goals, but should also contribute to the general interest, social cohesion and the well-being of our societies.

This work showcases the indispensable need to restore mastery of their destinies to human beings and includes the Social and Solidarity Economy in the history of social transformation and social progress, an inevitable goal if the well-being of the citizens of this planet is to be ensured.

It will, however, take more than a book to support the development of the Social and Solidarity Economy. Our decision-makers will need to be bold if the full potential of the SSE is to be realised. To this end, it requires suitable political, legislative and operating conditions, as well as a favourable environment in the area of taxation and loans. Red tape must be cut through and material supporting measures need to be set up, especially for young people keen to engage in a more responsible form of economic activity and who wish to invest in humanity.

I fully believe that this publication will be very useful to all players involved: the Social and Solidarity Economy players as well as regional, national and international authorities.





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METHODOLOGY

This publication was prepared and written by Professor David Hiez, Professor of Private Law at the Faculty of Law, Economics and Finance of the University of Luxembourg, with the support of a committee of experts comprising Jean Fabre, Anne-Lise Barberon and Eva Cantele, who discussed the overall work programme, methodology and final document with the author. Mame Fatou Séné and Katell Coureaud also helped finalise this work. Careful rereading by Jean-Philippe Poulnot, Gérald Larose and Jacques Debry was the final contribution to our joint effort. This Guide is the end result of a long journey undertaken at the behest of the International Leading Group on Social and Solidarity Economy (ILGSSE)*, first by Professor Abdou Salam Fall, then by SSE International Forum. It is based on a systematic analysis of Social and Solidarity Economy legislation in the wider sense. This analysis yielded many instances of actual measures which are supplied as a source of inspiration. The analysis is completed by and takes its place within a didactic presentation of the landscape, debates and stakes to which such legislation pertains.

*The International Leading Group on Social and Solidarity Economy (ILGSSE) was founded in 2014 and is a platform for the discussion and exchange of good practices in the area of the Social and Solidarity Economy. Its purpose is to promote the SSE internationally and to make this form of entrepreneurship more accessible. It comprises nine States (Colombia, Costa Rica, Ecuador, France, Greece, Luxembourg, Morocco, the Republic of Korea and Uruguay), two observing States (Quebec, Senegal), seven SSE civil-society organisations and the UN Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE).

ACRONYMS

ESS	Social and Solidarity Economy
UNTFSS	United Nations Inter-Agency Task Force on Social and Solidarity Economy
ICA	International Cooperative Alliance
UN	United Nations
OHADA	Organisation for the Harmonisation of Business Law in Africa
WAEMU	West African Economic and Monetary Organisation
ILO	International Labour Organisation
SSEOs	The Social and Solidarity Economy Organisations and Enterprises
UNCTAD	United Nations Conference on Trade and Development
ICC	International Chamber of Commerce
CIC	Company Interest Companies
ILGSSE	International Leading Group on Social and Solidarity Economy
CIRIEC	Centre International de Recherches et d'Information sur l'Économie Publique, Sociale et Coopérative (International Research and Information Centre on the Public, Social and Cooperative Economy)
RIPESS	Intercontinental Network for the Promotion of Social Solidarity Economy
UNRISD	United Nations Research Institute for Social Development



WHAT IS THE SOCIAL AND SOLIDARITY ECONOMY?

Although there is no worldwide agreement on the definition of the SSE, SSE International Forum has adopted the definition used during the International Labour Organisation (ILO) Regional Conference on “The social economy: Africa’s Response to the Global Crisis” organised in Johannesburg in 2009 and 2014 by the United Nations Inter-Agency Task Force on SSE (UNTFSSSE), in the course of which the SSE was defined as a “concept designating enterprises and organizations, in particular cooperatives, mutual benefit societies, associations, foundations and social enterprises, which have the specific feature of producing goods, services and knowledge while pursuing both economic and social aims and fostering solidarity”.

This definition is the result of a consensus concerning various approaches which also takes into account the context in which this concept emerged. Indeed, it should be emphasised that the Social and Solidarity Economy remains an evolving concept.

The fact of investigating the origin of the SSE amounts to a reflection on the archaeology of collective and community-based human activity. Throughout history, human communities have organised themselves so as to meet and fulfil their needs in the community's general interest. For instance, in the African context, some practices which can nowadays be characterised as being in the spirit of the SSE can be dated back to well before colonisation and the Industrial Revolution. Both the idea and its expression are usually connected with Western Europe, as it is there that it was most likely conceptualised. However, the concept of the Social and Solidarity Economy remains a useful medium-term moniker for a number of very disparate practices.

It seems to me that a starting-point for any country keen to develop a legal and institutional framework for the SSE is to draw up an assessment of reality in the field. Then, the values and principles that form the backbone of the enterprises and organisations in this sector need to be defined. Just as in the case of the definition of the SSE, there is no consensus as to these principles, or even an international umbrella organisation. Nevertheless, a summary can prove highly useful, as it can be used as a guideline for the sector and as a base upon which enterprises and organisations can build.

This is also what enables a distinction to be drawn between the Social and Solidarity Economy and other economic sectors. The principles of the SSE therefore need to be determined in order to discern its perimeter, and if necessary differentiate it from social enterprises, the nonprofit sector or the informal economy.

THE GENESIS OF THE CONCEPT OF SOCIAL AND SOLIDARITY ECONOMY

Far from being a homogeneous whole, the Social and Solidarity Economy is a developing concept which still appears to be a convenient means of pigeonholing a number of disparate systems. To best characterise the genesis of a concept, one needs to draw a distinction between the origins of the fact and of the name. Although the concept of the SSE is becoming universal as a global movement emerges, the realities in the field still remain extremely diverse.

THE SOCIAL AND SOLIDARITY ECONOMY: THE FACT

Facts are essential, and in this case the SSE is usually linked to 19th-century Europe, especially France, the United Kingdom and Germany. Its great theorists are Robert Owen in England and Charles Fourier in France, around whom many other Utopians gravitated. As for its main achievements, they are Britain's Rochdale Society of Equitable Pioneers, as well as production cooperatives such as the Guise familistère in France and cooperative banks such as the Raffeisen network in Germany.

This archaeology merits a more nuanced approach. In the very case of Europe, it is often said that a number of mediaeval organisations may be considered to be exemplars of the SSE, for instance monastic communities which operated as democracies of a kind, in a disinterested manner and with a view to the common good. Indeed, collective economic activity was far from exceptional, as evidenced by the existence of peasant communities.

This claim that the SSE had forebears is consistent with the comparisons

made in both theory and practice between the SSE and traditional community-based systems. Such comparisons are perfectly legitimate and expose an important truth, which is that human economic activity has always been polymorphous and has always included a collective dimension, a commons.

However, is it equally true of the Social and Solidarity Economy that it is indissociably linked with capitalism, which is why it is considered to have emerged in the 19th century. Only with the generalisation of the entrepreneurial model exclusively geared to profit under the guidance of its owner or manager did other entrepreneurial models become conceivable. Until then, entrepreneurship was a varied practice and did not stand at the core of the social structure. With capitalism, the right to undertake business and businesses intended to generate profits became central, and this dominant model shaped other models which arose at the same time. In such a context, it was natural for the SSE to first appear where capitalism did so and to develop in synchrony with capitalism, as a response to the latter's absolute domination.

Today, capitalism is ubiquitous, and so is the Social and Solidarity Economy, which leads one to conclude that the world economy is a diverse business in every sense of the word. Depending on the country and culture, it explicitly presents itself as an alternative to capitalism, or more humbly as another way of doing business. However, it is always identified as being another form of entrepreneurship, a marginal one since it differs from the dominant model.

THE SOCIAL AND SOLIDARITY ECONOMY: THE WORDS

Although the SSE as a phenomenon has broad historical origins, the words are far more circumscribed. Strictly speaking, the expression “Social and Solidarity Economy” is nowhere to be found in many bodies of legislation. Due to French influence, it is present in EU law, as well as in Luxemburg, where it has struck a balance between the influences of Christianity, socialism and the dominant social sector. However, it was probably first acknowledged in France. The expression “social economy” was first enshrined in French law in the 1980s, in the sector’s purest tradition. At the same time, however, new practices began to develop in response to a new need to enable the long-term unemployed to resume economic activity and to growing environmental concerns. However, these new enterprises, despite being different from capital-based companies, did not recognise themselves in the social economy, which they criticised as being a form of restrictive institutionalisation and even trivialisation, and claimed for themselves the label of “solidarity economy”, notably drawing inspiration from the expanding Latin American tradition. Although this opposition did not immediately leave its mark on the legislation, it did lead to the formation of a number of competing networks characteristic of the 1980s and 1990s. The culmination of this process was the creation in 2000 of a ministerial department for the Solidarity Economy: whereas the social economy had always contented itself with an Interministerial Delegation, the entry of Les Verts¹ into the government was a sign of both a new political acknowledgement and a conceptual defeat for the defenders of the social economy. To put an end to this quarrel, the expression “Social and Solidarity Economy” was coined in the 2000s.

The composition of the Social and Solidarity Economy bears the mark of this twofold influence. In the 1970s, cooperatives and mutual-benefit societies convened and formed a joint group, where they were soon joined by nonprofit organisations which engaged in economic activities. These three legal structures remain at the core of the SSE, to which foundations have been added. Solidarity-economy enterprises were rather defined by their activity: enabling people to re-enter economic life, the recycling of used goods, local exchange services, fair trade, local currencies, etc. All these activities continue to gravitate in the orbit of the SSE, and are indeed taken into account by the 2014 French Law on the SSE, even though they are not expli-

1. *Les Verts* (The Greens), known since 2010 as *Europe Ecologie les Verts*, is a French environmentalist political party.

citly included in its definition. In practice, the difference is slight, in so far as most solidarity-economy activities are enterprises which take the form of nonprofit organisations or cooperatives.

Partly due to French influence, but also with a view to achieving the most consensual terminology, the European Union adopted the expression SSE, now often used next to the term “social enterprise”. However, the European Union is not alone in having done so, and the term can be found in a number of international bodies. The United Nations Inter-Agency Task Force on Social and Solidarity Economy, of which more later, has also chosen to use the expression “Social and Solidarity Economy”. Indeed, our own international network SSE International Forum constitutes a further illustration of the progress made by this concept. For these reasons, the expression “Social and Solidarity Economy” still appear to be the best umbrella term for a number of disparate structures.

THE SOCIAL AND SOLIDARITY ECONOMY: A WORLDWIDE MOVEMENT

Not only has the term “Social and Solidarity Economy” been adopted by international bodies such as the International Leading Group on Social and Solidarity Economy (ILGSSE) or the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE), “SSE” has made it possible to unite the players in a movement for an economic, development and growth model which places human beings at its core. The movement has built itself up around the globe, in the margins of the institutional structure. Indeed, a supranational SSE civil society has emerged.

This structuring of the players in the Social and Solidarity Economy into a worldwide movement, which had been facilitated by globalisation, proved indispensable in the wake of the 2008 economic crisis. The SSE enterprises and organisations proved resilient in the face of the ongoing breakups and managed to weave networks that overcame corporatist differences.

There are several international networks of Social and Solidarity Economy enterprises and organisations that encourage intercontinental networking and cooperation and also push priorities up international agendas. This applies to our SSE International Forum, and also to other players such as the Global Social Economy Forum (GSEF), the International Cooperative Alliance, the International Association of Mutual Benefit Societies (AIM), the Intercon-

tinental Network for the Promotion of Social Solidarity Economy (RIPESS), and in the area of scientific research the International Research and Information Centre on the Public, Social and Cooperative Economy (CIRIEC) and the EMES network. The members of these networks agree on the importance of globalising solidarity so as to build and strengthen a people- and planet-centred economy.

At UN level, the creation of the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE)² in Geneva on 30 September 2013 was a response to a growing concern within the United Nations system at the lack of consideration given to the SSE in its endeavours to conceive of a difference form of development, in the light of the various global crises and within the context of the post-2015 development programme. The UNTFSSSE comprises 17 United Nations agencies and the OECD³, as well as 14 observing members.

The foundation of an International Leading Group on Social and Solidarity Economy (ILGSSE) in 2014 was a further step towards the internationalisation of the SSE. This group, which currently comprises seven member States (Colombia, Costa Rica, Ecuador, France, Greece, Luxemburg, Morocco, the Republic of Korea, Uruguay), two observer States (Quebec and Senegal), the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE) and civil-society organisations⁴, has set itself the task of promoting the Social and Solidarity Economy at the international level and enabling access to this form of entrepreneurship. Its intention is therefore to propose actual measures and support national and international public policies in favour of the SSE. The Leading Group has set itself the task of increasing awareness of the SSE and enabling it to participate in a new development model, in particular with a view to contributing to the implementation of the

2. <https://unsse.org> – UN Inter-Agency Task Force on SSE.

3. International Labour Organisation (ILO), Joint UN Programme on HIV/AIDS (UNAIDS), United Nations High Commissioner for Refugees (UNHCR), World Bank, United Nations Conference on Trade and Development (UNCTAD), United Nations Department of Economic and Social Affairs (UNDESA), United Nations Development Programme (UNDP), United Nations Education, Scientific and Cultural Organisation (UNESCO), United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), United Nations Environment Programme (UNEP), UN Environment United Nations Human Settlements Programme (UN Habitat), United Nations Industrial Development Organization (UNIDO), United Nations Institute for Training and Research (UNITAR), United Nations Office at Geneva (UNOG), United Nations Research Institute for Social Development (UNRISD), World Food Programme (WFP), World Health Organisation (WHO) and Organisation for Economic Co-operation and Development (OECD).

4. SSE International Forum, International Cooperative Alliance, International Association of Mutual Benefit Societies (AIM), International Association of French-Speaking Mayors (AIMF), Global Fund for Cities Development (FMDV), Global Social Economy Forum (GSEF), Intercontinental Network for the Promotion of Social Solidarity Economy.

Sustainable Development Goals⁵. Further to the High-Level Event of 28 September 2015, the members of the Leading Group issued a joint declaration⁶ demanding that the SSE be taken into account in the various processes for monitoring and revising the Sustainable Development Goals (SDGs), as well as further resources for the UN agencies and their partners to enable the SSE to be scaled up.

Next to these groups of players, there are bilateral State collaborations as well as government coordinations such as that known as the Luxembourg Declaration coordination, which comprises a group of EU Member States and calls for increased promotion of the Social and Solidarity Economy.





Nonetheless, despite the fact that the institutional bodies in the sector agree on the term “Social and Solidarity Economy” and are backed up by a strong global movement, the national and regional terminology remains diverse and refers to similar realities which are frequently the subject of similar debates.

5. GPIESS-ILGSSE, *Vade-mecum du Groupe Pilote International de l'Économie Sociale et Solidaire*.

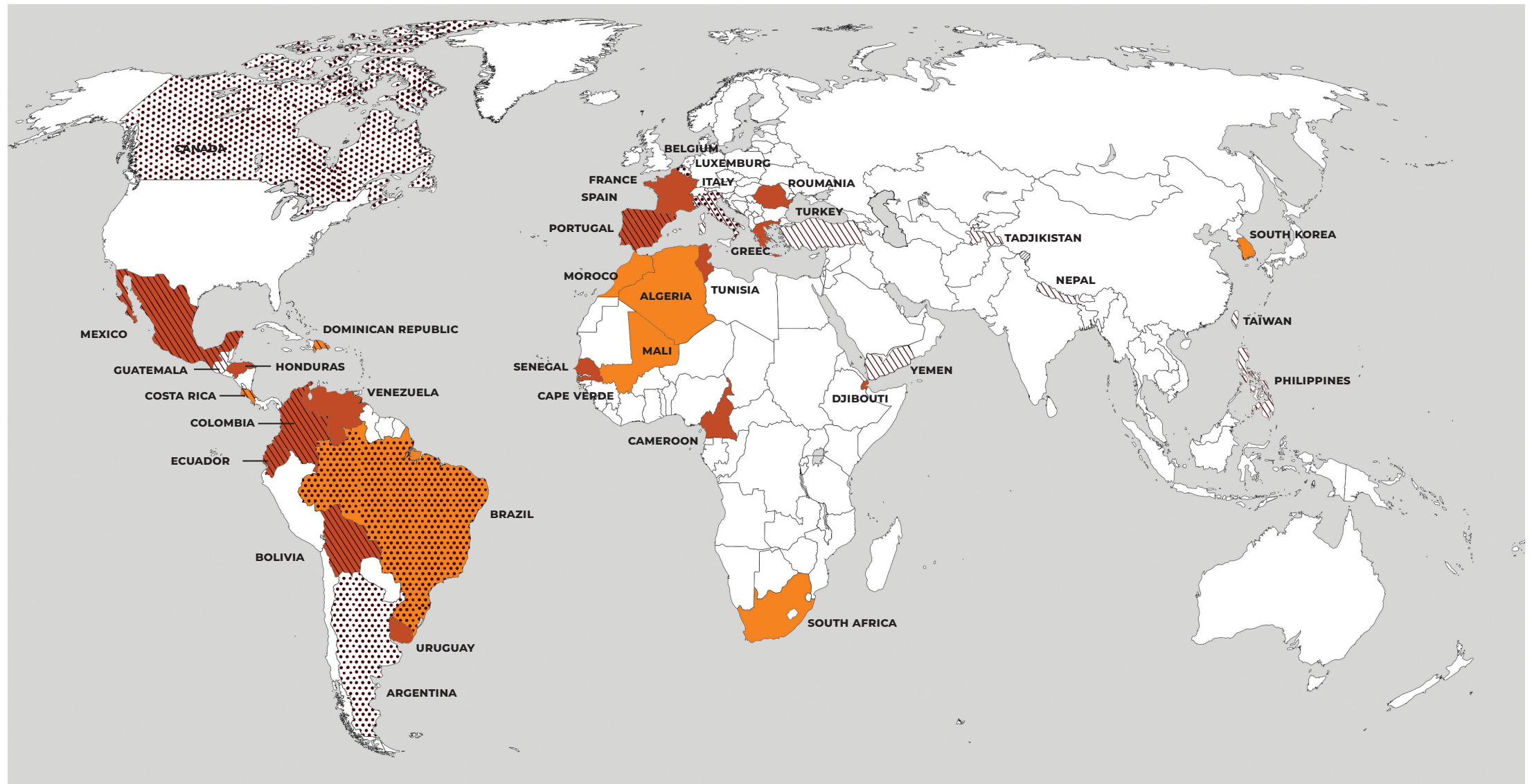
6. GPIESS-ILGSSE, Joint Declaration of 2015.

THE SOCIAL AND SOLIDARITY ECONOMY: AN OVERVIEW OF THE REALITY

The “Social and Solidarity Economy” is therefore a smooth, globalised expression used to designate a diverse and scattered geographical reality.

-  COUNTRIES WITH A NATIONAL CONSTITUTION THAT REFERS INDIRECTLY TO THE SOCIAL AND SOLIDARITY ECONOMY (NON-EXHAUSTIVE LIST)
-  COUNTRIES WITH A NATIONAL LAW ON THE SOCIAL AND SOLIDARITY ECONOMY
-  COUNTRIES WITH A DRAFT LAW ON THE SOCIAL AND SOLIDARITY ECONOMY CURRENTLY IN THE PROCESS OF BEING ENACTED
-  COUNTRIES WITH REGIONAL, FEDERAL OR PROVINCIAL LAWS ON THE SOCIAL AND SOLIDARITY ECONOMY

Legal Frameworks on the SSE worldwide



A community-based Africa in the vanguard

In Africa, the Social and Solidarity Economy is gradually inching its way into public policies. Legislation is being enacted which strongly enhances the sector's visibility. Officially, the SSE only exists in French-speaking African countries, in so far as English-speaking Africa is under the influence of the Anglo-Saxon tradition, which ignores the concept. In French-speaking Africa, therefore, Senegal has a Delegate Ministry for Microfinance and the Solidarity Economy (MDMFES)⁷. Mali relies on a National Network for the Promotion of the Social and Solidarity Economy (RENAPESS), which is campaigning for a law on the subject. Morocco has both a Moroccan Social and Solidarity Economy Network (REMESS) and a Department for the Artisan and Social Economy (Secrétariat d'Etat à l'Artisanat et à l'Economie Sociale)⁸, while since 2004 Cameroon has had a Ministry of Small and Medium-Sized Enterprises, the Social Economy and Artisans (Ministère des Petites et Moyennes Entreprises, de l'Économie Sociale et de l'Artisanat)⁹. Senegal has also recently enacted a Policy Act on the Social and Solidarity Economy (4 June 2021), while on 30 June 2020 Tunisia adopted Law No. 2020-30 on the Social and Solidarity Economy¹⁰, in the wake of Cameroon (spring of 2019)¹¹ and Djibouti (June of 2019)¹².

There has also been progress at the regional level. First, a uniform act was adopted on behalf of 17 Central African countries: the Uniform Act on Cooperatives of 15 December 2010, enacted by the Organisation for the Harmonisation of Business Law in Africa (OHADA)¹³. Although its first draft would have formed a more solid base for the Social and Solidarity Economy, in so far as it covered both cooperatives and mutual-benefit societies, this sub-regional instrument remains a fairly powerful instrument. West Africa has also enacted a joint regulation on mutual-benefit societies within the framework of the West African Economic and Monetary Union (WAEMU)¹⁴. In regulatory

7. Senegal, *Décret no 2014-898 relatif aux attributions du Ministre délégué auprès du Ministre de la Femme, de la Famille et de l'Enfance, chargé de la Microfinance et de l'Économie Solidaire*, 22 July 2014.

8. Morocco, *Décret no 2-02-846 du 24 ramadan 1423 relatif aux attributions du Ministre de l'Artisanat et de l'Économie Sociale*, 29 November 2002.

9. Cameroon, *Décret présidentiel no 2004/320 portant l'organisation du gouvernement, modifié par le décret no 2011/408 du 9 décembre 2011*, recently completed by *Décret présidentiel du 27 mai 2013 n°2013/16*.

10. Tunisia, *Loi no 2020-30 du 30 juin 2020, relative à l'Économie Sociale et Solidaire*.

11. Cameroun, *Loi-cadre 2019/004 du 25 avril 2019 régissant l'Économie Sociale*.

12. Djibouti, *Loi n°044/AN/19/8° L relative à l'Économie Sociale et Solidaire*.

13. Organisation for the Harmonisation of Business Law in Africa – www.ohada.org

14. West African Economic and Monetary Organisation (WAEMU), Council of Ministers, *Règlement no 07/2009/CM/UEMOA portant réglementation de la Mutualité Sociale au sein de l'UEMOA*.

terms, the Social and Solidarity Economy and microloans have often been drawn closer to each other, as evinced by the exclusive right of credit unions to full-fledged licensing for microcredit in the WAEMU countries prior to 2007^{15/16}. A prescriptive connection of this type demonstrates an existing closeness and already supplies a continent-wide perspective on the Social and Solidarity Economy.

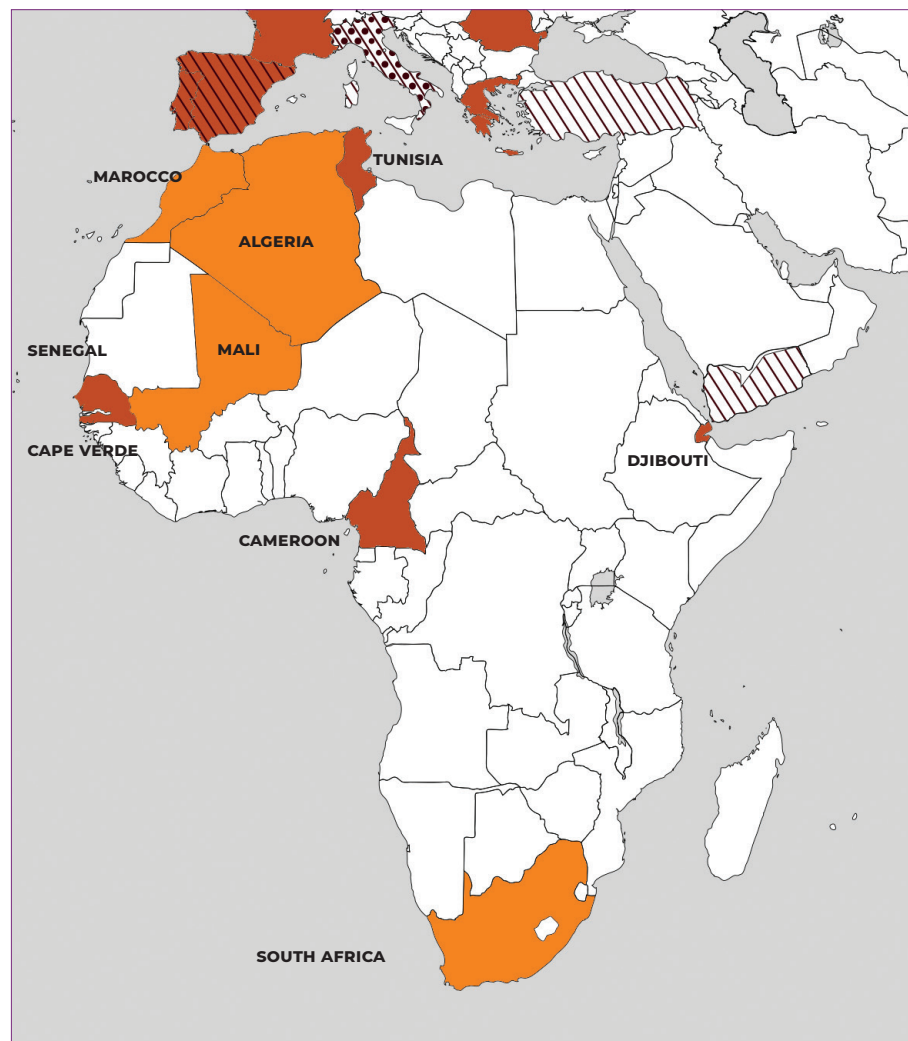
That Africa is the ideal venue for the Social and Solidarity economy due to its community-based culture is something of a commonplace: however much of an import the concept may be, the system is held to have existed in Africa forever. The most commonly used example is the tontine, an informal group of people who pool their savings so that each of them can take out a loan in turn. More broadly, however, there are innumerable instances of joint endeavours by farmers, age-group societies and, more recently, women's groups. The International Labour Organisation (ILO) has encouraged the acknowledgement of this sector, in particular on the occasion of the Johannesburg Regional Conference on the Social Economy of 2009. A more recent study on social economy in Africa takes much the same line: "Africa is the continent in which the social economy plays the most prominent role, as all African countries count a large number of organisations pursuing both social and economic objectives and many activities, including the production of general-interest goods and services, are managed collectively."¹⁷ One needs to be wary of generalisations lest they become reductive; however, all this goes to show that in Africa the Social and Solidarity Economy is a vibrant undertaking, not only in its traditional forms, but latterly with the development of legislation and public policies.





15. Banque Centrale des États d'Afrique de l'Ouest (BCEAO), *Projet d'Appui à la Réglementation des Mutuelles et Coopératives d'Épargne et de Crédit (P.A.R.M.E.C)*, June 1992.

16. On 6 April 2007, the WAEMU enacted a new law regulating decentralised finance systems that transformed the earlier system, which had been set up in 1993.

17. C. Borzaga, G. Galera, The potential of the social economy for local development in Africa: An exploratory report, EURICSE, 2014, p. 24. [Click here.](#)

SSE legislative frameworks in Africa



-  COUNTRIES WITH A NATIONAL CONSTITUTION THAT REFERS INDIRECTLY TO THE SOCIAL AND SOLIDARITY ECONOMY (NON-EXHAUSTIVE LIST)
-  COUNTRIES WITH A NATIONAL LAW ON THE SOCIAL AND SOLIDARITY ECONOMY
-  COUNTRIES WITH A DRAFT LAW ON THE SOCIAL AND SOLIDARITY ECONOMY IN THE PROCESS OF BEING ENACTED
-  COUNTRIES WITH REGIONAL, FEDERAL OR PROVINCIAL LAWS ON THE SOCIAL AND SOLIDARITY ECONOMY



INTERNATIONAL LEGAL FRAMEWORK IN THE AREA OF THE SOCIAL AND SOLIDARITY ECONOMY

Organisation for the Harmonisation of Business Law in Africa (OHADA).
Treaty on the Harmonisation of Business Law in Africa
(1993, revised 2008)

Acte uniforme relatif au droit des sociétés coopératives (2010)

SOUTH AFRICA

Launch of the Green Paper on the Social and Solidarity Economy. Currently being finalised as a White Paper (2019).

CAMEROON

Law No. 004/2019 of 25 April 2019, Framework Law on the social economy in Cameroon.
Decree No. 0001/2020 of 3 January 2020 on the structuring and operation of the network of social economy Units.

ALGERIA

Draft legal and regulatory framework to support the development of the SSE in Algeria (2019).

MALI

Law No. 056/2017 of 6 November 2017 creating the National Centre for the Promotion of the Social and Solidarity Economy (2017).

MAROCCO

Draft Framework Law on the Social and Solidarity Economy (since 2016).

TUNISIA

Law No. 30/2020 of 30 June 2020 on the Social and Solidarity Economy.

DJIBOUTI

Law No. 044/AN/19/8e L of 23 June 2019 on the Social and Solidarity Economy.

CAPE VERDE

Law No. 122/VIII/2016 on the Social Economy in Cape Verde.

SENEGAL

Policy Act on the Social and Solidarity Economy (2021).

Solidarity in Latin America

Latin America may well be the geographical area in which Social and Solidarity Economy-related institutions are the most varied, from networks of enterprises to the community-based economies of the First Nations, and have also been most legitimised by public bodies and policies, including legislative and constitutional action. Their names are manifold, reflecting the diversity of the experiences to which the expression “Social and Solidarity Economy” can be applied. Both concepts are interwoven and can only be differentiated in their purest, most theoretical form.

The expression “social economy” appears to have been disseminated in the 1980s and was inspired by the French concept. It more or less matches the traditional concept of the social economy. It is especially characterised by paternalism and the influence of the State (as it acknowledges only the legal form of mutual-benefit societies, cooperatives and organisations). However, it soon became attracted to what is known today as the Solidarity Economy, the three main traits of which are self-governance, a grassroots character, and an alternative character. Self-governance is a sign of both its emancipation from the public sector and its gut-level attachment to democratic and emancipatory operation. Its grassroots character refers to both the fact that it is rooted in the people, including their traditional forms of organisation, and based on their knowledge and practices. It is alternative in that it claims to be detached from the capitalist system. Indeed, it is the culmination of a particular view of the economy which may, in the long run, be substituted for capitalism. The Solidarity Economy concerns itself particularly with labour relations and the ownership of production resources, to the extent that Brazil explicitly excludes from its spectrum user cooperatives that employ staff to fulfil their goals without making them partners in the cooperative project.





In Latin America, the Social and Solidarity Economy has been legitimised in many ways and I shall not be counting them all. I shall limit myself to two instances, to demonstrate the broadness of the spectrum. In the 2000s, Brazil used the Solidarity Economy as a development model and is considered to have implemented dynamic public policies at all geographical levels to develop this sector and meet the basic requirements of the most under-privileged populations. In another style, Ecuador has rebooted its economic organisation, which now uses the “good way of living” (*buen vivir*) as the ultimate basis for government action and society. In both cases, and despite the fact that they are often presented as being opposed, the social and environmental aspects are brought to the fore.

This alternative character, which is somewhat more marked than in other geographical areas, should not cause one to lose sight of the fact that the more traditional forms of social economy are also present, often in a complementary manner. The emphasis on the most successful alternative experiments and their use as models may well be related to the strong left-leaning movements active on the continent. As established institutions and the underlying thinking are at risk of being undermined by political happenstance, these institutions allow the Social and Solidarity Economy to flourish in its full diversity.

Finally, the existence of regional organisations and endeavours to produce supranational legislation should be noted, even if the latter applies more specifically to cooperatives rather than the Solidarity Economy as a whole.

SSE legislative frameworks in Latin America



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-  COUNTRIES WITH REGIONAL, FEDERAL OR PROVINCIAL LAWS ON THE SOCIAL AND SOLIDARITY ECONOMY

MEXICO

Political Constitution of the United States of Mexico
 Law on the Social and Solidarity Economy
 Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012.

GUATEMALA

Political Constitution of the Republic of Guatemala of 17 November 1993.

HONDURAS

Law No. 24.820/1985 of 14 November 1985 regulating the Social Sector of the Economy.

COSTA RICA

Political Constitution of the Republic of Costa Rica of 7 November 1949.

COLOMBIA

Political Constitution of Colombia of 4 July 1991.
 Law No. 454/1998 of 4 August 1998 on the Solidarity Economy.

ECUADOR

Constitution of the Republic of Ecuador of 20 October 2008.
 Law No. 444/2011 of 10 May 2011, Organic Law on the Popular and Solidarity Economy and the Popular and Solidarity Financial System.

BOLIVIA

Political State Constitution of The Popular and Solidarity-Based State of 7 February 2009.
 Law No. 300/2012 of 15 October 2012, Framework Law on Mother Earth and Integral Development for The Good Way of Living.

DOMINICAN REPUBLIC

Draft Framework Law on the Solidarity Economy Sector (2016).

VENEZUELA

Law for the Promotion and Development of the People's Economy of 12 June 2009.

BRAZIL

Federal Laws for the Regions of São Paulo, Pernambuco, Mato Grosso Do Sul, Rio Grande do Sul, Espírito Santo, Santa Catarina, Minas Gerais. Other provinces concerned: Rio Grande do Norte, Bahia, Rondônia, Mato Grosso, Acre.
 Draft Law No. 6606/2019, formerly Draft Law No. 4685, National Solidarity-Economy System.

URUGUAY

Law on the Social and Solidarity Economy, Publication D.O. 8 ene/20 – No. 30353.

ARGENTINA

Federal Laws for the Regions of Rio Negro (Law No. 499/2010), Mendoza (Law No. 8435/2012), Buenos Aires (Draft Law, October 2014), Catamarca (Draft Regional Law, September 2017).

The North American patchwork

In this work, “North America” refers only to the United States and Canada, in so far as Mexico is included in Latin America, with which it basically shares the same concepts of the Solidarity Economy. The description of North America as a “patchwork” refers to the fact that Quebec is a special case, with a flourishing social economy which somewhat resembles its counterpart in Latin Europe. On the other hand, there is no such thing as an institutionalised Social and Solidarity Economy in the US, no comparable historic network and definitely no public policies.

In the wake of their rank twentieth-century suspicion of Communism, to which they liken Socialism, the United States appear to be allergic to anything which might resemble the social economy. Although cooperatives do exist, they have not given rise to a body of doctrine that might have affected socio-economic thinking. The major socially-minded movement there is philanthropy with its attendant foundations, but these are definitely charities and the economic or – even less – alternative aspects of the social economy have never been brought to the fore. Nevertheless, a closer look at the United States shows that it does not lack experiments and, in view of its worldwide influence, these necessarily exert a measure of influence.

The economic activity of charities has given rise to various forms of social entrepreneurship. Originally, these were for-profit activities intended to finance charitable actions. However, these first initiatives gained traction, so that the entrepreneurial mindset and capitalist-style financing came to serve social purposes. The best-known network of this kind is certainly Ashoka, the purpose of which is to drive a community of social innovators, players in change and the resolution of the major societal issues.

At the same time, under the influence of Corporate Social Responsibility (CSR), and in response to an increasingly stressful quest for quick profits, a number of initiatives are endeavouring to reconcile enterprises and their environment. This policy, which is different from the Social and Solidarity Economy, is perfectly represented by the B-Corp (Benefit Corporation) label¹⁸, the purpose of which is to display a company’s commitment to the general good, in particular through its practices. Faced with the potential liability of the top executives of such companies and in the name of their obligation to maximise shareholders’ interests, an increasing number of American States have enacted legislation acknowledging companies that,

18. B Corp – <https://bcorporation.net>

as well as profit, pursue community goals. Such initiatives have been given a variety of names, for instance the Public Benefit Corporation¹⁹ adopted by Delaware in 2013²⁰.

Some American initiatives rooted in traditions of political and social demands more openly break away from the capitalist economy, but they remain scattered and have not given rise to a full-fledged network. For instance, the *US Solidarity Economy Network*²¹, partly draws its inspiration from Latin America. American thinkers are also trying to include experiments in social economy in their thinking²². Other networks focus on activist or goal-oriented member-based organisations, the purpose of which is to assist their members. All this, however, lacks unity, and although their conceptual kinship is obvious, this has not translated into effective organisation. Nevertheless, some authors are beginning to refer to them as the Social and Solidarity Economy and advocate that they be strengthened²³.

In Northern America, Quebec is something of an outlier. Indeed, Canada showcases the differences between the “Anglo-Saxon” and “Latin” social-economy models. Above all, however, Quebec stands apart as a full ecosystem that includes social movements, financial backers, observatories, research, training, etc., and also due to the sheer volume, diversity and innovativeness of its social economy compared with the rest of Canada and North America. Its social-economy movement, notably based in Northern America, Quebec is something of an outlier. Indeed, Canada showcases the differences between the “Anglo-Saxon” and “Latin” social-economy models. Above all, however, Quebec stands apart as a full ecosystem that includes social movements, financial backers, observatories, research, training, etc., and also due to the sheer volume, diversity and innovativeness of its social economy compared with the rest of Canada and North America. Its social-economy movement, notably based on consumer cooperatives and cooperative banks such as the Caisse Desjardins²⁴ or Fondation²⁵, has developed on the basis

19. A Public Benefit Corporation has a hybrid legal status based on both capitalistic and nonprofit organisations, and its purpose is to generate a positive social and environmental impact. It aims to reconcile the interests of its shareholders with the other players in the company and include the principle of social responsibility in its very foundations.

20. United States of America, State of Delaware, Delaware Code, Title 8 “Corporations”, July 2013.

21. US Solidarity Economy Network – <https://ussen.org>.

22. E. Wright, *Envisioning Real Utopias*, Verso, London (UK), Brooklyn (US), 2010. Click here.

23. J. Augustine, E. O. Cox, M. Inaba, “The Social and Solidarity Economy Movement in the US – Potential Linkages to Social Welfare and Related Social Justice Movements”, Draft paper prepared in response to the UNTFSSSE Call for Papers 2018, 2019.

24. Caisse Desjardins – www.desjardins.com

25. La Fondation – www.fondaction.com

of a long-standing historical substrate and is now substantially supported by public policies that culminated in the enactment in 2013 of a Social Economy Act²⁶. Other Canadian provinces have followed suit and federal initiatives have been taken, one of which is the Canadian Social Economy Hub²⁷.

Asia: dynamic and controlled

It is difficult to speak of Asia as a whole. If I do so, it is out of relative ignorance and an inability to supply a map of its complex national situations. One need only think of the radical difference between its two behemoths, India and China. At any rate, the image associated with the continent is one of strong executives with a top-down rather than bottom-up approach to social economy²⁸, and more or less influenced by colonialism depending on national context²⁹. The presence of the State varies from one country to the next, and is of course particularly significant in China; however, this should not be misread by the standards of Western political systems alone. By contrast, India appears to boast a significant network of organisations connected to social enterprises³⁰ or cooperatives³¹, despite the fact that the term “social economy” is not used³². However, this expression is gaining in popularity on the continent.

The Asia Policy Dialogue organised in 2016 on the construction of a social economy in Asia³³ convened representatives from 14 Asian countries to discuss the ways in which the social economy could be stimulated in the region. This dialogue continues annually³⁴. Actual plans for legislation or public policies more often target social enterprises, but the use of the expression “social economy” shows that the latter has the ability to unite people. One Korean

26. Quebec, Social Economy Act E-1.1.1, enacted 10 October 2013. Click here.

27. Canadian Social Economy Hub – www.socialeconomyhub.ca.

28. J. Defourny, S.-Y. Kim, “Emerging models of social enterprise in Eastern Asia: a cross-country analysis”, *Social Enterprise Journal*, 2011, Special Issue, pp.88-111.

29. Report on Social and Solidarity Economy for the Sustainable Development Goals, Spotlight on the social economy in Seoul, GSEF and UNRISD, 2018, p. 58.

30. British Council report, *The State of social enterprise in Bangladesh, Ghana, India and Pakistan – The State of social enterprise in India*. Click here.

31. N. Vinod Moses, “Wondering which legal structure to choose for your social enterprise?”, published on Yourstory, February 2014. Click here.

32. M. Sakurai, S. Hashimoto, “Exploring the distinctive feature of social enterprise in Japan”, *International Conference on Social Enterprise*, Trento, Italy, 2009.

33. The Asia Policy Dialogue is a collaboration between the Asian Venture Philanthropy Network, the BMW Foundation, the British Council and the Global Social Economy Forum (GSEF), organised in 2016 and comprising 14 Asian countries. www.pioneerspost.com

34. Global Social Economy Forum, Asia Policy Dialogue, “Public policies for financing the social and solidarity economy to strengthen its values and competitiveness”, 2018. Click here.

law explicitly targets social enterprises³⁵ and most of the countries involved have a significant cooperative movement.

In the 1980s and 1990s, Asia took the lead with Muhammad Yunus. Known for his involvement in microcredit – he is held to have founded the world’s first microcredit institute, the Grameen Bank, in 1976 – he was awarded the Nobel Peace Prize in 2006. However, Yunus’ contribution went beyond microloans, despite their affinity with the Social and Solidarity Economy. He is also the theorist of what he calls “social business”, which has been popularised in books with a worldwide readership. Social business is based on the idea that the power and economic efficiency of large capital-based enterprises can be used to supply the poor with services or products to which they would not otherwise have access. Although this proposition has sparked debate on social enterprises and the Social and Solidarity Economy, its achievements have largely remained limited to Yunus’ native Bangladesh.

Western Europe: structured

Western Europe is the historic source of the Social and Solidarity Economy, and also manifests the extreme diversity of the related traditions, including those opposed to such terminology, as well as illustrating the difficulty of developing a unified approach despite its highly structured regional institutions. There is no doubt that Western Europe is the birthplace of the social economy, or at any rate of the expression, which came into being in France in the 1900s and was rediscovered there in the 1970s. Many organisations also operated on the margins of the nascent capitalist economy in the 19th century, so that the foundations of the social economy are also Western European, mainly France, Spain, Portugal, Italy, Belgium and, at least in practice, the United Kingdom and Germany. It was also there that the first problems emerged. Whereas the former managed to unite various organisations under a single banner, the Germans and British were reluctant to do so. In the former, the cooperative doctrine served as a theoretical foundation for the development of the social economy, which was later nourished by its adherent organisations, the two latter countries remained isolated. Although cooperatives in both countries remain powerful and inspiring, they have not drawn closer to the organisations operating in the social sector. One explanation is the strong sense of identity of that social sector, which is dominated by charities in the UK and by churches in Ger-

35. Republic of Korea, *Loi sur le développement des entreprises sociales en 2007* (Act No. 8217, Jan. 3, 2007) ainsi que la mise en application de la loi de base sur les coopératives en 2012 (KOR-2012-L-93311).

many. At any rate, the result, whether or not based on the social economy, is a totally different configuration.

The Anglo-Saxon tradition, which at times is difficult to separate into its British and American strands, has thus taken a different rather than opposite direction to the social economy. Some of its ingredients are similar, e.g. community interest as in company interest companies (CICs) or the attention paid to the irrevocable nature of the social allocation of the company capital. The standard that best defines Anglo-Saxon initiatives is the concept of the social enterprise. In practice, many of the latter take the same form as SSE enterprises in Continental Europe, but recourse to capital-based enterprises is more frequent. However, even this distinction is becoming blurred as the Continental Social and Solidarity Economy is less and less unwilling to accept certain capital-based companies.

Obviously, these differences have also affected the European institutions. Initially dominated by Continental countries, the European Commission supported the Social and Solidarity Economy throughout the 1980s and 1990s³⁶. In the 2000s, this trend culminated with the adoption of the European Cooperative Society³⁷ – and also slowed down. Faced with the lack of success of this legal structure, all the other legislative processes failed and the Community disengaged. The project was somewhat revived in the 2010s, optimistically combining British-style social enterprises and the Continent's Social and Solidarity Economy. The Commission's 2011 Communication, "Social Business Initiative", was a perfect exemplar: the content below this British-sounding title was extremely close to the Social and Solidarity Economy. The difficulty of reconciling different cultures was in no way eased by the experience of Eastern Europe, which affected its development in that region.

The hesitations of post-Soviet Europe

The social economy is becoming a rallying-point, as shown by the Ljubljana Declaration issued at a conference of 24 and 25 April at which seven South-Eastern European countries met. The Declaration called on the European Commission to support the social-economy sector.

The Central and Eastern European countries have now been taking an interest in the social economy for several years. As yet, this sector remains marginal, accounting for only 1 to 4% of paid employment in Romania, Poland,

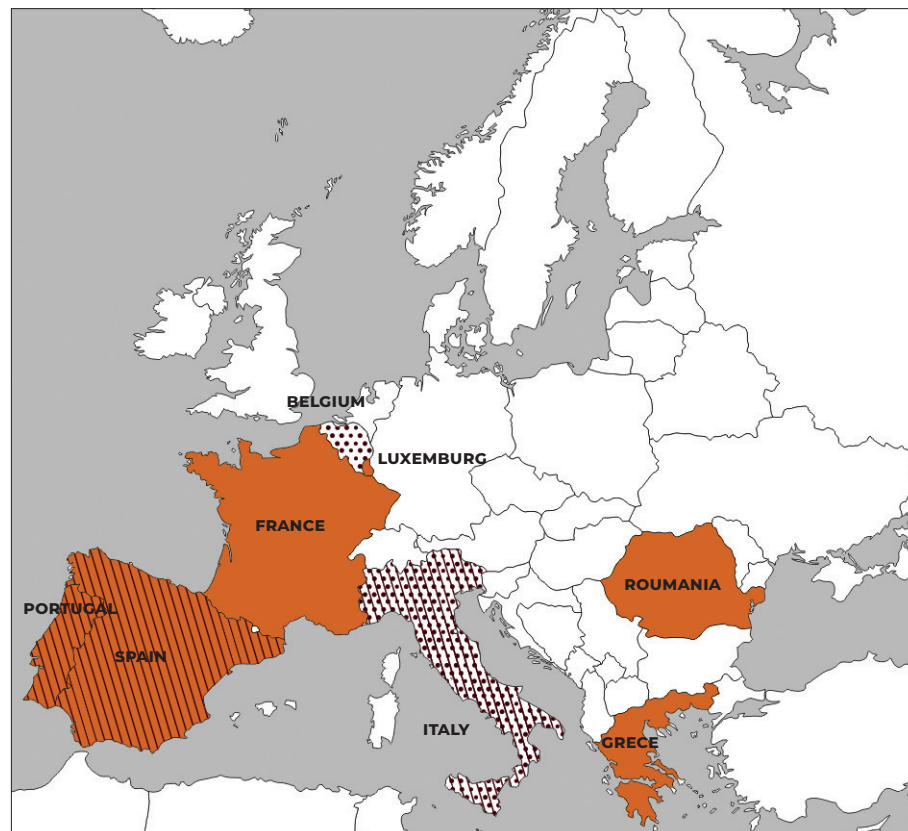
36. I. G., Fajardo-García, "El reconocimiento legal de la economía social en Europa. Alcance y consecuencias", *Cooperativismo & Desarrollo*, Volume 27 n°1, 2019, pp. 1-31. [Click here](#).




37. European Union, Regulation No. 1435/2003 on the Statute for a European Cooperative Society, 22 July 2003.

Bulgaria and Greece. At first, due to their experience of Soviet cooperativism, these countries fought shy of the concept. Over time, however, they have become aware of the deviancies of the liberal model.

The EU's Social Economy Action Plan, to be published during the fourth quarter of 2021, will be a valuable political tool for the promotion and development of the social economy in all Member States, even the more hesitant.

SSE legislative frameworks in Europe



-  COUNTRIES WITH A NATIONAL CONSTITUTION THAT REFERS INDIRECTLY TO THE SOCIAL AND SOLIDARITY ECONOMY (NON-EXHAUSTIVE LIST)
-  COUNTRIES WITH A NATIONAL LAW ON THE SOCIAL AND SOLIDARITY ECONOMY
-  COUNTRIES WITH REGIONAL, FEDERAL OR PROVINCIAL LAWS ON THE SOCIAL AND SOLIDARITY ECONOMY

EUROPEAN LEGAL FRAMEWORK IN THE AREA OF THE SOCIAL AND SOLIDARITY ECONOMY

Charter of Principles of the social economy (1980)
 European Social Economy Charter (2002)
 Luxemburg Declaration (2015), Bratislava Declaration (2016),
 Ljubljana Declaration (2017), Madrid Declaration (2018),
 Toledo Declaration (2020)
 European Pillar of Social Rights (2017)

FRANCE

Law No. 856/2014 of 31 July 2014 on the Social and Solidarity Economy.

SPAIN

Spanish Constitution of 1978.
 Law No. 5/2011 of 29 March 2011 on the social economy.

PORTUGAL

Constitution of the Portuguese Republic of 2 April 1976.
 Basic Law No. 30/2013 of 8 May 2013 on the bases of the social economy.

BELGIUM

Ordinance of 26 April 2012 on the social economy, Brussels-Capital Region.
 Decree of 20 November 2008 on the social economy – Walloon Region.

ROUMANIA

Law No. 219/2015 of 23 July 2015 on the social economy.

GREECE

Law No. 4430/2016 of 31 October 2016 on the Social and Solidarity Economy and the development of its constituent organisations.

ITALY

Constitution of the Italian Republic of 27 December 1947.
 Regional Laws for the regions or municipalities of Trento, Venice, Rome, Lazio, Liguria, Marche, Emilia Romagna, Val Venosta, Friuli Venezia Giulia.

LUXEMBURG

Law No. 255/2014 of 12 December 2016 creating Societal Impact Companies (SIS).

Oceania: little-known

Oceania is meant in the wider sense, i.e. comprising not only the Pacific Islands, but also Australia and New Zealand. This is not an area in which the Social and Solidarity Economy has developed as such. Although cooperatives (farming, credit, housing, etc.) are to be found there, they have not drawn closer to other organisations to form a broader base. For a while, as in other colonial areas, cooperatives were a government tool for development, but subsequently evolved into independent organisations which fully belong to the Social and Solidarity Economy. Experiments

I shall not be dwelling on the situation of the cooperatives, which have no notable particularities. It should simply be noted that they have given rise to specific legislation³⁸. On the other hand, the concept of the social enterprise is gaining ground and making inroads into the English-speaking philanthropic tradition. It has made an appearance in Australia and Fiji³⁹, and has been receiving more sustained attention in New Zealand for some time⁴⁰. Although the contours of the social enterprise have not yet been stabilised, the New Zealand government has had to supply a basic definition for the purpose of the study commissioned in 2012. This comprises three cumulative criteria:

- ▶ a social, cultural or environmental goal;
- ▶ a substantial portion of income drawn from trade;
- ▶ most profits/surpluses to be reinvested in order to fulfil the goal(s).

This is in the English-speaking tradition, but has of necessity been affected by local culture: for instance, a small proportion of social enterprises are in line with Maori culture.

However, there are more ways than one to engage in the social economy, and Australia has an alternative movement that, without claiming membership of the Social and Solidarity Economy, resembles it in many ways: the New Economy. The New Economy Network Australia (NENA) is a network of individuals and organisations that work at transforming the Australian economic system to ensure that environmental health and social justice are the governing principles and chief goals of the economic system. Unlike social enterprises, the new economy explicitly intends to transform the economic

38. Food and Agriculture Organization of the United Nations, "A study of cooperative legislation in selected Asian and Pacific countries", Bangkok, Thailand, 1998. [Click here](#).

39. H. Douglas, B. Eti-Tofinga, G. Singh, "Contextualising social enterprise in Fiji", *Social Enterprise Journal*, 2018, vol. 14 n° 2, pp. 208-224.

40. S. Grant, "Social enterprise in New Zealand – an overview", *Social Enterprise Journal*, 2017, vol. 13 n° 4., pp. 410-426.

system. A network of researchers as well as players, it may form a base for the Social and Solidarity Economy. However, it is also strongly attached to the new-technology revolution, which is less focused on emancipation.

A GROUP OF ENTERPRISES THAT SHARE COMMON VALUES

In the absence of an international standard (with the exception of regional legislation) on the Social and Solidarity Economy, there is no consensus concerning the values and principles that draw together the enterprises and organisations in the sector. Neither is there any kind of international umbrella organisation, although some organisations do exist, including the one that commissioned this Guide. In consequence, any attempt at a summary is of necessity subjective. A summary, however, can prove to be of the greatest importance, as it constitutes a base around which enterprises and organisations can meet and find inspiration. It is also what enables a distinction to be made between the SSE and other economic sectors or social movements. Thus, however open the Social and Solidarity Economy may be to exchanges and collaborations, it needs to know what causes it to differ conceptually from social enterprises or the nonprofit sector, even if such theoretical differences do not prevent them from drawing closer to each other at the institutional level. It seems to me that the SSE is based on five principles: the primacy of people, limited profitability, a democratic character, collective ownership and working for the community.

The European Social Economy Charter⁴¹ adopted in 2002 at Salamanca (Spain) included seven such principles: primacy of people and of the social purpose over capital, democratic control by the membership, voluntary and open membership, the combination of the interests of member users and society (general interest), defence and application of the principles of solidarity and responsibility, self-government and independence from public authorities, reinvestment of the essential surplus to carry out sustainable-development objectives, services of interest to members or of general interest. These crite-

41. European Union, European Social Economy Charter, 2002. [Click here.](#)

ria have been mentioned by several authors⁴², even outside Europe⁴³. There is no basic incompatibility between these criteria and my own. I have simply grouped mine differently, and feel it is preferable to have, in so far as this is possible, a smaller number of more general principles that also more closely resemble legal concepts. The Social and Solidarity Economy organisations indisputably have greater authority to define these principles, yet the EU's seven principles are over twenty years old and are not unanimously considered to be the true definition of the social economy.

Albeit without any political agenda, the choice of the Social and Solidarity Economy principles that appear in legislation reflect the political dimension to which the SSE stands sponsor. In this respect, the Colombian law is especially interesting, as its Article 4, which lists the principles common to all enterprises and organisations in the Social and Solidarity Economy, reads like a political manifesto⁴⁴. Indeed, its most innovative principle comes last in the list: "11. Promotion of ecological culture". Next to this principle, the Solidarity Economy principles also include:

1. Human beings, their work and cooperation mechanisms have primacy over means of production.
2. A spirit of solidarity, cooperation, participation and mutual help.
3. Democratic, participative, self-governing and entrepreneurial management.
4. Voluntary, responsible and open membership.
5. Joint and several ownership of the means of production.
6. Just and fair economic participation of partners.
7. Continuing, appropriate and progressive training and information of members.
8. Autonomy, self-determination and self-government.
9. Service to the community.
10. Integration with other organisations in the same sector.
11. Promotion of ecological culture.

This Colombian law supplies a good illustration of the diversity of the principles considered to be political bases.

42. I. G., Fajardo-García, "El reconocimiento legal de la economía social en Europa. Alcance y consecuencias", *Cooperativismo & Desarrollo*, Volume 27 n°1, 2019, pp.16-17. [Click here](#).

43. L. R., Sánchez Boza, "Identidad, características y desarrollo social, económico y político de las cooperativas costarricenses", *Coopérativisme & Développement*, 2019, Volume 27 n° 114, pp.1-27. [Click here](#).

44. Colombie, Ley de economía solidaria n° 454 de 1998, 6 August 1998, article 4. [Click here](#).

THE PRIMACY OF PEOPLE

People before capital

The primacy of human beings is mentioned in a number of Social and Solidarity Economy legal instruments. For instance, it is the first principle of the abovementioned European Social Economy Charter and is also to be found in the Portuguese Law⁴⁵. The latter is interesting, as it posits this as a basic principle and also complements it with the primacy of social purposes. Putting people first is not merely a theoretical assertion on which everyone is agreed; it is also expressed in the form of several other forceful assertions which, in their way, include all other SSE principles. Of course, the chief primacy is that of people over capital, as people are both the drivers and beneficiaries of the SSE, unlike capital-based enterprises, which centre on capital, whether as a means of performing an activity or a generator of profit to be maximised and shared. Moreover, the primacy of people makes them the gold standard of the SSE, which more or less means that the SSE operates for the benefit of the community in so far as people are the incarnation of the community, both in the diversity of their needs as in the extent of their collective attachments.

A view to emancipation

Finally, the primacy of people also refers to the emancipatory nature of a Social and Solidarity Economy enterprise: the user is more than a customer, employees take on a new status within the enterprise, partners are freed from the tyranny of capital, etc. This is expressed differently in the Spanish Law, which explicitly describes the supremacy of human beings⁴⁶: autonomous, transparent, democratic and participative management, which tends to prioritise decision-making according to people and their contribution in the form of services and work to the entity or to a social purpose, rather than to capital.

The primacy of people and the social purpose

In any case, the Portuguese Law bridges the gap between the primacy of people and the corporate purpose, which confirms that a Social and Solidarity Economy enterprise is more concerned with the social aspects of its activity than with its economic results. Of course, an SSE enterprise remains an enterprise, and as such it cannot afford to ignore its own profitability, since it must be economically viable to survive. However, viability is not incompa-

45. Portugal, Basic Law on the social economy, No. 68/XII-1, 8 May 2013, article 5. [Click here.](#)

46. Spain, Law on the Social Solidarity Economy, No. 5/2011, 29 March 2011, article 4. [Click here.](#)

tible with support from the public authorities or the citizenry, in so far as a corporate purpose can perfectly well deserve public financial support. The corporate purpose should not, therefore, be confused with the social purpose pursued by a social enterprise. Whereas, in company law, “corporate purpose” refers to the company’s actual activities, the social purpose refers to a higher purpose which is compatible with many activities. Such is the first and most basic principle of the Social and Solidarity Economy.

LIMITED PROFITABILITY

Beyond the profit/nonprofit divide

The law usually deals in concepts such as “for-profit” and “nonprofit”, or “free of charge” and “paying”. The principle of limited profitability has never been set out in a Social and Solidarity Economy law. However, all related legislation includes provisions and mechanisms which appear to express this principle. Limited profitability is increasingly taking the form of a majority allocation of a company’s profit to the fulfilment of its goal. Of course, this is slightly different from the concept of “nonprofit”, but indirectly this positive allocation places a limit on allocation for the purpose of capital returns; it is in this sense that one should speak of “limited profitability”. Some laws may take matters even further, like the Cameroonian law that demands “fair distribution of surpluses”⁴⁷.

Limited profitability, a developing concept

This concept of limited profitability remains to be fully defined, and only a handful of theoretical works⁴⁸ have sketched its contours. Nevertheless, I find it both highly significant and useful. In so far as most recent legislation, in particular at the European Union level, emphasises the allocation of surpluses to the corporate purpose, complemented if necessary by an asset lock, it makes sense that this concern be rendered by the concept of limited profitability. Moreover, the definition of this principle enables the SSE to remain both close to and different from the nonprofit sector and bridge the gap between both sectors, and hence make clear the difference between the Social and Solidarity Economy and the capital-based sector. Indeed, it should be remembered that it is very tempting for the nonprofit sector in

47. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun Loi 2019/004 du 25 avril 2019, article 3, para 1*. [Click here](#).

48. L. Driguez, “Le but non lucratif en droit de l'union européenne. Ou de la nécessité d'adopter une notion nouvelle de lucrativité limitée”, MGEN/Alternatives économiques, 2018.

the strict sense to view SSE enterprises, which operate on the market, as capital-based by nature. All its other principles show that this is truly not the case, but unless the concept of limited profitability is developed, the binary opposition between “for-profit” and “nonprofit” may cause the singular nature of these enterprises to be overlooked.

DEMOCRACY, A BASIC VALUE

Democratic management

The democratic character of the Social and Solidarity Economy is perhaps its best-known characteristic as well as the one that distinguishes it most clearly from other undertakings. Neither capital-based companies, nor even social enterprises or nonprofit organisations, display such concern. Indeed, the principle of democracy is reaffirmed by almost all laws on the Social and Solidarity Economy, with the exception of the Luxembourgish Law⁴⁹. This mainly translates into the principle of “one person, one vote”, but also extends to a requirement for autonomy and transparency, and even the voluntary character of membership. In 1998, Colombian law defined the third principle of the solidarity economy as “democratic, participative, self-governing and entrepreneurial management”⁵⁰. It is to be found in almost all such legislation, and although, as we have said, it is frequently expressed in the rule of “one person, one vote”, it is not always explicitly stated. However, this rule appeals very strongly to people for many reasons: it is very simple and also opposed to the capitalistic rule of one vote per share. It is the economic counterpart of the operation of the democracies of today and perfectly embodies the assumed equality between all members of the entity.

A guarantee of commitment on the part of all members

However, the actual operation of Social and Solidarity Economy enterprises is more complex than this uniform rule might suggest: the involvement of each individual in the enterprise may vary in intensity, each entity may include groups, some people may require special protection, etc. Moreover, the democratic character of the SSE is not only expressed in the management of the enterprise: more importantly, it signifies the commitment of all its members to the enterprise, whether to its management or economic life,

49. Luxembourg, *Loi portant création des sociétés d'impact sociétal*, 12 December 2016, Chap. 1, para 3. [Click here](#).

50. Colombia, Ley de economía solidaria n° 454 de 1998, 6 August 1998, Article 4. [Click here](#).

and guarantees that people are the beginning and the end of the enterprise. In short, although the “one person, one vote” principle may be a guiding principle, it does not sum up democratic operation. This is clearly confirmed by the Portuguese Law, which links democracy with the control of the enterprise’s various bodies by the members themselves⁵¹.

The differences between self-governance and participation

Two attributes of this democracy require particular elucidation, since they represent both extremes: self-governance and participation. Much Latin American law cites self-governance next to or as a part of democratic management. The tradition of self-governance was inspired by various currents of thought, mainly the socialistic and collectivist alternative to the centralising Communist tradition. In other words, it is politically charged and places the solidarity economy within a specific humanistic current. Although it constitutes one of the expressions of the Social and Solidarity Economy, it does not fully summarise the latter and is only one of the potential expressions of the quest for the emancipation of the individual.

Participation is to be found at the other end of the spectrum. The most typical instance is certainly EU legislation⁵²: “managed in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities”. In this case, participation is envisaged on its own, in the purest stakeholder tradition of the English-speaking world. This is a different version of democracy, based less on strict decision-making mechanisms than on processes that ensure that all individuals concerned by the enterprise are given an opportunity to have their say and be heard. This version of democracy is far closer to that embodied in social enterprises.

Some legislation, such as Article 6 of the Cape Verdean law, lists all such requirements, a good illustration of the many-layered character of the democratic imperative⁵³. Other laws ignore it completely and retain only the imperative of self-governance, in the sense that enterprises are fully able to hire and fire their governing bodies as well as control and organise all their activities⁵⁴. In this case, democracy is no longer a requirement, only independence, mainly from the public authorities. Although such independence is

51. Portugal, Basic Law on the social economy No. 68/XII-1, 8 May 2013, article 5, para c. [Click here.](#)

52. European Union, Regulation (EU) No. 346/2013 of 17 April 2013 on European social entrepreneurship funds, article 3, para d, IV. [Click here.](#)

53. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 6. [Click here.](#)

54. Luxembourg, *Loi portant création des sociétés d'impact sociétal*, 12 December 2016, Chap. 1, para 3. [Click here.](#)

one of the structuring components of self-governance, it is obvious that the same degree is not required.

The voluntary-membership imperative

The last element that can be connected to democracy is voluntary membership, which is sometimes listed explicitly as one of the SSE's guiding principles⁵⁵. Whether or not explicitly enshrined, this principle underpins all Social and Solidarity Economy legislation. To a certain extent, it is not specific to the SSE, as its primary concern is to protect the individual member; as such protection applies to the individual members of all organisations, the courts in charge of ensuring compliance with the basic rights of individuals may intervene in the matter⁵⁶. From this angle, it guarantees the freedom not to join an organisation. Although the protection of members' individual rights is clearly interwoven with it, the justification of voluntary membership is very different: its purpose is to guarantee that entities operating in this sector are not closed in upon themselves, but open to their communities and prepared to allow the other members of those communities to take advantage of the opportunities afforded by the enterprise to enable their emancipation. Voluntary membership may therefore be connected to both the democratic principle and the primacy of the individual.

COLLECTIVE OWNERSHIP OF ENTERPRISES

Collective or common property?

Few laws actually formulate this principle of collective appropriation, and those that do often use a Marxist terminology that is far from consensual. For instance, the Colombian law speaks of "partnership-based and solidarity-based ownership of production resources"⁵⁷. The Cameroonian law also mentions the pooling of production resources as characteristic of collective entrepreneurship⁵⁸. This anchoring is based on a view of collective property as a trait specific to certain political interpretations of the social economy, as opposed to the general description of the latter. Such an interpretation would be wrong, and we need to look beyond the terminology to consider

55. Colombia, Ley de economía solidaria n° 454 de 1998, 6 August 1998, Article 4, Para 4. [Click here.](#)

56. European Court of Human Rights, *Mytilinaios and Kostakis vs. Greece*, 3 December 2015, 29389/11, an instance of mandatory membership of a Greek winemaking cooperative.

57. Colombia, Ley de economía solidaria n° 454 de 1998, 6 August 1998, article 4, para 5. [Click here.](#)

58. Cameroon, Loi-cadre régissant l'Économie Sociale no 2019/004 du 25 avril 2019, article 3, para 1. [Click here.](#)

the reality to which it refers. It should be noted in passing that common property could be substituted for collective property; whereas “collective property” is underpinned by the Marxist concept of collective appropriation of production resources, “common property” refers to the community, to the commons, and to the traditional forms of group ownership which are also well known to anthropologists. This concept locates the SSE closer to far more conservative or even reactionary traditions, which may sometimes also even constitute a source of inspiration. Indeed, several of the characteristics common to all SSE legislation tend to enshrine collective (or common) ownership: the collective character of the enterprise, the withholding of surpluses from the members’ appetites, and disinterested devolution.

Collective by nature

Social and Solidarity Economy enterprises or entities are collective by nature. Although this is not expressly stated by the legislation, this is due to the obviousness of the fact. However, this argument might appear weak were it not corroborated by regulations applicable only to collective organisations. For instance, the use of the plural to describe the members of the enterprise is significant; moreover, the requirement of democratic operation can only be conceived of in enterprises which are not owned by a single individual, since in that case decisions are made by the owner alone and democracy is irrelevant. Sole-trader enterprises are more frequently to be found among social enterprises. This is where the participation imperative comes fully into its own: when there is a sole owner, it is not possible to do more than encourage participation by outsiders. This does not apply to the Social and Solidarity Economy. A number of debates have arisen as to whether this collective character should be mandatory in all enterprises: for instance, some authors support the idea that the for-profit enterprises which under French law may call themselves SSE enterprises could be sole-trader enterprises⁵⁹; in the case of the Luxembourgish Law, this is an even more burning issue given its lack of concern for democracy within the Social and Solidarity Economy⁶⁰. However, this is a consequence of the influence or penetration of the various concepts of the social enterprise, and there is no doubt that the social and solidarity economy is basically collective. This issue can even be connected with the theories that endeavour to show that even capital-based enterprises have a collective dimension as the enterprise may be considered to be

59. K. Rasolonomalaza, “Recherche sur le droit du financement des entreprises sociales et solidaires”, Ph.D. thesis, University of Aix-Marseille, France, 2018.

60. D. Hiez, “Société d’impact sociétal : première reconnaissance législative de l’économie sociale et solidaire”, *Journal des tribunaux luxembourgeois*, 2017, Volume 4, pp.110-117.

a commons⁶¹. However, capital-based companies are no such thing, far from it, and the author I cite States in the title of his paper that if corporations are to be considered to be commons, one needs to “[rethink] property rights and governance”⁶². If one accepts that the Social and Solidarity Economy is by nature collective, the aggregated property that partly underpins it must have a collective dimension. Although it is possible to question the degree of collective appropriation and one can conceive of a modicum of individual appropriation, the existence of collective appropriation cannot be denied.

Beyond symbolism: the technical provisions

Collective appropriation is not only a symbolic Statement; it is expressed in practice. For instance, the Cameroonian Law enshrines the pooling of resources⁶³, while the French legislation is even clearer on the obligation to allocate to reserves⁶⁴. However, such collective appropriation remains the result of a mandatory allocation of surpluses to the development of the enterprise, since for such an allocation to be performed reserves must be built up. This type of collective appropriation, even partial, is guaranteed only when mandatory allocation is coupled with disinterested devolution of the net assets in the event of liquidation, i.e. when the enterprise is wound up, its members have no claim to the assets (beyond their own stake, at any rate). This is known as asset lock. This is where we see that collective ownership of the enterprise is linked to the principle of limited profitability. The allocation of results to the development of the enterprise, the limitation of dividends, refunding limited to the initial investment in the event of a stakeholder leaving the enterprise, disinterested devolution, the impossibility of speculating on the value of the company stock (as a consequence of all these regulations and since stock is registered), all of this stems from the same basic premise that ownership of the enterprise is (in part, at least) collective.

All these considerations may appear to be far distant from nonprofit organisations or foundations, or even mutual-benefit societies, in so far as the latter have no capital and their members therefore have no claim on the enterprise's property. However, they are most assuredly not incompatible with the concept of collective ownership, and to my mind they are even a more sophisticated form of such ownership.

61. S. Deakin, "The corporation as commons: rethinking property rights, governance and sustainability in the business enterprise", *Queen's law journal*, 2012, Volume 37 n° 2, pp.339-381.

62. Op. cit.

63. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun*, Loi no 2019/004 of 25 April 2019, article 3, para 1.

64. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 1, 3° b.

ACTIVITY FOR THE BENEFIT OF THE COMMUNITY

Social purposes in the general interest

Although the various enterprises that make up the Social and Solidarity Economy make different contributions to the community, they all do so in some way or another and the legislation bears traces of the fact. Some laws refer to “collective or social usefulness”⁶⁵, “social usefulness”⁶⁶, or “the interest of the community”⁶⁷. The wording may vary, but the mechanism is identical: a Social and Solidarity Economy enterprise pursues a goal that is advantageous to the community. This may, but does not have to be, its primary purpose; enterprises have several purposes, including their own durability, but at the very least its purposes must be consistent with the general interest. This is the concept expressed by the Cape Verdean law, which lays down as a principle that surpluses must be allocated to the pursuance of the purposes of a Social and Solidarity Economy enterprise in the general interest⁶⁸. Respect for the general interest should not be understood to mean protection against the violation of the general interest: such respect is common to all human activity, however capitalistic. Compliance with this principle should mean active endeavour and takes on its full meaning when compared with the other principles, e.g. respect for the values of solidarity and justice⁶⁹. Social purposes should therefore not be confused with the corporate purpose pursued by a social enterprise. The corporate purpose is the purpose of an enterprise and is therefore identical with the actual enterprise, whereas social purposes are a higher form of purpose compatible with many of the enterprise’s activities.

A specific corporate purpose: services to people in vulnerable situations

The diversity of the corporate purposes of the Social and Solidarity Economy contradicts the frequent focus on the social aspect of these purposes⁷⁰. Concerning the latter point, such companies are relatively similar, since they all have a similar purpose; of course, this may be subdivided, for instance between the supply of employment to vulnerable individuals and the supply of services to vulnerable individuals; however, such differences are minimal

65. Cameroon, *Loi-cadre régissant l'économie sociale, Loi n° 2019/004 du 25 avril 2019, article 3*. [Click here](#).

66. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 2. [Click here](#).

67. Mexico Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012, article 9, IV. [Click here](#).

68. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 6, h. [Click here](#).

69. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 6, e. [Click here](#).

70. European Union, Regulation (EU) No. 346/2013 of 17 April 2013 on European social entrepreneurship funds, Article 3, Para d, II. [Click here](#)

compared with the broadness of the spectrum of SSE activities. As far as participation in communal property is concerned, the specific purposes of social enterprises that serve the vulnerable dovetail perfectly with the more general purpose of the SSE, even though it constitutes only a specific instance. However, the strong point of the SSE is its wider embrace of the community's interest, which cannot be reduced to fulfilling the needs of its frailer members. With their activities, their values, their organisations, SSE enterprises contribute to the development and emancipation of the more vulnerable, but do not do so exclusively by providing jobs or goods and services.

Although the principles of the SSE, their grouping and order may vary from one set of legislation to another, I can therefore confirm that they can be reduced to the five principles described above. It is preferable to have a smaller number of more general principles that also more closely resemble legal concepts.

The perimeter of the Social and Solidarity Economy remains to be determined on the basis of these principles. For this purpose, and in order to show the reader the widest possible range of the issues current in the debate and describe the situation concerning the perimeter of the SSE, the following question should be asked: do social enterprises, charities and the informal economy belong to the Social and Solidarity Economy?

THE PERIMETER OF THE SSE: SOCIAL ENTERPRISES, CHARITIES AND THE INFORMAL ECONOMY

In some legislations – and we shall be discussing this in further detail in the next section – the perimeter of the SSE can be defined by opening it to other legal forms, provided these enterprises and organisations comply with the principles of the Social and Solidarity Economy. A minority of instruments take matters further by making no reference whatsoever to any legal form, e.g. the Luxembourgish Law. I therefore insist on the fact that compliance with the principles stipulated by the law on ESS enterprises and organisations is central to the definition of the perimeter of the SSE. Indeed, these principles are obviously operating rules that are quite binding, safeguards that in theory prevent it from deviating from its purpose and keep it different from the capitalist model. These principles mainly relate to the allocation of the value generated by the activity, and hence constitute a ban on a speculative approach to shares in capital, or on the appropriation and concentration of decision-making power within the enterprise. It should be remembered here that the existence of binding provisions is essential if SSE enterprises and organisations are to comply with their legal obligations.

Far from considering myself to have any authority to differentiate between SSE structures and non-SSE structures, I have one purpose in writing this Guide: to assist public authorities and other relevant institutions in defining the perimeter of a sector they wish to support. I am therefore well aware that, depending on the countries reviewed and the degree of development of the Social and Solidarity Economy there, nuances occur.

It seemed to me relevant to emphasise existing tensions when setting the perimeter for SSE structures, without forcing rigid limitations on the definition of the SSE, which, indeed, is still very much in flux.

Social enterprises, charities and the nonprofit sector, as well as the informal economy, raise questions: do they, or do they not, belong to the Social and Solidarity Economy? In the next chapter, I shall be analysing the legal definition of the SSE. At this point, a number of doubts need to be lifted and the overall picture cleared in order to facilitate decision-making.

THE SOCIAL AND SOLIDARITY ECONOMY AND SOCIAL ENTERPRISES

Although the Social and Solidarity Economy and social enterprises do not quite define the same realities, they are close in some respects. Moreover, they partially overlap as some enterprises claim to meet both definitions.

Geographically, social enterprises originated in the nonprofit-sector countries, chiefly the United States, where they are a development of traditional nonprofit organisations. Social enterprises are therefore a recent phenomenon, appearing in the 1980s, with two main strands. First of all, their structures are more flexible than those of the nonprofit organisations to which they remain connected, to enable them to raise funds for the achievement of the nonprofit goal. They then began to apply capitalistic mechanisms to fulfil their social purposes: whereas the first group add an external profit-making layer in order to finance nonprofit activities, this second strand unites capitalistic resources and altruistic goals within a single structure. From its birthplace in the United States, this model has spread to many countries, and the expression is now applied to a number of very different situations.

Some legal forms are related to these models, such as community interest companies in the UK or social cooperatives in Italy, but, like the Social and Solidarity Economy, they may also serve as banners for diffuse networks. A number of legal instruments explicitly deal with them; I shall be using examples from the European Union and South Korea.

According to the European Commission, 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, involve employees, consumers and stakeholders affected by its commercial activities”.⁷¹

The South Korean law stipulates that a social enterprise is “an enterprise certified in accordance with Article 7 as one that pursues a social objective, such as raising local residents’ quality of life, etc., by providing vulnerable groups with social services or jobs while conducting business activities, such as the production and sale of goods and services, etc.”⁷²

Although the South Korean definition is legal where the European definition is only programmatic, the latter appears to be more complete. These texts do not oppose each other, yet the South Korean definition has fewer distinctive traits and therefore applies to a broader spectrum, which means it is also less stringent. Two remarks are worth making concerning the European Commission’s definition of a social enterprise: for one, it is specified that social enterprises are players in the social economy; also, they are managed in an “open and responsible manner”, which constitute a reference to a governance that, if not democratic, makes room for its stakeholders without being truly binding. This constitutes a twofold link between social enterprises and the Social and Solidarity Economy, one explicit, the other by the inclusion, albeit in a watered-down form, of the democratic principle.

However, this link needs to be questioned. Indeed, the European Commission’s definition of a social enterprise uses three criteria:

- ▶ social objectives;
- ▶ the allocation of part of its profits to those objectives;
- ▶ a measure of democratic governance.

However, to comply with the criteria for the ESS as defined in the European Social Economy Charter adopted at Salamanca (Spain) in 2002, compliance with four principles appears to be missing: the primacy of people, limited profitability, collective ownership and a democratic character. There is not a word concerning the membership of social enterprises in the social economy in this sense.

However, the connection between the SSE and social enterprises is constantly changing.

At first, it appears that in Continental Europe social enterprises are perceived

71. European Commission, Social Business Initiative (SBI), launched in October 2011. [Click here.](#)

72. Republic of Korea, Social Enterprise Promotion Act No. 8217, 3 January 2017, article 2 para 1. [Click here.](#)

as being outside the SSE spectrum, in particular due to the near-absence of the principle of democracy, but also as they are considered to be offshoots of the capitalistic system in that they do not endeavour to limit their profits. This negative perception manifests as a fear that the non-profitability principle is being violated. Indeed, part of the criticism social enterprises attract is that they are not intended to question the capitalistic entrepreneurial model, but decide to commit themselves to a number of obligations that reflect their determination to concern themselves with the consequences of their activities on their human and natural environment. Both endeavours therefore strongly differ in terms of origin, intentions and methodology.

However, other voices have been raised which welcome social enterprises, since their development cannot be effectively opposed: the inclusion of social enterprises in the Social and Solidarity Economy by the European Commission is a striking example, and one open to criticism due to their failure to comply with a number of the fundamental principles Stated in the European Social Economy Charter. Moreover, some Social and Solidarity Economy enterprises also consider themselves to be social enterprises, and in practice comply with the principles of the SSE.

A number of national legal instruments also display openness to social enterprises. In their Statements of common principles, some of them suggest policies that differ in part from the SSE, notably under the influence of the social-enterprise model. In its first article, the Luxembourgish Law of 2017 enshrines principles that may be characterised as low-key, so as to also cover social enterprises. Such an approach is considered to be potentially confusing; it may also reflect the level of development in a particular country.

For the time being, both strands retain their individuality and separate areas of influence. This does not prevent them from coexisting, since references to both concepts are to be found on all continents. Moreover, rather than dwell on the differences between both endeavours and their components, the countries and regions concerned are often developing concomitant and often complementary legislation on both legal realities worldwide. The Social and Solidarity Economy does indeed constitute the better response to the challenges of our time: collective property and limited profitability to protect future generations, democratic principles to shore up crumbling political democracy. However, they are not radically opposed and all bridges are welcome.

THE SOCIAL AND SOLIDARITY ECONOMY AND THE NONPROFIT OR CHARITY SECTOR

It is difficult to compare the SSE and the nonprofit sector, in so far as both appear to be circumscribed in separate geographical areas: roughly, the nonprofit sector in English-speaking countries and their areas of influence, and the Social and Solidarity Economy in Latin and French-speaking countries. Some nuance is required, however. The United Kingdom is an exception to this rule as the cooperative movement remains powerful there: there has even been a Co-operative Party, which has since merged with the Labour Party.

In my view, both realities are neither polar opposites nor identical, but simply do not communicate with each other, despite the fact that some Social and Solidarity Economy organisations (foundations, organisations, etc.) would be charities were they registered in another country. This issue is well-known to comparative-law specialists faced with two institutions that fulfil similar functions, but with very different characteristics inherent to the culture of the country in which each of them took root. In such situations, if correlations (positive or negative) are to be established, a number of markers need to be set to understand the culture of origin of each institution before making a more technical comparison. This is what I shall be doing in order to supply the reader with a few pointers.

The SSE took off in countries that have experienced opposition to the capitalist system, whether promoted by the right or left wing of the political spectrum. France, Italy, and Latin America have all experienced major political crises over the past two centuries, which were at least partly fuelled by social issues. Conversely, although it has not been trouble-free, the history of the English-speaking countries is less turbulent. The existence of vocal and long-term opposition to capitalism, albeit marked in the former group, remained more marginal or less visible in the latter. In such conditions, enterprises which fit into the SSE follow this anti-establishment tradition even if they are anything but radical. Conversely, nonprofit enterprises are located outside this spectrum and focus on the pursuit of a charitable goal, without adopting an explicit position concerning the causes of the poverty they are endeavouring to alleviate. Of course, this is a schematic opposition and the reality is more nuanced. Many Social and Solidarity Economy enterprises

have no quarrel with the establishment even if they still hope to take part in some form or other of societal change. On the other hand, some charities are extremely harsh in their criticism of the system.

The second difference lies in the concept of the State. The concept of a State that is legitimately called upon to become involved in the structuring of society is another distinguishing feature of the SSE, while conversely, in theory at least, countries irrigated by the powerful political liberalism of the United States, which stringently prohibits the State from taking sides concerning the nature of individual happiness and well-being and therefore restricts it, have encouraged nonprofit organisations. In such conditions, nonprofits perform a clear function, i.e. they respond to poverty (even if these days the State also intervenes). Some SSE entities choose to play the same role, but when they do so it is in the knowledge that they are substituting for an inefficient State or taking a different approach.

On a more technical level, cultural differences are reflected in the different composition of both sectors. In the case of nonprofits, M. McGregor Lowndes supplies the following definitions for the US and UK: *charitable trust, limited liability company, unincorporated association, incorporated associations, not-for-profit co-operative, charitable incorporated organisation, company limited by guarantee*⁷³. Although forms may vary, they all have in common a complete refusal to share any profits and very often a restricted list of charitable purposes that may be pursued. On the contrary, the Social and Solidarity Economy sector comprises organisations, mutual-benefit societies, foundations, companies purchased by their salaried workers, etc. However, there is also a noteworthy difference in the activities performed: whereas the nonprofit sector is exclusively geared to charity even in the wider sense, the SSE covers a potentially infinite spectrum, since it is not only, or even not at all, characterised by its activities or by its target populations, but by the manner in which its players implement its principles. The area of activity of the SSE is unlimited both in terms of activity sectors and target populations. Article 1 of the French Law on the status of cooperation expresses this perfectly: "it [the cooperative] shall perform its activity in all areas of human activity"⁷⁴. This definition requires qualification as hybrid forms are emerging in the nonprofit sector side by side with social enterprises which are based on both American and European experiences. However, although this develop-

73. M. MC Gregor Lowndes, "An overview of the not-for-profit sector", Harding, M., (Ed.), Handbook research on not-for-profit law, 2018, Edward Elgar publishing, Massachusetts, USA, pp.140-147.

74. France, *Loi n° 47-1775 portant statut de la coopération, 10 September 1947, article 1, para 2.* [Click here.](#)

ment may be drawing both endeavours closer to each other, it does not alter the fact that in principle they are opposed.

This difference in approach is reflected in the principles which govern each of these sectors. A guide designed to help design legislation concerning nonprofit organisations mentions five characteristics of such organisations:

1. organisation (minimal involvement of institutions);
2. private (as opposed to the public sector);
3. no profit sharing;
4. autonomy (own decision-making powers);
5. voluntary (voluntary membership)⁷⁵.

As far as the SSE is concerned, I refer the reader to the principles I have endeavoured to summarise: primacy of people over capital, democratic character, self-governance, voluntary membership, collective ownership of the enterprise, an activity which benefits the community. Although there is some overlap, both sets of principles also reflect the difference in intent between both sectors.

Despite their different wording, some of these principles underpin both sectors. This is obviously the case of self-governance and voluntary membership. Some of the other principles Stated in one sector can easily be transferred to the other even if they are not explicit, e.g. the organised and private character of the nonprofit sector, or the primacy of people over capital and an activity which benefits the community characteristic of the SSE. Three principles therefore remain problematic: the total lack of profit sharing in nonprofits on the one hand, and the democratic character and collective ownership of SSEs on the other. All three points require further analysis in order to measure the distance that actually separates both traditions.

In the case of the ban on profit sharing, both traditions appear to be all the more opposed as this is most certainly a central trait of the nonprofit sector, as evidenced by its very name as well as that of its constituent organisations. Not only is this an essential characteristic; it is radical. The ban on profit sharing applies to both the organisation's members and its employees. Yet should it be considered that due to this opposition Social and Solidarity Economy enterprises are for-profit organisations? The difference is not so extreme. First of all, several of the enshrined principles reflect an unwillingness to derive too much profit; this applies to both the primacy of people

75. M. McGregor-Lowndes, "An overview of the not-for-profit sector", Harding, M., (Ed.), Handbook research on not-for-profit law, 2018, Edward Elgar publishing, Massachusetts, USA. p.135.

over capital and collective ownership of the enterprise, which at the least express a rejection of individual control. Some SSE laws are more explicit and mention the allocation of surpluses to the purposes of the Social and Solidarity Economy entities in line with the general interest⁷⁶. Yet, even in this case, the prohibition remains indirect and is not necessarily absolute. In practice, SSE entities are not uniform, and whereas some of them are bound by their statutes not to share profits (foundations, nonprofit organisations, etc.), others may do so (in particular cooperatives). However, the lack of a ban on profit sharing does not mean a free-for-all and profit sharing is therefore controlled to ensure compliance with the above principles. For this reason, it is appropriate to speak of limited profitability⁷⁷. There is, therefore, no opposition between nonprofit organisations and the SSE, merely a difference in degree. Moreover, this difference does not originate in a greater or lesser tolerance concerning the enrichment of the members of the enterprise, but generates a different type of commitment to the various organisations on the part of their members. In the Social and Solidarity Economy, some enterprises are founded by people who invest their funds in them, or link their own professional activity to the enterprise. There is therefore not the same reason to reject all profit sharing for their benefit.

The second problematic issue is collective ownership. If one is to make an unbiased comparison between both traditions, one needs to ignore the Marxist flavour of the expression. Although in some bodies of law such a connotation is congruent with reality, they are in a minority and collective property has to be understood in a more technical sense. It is primarily based on three concepts that have been discussed above: plural membership, the existence of unshareable reserves and the disinterested devolution of net assets in the event of liquidation. None of these is inconsistent with the structure of nonprofit organisations. Properly speaking, the latter do not necessarily enshrine them, especially when they are not based on member commitment, yet they do share the requirement that the project's assets be protected, which is done by means of an asset lock.

The last potential hiatus is the democratic imperative that characterises the Social and Solidarity Economy, whereas it is not to be found in charities. This issue does not loom large in the concerns of charities for two reasons. First, charities do not always rely on member involvement, and in such a case the issue of democracy is not as significant; when the beneficiaries are exter-

76. Portugal, Basic Law on the social economy, No. 68/XII-1, 8 May 2013, Article 5, Para g. [Click here.](#)

77. L. Driguez, *Le but non lucratif en droit de l'Union européenne*, IREDIES, 13 February 2018, op.cit.

nal to the organisation, it is more important to encourage participation by the parties. Moreover, the charitable purpose takes precedence, and at best democracy can be a means of achieving it.

Ultimately, should charities be included in a Social and Solidarity Economy law? In theory, the answer is no, as both practices are governed by different approaches, but of course this depends on the context of the country under consideration. The more a country insists on the alternative character of an SSE enterprise, the more reluctant lawmakers will be to include purely charitable organisations, which indeed may not wish to be included. However, I feel that it should at least be recommended that bridges be built and inclusive approaches encouraged.

THE SOCIAL AND SOLIDARITY ECONOMY AND THE INFORMAL ECONOMY

Due to its historic origin, the SSE has been designed according to Western European thought models, and thus the formal economy. However, even today, over six workers in ten and four businesses in five operate in the informal sector worldwide⁷⁸. By definition, it is difficult to measure this sector, so that any figures are variable and unreliable⁷⁹. These debates are of little relevance to the matter in hand, although guesstimates agree on the scale of the phenomenon. Moreover, the SSE and the informal economy have two points in common: they involve the poorest members of society and are related to traditional social structures. By its very nature, the SSE targets the most socially deprived or supplies them with a framework that empowers them. For its part, the informal economy comprises the activities of the underprivileged, in so far as they are not covered by the legal framework supplied by the State.

Several criteria are used to describe the informal sector, including several that are legal⁸⁰: non-payment of taxes, non-performance of registration formalities, non-use of the employment contracts regulated by labour law; in the less obviously legal sphere, recourse to forms of financing outside the traditional banking sector⁸¹. Most of these characteristics do not apply to

78. International Labour Organisation. Click here.

79. N.Benjamin et M.A. Mbaye, "The informal sector in francophone Africa: firm size, productivity and institutions", Africa development forum, Washington D.C. (USA), World Bank Group, 2012. Click here.

80. S. Kwemo, *L'OHADA et le secteur informel. L'exemple du Cameroun*, 2012, Larcier, Bruxelles (Belgium).

81. C. O. Tohon, "Droit pratique des affaires : l'exemple du Bénin", Ph.D. thesis, University of Paris I, 2002.

SSE enterprises, which, in practical terms, are considered to be part of the formal economy. Recourse to financing outside traditional banking is the only characteristic both sectors have in common, in so far as SSE enterprises often have trouble getting loans in the traditional banking networks: indeed, this is one reason for the emergence of cooperative banks. The comparison between both types of enterprise does not rest on their mode of incorporation: a Social and Solidarity Economy enterprise may be either formal or informal, just as an informal enterprise may be Social and Solidarity-oriented or intended to maximise profit. The main resemblance between both sectors is to be found elsewhere, e.g. in their collective character and in the values of solidarity and mutual help that underpin them. The SSE is sometimes presented as bridging the formal and informal sectors. Such an assertion is absolutely untrue, in so far as it is based on the assumption that informal enterprises model themselves on capitalistic enterprises and their entrance into the SSE would be a first step in this direction. On the contrary, the informal sector and the SSE are far more intimately related and mutually support each other as models for alternatives to the capital-based enterprise.

As Stated above, the resemblance between both sectors is due to the preponderance of the underprivileged: whereas, in the capitalistic sector, they are chiefly considered to be a resource in the form of salaried employees – with all the protection this implies –, they are central to both the Social and Solidarity and informal economies; in both cases, they are the main players in economic activity.

The second common point is the importance of traditional structures. The latter should be taken to mean the social organisations specific to each society prior to or coeval with the State, which form groups that stand between the individual and the State. Such groups are innumerable and are not all involved to the same degree: villages, families, professional groups, age groups, initiation societies, etc. Only groups which participate in economic activities are relevant here and it should be noted that families are generally not included in these groups. Of course, they support the informal economy as they are both located on the margins of the modern State. As for the Social and Solidarity Economy, it shares with them the characteristic of collective ownership, so that several bodies of legislation include such groups in the SSE. The best instance may be the Mexican draft law, Article 4 of which covers both community land – *ejidos* – and communities – *comunidades*⁸².

82. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, Article 4. [Click here](#).

The connection between the informal economy and the SSE is the work of both informal organisations and of the political decision-makers, albeit with different purposes.

Indeed, the players in the informal sector are not necessarily disorganised and some organisations are campaigning for the emancipation of the most vulnerable economic players: non-salaried domestic staff, street vendors, etc. One example is Wiego⁸³, the purpose of which is to empower informal-sector workers and secure their means of subsistence. Such organisations actually point to SSE enterprises as the best means of achieving such protection. Cooperation between informal workers, e.g. domestic staff and rag-pickers, takes the form of a cooperative that gives them a collective strength and generates a measure of protection and acknowledgement. The soaring numbers of women's cooperatives should also be mentioned.

International organisations and States forge other relations between the informal sector and the Social and Solidarity Economy: they see in the latter a solution to the problems generated by the former. In other words, the SSE is considered to be a means of formalising the informal. Indeed, SSE enterprises can rely on acknowledged legal forms, so that the collective organisation of informal-sector workers into such enterprises finalises a form of institutionalisation. This solution is all the more attractive as endeavours to formalise one-person enterprises in capitalistic legal forms, even when the latter are simplified, have not been particularly successful. One instance of such a strategy is West and Central Africa and its Organisation for the Harmonisation of Business Law in Africa (OHADA). As mentioned above, the latter has enacted a Uniform Act on Cooperatives⁸⁴. This Act draws a distinction between two types of cooperative, depending on their size and organisation. The explicit purpose of this distinction was to provide informal economic organisations, which are chiefly rural, with an appropriate mode of formalisation.

Indeed, this is the subject of Recommendation 9 addressed to Peru by the United Nations Conference on Trade and Development Economic Commission for Latin America and the Caribbean⁸⁵: "Promote the development of the tertiary sector or solidarity economy (productive chains, strategic

83. Wiego – www.wiego.org

84. OHADA, Uniform Act on Cooperatives of 15 December 2010.

85. United Nations, United Nations Conference on Trade and Development – Economic Commission on Latin America and the Caribbean, Science, Technology and Innovation Policy Review Peru, UNCTAD/DTL/STICT/2010/2, Peru, New York and Geneva, 2011, p.157. [Click here.](#)

partnerships, subcontracting) to convert peasant farming into commercial agriculture and MSEs into formal SMEs.” Although this may or may not succeed, the process is characterised by a new connection between the SSE and the informal economy.

To delineate the perimeter of the bodies that belong to the Social and Solidarity is to make the decision to exclude or include certain organisations or enterprises. However, it should be remembered that the very concept of the SSE is constantly fluctuating. Indeed, beyond company statutes, there are sectors and activities that their practices, if not the law itself, cause to resemble the SSE: commons, fair trade, local currencies, etc. It is quite possible to imagine that one day such activities, sectors and practices will join the Social and Solidarity Economy. This brings us back to the idea that the definition of the SSE, and hence its perimeter, are constantly changing. However, to retain a modicum of consistency, the five common principles of the SSE that have been described above should always be included in its definition.





HOW DO WE PROMOTE THE SOCIAL AND SOLIDARITY ECONOMY?

The development of the SSE is the consequence of multiple converging factors, not least the vitality of the actual enterprises and organisations. However, they multiply and grow more easily in a favourable regulatory environment. In view of the relevance of the SSE as a response to the issues of our time, lawmakers in the wider sense need to contribute to its development.

Moreover, by building a legal framework for enterprises, laws define key concepts as well as the perimeter of the Social and Solidarity Economy. This causes the law to exert a measure of influence, and therefore of control. In some cases, the law links social enterprises with the SSE or devotes a separate body of legislation to them. In others, the law treats each type of enterprise separately or considers them to form a consistent whole.

The decision to encourage the SSE requires three types of action. First, a legal framework in the strict sense must be created, without which the Social and Solidarity Economy can have no legal existence. However, this first stage only constitutes a base. Intervention by the public authorities can only take the form of public policies designed to promote such enterprises in actual fact. Both types of action by the State must be complemented by the formation of networks of enterprises within the newly created SSE. I shall be describing all three aspects in detail for public decision-makers to consider in debate and to assist in their implementation in real life.

CONSTRUCTING A LEGAL FRAMEWORK FOR THE SOCIAL AND SOLIDARITY ECONOMY

In formal terms, the legal enshrinement of the Social and Solidarity Economy can occur at three levels that each complement and support each other: constitutional law, legislation in the strict sense and international law. Constitutional law cannot enter into detail, but has a symbolic and legal force that can provide the SSE with decisive support. However, legislation in the strict sense is of necessity the main instrument, as it is able to supply more detailed provisions. Indeed, such regulation is twofold: on the one hand, the Social and Solidarity Economy must be given a legal definition, but this is necessarily inadequate, in so far as the SSE cannot but be a group of enterprises with a variety of legal forms. It must therefore be complemented with one or more instruments that set out the details of the legal frameworks applicable to each of these enterprises. As for international law, which despite its precedence is a latecomer, it has the advantage of covering several countries and supplying a common framework.

SOME CONSTITUTIONAL PRINCIPLES

The absence of the concept of the SSE in constitutional references

Strictly speaking, the Social and Solidarity Economy has not been constitutionally enshrined. No constitution, on any continent whatsoever, explicitly refers to this concept. However, many constitutional provisions do provide a solid basis for underpinning State support to enterprises in the sector. For instance, there are many, many references to cooperatives¹. Indeed, twenty-

1. Douvitsa Ifigenia, "National Constitutions and Cooperatives: An Overview. International Journal of Cooperative Law (IJCL)", Vol. 1 (1), 2018, pp.128-147.

odd of the world's constitutions, on all continents, express direct support for cooperatives. Of these, I shall be citing only a limited number of representative instances.

The constitutional acknowledgement of the role of cooperatives in the economic development of States

Article 148 of the Constitution of the Republic of Yemen stipulates that: "The State shall encourage and sponsor the local development cooperatives as they are one of the most important means of local development."

In its Article 12(15), the Constitution of the Republic of the Philippines takes matters further by emphasising the contribution of cooperatives not only to the local economic development of a State, but also to social justice. It is therefore specified that "The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development."

The Plurinational State of Bolivia States in Article 55 of its Constitution that "the cooperative system is based on principles of solidarity, equality, reciprocity, equity of distribution, social purpose, and the non profit motive of its members. The State shall promote and regulate the organization of cooperatives by means of the law."

In Taiwan, according to Article 145 of the Constitution, "cooperative enterprises shall receive encouragement and assistance from the State".

Finally, Article 45 of the Constitution of the Republic of Italy specifies that "The Republic recognises the social function of co-operation of a mutually supportive, non-speculative nature. The law promotes and encourages cooperation through appropriate means and ensures its character and purposes through appropriate checks."

These provisions have been issued by States that are very different, whether in geographical location, political or socio-economic system, which demonstrates the ability of cooperatives to become integrated into any society. Whatever the context, the cooperative's purpose is always fair, endogenous, solidarity-based development.

Beyond such general support, several constitutions also link cooperatives with a number of more specific objectives: housing², worker emancipation³,

2. Portugal, *Constituição da República Portuguesa*, 1976, article 65; Constitution of the Republic of Tajikistan, 1994, art. 36.

3. Costa Rica, *Constitución Política de la República de Costa Rica*, 1949, article 64.

rural development⁴, and consumer protection, to cite only a few examples.

A cooperative constitutional construct

This wealth of provisions is a resource for the Social and Solidarity Economy. In this regard, an observation needs to be made concerning the relation between cooperatives and the SSE. The latter is multifaceted and is not limited to cooperatives: in many countries, cooperative enterprises even form a minority within the social economy. Nevertheless, due to their institutional structure and their more than one hundred years of development of theoretical and practical doctrine, they have all achieved a legal maturity and degree of recognition that far exceed those of the other forms that may be taken by Social and Solidarity economy enterprises.

The wealth of cooperatives belongs to all, and this construct needs to be used and expanded, which is why I dwell on constitutional provisions.

At this point, it should be mentioned that very often cooperatives are not considered on their own, but within a wider context. For instance, in its Article 45, the Constitution of the Italian Republic brings together the concepts of cooperative and mutuality⁵. For its part, the Republic of Costa Rica combines cooperatives with solidarity and “associations of solidarity” for workers⁶, as demonstrated by Article 64 of its Constitution. Less often, but more significantly, some constitutions target generic groups of people. This is true of the Constitution of the Republic of the Philippines, which stipulates that “The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation” in its Article 2 (23)⁷. Finally, some constitutions expressly mention the spiritual dimension of human beings⁸, as can be observed in Section 257 of the Constitution of the Kingdom of Thailand. In a different style, the “good way of living” and the place given to the relationship of human beings with nature can cause constitutional requirements to exceed the mere material well-being of people; Article 283 of the Constitution of the Republic of Ecuador supplies a good illustration of this.⁹

In the main, there are few specific provisions concerning the concept of Social and Solidarity Economy enterprises. The purpose of a constitution is

4. Guatemala, Constitución Política de Guatemala, 1993, article 67.

5. Italy, Costituzione della Repubblica Italiana, 1947, article 45.

6. Costa Rica, Constitución Política de la República de Costa Rica, 1949, Article 54.

7. Philippines, article 2, section 23.

8. Thailande, Constitution, 2017, section 257.

9. Ecuador, Constitución del Ecuador, 2008, Article 283.

usually to build a framework for a society, so that mentions of the special place of enterprises and organisations structured according to a model that is different from the dominant model are already welcome. At a time when social and environmental concerns are becoming more pressing, it would be especially fortunate if constitutions were to positively enshrine the role such enterprises can and must play in the construction of a future for humanity. In this connection, Article 278 of the Constitution of the Ecuadorian Republic deserves to be quoted in full:

“To achieve the good way of living, it is the duty of people and communities, and their various forms of organization:

- 1. To participate in all stages and spaces of public management and national and local development planning, and in the execution and control of the fulfillment of development plans at all levels.*
- 2. To produce, exchange and consume goods and services with social and environmental responsibility.”*

A copious cooperative doctrine

More specifically in connection with the contribution of cooperative doctrine, it should be emphasised that some of the key principles of the SSE were legally formalised for the first time on the occasion of the foundation of actual and sustainable cooperative enterprises. In particular, the primacy of people over capital, democratic control, the provisions that establish the principle of limited profitability and the collective ownership of the enterprise (allocation of refunds in proportion to the transactions performed with the cooperative, allocation of profits to the development of the cooperative, limitation on dividends) are all included in the statutes of the Rochdale Society of Equitable Pioneers, which was founded at the end of 1844. Later, the International Cooperative Alliance (ICA), formed in 1895, reused, refined, made more explicit and systematically formulated the cooperative principles over the next decades and to this day. The latest version of the ICA's Statement of principles was issued in 1995. This text presents these principles in a Statement on the Co-operative Identity, which begins with a definition of “cooperative”, followed by a list of the basic values of cooperatives – self-help, self-responsibility, democracy, equality, equity, and solidarity – and of cooperative ethics – honesty, transparency, social responsibility and altruism – as well as a list of the seven cooperative principles, with comments. In 2015, the ICA approved and published Guidance Notes

on the *Cooperative Principles*¹⁰, which are intended to guide the application of the principles. The ICA therefore not only represents and defends the cooperative enterprise model internationally, but also issues global standards for cooperatives. It should also be noted that in its Recommendation No. 193 of 2002 the International Labour Organisation explicitly references the ICA's cooperative principles as specified by the ICA in 1995¹¹.

10. International Cooperative Alliance, *Guidance Notes on the Cooperative Principles*. [Click here](#).

11. International Labour Organisation, R193 – Promotion of Cooperatives Recommendation (No. 193), 2002. [Click here](#).



PRACTICAL NOTES

How can one include a provision on SSE enterprises in the Constitution of a country?

Two cases:

➔ Constitutional provisions that encourage cooperatives, mutual-benefit societies and associations of solidarity for workers already exist. In this case, constitutional recognition needs to be extended to include the family of Social and Solidarity Economy enterprises.

➔ There are as yet no constitutional provisions that mention the contribution made by SSE enterprises. In this case, a draft amendment to the constitution needs to be proposed in accordance with the current procedure specific to each State. It is advisable that this draft be included in the agenda with other reforms to the constitutional provisions, as constitutional reform is often a large-scale undertaking.

It is especially advisable to consult the works on cooperative principles commissioned by the International Cooperative Alliance¹² in order to design principles that are not only cooperative, but relate more specifically to the Social and Solidarity Economy at the constitutional level.

12. International Cooperative Alliance, Guidance Notes on the Cooperative Principles. [Click here.](#)

A LEGISLATIVE DEFINITION OF THE SOCIAL AND SOLIDARITY ECONOMY

To supply a legislative definition of the Social and Solidarity Economy is to design a legal norm that matches the political system of the relevant country and is also appropriate to the political context of its enactment, which requires that a number of choices be made: the geographical area of application of the legislation, its type, a statutory or substantial definition of the SSE, and a generic definition compatible with the debates relating to the joint design of the legislation.

The geographical area of application: national or regional?

In the case of countries with a unitary political structure, the legal definition of the Social and Solidarity Economy will be considered by the legislative arm and possibly the executive if the latter has the ability to propose legislation.

Federal countries or countries divided into autonomous units face another issue: choosing the geographical area of application of legislation. In this context, the State shares its powers with the territorial entities, autonomous communities, federated States or autonomous regions that compose it. Internally, then, sovereignty is shared between the federal authority and the federated States, and each entity may frequently have its own legal order, which leads to the coexistence of several legal orders within one country. Not only is the selection of a geographical level for legislation logical, it also depends on the national context as well as on strategic decision-making.

However, two major trends are to be observed in the making of this choice: first of all, a national law often constitutes an ultimate goal, as that is the only way of guaranteeing consistency at the national level; also, it may be useful to use certain autonomous regional entities to experiment a system locally prior to full rollout.

Argentina is a particularly good illustration of the latter case. In the absence of a national law on the SSE¹³ and “a federal law that describes the Social and Solidarity Economy, identifies its various expressions and specifies its legal implications within the framework of the Argentine legal system”¹⁴,

13. In 2004 and 2008, the Argentine national government enacted three laws that impact social and solidarity dynamics: 1) Law 25865, with its numerous amendments, which implements the Social Monotribute; 2) Law 26117 on the promotion of microcredit for the development of the social economy; and 3) Law 26355 on collective trademarks. Meanwhile, Decree 159 of 2017, which regulates National Law 27345 extending the economic emergency under Law 27200, helps ensure the visibility and legal and institutional recognition of social and solidarity development.

14. Agustín Torres, M., “La economía social y solidaria en los ordenamientos jurídicos provinciales de Argentina”, *Cooperativismo & Desarrollo*, 27(1), 1-27, 2018. Click here.

number of provinces have taken prescriptive action at the provincial level, such as those of Buenos Aires, Chaco, Mendoza, Rio Negro, Entre Rios, and others. However, in terms of national – or in this case, provincial – choices, there is a certain amount of asymmetry in the development of legislation, as some provinces have specific legislation and others do not, but also as there are disparities between the criteria that structure the legislation, the sensitivity of the public policies and programmes that apply these measures, the interaction with SSE players in these provinces and the involvement of public State-level players as well as private players in their implementation. The chief advantage of selecting the federal or provincial level is that the implementation of the regulatory frameworks set up by these provisions is performed from the bottom up.

The type of legislation: a framework or special law?

In most cases, the laws are of the framework type. They are very general and display a clear intention by the parliaments concerned to orient the actions of the government as a whole in favour of the sector. Such laws are deliberately concise, comprising only twenty-odd articles. This is true of Cameroon, Uruguay and Tunisia, to cite only a few examples. In other countries, as in France at the time of the enactment of the Law of 2014, a somewhat different approach is taken. The SSE Law amends many other laws and is therefore very detailed, comprising almost 90 articles¹⁵.

The difference should not be exaggerated. In actual fact, the seemingly more detailed laws are two-parters: a traditional framework to which is added a highly detailed section with no overall approach. A genuine special law would, as well as a framework, develop a full statute for the enterprises concerned. This second, far more ambitious model, has as yet not been tried. It can probably only be considered in countries with a Social and Solidarity Economy mature enough for the design of a common legal system for all its enterprises, beyond the various legal forms they may take.

The statutory or substantial approach: open or closed?

The statutory approach: restrictive and easily implemented

Historically, the first route taken for the definition of the Social and Solidarity Economy was a definition in extenso, i.e. the drawing up of a list of legal forms for SSE enterprises.

The first steps in this approach were taken in France, with the appointment of an Interministerial Delegation for the Social Economy by means of Article

15. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article I, 3° b. [Click here](#).

3 of Decree 81-1125 of 15 December 1981, the purpose of which was to “assist the development of mutual-benefit societies and of organisations, the production activities of which render them similar to the organisations that operate in the area of the social economy.”¹⁶ This was continued and nuanced by Law No. 2014-856 of 31 July 2014, known as the Social and Solidarity Economy Law, which continued to list a group of enterprises which belonged naturally to the SSE, i.e. mutual-benefit societies, cooperatives and nonprofit organisations, now joined by foundations¹⁷.

This approach is taken by many of the world’s laws, for instance in Mexico, which targets “*farming cooperatives (ejidos), workers’ organizations, cooperatives, rural communities, enterprises which are majority or exclusively owned by workers and, in general, all the different social organizations for production, distribution and consumption of such goods and services that are necessary for society*”¹⁸.

A list of Social and Solidarity Economy enterprises that varies according to local specificities

The lists of enterprises concerned vary, as well as their names, in particular due to local particulars. For instance, the Spanish Law adds workers’ societies, insertion undertakings, special jobcentres, fishermen’s organisations and agricultural processing companies¹⁹. Portugal has added *misericórdias*^{20/21}. Uruguay includes enterprises that are democratically self-governed by their workers under various legal forms, artisanal production entities and networks²², and rural development societies, as well as enterprises and networks that promote food sovereignty, agroecology and the production of organic foodstuffs²³. As we have already seen, Mexico identifies *ejidos*²⁴ and communities as belonging to the SSE²⁵.

16. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 1, 3° b. [Click here.](#)

17. France, *Décret n° 81-1125, Création d'une délégation à l'ESS auprès du Premier Ministre qui est mise à disposition du Ministre du plan et de l'aménagement du territoire*, 15 December 1981, article 3. [Click here.](#)

18. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, Article 4. [Click here.](#)

19. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, Article 5. [Click here.](#)

20. *Misericórdias* are powerful tools for social intervention in the area of public health and are able to complement the action of the State.

21. Portugal, Basic Law on the social economy, No. 68/XII-1, 8 May 2013, Article 4. [Click here.](#)

22. Uruguay, Law No 19.848 on the Social Solidarity Economy, article 6. [Click here.](#)

23. Op. cit.

24. *Ejidos* are plots of land that belong to the State, which may be used by small farmers either individually or collectively, in the form of production cooperatives.

25. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, Article 4. [Click here.](#)

Despite this closed definition, an openness to other legal forms that adopt the principles of the SSE

However, this basic definition method: nowadays, all laws provide for the inclusion of other legal forms, as long as they comply with principles that have been defined elsewhere, often in the paragraphs that precede the lists of legal form concerned. Besides these laws, which all make provision for the inclusion of other forms, it is worth dwelling on Mexican law, which ends the list of enterprises concerned with the following: “in general, all the different social organizations for production, distribution and consumption of such goods and services that are necessary for society”²⁶. This formulation is especially wide-ranging as its distinctive criterion is goods and services that are necessary for society.

The substantial approach: maximum openness based exclusively on the principles of the Social and Solidarity Economy

A minority of laws take matters further by setting aside reference to any legal form whatsoever. The idea is to reduce the definition to a number of principles. This applies in particular to the Luxembourgish Law, which specifies that “The social and solidarity-based economy is a business model adopted by legal entities of private law that cumulatively meet the following conditions [...]”²⁷ Only two formal restrictions apply: entities governed by public law and private individuals are excluded.

26. Op. cit.

27. Luxembourg, *Loi portant création des sociétés d'impact sociétal*, 12 December 2016, article 1. [Click here.](#)

PRACTICAL NOTES



Statutory and closed or substantial and open: which is best?

Both approaches have their advantages and drawbacks.

The substantial approach of opening the perimeter of the SSE as wide as possible.

⊕ The advantage of this is that no one is excluded on principle, while the consistency of the sector is guaranteed by compliance with a number of common principles.

This approach is intended to be more substantive and based on real-life practices rather than abstract standards.

⊖ However, it has drawbacks, which can be divided into two categories:

▶ First, the variety and variability of practices makes it difficult to determine whether a particular enterprise is or is not an SSE enterprise, which can be a problem for the compilation of statistics and identification of companies that may benefit from public policies supporting the Social and Solidarity Economy; the flexibility of this perimeter is offset by a measure of legal uncertainty.

▶ Also, the porous nature of the border between the SSE and the rest of the economy may confuse people as to the sector's identity and make it easy for companies to transition from one side to the other. The latter point raises issues when the SSE is also defined as having limited profitability, as no control is exercised should a company change its approach to profitability and thus lose its status as an SSE enterprise.



The statutory approach implies a closed category... yet also potential extension.

+ One of the chief advantages of the statutory approach is that compliance is guaranteed with a number of basic rules.

Countries that have adopted a statutory definition completed with openness to other forms have therefore often formalised this openness. As well as compliance with the general principles defined by law, special conditions may be applied to the integration of commercial companies, as in France and Uruguay. Uruguayan law requires that shares be registered and that there be a minimum of ten partners, none of whom may own more than 10% of the capital. The mandate of board members may not exceed three years and may not be renewed more than twice, and the surplus sharing method guarantees that priority is given to the reconstitution of reserves and allocation to a special unshareable reserve fund; in the event of liquidation, net assets must be allocated to the National Institute of Cooperativism. The definition of the area of activity of such enterprises may also be regulated by later legislation or local public bodies. At any rate, applicants for Social and Solidarity Economy Enterprise status must register as such with the Board of Trade.

- One of the criticisms of the statutory definition is that adoption of a specific legal form does not constitute a foolproof guarantee that the principles of the SSE will actually be applied. Conversely, a number of commercial companies apply practices that are perfectly consistent with the SSE, despite the fact that they are systemically excluded by the statutory approach.



IN BRIEF

Lawmakers therefore have a choice between the abstract definition of basic conditions and principles for identification as a Social and Solidarity Economy enterprise or supplying a list, limitative or otherwise, of legal forms considered irrevocably or assumed to belong to the SSE.

Another option: registration

In the case of all enterprises concerning which it is not clear whether they are SSE enterprises, lawmakers may decide to create a register of Social and Solidarity Economy enterprises to enable people to find out easily which enterprises belong to this category; many options are available concerning the entity that manages this register, its legal status, whether registration is supervised, etc.



The choice of a generic definition of the Social and Solidarity Economy in connection with the debates concerning the joint design of the law

A comparison between Greek, French and Argentine (Catamarca) law

When taking a closer look at SSE legislation, it becomes apparent that they all – whether their approach be substantial or statutory – include an intentional definition. Even though a law may list the companies concerned, the lawmakers take care to specify what constitutes the identity of an SSE enterprise. Indeed, it needs to be remembered that the SSE may not be limited to the companies that it comprises. At any rate, that is what transpires in the definitions supplied by the Greek, French and Argentine (Catamarca) laws, which provide good illustrations of the series of choices that need to be made to achieve a generic definition of the Social and Solidarity Economy.

The Greek law stipulates that the SSE is defined as “all economic activities based on an alternative form of production, distribution, consumption and reinvestment relations, based on the principles of democracy, equality, solidarity, cooperation and respect for human beings and the environment.”²⁸ It may be observed that this law includes principles in its definition.

However, laws can be far more modest in scope and not enunciate principles. For instance, the law in the Argentine province of Catamarca specifies that the SSE is “the socio-economic, political, cultural and environmental system in which individuals and enterprises seek to satisfy their needs and those of their communities through the production of goods and services, their distribution, circulation, marketing, financing and dignified and responsible consumption.”²⁹

With similar concision, the French Law on the Social and Solidarity Economy defines the ESS as “a mode of enterprise and economic development adapted to all areas of human activity to which legal private-law entities that fulfil the following cumulative conditions belong.”³⁰

All three definitions are representative instances of the related issues and debates and the various answers that can be supplied. Such issues and debates need to be raised and had prior to writing the provisions of SS Legislation. However, when lawmakers have a very holistic and/or alternative

28. Greece, Law 4019/2011 on the social economy and social cooperative enterprises, 31 October 2016, article 2. [Click here.](#)

29. Argentina, Catamarca, Regional Law promoting the Social and Solidarity Economy, September 2017, article 2. [Click here.](#)

30. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 juillet 2014, article 1, para 1. [Click here.](#)

vision of the SSE and say so, consistency requires that they translate this vision into stringent requirements concerning the standards to be met in terms of limited profitability, collective ownership and democracy (above and beyond formal democracy).

Here are some of the questions that need to be asked during the joint design of a law by all parties involved:

→ ***Should the Social and Solidarity Economy be limited to economic activity or extended to a holistic dimension of human activity?***

First of all, it should be noted that the Greek and French definitions both refer to the principles with which SSE enterprises must comply. Each country has its own answer, since the Greek law includes its principles in the definition, whereas the French law specifies them in subsequent provisions; nevertheless, they are mentioned by both laws. This is due to the fact that both laws first consider economic activity and that the latter is considered to be undertaken by enterprises. Such is the first basic difference which distinguishes the various pathways taken³¹.

In opposition to this economic focus, the Argentine law is revealing. The SSE is a socio-economic, political, cultural and environmental system. It may be said that it is holistic in that it includes all aspects of human beings and society rather than concentrates on economic issues. Of course, both approaches are not radically opposed. The Argentine law reintroduces economic aspects in order to determine the activity of the people involved in the Social and Solidarity Economy: production, distribution, circulation, consumption, financing. This strictly economic dimension, however, is embedded in a more overarching vision.

→ ***The Social and Solidarity Economy: what distinguishes it from the dominant entrepreneurial system?***

The French and Greek laws also display a major difference in their definitions. Whereas the French law sounds especially neutral and descriptive, its Greek counterpart adopts an explicitly alternative definition by mentioning the alternative organisation of production, distribution, consumption and reinvestment. "Alternative" designates what is alternative with respect to the majority model, i.e. dominance-based and capitalistic. This is a long-stan-

31. Some nuance is required here as the Greek law reconciles the economic and non-economic dimensions by means of the concept of collective benefit: "jointly meeting the needs of the members of the Social and Solidarity Economy Actor, through the creation of a level playing field of relations of production, (through) the creation of stable and decent jobs, (and) the reconciliation of personal, family and professional life." (Greece, Law No. 4430/2016 on the social economy and social cooperative enterprises, 31 October 2016, article 2, para 3).

ding source of controversy concerning the SSE: should it be defined by its opposition to the dominant system? Although historically this has been the case, the situation has changed and each political context is naturally reflected in legislation. However, the neutrality of the French position requires confirmation, and can be interpreted as an endeavour to coordinate and even to reconcile the SSE and the capitalistic economy.

→ **The Social and Solidarity Economy: what type of economic activity?**

Such debates are not purely theoretical or political: they have actual consequences for the activities and people under the SSE umbrella.

The more holistic the concept, the further it exceeds strictly economic activity, the larger the group of people and activities concerned. One need only think of domestic production, informal activities, local or traditional communities, etc., which are far more naturally integrated into a Social and Solidarity Economy than those defined by the usual economic criteria.

Even when the core definition is economic, the issue remains of whether the SSE can be defined by its activities. The French Law explicitly States that this is not the case as it applies to all areas of human activity. The Luxembourgish Law specifies the opposite as it requires that Social and Solidarity Economy enterprises “provide, through their business, support to persons who are vulnerable due to their economic or social situation, their personal situation, particularly their State of health, or their need for social or socio-medical assistance, or contribute to the preservation and development of social ties, the fight against exclusion and health, social, cultural and economic inequalities; to achievement of equality between men and women; to maintenance and strengthening of territorial cohesion; environmental protection; to development of cultural or creative activities; and to development of initial or continuous training activities.”³²

Very generally speaking, this debate can be summarised by stating that in Luxemburg Social and Solidarity Economy enterprises may only be enterprises with a social or sustainable-development purpose, whatever the other requirements.

In short, lawmakers have a first choice to make between an SSE focused on economic issues and one based on a more holistic concept. Their second choice lies in the positioning of the Social and Solidarity Economy enterprise with respect to other forms of entrepreneurship, mainly capital-based enter-

32. Luxemburg, *Loi portant création des sociétés d'impact sociétal*, 12 Decembre 2016, article 1, paras 4 and 5. Click here.

prises, but also, mainly in the case of Socialist countries, public enterprises. Finally, they need to decide whether or not the SSE can embrace all forms of socio-economic activity.

Which common principles?

The fifth component of the definition of the Social and Solidarity Economy relates to the principles to which SSE enterprises must adhere. As far as the content of these principles is concerned, approaches vary widely.

For instance, let us take the guiding principles enunciated by the Cape Verdean Law in its Article 6³³: “social economy entities are autonomous, emanate from civil society and are distinct from the public and private sector, acting on the basis of the following guiding principles:

- a** – The primacy of people and social objectives;
- b** – Free access and voluntary membership;
- c** – Political and managerial autonomy from the State and other public bodies, except where, in relation to community production resources managed by and owned by local communities, the representative bodies delegate their management to a local authority;
- d** – Democratic control of their bodies by their members;
- e** – Reconciliation of the interests of members, users or beneficiaries and the general interest;
- f** – Respect for the values of solidarity, honesty, equality and non-discrimination on the basis of gender, ethnic origin, sexual orientation, cultural, social and psychological particularities, territory and age, social cohesion, justice and equity, transparency, shared individual and social responsibility and subsidiarity;
- g** – Autonomous and independent management by public authorities of any other entity outside the social economy;
- h** – The allocation of surpluses to the pursuit of the objectives of the social economy entities in accordance with the general interest, without prejudice to the guarantee of the self-sufficiency necessary for the provision of quality services, in an increasing and judicious manner, within a logic of development and sustainable growth;
- i** – The syndication by the courts of the acts of the internal life of the organisations;
- j** – Transparency and publicity of their accounts;
- k** – Cooperation with the State and other social and economic actors in the construction of new models of regulation and governance;

33. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 6. [Click here.](#)

I – The principle of subsidiarity.”

These relatively numerous principles have in part been drawn from those generally specified for social and economic activities, while other are more specific to the SSE.

Using general principles common to all definitions of the SSE

Autonomy with respect to the public authorities is frequently emphasised, as is the disinterested allocation of the enterprise’s surpluses to prevent their appropriation by the members. The legislation sometimes complements these with the principle of disinterested devolution when the enterprise is wound up (which is logical, since it is a consequence of the ban on surplus appropriation): the rules applicable to the legal entity that operates the enterprise stipulate that in the event of liquidation the remainder of the enterprise’s assets must be allocated to another legal entity with similar purposes³⁴. This category also includes democratic management, voluntary membership and the primacy of people.

The affirmation of ethical and moral principles

This category includes the especially ethical and moral affirmation of the principle of non-discrimination, the transparency requirement and the obligation to make the accounts public³⁵. Such affirmation is far from pointless, as it is intended to display the attachment of the Social and Solidarity Economy to these values, as well as a means of supporting them when compliance is less than total.

Indeed, it may be tempting in some cases for communities to form splinter groups, which may generate discrimination due to the exclusion of some (sets of) people. Similarly, some Social and Solidarity Economy entities operate informally, which is not conducive to the proper maintenance of accounts.

As well as these innovative principles, the other principles are specific to the SSE, and some are to be found in almost all national legislation, while others have been adapted to suit the local context.

The adaptation of principles to local realities

The endeavour to reconcile the members’ interests and the public interest, as well as attention to community-based organisations, are more specific to a local political or cultural context, which in no way means that they are less

34. Canada, Quebec, Social Economy Act, 10 October 2013, article 3. [Click here.](#)

35. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, Article 6, f) and j). [Click here.](#)

important to the countries that adopt them. The number of such contexts and their variations is infinite. Thus, it is quite possible to consider including principles that generate a link with the abovementioned “good way of living”.

Selecting principles: a political decision

Obviously, the content of principles is not neutral, and some laws supply very different frameworks for the Social and Solidarity Economy, particularly when influenced by the social-enterprise model. The countries most focused on the social enterprise or the charitable sector do not use the expression “Social and Solidarity Economy”.

In this respect, Luxemburg is interesting, as although its Law does use the term it supplies an unusual interpretation that is reflected in its principles: “conduct an ongoing business in the production, distribution or exchange of goods or services”; a social or sustainable-development purpose (to cite my somewhat summary description above); “manage their business autonomously and in such a way that they are completely free to select and revoke their managing bodies and organize and monitor all of their activities”; “follow the principle that at least half of the profits realized are reinvested in maintenance and development of the company’s business”³⁶. These principles are middle-of-the-road and ignore some of the generally enshrined principles such as democracy.

In this respect, the case of Uruguay is interesting. One of the specific characteristics of its Law on the Social and Solidarity Economy is the mention in Article 4(f) – Article 4 being its Statement of principles – that its purpose is to “promote gender equality and the social inclusion of people with insertion problems”³⁷. This principle has gained traction due to the convergence of the feminist movements with other SSE movements which are particularly present in some Uruguayan cooperatives. The feminist movements are 30 to 40 years old, and the laws enacted to promote gender equality or the inclusion of people with insertion problems are the result of activism by feminists, who view the SSE as a lever.

For its part, the final 2016 draft of the Moroccan framework law on the Social and Solidarity Economy emphasises training and education on a scale rarely found in law. Its Statement of principles, Article 3, stipulates that “in addition to the principles which are specific to them by virtue of their specific legal status, the legal persons governed by private law referred to in Article 1 shall

36. Luxemburg, *Loi portant création des sociétés d’impact sociétal*, 12 Decembre 2016, article 1. Click here.

37. Uruguay, Law No. 19.848 on the Social and Solidarity Economy, article 4, para f. Click here.

comply with the following principles in their training, organisation and operation: [...] Education and training of members, elected leaders, employees, beneficiaries and information of the general public.” Concerning the implementation of this educational principle, there are two schools of thought: there is a belief in improving the capacities and training of the SSE players, as well as in the dissemination of the SSE culture.

Beyond principles: defining purposes

Finally, it should be noted that, as well as principles, a law may specify the purpose of the Social and Solidarity Economy. One eloquent instance is the list in Article 4 of the Cape Verdean law³⁸:

- a** – Promote the integral development of human beings;
- b** – Contribute to the socio-economic development of Cape Verde by taking part in the production, distribution and consumption of socially necessary goods and services;
- c** – Promote education and training by promoting practices that consolidate a culture of solidarity, creativity and entrepreneurship;
- d** – Contribute to the practice and improvement of participative democracy;
- e** – Promote participation in and access to training, work, property, information and the fair management and distribution of profits without any discrimination whatsoever to the members of the social economy;
- f** – Promote the economic and social emancipation of communities;
- g** – Promote culture and sports.”

These highly specific purposes should not be confused with the principles mentioned in previous paragraphs, as they are not criteria which enable an enterprise to be characterised as belonging to the Social and Solidarity Economy. They constitute a general framework with little prescriptive value, yet which justifies the existence of such enterprises. They can also be used as a road map by the enterprises themselves, or by their federations.

Labels, approval and regulatory oversight

There is no general “Social and Solidarity Economy” approved status or label, and where it exists it is used in widely differing contexts and fulfils extremely varied functions. The first issue is the purpose of creating such a label. If its purpose is to promote the Social and Solidarity Economy or encourage its players, no law is required, and it may not even be up to the State to take that initiative. However, a label – or a label by any other name – may also have another purpose, for instance the identification of the enterprises concerned

38. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 4. [Click here.](#)

when they are not listed by law, or the provision of a national approved status in a federal State, the provinces of which have enacted different definitions, or even, at the supranational level, to cover a variety of national situations. In such cases, labelling could be required as a condition of access to certain public policies, and the use of initiative and oversight, however indirect, by the public authorities would take on its full meaning.

A mechanism for the creation of autonomous structures within the SSE

At first sight, labels may appear useless when the legislation lists the enterprises which belong to the Social and Solidarity Economy, in so far as all such enterprises are then known. However, even in such cases, autonomous structures may exist within the SSE, which have their own independent legal system and may be subject to special measures. For instance, this applies to France's socially useful solidarity-based enterprises (*entreprises solidaires d'utilité sociale*)³⁹. This system, known as the ESUS system – in some ways more stringent than that which applies to other SSE enterprises – enables enterprises with this status to access certain forms of public financing or enjoy advantages in connection with the collection of Employee savings. This entails increased State control, offset by extra advantages.

The same mechanism applies to certain specific Social and Solidarity Economy companies. For instance, in Luxemburg, it is applied to societal impact companies (SIS) to enable commercial companies to enter the SSE under certain conditions and enjoy tax benefits⁴⁰. This practice should not be confused with the sometimes mandatory registration of SSE companies on a list or register intended to make their names public or for statistical purposes.

Approval or labelling as a means of including enterprises in the Social and Solidarity Economy

Approval and labelling take on a whole new meaning when the definition of the Social and Solidarity Economy is entirely open. Indeed, in this case, inclusion in the SSE can only be determined case by case and approval or labelling can then be used as a means of identification. In Tunisia, for instance, the list of potential SSE enterprises⁴¹ is so wide-ranging that compliance with regulations has had to be included in its law, and that companies must be awarded a label to be considered to be SSE enterprises⁴².

39. France, *Loi no 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, Article 11, reference to Article L. 3332-17-1 of the Labour Code (Code du travail).

40. Luxemburg, *Loi portant création des sociétés d'impact sociétal*, 12 December 2016, Article 3 sqq.

41. Tunisia, *Loi no 2020-30 du 30 juin relative à l'économie sociale et solidaire*, 30 June 2020, articles 2 and 3. Click here.

42. Op. cit., article 3.

It may happen that lawmakers do not take this precaution, as in Luxemburg. One indication is to be found in membership of the sectoral federation, the *Union luxembourgeoise d'Économie Sociale et Solidaire*⁴³, however, this has no legal value. Ultimately, should a dispute arise concerning the application of a public provision or policy measure on the Social and Solidarity Economy, only a judge would have the authority to decide the matter and jurisprudence would therefore substitute for the law.

Anther mechanism: a regulatory framework

In this configuration, a special place needs to be reserved for hybrid situations in which any company may join the Social and Solidarity Economy sector while being bound by reference to regulations. This applies to the Spanish Law⁴⁴, which enables enterprises performing economic and commercial activities under standards which comply with the principles of the SSE to be integrated into the SSE if they are included in the social economy catalogue. Strictly speaking, this does not constitute approval, in so far as the catalogue specified by Spanish law is not individual in nature; however, it supply a ruling on categories of organisations not explicitly mentioned by law, yet which it includes in the Social and Solidarity Economy.

Towards a European SSE label?

In its Resolution of 5 July 2018, the European Parliament proposed that “a mechanism involving Member States should be established, through which entities that fulfil the relevant legal requirements can obtain the European Social Economy Label”⁴⁵. Although this label would therefore have the blessing of a public authority, the Parliament’s Stated objective is to override the various national legal statuses used by the Social and Solidarity Economy. As it would be difficult if not impossible for the European Union to set up a legal structure intended to operate smoothly at both the European and national levels, this label constitutes an appropriate solution. Nevertheless, the cooperation of the Member States would remain indispensable: for one, a label awarded to a national enterprise would have to be recognised by all the other Member States, but above all it would be up to the Member States to enact measures to protect the label, either by banning its use by other enterprises or sanctioning improper use by holders⁴⁶.

43. Union luxembourgeoise d'Économie Sociale et Solidaire – www.uless.lu

44. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, article 6. [Click here.](#)

45. European Parliament, Resolution of 5 July 2018 with recommendations to the Commission on a Statute for social and solidarity-based enterprises (2016/2237(INL)), Recital, Para A1.11. [Click here.](#)

46. Op. cit., Recommendations 11 to 17. [Click here.](#)

A LEGISLATIVE FRAMEWORK FOR SOCIAL AND SOLIDARITY ECONOMY ENTERPRISES

The enactment of a law on the Social and Solidarity Economy does not in itself provide an adequate framework for the various enterprises in the sector. One need only think of the enterprises included in Portugal's SSE: cooperatives, mutual-benefit societies, misericórdias, etc. All of them are subject to special provisions, such as the Cooperative Code (*codigo cooperativo*) in the case of cooperatives. The provisions applicable to each type of enterprise are juridical and technically specific, their purpose being to regulate the relationship between the members of the enterprise and the legal entity that is its legal form, as well as the relationship between the enterprise and other economic operators or the public authorities. The details of such provisions depend on the enterprises' legal forms as well as the national legal context, and a full inventory would be beside the point at this juncture. On the other hand, I do believe it is possible to identify a number of questions that all law-makers need to ask themselves when considering such legislation, as well as some of the solutions chosen for existing legislation.

Framework laws, special laws and provisions specific to each legal form: a full legal arsenal

Most often, Social and Solidarity Economy laws, whatever their actual names, were enacted long after the laws relating to the enterprises included in the SSE. In consequence, the principles enunciated by the framework law summarise those set up by each of the special laws concerned. The result of grouping various players on the basis of their common practices, an ESS law usually contents itself with expressing the principles that already underpin the special laws.

Special laws to complement the framework law

However, if positive law is applied: once a law on the Social and Solidarity Economy has been adopted, and since the natural course of action is to proceed from the general to the specific, in logical terms the law will appear to come first despite being, in chronological terms, second. In these conditions, the issue will arise as to the compliance of special laws with the general principles of the framework law. Of course, it will only arise in the case of SSE laws that include a list of enterprises considered to belong to the SSE

sector, but this is true of most such laws⁴⁷. Indeed, in such cases, it is conceivable that a specific law regulating a specific type of enterprise identified as being of the SSE type by the general law be inconsistent with the general principles expressed in the general law. For instance, in French law, the SSE Law refers to nonprofit associations (*associations régies par la loi du 1^{er} juillet 1901*) as Social and Solidarity Economy Enterprises. However, such associations are governed by the Law of 1 July 1901 rather than the SSE Law. The 1 July law does not require that the associations have any kind of economic activity, and in actual fact they very often do not. In such a case – and others are conceivable – it makes sense to wonder whether a structure founded under a special law applicable to it alone may be considered to be a Social and Solidarity Economy enterprise. Indeed, a contradiction arises between explicit integration into the SSE and failure to comply with its principles. There is no general answer to this question, which remains entirely subject to the letter of the legal texts under consideration.

Implementation of the framework law by means of provisions specific to each type of enterprise

On a more positive note, the laws specific to each form of Social and Solidarity Economy enterprise normally supply detailed measures that enable the general principles Stated in the framework law to be implemented in practice. The first principle enunciated by the Cape Verdean Law, for instance, “the primacy of people and of the social objectives,” supplies a useful framework, but cannot dictate how any particular enterprise should operate. It is therefore up to lawmakers to implement this, or to legal specialists to interpret it and show how it is translated into the provisions specific to a form of enterprise. For instance, in French law, the requirement that members supply their skills or activity reflects the personal character of a nonprofit⁴⁸, in contrast to capital contributions to a company.

We have reached the implementation of the SSE principles, and the law is frequently ill-suited to do more to enunciate those principles. Nevertheless, I shall be discussing some of the dilemmas with which SSE enterprises are faced, and to which a number of SSE laws have endeavoured to supply a solution. However, the reader needs to bear in mind that such legal provisions can only serve as an aid and that responses need to be designed by each player in the form of practices.

47. C. Caire, W. Tadjudje, “Vers une culture juridique mondiale de l’entreprise d’ESS? Une approche comparative internationale des législations ESS”, RECMA, 2019/3 (n° 353), pp. 74-88. [Click here](#).

48. France, *Loi relative au contrat d’association*, 1 July 1901, article 1.

SOME CONSIDERATIONS RELATING TO THE DESIGN OF SUITABLE LEGISLATIVE SOLUTIONS FOR EACH STATE

How to combine democracy and efficiency?

The Social and Solidarity Economy model is not set in stone and its promoters' sole aim is not to transcribe utopian principles into positive legislation. Although utopias are a definite source of inspiration and deserving of respect, the fulfilment of the goals of the SSE requires that the most material of realities be taken into account. Men and women will not be radically transformed by their involvement in the SSE, and the latter must therefore use and adapt to their specific motivations. In general, a law on the Social and Solidarity Economy supplies the general principles and basic characteristics of an SSE enterprise. By contrast and in complement, it is the business of the special laws specific to each form of enterprise concerned to strike the balance that enables such principles and characteristics to be implemented. Let us take, for instance, the principle of democratic governance that is to be found in most of the legislation. Its wording is illuminating as it gives the enterprise a distinctive identity, yet does not make it possible to determine the way in which it will operate in real life. Here are a few instances of the available options.

The implementation of democratic values

Although an SSE is collective and democratic, it will be entering legal transactions with third parties. The way in which decisions are taken internally and validly notified outside the enterprise therefore needs to be determined. A law specific to a type of enterprise may very well stipulate that the latter shall be legally bound with respect to third parties by the signature of a person appointed for this purpose by the members of the enterprise. Under this assumption, the appointment of the person authorised to commit the enterprise (often known as the chair) may take place in a democratic manner, and this is what implements the democratic character required by the Social and Solidarity Economy law. At the same time, the enterprise is frequently always bound by this person's signature even when the internal decision-making procedure has not been applied. This solution is justified (which does not mean that it is required) by the need to protect third parties and help secure economic exchanges. The democratic operation of the enterprise is therefore specified, but is not fully guaranteed, and failure to comply may have consequences only on relations within the enterprise.

Direct or indirect democracy? Democratic operation vs. efficiency

Democratic operation raises other issues relating to the efficiency of the enterprise. Two examples come to mind: the decision-making procedure and transparency. Concerning decision-making, the same debates occur within enterprises as within political societies as to whether democracy should be direct or indirect. The decision will partly depend on the size of the enterprise, but may also be the result of the lawmakers' or statute-writer's preference. For instance, Italian law on cooperatives enables cooperatives to be managed by the members' meeting alone⁴⁹. This idea made enough of an impression that it was included in the principles of European cooperative law in Section 2.4 (4) (a) as the default rule (applicable unless the statutes require another solution) for small cooperatives⁵⁰. This is not a very common solution as the capital-based model has heavily influenced the operation of cooperatives; nevertheless, it does reflect a growing demand for democracy.

However, indirect democracy also takes other forms that encourage greater participation by the enterprise's members, especially in large organisations. One frequently implemented solution is the deconcentration of the members' meeting into several meetings according to geography, activity or any other relevant criterion. The devolved meetings all have to make decisions concerning the same agenda and appoint delegates to hold the general meeting. Obviously, this solution, which experience has shown to be effective, has raised multiple technical issues and can be implemented in a variety of ways; the special legislation specific to this or that legal form that may opt for such a solution therefore needs to include all necessary specifics.

Choosing top managers: the chief democratic issue in SSE enterprises

The issue of how to appoint top managers is also a sensitive one and depends on the concept of democracy. Depending on the enterprise, the centrality of users to the management of the enterprise is more or less important and this plays an influential role. One of the stakes is the control of the enterprise by its users, which requires not only that they form a majority at the general meeting, but that they also be in the majority within the executive body. At the same time, the relevance of having an outsider's view of the management of the enterprise is also an issue, and capital-based enterprises' increasing habit of including a person external to the company in the executive body has raised this issue within Social and Solidarity Economy enterprises.

49. Fici, A., Chapter 9 – Italy. In G. Fajardo-García, A. Fici, H. Henry, D. Hiez, D. Meira, H. Muenker, et al. (Authors), "Principles of European Cooperative Law: Principles, Commentaries and National Reports", Intersentia, 2017, pp. 347-408. [Click here](#).

50. Op. cit.

The place of salaried staff: a variety of democratic approaches

The place in Social and Solidarity Economy enterprises of their salaried staff is another issue that has led to the design of many different solutions from one country to the next, and also from one legal form to the next, due to varying cultural and social contexts. At first sight, given the wage pressure to which the enterprise is subjected due to the dominance of the capitalistic model, it might appear that a more democratic enterprise should give its employees a greater say. German-style joint management is one instance of company democratisation. However, there is no guarantee that salaried staff will be fully integrated into all SSE enterprises, since not all of them are based on that principle. Another instance is the Latin American workers' cooperatives known as recuperadas, which have been purchased by their employees. Mexican law takes matters further by openly expressing support for self-governance as a principle all organisations in the sector need to include in their internal structure⁵¹. Nevertheless, there are other models, and user centrality may interfere with the integration of employees, as the latter's interests may well conflict with those of the users. Moreover, in many enterprises managed by non-specialists such as users or volunteers, giving too much weight to salaried staff is considered to be a risk, as their superior technical ability may strip the members of the management body of their effective power. In the case of nonprofit organisations, another issue arises: the fear that the participation of employees as members will jeopardise the nonprofit principle. For instance, in French law, the tax regime for nonprofits discourages all nonprofits from including more than 25% of their salaried workers in their management board.

Transparency: internal or external to the enterprise?

Another aspect of democratic operation is transparency. However, this concept can be understood in different ways and there are various schools of thought on this issue. First, transparency may be a requirement with respect to parties that are also outsiders. If third parties are not included in internal decision-making processes, an enterprise may at least render accounts concerning the manner in which it takes into account the interests of these third parties and even the interests of the community in its decisions. This system, which originated in capital-based companies practicing corporate social responsibility and solidarity, is included in the European legislation on

51. Mexico, Regulation of Article 25(B) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, Article 9. [Click here.](#)

social entrepreneurship⁵², in which such transparency ensures democratic governance. However, transparency may also be only a requirement internal to the enterprise, i.e. a duty to inform, in which case it constitutes an indispensable complement that ensures effective democratic governance. If the members of the general meeting are to be able to discuss matters, they must have all information concerning the issues being debated. However, this requirement may conflict with economic necessity, which requires a measure of discretion vis-à-vis the competition. A balance therefore needs to be struck, which can be determined only by law, between the duty to inform on the one hand and the duty of confidentiality on the other. This balance may also affect the allocation of a particular type of decision to the general meeting or the management body, as this choice necessarily affects the number of the people who are given the information. Limits to the duty to inform must necessarily be determined on a case-by-case basis.

How to reconcile manager motivation and limited profitability

Fair pay for the top management of the Social and Solidarity Economy?

Another sensitive issue is posed by top-manager remuneration. Lack of or limited profitability are an undoubted incentive to limit the pay of top management in the Social and Solidarity Economy. However, this is easier said than done in highly competitive sectors that require knowledgeable management. To attract skilled managers, it may be necessary to offer salaries that are not too different from those offered by capital-based companies of similar size in the same sector. As for nonprofits, which in theory are run by volunteers, fairness may require a more nuanced solution. If a company expects genuine and consistent involvement from its top management, imposing volunteer status is of necessity discriminatory, since such positions would be reserved for people with private means that enable them to devote their time to the enterprise free of charge.

Non-payment covered by special legislation

In the face of such disparate situations, laws on the Social and Solidarity Economy can only enunciate very general principles, if they say anything at all. A number of special instruments take a more direct interest, such as France's Law of 1947 on cooperation, especially in the case of the SSE, which stipulates that "The positions of member of the board of directors or member of the supervisory board shall be unpaid and only entitle their holders to the refunding of expenses on presentation of written proof, as well as to the pay-

52. European Union, Regulation (EU) No. 346/2013 of 17 April 2013 on European social entrepreneurship funds, Article 3(d). [Click here](#).

ment of a compensatory allowance for the time spent in the management of the cooperative. Each year, the general meeting shall determine a global sum for compensatory allowances.”⁵³This solution is especially enlightening, as it covers not only nonprofit SSE enterprises, but also those with limited profitability. The legislation on mutual-benefit societies took matters even further and even earlier⁵⁴ (Code on Mutual Societies, Article L.114-26); the principle of non-remuneration is also specified, and the limitations are even more stringent: remuneration may only be paid in the case of mutual-benefit societies over a certain size, and only a CEO or board member with permanent responsibilities may be remunerated.

Limitations on remuneration

Other laws concern themselves with remuneration practices. This, for instance, applies to societal impact companies (SIS) in Luxembourg. “The annual remuneration paid to employees of a societal impact company cannot be more than six times the amount of the minimum wage.”⁵⁵ Although no direct sanctions are specified for infringement of this provision, a number of mechanisms ensure compliance. First of all, the company’s mandatory annual report must include certification by the company auditor to the effect that this obligation has been met. The relevant minister then receives the report and may withdraw the company’s approval in the event of non-compliance. Under French law, socially useful solidarity-based enterprises (ESUS) are subject to a similar obligation which applies not only to their salaried workers but also their top managers⁵⁶.

How to guarantee that today’s investments will not enrich the members of tomorrow?

The asset lock: a limit on dividend payouts

By contrast, the company interest company created in the UK in 2006 has taken a measure that protects the company from its members’ appetites, although its primary objective is to guarantee the allocation of company assets to the interest of the community for which it was founded. This is the “asset lock”, which has been designed so that the CIC’s assets (including all profits and other surpluses generated by its activities) are used for the bene-

53. France, Loi n° 47-1775 sur le statut de la coopération, 10 September 1947, Article 6, Para 2. [Click here.](#)

54. France, *Code de la Mutualité*, article L.114-26.

55. Luxembourg, *Loi du 12 décembre 2016 portant création des sociétés d’impact sociétal*, article 5, para 1. [Click here.](#)

56. France, *Code du travail*, article L.3332-17, Paras 4-6.

fit of the community⁵⁷. This mechanism does not apply only to CICs, since allocation to the benefit of the community only needs to be transposed into allocation to the company purpose, it being understood that this purpose cannot be maximisation or sharing out between partners. In this way, the concept of the asset lock used by most SSE enterprises; it also acts as a powerful motive to include CICs in the SSE sector even though they are not nonprofits.

Although their purpose is positive – the allocation of resources to a duty – the means used are negative in so far as they prohibit various uses of the company's assets. Thus, dividends can only be paid out within certain limits, no one may be enriched by being allocated capital shares and, should assets remain further to the winding-up of the enterprises, they may not be shared out between the partners. The difficulty lies in determining which operations are permitted and which are prohibited. The only exception to the prohibitions and limitations is allocation to other enterprises subject to the same lock on their capital. In other words, only organisations whose assets may not be appropriated by their members may profit from the enterprise.

**Unshareability of reserves and disinterested liquidation:
further limits on enrichment**

Cooperative law includes a mechanism that fulfils the same function: the unshareability of reserves. As for nonprofit organisations, they must be wound up in a disinterested manner. Unlike capital-based enterprises, the transfer of which is regarded as a patrimonial issue and measured in terms of the advantage to their successive owners, a Social and Solidarity Economy enterprise is intended to last over time, with members succeeding each other. In such conditions, although the individual rights of each member of the enterprise must be protected, the protection of the actual enterprise leads to mechanisms being designed to ensure that a member's participation at a particular time does not lead to undue appropriation by a member at a later date. Indeed, it is only possible to demand that the rights of members be limited if the latter are assured that such limitation will not end up enriching another member.

However, one should be wary of concentrating on such practicalities without having an overarching vision in the form of a regional policy and legal framework on the Social and Solidarity Economy.

57. Office of the Regulator of Community Interest Companies, Information and guidance notes, Chapter 6: The asset lock, 2016. [Click here.](#)

EMERGING INTERNATIONAL RECOGNITION AND THE FUTURE OF INTERNATIONAL SSE LEGISLATION

The emergence of a regional policy on the Social and Solidarity Economy – The example of OHADA and of European law on the social economy

At the level of the African continent, the Organisation for the Harmonisation of Business Law in Africa (OHADA) is an attempt to gain an overall perspective by means of a regional policy and legal framework. OHADA, which is intended to draw up a uniform legal framework for all its Member States (currently 17 Central and West African countries), is chiefly geared to the traditional capitalistic model. However, in 2011, it adopted a uniform act (a regional law) on cooperative societies applicable to all Member States and which substitutes for their national legislation⁵⁸. The purpose of this Act was to promote and facilitate the development of such companies, which are usually local rather than capital-based companies – the latter being most often foreign to boot – and more informal. Ten years on, the results have been disappointing. Without ignoring the difficulties caused by the lack of public financing and coordination between the national and regional levels of the legislation, one of the main reasons for this relative failure is the lack of a genuine overall public policy. Although technically the text is interesting, it is not underpinned by any genuine political will to implement it, so that some authors have pleaded for the enactment of national laws on the Social and Solidarity Economy, with the parallel aim of covering all organisations neglected due to concentration on cooperatives alone⁵⁹.

The second attempt at a regional policy in the area of the social economy came from the European Union. EU law does not take into account the intrinsic characteristics of the social economy, e.g. a different attitude to profit. Article 54 of the Treaty on the Functioning of the European Union⁶⁰ is interpreted as opposing economically disinterested entities (nonprofits) to companies undertaking a for-profit activity. As a result, the second category includes, without differentiating between them and whatever their legal form, all profit-making companies, whether or not those profits are shared out. Whether they are cooperatives, mutual-benefit societies, social enter-

58. Togo, *Acte uniforme relatif au droit des sociétés coopératives*, 15 Decembre 2010. [Click here](#).

59. G. Caire, W. Tadjudje, "ODD dans la zone OHADA, de l'outil coopératif au paradigme ESS", Inter-Agency Task Force on Social and Solidarity Economy, draft paper, 2019.

60. European Union, Treaty on the Functioning of the European Union, article 54. [Click here](#).

prises or associations, all enterprises that engage in an economically viable activity that may even generate surpluses are lumped in with capitalist-type for-profit companies. However, social-economy enterprises do not seek to maximise or profit from capital; rather, their purpose is social.

Such indifference to the legal nature and purpose of the social economy, and hence of the particular economic and financial limitations that weigh on them, may be increased by jurisprudential and doctrinal interpretations that regularly convey the idea that the market norm is the for-profit company that maximises profits or the return on the capital invested. Thus, the capitalist-enterprise model has pervaded all European legislation. Despite the advantages to the general interest of the presence of such organisations on the territory of the EU Member States, and with the occasional identification of services of general economic interest, neither its company or organisation law, public-contract law or tax law draw any distinction between SSE enterprises and organisations from other forms of entrepreneurship.

In its opinion INT 871, *Towards an appropriate European legal framework for social economy enterprises*⁶¹, the European Economic and Social Committee suggests introducing into EU law a legal framework suited to better recognition of the enterprises and organisations in the social economy. This framework would be based on a new concept, “limited profitability”, which would define all enterprises that might turn a profit but are not intended to distribute such profits to their owners, as their purpose is solidarity-based or the general interest.

Conceptual reference documents at the initiative of the United Nations... and an international legal vacuum

Strictly speaking, there are no international standards or laws that define the Social and Solidarity Economy, any more than social enterprises or any other comparable institution. There is only – and even that has required a long time to come to fruition – a definition on which various UN agencies, programmes and funds have agreed within the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE).

This Task Force, which includes 16 UN and OECD agencies as well as many civil-society organisations, has used the definition of the SSE supplied during the International Labour Organisation (ILO) Regional Conference on “The social economy: Africa’s Response to the Global Crisis” organised

61. European Economic and Social Committee, *Towards an appropriate European legal framework for social economy enterprises (own-initiative opinion)*, INT/871-EESC-2019. [Click here](#).

in Johannesburg in 2009 and 2014: a “concept designating enterprises and organizations, in particular cooperatives, mutual benefit societies, associations, foundations and social enterprises, which have the specific feature of producing goods, services and knowledge while pursuing both economic and social aims and fostering solidarity”.

According to the same Task Force, SSE organisations and enterprises have three specific characteristics:

- they have explicit economic and social (and often environmental) purposes;
- in different forms and to varying degrees, they maintain cooperative, associative and solidarity-based relations between workers, producers and consumers;
- they practice democracy and self-governance in the workplace.

Although this definition does not constitute a legal standard in the strict sense, it is nevertheless an international conceptual reference. What is more, a number of factors suggest that such law is being to be written.

Copious acknowledgement of the SSE in United Nations Declarations

As well as being members of the United Nations Inter-Agency Task Force on Social and Solidarity Economy, a number of international bodies have shown interest individually in the SSE. This growing international interest in SSE is reflected in Statements recently adopted within international forums. We have already mentioned the commitment of the International Labour Organisation (ILO) to cooperatives, which has now been extended to the SSE; the United Nations Conference on Trade and Development (UNCTAD) is also taking an interest in the sector. Both organisations support the drawing-up of national legislation or measures in its favour. There is in particular an abundance of declarations promoting cooperatives and the SSE in general.

The ILO Centenary Declaration for the Future of Work adopted in June 2019 calls for “supporting the role of the private sector as a principal source of economic growth and job creation by promoting an enabling environment for entrepreneurship and sustainable enterprises, in particular [...] cooperatives and the social and solidarity economy, in order to generate decent work, productive employment and improved living standards for all.”⁶²

The Abidjan Declaration adopted during the ILO’s 14th African Regional Meeting in December 2019 calls for “promoting inclusive and sustainable economic development and growth, full and productive freely chosen

62. ILO, Centenary Declaration for the Future of Work, 2019, Part II, A, ix, page 3. [Click here.](#)

employment and decent work for all, through [...] promoting cooperatives.”⁶³

As well as the ILO, the United National Conference on Trade and Development (UNCTAD) has taken noteworthy positions several times, especially since 2014. During the 61st session of the Board of Trade and Development, particular attention was paid to the Social and Solidarity Economy⁶⁴.

The UNCTAD even specified the area of application of the SSE by stating that “the movement, which included cooperatives, community-based initiatives, agro-ecological projects, community development banks and fair-trade programmes, contributed to economic activities that created decent jobs, while seeking to meet social and environmental objectives. In general, it involved democratic economic management at the enterprise and community levels, and reinvestments in jobs and community projects, given that profit was not a primary motive.”

The support of the UNCTAD and its increasing acknowledgement of global development issues was taken even further in 2016. In the course of its 14th session, held in Nairobi in July 2016, support for the players in the Social and Solidarity Economy, such as associations and cooperatives of small producers, is cited as a path to structural transformation in developing countries. The report adds that such players could create more inclusive forms of economic activity and had displayed great resilience at the time of the global financial crisis of 2008-2009⁶⁵.

In 2016, the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), which took place in Quito (Ecuador) and is organised every 20 years, was also another step towards the acknowledgement of the SSE on an international scale. On this occasion, the International Leading Group on Social and Solidarity Economy advocated the inclusion of the SSE in the New Urban Agenda during a conference on “Social and Solidarity Economy, a key sector to implement the New Urban Agenda”. The SSE was acknowledged to be a core component of the New Urban Agenda Implementation Plan for an Urban Paradigm Shift. The final report of the Conference explicitly refers to the SSE in its Paragraph 58: “[...] We also commit ourselves to addressing the challenges faced by local business communi-

63. ILO, Abidjan Declaration, *Advancing Social Justice: Shaping the future of work in Africa Realizing the potential for a future of work with social justice*, 14th African Regional Meeting, Abidjan, Côte d'Ivoire, 3-6 December 2019, 1)djv), page 3.

64. United Nations, United Nations Conference on Trade and Development, Trade and Development Board, 61st session, Geneva, 15-26 September 2014.

65. United Nations, United Nations Conference on Trade and Development, 14th session, Nairobi, 17-22 July 2016.

ties by supporting [...] businesses and enterprises in the social and solidarity economy [...]"

In 2018, the General Assembly of the United Nations mentioned the SSE next to the social enterprises⁶⁶, and emphasised that "there is a growing drive for the development of a social and solidarity economy, which includes cooperatives and social enterprises. It recognizes the role of collective action and active citizenship in integrated economic, social and political empowerment of disadvantaged or fragile groups."

During the 59th session of the Commission for Social Development of 8-17 February 2021, the United Nations Economic and Social Council Stated in its Paragraph 24 that "Another alternative model of growth, aimed at finding a new balance between economic efficiency and social and environmental resilience, is the social and solidarity economy. The social and solidarity economy refers to enterprises and organizations, in particular cooperatives, mutual benefit societies, associations, foundations and social enterprises, that pursue economic and social solidarity through the production of goods, services and knowledge. By empowering individuals through increased control over decision-making processes and resources, the social and solidarity economy fosters economic dynamism, social and environmental protection and sociopolitical empowerment." Another step forward in the acknowledgement of the SSE by the UN.

Towards the adoption of international legal instruments on the SSE?

As well as declarative texts, other instruments also explicitly reference cooperatives or the SSE.

The ILO recommendation on the promotion of cooperatives of 2002 (No. 193) calls for the establishment and expansion of a separate, viable and dynamic, economic sector that includes cooperatives and responds to the social and economic needs of the community. It also considers that a balanced society requires the existence of strong public and private sectors, as well as strong cooperative, mutual and other social and non-governmental sectors.

UN Resolution 74/119 of 18 December 2019, "Cooperatives in Social Development", recognises that cooperatives, in their various forms, promote the fullest possible participation in the economic and social development of local communities and all people, and contribute to the eradication of poverty.

66. United Nations, General Assembly, 71st session, Item 19 of the provisional agenda, Sustainable Development, Entrepreneurship for Development: report of the Secretary-General, 2016, A/71/210.

UN Resolution 71/221 of 21 December 2016, “Entrepreneurship for Sustainable Development”, recognises social entrepreneurship and social enterprises.

UN Resolution 71/256 of 23 December 2016, “New Urban Agenda”, undertakes to promote “an enabling, fair and responsible business environment throughout the value chain, including businesses and enterprises in the social and solidarity economy, operating in both the formal and informal economies.”

The 10 Elements of Agroecology enabling transitions to sustainable agriculture and food systems that were adopted by the FAO Council during its 163rd session of December 2019 include references to the circular and solidarity economy.

An instance of cooperative law included in SSE law may serve as a lever and example for the design of international Social and Solidarity Economy legislation. Indeed, the ILO drove through the adoption of its Promotion of Cooperatives Recommendation No. 193 in 2002⁶⁷. Although it is not very binding, the acknowledgement and promotion of this legal instrument by international organisations such as the International Cooperative Alliance, or its use in conjunction with references in positive legislation to the principles it promotes, mean that the Promotion of Cooperatives Recommendation lays the foundations for powerful international cooperative legislation⁶⁸.

Despite all these international references, no international instrument as yet deals with all aspects of the SSE, especially its contribution to inclusive and sustainable development which positively impacts people and the planet. For this reason, the international SSE movement is pushing for the adoption of a draft resolution by the General Assembly of the United Nations.

Indeed, a resolution on the SSE would fill a major gap in the 2030 Agenda, which does not – with the exception of cooperatives – explicitly mention the SSE as a means of achieving the Sustainable Development Goals.

The adoption of a resolution on the SSE by the General Assembly of the United Nations would supply a policy guideline and learning opportunity for all member countries of the General Assembly, as well as provide guidance to the UN bodies concerning the priority areas of work on the SSE and document its contribution to sustainable development. Such a resolution would

67. International Labour Organisation, R193 – Promotion of Cooperatives Recommendation (No. 193), 2002. [Click here](#).

68. H. Hagen, “Guidelines for cooperative legislation”, 2012, 3rd edition, ILO.

help improve the design and implementation of policies and speed up the implementation of the 2030 Agenda and achievement of the SDGs. Today, we need a group of countries to support it at the United Nations.

The increasing concern of the United Nations for the Social and Solidarity Economy and the plan to have its General Assembly adopt an SSE resolution should enable the world to move on from “soft” law and a merely political acknowledgement of the SSE, and impel the writing of more prescriptive and even binding international texts and legal instruments.

At the same time, the inclusion in the agenda of the 2022 International Labour Conference of an item on “Social and Solidarity Economy (SSE) for a human-centred future of work” may also be an opportunity to draw up more prescriptive legal instruments, which may for instance take the form of one or more recommendations promoting the SSE.

I therefore support the emergence and adoption of more prescriptive and even binding legal instruments on the Social and Solidarity Economy.

Although the legal acknowledgement of the Social and Solidarity Economy is necessary, it is only a foundation. Of course, no one could consider building a house without a foundation, but foundations without a house to support soon crumble away and ruin the landscape to no purpose. Such an enshrinement would open up many possibilities to the players involved, but if the public authorities wish to support this highly promising entrepreneurial system, they must complement its conceptual framework with concrete measures, i.e. appropriate public policies.

APPROPRIATE PUBLIC POLICIES

Public policies on the Social and Solidarity Economy have given rise to a fairly large number of publications⁶⁹, especially concerning individual public policies. It is not the place of this Guide to cite them all; I shall only be referring to them as required and only their specific place needs to be described. Although public policy is not this Guide's primary object, it is nonetheless a natural development of legislation on the Social and Solidarity Economy; in this sense, both aspects are inseparable and a few words are therefore needed. When lawmakers make their choices, they also do so in accordance with the public policies they are considering; at that stage, they therefore need to be able to become aware of the main lines of public policies.

What role can public policies play in the development of the SSE? Since the enactment of an SSE law supports the development of the SSE, it would appear logical that complementary measures are useful. However, it is just as well to confirm this intuition as well as determine the points which need to be emphasised first. For this purpose, a recent study by the CIRIEC can be used⁷⁰, which identifies four institutional barriers to the development of the SSE. This is a relevant study in so far as it is based on surveys at the actual enterprises. It may be objected that only the European context is discussed. However, this includes a great many different national situations and histories, which guarantees that the responses received were fairly representative.

69. In particular: GSEF & UNRISD, *Guidelines for Local Governments on Policies for Social and Solidarity Economy*, January 2021; R. C. Avila & J. L. Monzón, *Best practices in public policies regarding the European social economy post the economic crisis*, Working Paper, CIRIEC No. 2019/25.

Y. Poirier, "Reconnaissance juridique et politique de l'économie sociale : (ESS) Un aperçu de l'état des lieux et éléments d'orientation", Réseau intercontinental de promotion de l'économie sociale solidaire (RIPESS), January 2016.

70. R. Chaves & J. L. Monzon (Directors), "Best practices in public policies regarding the European Social Economy Post the economic crisis", Working paper CIRIEC N° 2019/25, esp., pp. 43 sqq.

→ **Lack of awareness and understanding:** lack of awareness is most obvious and generally prevalent in countries that do not have a significant SSE tradition. However, this is also true of the other countries, with two specific focuses: statistics and teaching.

→ **Lack of leadership, strategies and specialised government agencies:** such leadership is not lacking in the actual SSE enterprises, but among the public authorities. In the absence of an institution powerfully involved in the SSE, the issue does not find its way into public policymaking. This has at least two material consequences: first, the vulnerability of existing bodies to political change; also, the lack of a consistent national strategy and the resulting weakness of the SSE in cases of arbitration.

→ **Lack of or inadequate financial and tax systems:** two factors come into play here. On the one hand, governments are increasingly favouring private financing. Moreover, there are few appropriate tax systems.

→ **Institutional obstacles and sectoral regulations:** changes to regulations may negatively impact SSE enterprises in two ways. Either the regulations specific to an activity sector may introduce new standards that are unfavourable to SSE enterprises, and even indirectly cause them to morph into capital-based companies; or the regulatory changes weaken the identity of SSE enterprises and tend to make them more like capital-based enterprises.

Each of these four points can often be subdivided into several issues. However, I shall not be basing my presentation on these subdivisions; rather, the various issues will recur under the five aspects I shall be discussing: the goals of an ESS law, the appointment of relevant departments, fair taxation, the financing of Social and Solidarity Economy enterprises and organisations, public contracts as a lever and the importance of statistics.

Moreover, one should not lose sight of the fact that the adoption of such policies largely results from the expression of a demand by the actual sector, or even the achievement of a favourable power balance and a modicum of agreement within the sector⁷¹.

A further consideration should be added concerning the situation of the more fragile countries. Often, States are not structured to the same degree or their regions are developing at different paces; indeed, such situations

71. Y. Poirier, F. Wautiez & B. Alain, "Legislation and public policies in support of social and solidarity economy, First steps & elements of a practical guide", January 2018.

are not exceptional. In such circumstances, there is a strong risk that the adoption of an SSE law will prove a symbolic but hollow Statement for lack of (financial, human and local) resources. Great care should therefore be taken with the implementation of the law, i.e. the subsequent public policies. Special attention should be paid throughout the process to the training of the staff in charge of implementation: at the local level, ill-informed civil servants are likely to apply the law as they understand it, which means in the way that suits them best, and very often the SSE players will have a better knowledge of it, which exacerbates frustration and causes cases of misapplication to multiply

THE PURPOSES OF SSE LEGISLATION

What may be the purposes of SSE legislation? The Statement of purpose of an SSE law may adopt one of two approaches and State either minimum or maximum goals.

Minimum purposes

At first sight, the purposes of an SSE law set a seal on the support of the State and public authorities for the SSE sector, so that this issue may appear to merely replicate that of “why support the development of the SSE?”. However, it does not quite do so and the nuances will be made more apparent by means of a number of examples. The most explicit purpose is to be found in the law of Quebec, since it is Stated in as many words^{72/73}:

- “(1) to promote the social economy as a lever for socioeconomic development;
- (2) to support the development of the social economy by creating and adapting policy tools with a view to fostering coherence in government action and transparency; and
- (3) to facilitate access, for social economy enterprises, to the Administration’s measures and programs.”

Three lessons are to be drawn from this: the SSE is to be developed as a tool for socioeconomic development by creating specific intervention tools or adapting existing tools to encourage access to existing measures. No other

72. Quebec, Social Economy Act, Article 2.2, enacted 10 October 2013. Click here.

73. Other laws mention the “objectives” of the legislation, but in practice and in this context both may be held to mean the same. For instance: Mexico, Law on the Social and Solidarity Economy, 23 March 2012, article 2.

positive law expresses its purpose in so general a manner, yet it is clear that it is sometimes even more far-reaching.

Maximum purposes

The French example: a sweeping reform law

The most caricatural instance is to be found in French law. One need only review the content of the 2014 Law⁷⁴: in quantitative terms, the description of the measures specifically intended to develop SSE enterprises accounts for less than 20% of the full text. The rest comprises amendments to the laws specific to each form of SSE enterprise. However, this law is also the first to regulate new SSE activities: complementary local currencies⁷⁵, local support system⁷⁶, eco-organisations⁷⁷, fair trade⁷⁸, the cigales (associations that finance and support SMEs)⁷⁹. Obviously, this raises questions as to the spectrum of SSE enterprises, and also as to the usefulness of an SSE law. Instead of supplying only a framework for the development of the SSE, the French Law is a sweeping one that implicitly assumes that by enacting multiple provisions the lawmakers are multiplying the law's impact.

The Portuguese example: the use of complementary legislation

A similar consideration is to be found in Portuguese law⁸⁰, as although it does not comprise complementary measures like its French counterpart it requires the enactment of complementary legislation within 180 days of the coming into force of the SSE Law⁸¹, with particular focus on special systems on the one hand and sponsorship and public-usefulness status on the other.

Detailed goals

Unlike the French law, the Portuguese law does not include a maximum spectre of purposes. Rather, it details the objectives to be pursued by the public authorities and supplies reasonably full guidelines to these objectives⁸²:

"[...] in accordance with their powers in relating to policies encouraging the social economy, the public authorities shall:

- a** – Promote the principles and values of the social economy;

74. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014.

75. *Op. cit.*, article 16.

76. *Op. cit.*, article 61.

77. *Op. cit.*, articles 88-92.

78. *Op. cit.*, article 94.

79. *Op. cit.*, article 94.

80. Portugal, Basic Law on the social economy, n° 68/XII-1, 8 May 2013. [Click here](#).

81. *Op. cit.*, article 13.

82. *Op. cit.*, article 10 para 2.

- b** – Encourage the development of mechanisms, the purpose of which is to increase the economic and financial autonomy of social economy entities, in accordance with Article 85 of the Constitution of the Portuguese Republic;
- c** – Facilitate the creation of new social-economy entities and support initiatives to diversify the sector, in order to promote innovative responses to the challenges encountered by local, regional and national communities and remove the obstacles to the setting up and development of the economic activities of social economy entities;
- d** – Encourage research and innovation in the social economy, vocational training at social economy entities, and support the access of such entities to technical and organisational-management innovations;
- e** – Strengthen the dialogue between public bodies and the representatives of the social economy at the national and EU levels, to encourage mutual understanding and the dissemination of good practices.”

Purposes aligned with national concerns

A number of more context-dependent national concerns may become apparent, such as emphasis on the integration of women and young people, as in the case of the tasks of the Higher Council for the SSE (*Conseil Supérieur de l'ESS*) in France⁸³.

Should these purposes be explained?

The main advantage of explaining purposes is that this improves the guidance supplied to the public authorities in charge of implementing the law. It may protect SSE structures by deterring the public authorities from giving up one of the purposes. Conversely, it may hold back the extension of public policies. However, the choice between enunciating or not enunciating purposes will probably depend more on the legal culture, as some traditions restrict the law to a purely prescriptive, and hence purpose-free, content, while others habitually embed prescriptive content in more educational provisions.

83. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, Article 74. [Click here.](#)

THE APPOINTMENT OF RELEVANT DEPARTMENTS

The chief obstacle to the development of the SSE is the lack of a leading public body, which prevents the implementation of well-designed and proactive policies. There is therefore no question as to whether or not it is useful to appoint such public bodies: the answer is a resounding “yes”. The only remaining issues are the identity of these leading bodies and the nature of their task. Several questions need to be asked:

Should the State have a general competency?

Several countries have made that choice: under Cameroonian law, the State is in charge of promoting the social economy⁸⁴. Mexico’s legislation is broadly similar⁸⁵. Spain simply designates the public authorities⁸⁶, but the idea is the same and has simply been adjusted to the preferred local terminology. Other countries make no reference to this whatsoever, e.g. France.

The advantages

The advantage of mentioning the State, or any other word referring to the public authorities as a whole, as the holder of a competency or in charge of pursuing objectives is that the State as a whole is entrusted with that function. The Social and Solidarity Economy should not be the purview of a Ministry of Philanthropy or Poverty; it can only develop to the full if a large number of State bodies and authorities are involved. Indeed, such development requires the involvement of many aspects of public policy dependent on multiple jurisdictions, and rather than supply a fixed list it is more expedient to assign them to the State as a whole.

84. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun*, Loi 2019/004 du 25 avril 2019, article 8. [Click here](#).

85. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, Article 9.

86. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, article 8, para 2. [Click here](#).

The risks

There is, however, a drawback to referring to the State as a vast, abstract entity: the risk that responsibility may become diluted. If everyone is responsible for the SSE policy, it will be all too easy for everyone to rely on other institutions and refer the performance of any necessary arbitration to their colleagues.

In other words, it is desirable that the State should be responsible for promoting the SSE, but matters absolutely need to be taken further.

Which relevant departments?

Social and Solidarity Economy laws frequently appoint a joint body as a central component: the Higher Council for the Social and Solidarity Economy in France⁸⁷, the National Council for the Social Economy in Cameroon⁸⁸, the National Social Economy Institute in Mexico⁸⁹. However, the composition of these bodies varies widely, which affects their competencies. The case of Cameroon, where the Council's creation, organisation and operation are dependent on the President of the Republic and an implementing decree, On the other hand, France and Mexico present a useful contrast.

In France, the Higher Council for the Social and Solidarity Economy includes in particular (L. 2014, Article 4, Para VI):

- 1° Representatives appointed by the National Assembly, the Senate, the Economic, Social and Environmental Council and associations representing the Territorial Communities at the national level;
- 2° Representatives of the various legal forms of Social and Solidarity Economy enterprises mentioned in Article 1 of this Law, proposed by them;
- 3° Representatives of the organisations representing the employees and employers of the Social and Solidarity Economy, proposed by them;
- 4° Representatives of the National Council of the Regional Chambers of the Social and Solidarity Economy;
- 5° Representatives of other national consultative bodies competent to deal with issues relating to mutual-benefit societies, cooperatives, foundations, associations and integration through economic activity;
- 6° Representatives of State departments that contribute to the preparation or implementation of public policy on the Social and Solidarity Economy,

87. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 4. [Click here.](#)

88. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun*, Loi 2019/004, 25 April 2019, Article 7. [Click here.](#)

89. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012, Article 13 sqq. [Click here.](#)

including its international dimension;

7° Qualified persons chosen among experts in the Social and Solidarity Economy, some of whom are chosen for their experience of the European dimension of the Social and Solidarity Economy.”

Mexico’s National Social Economy Institute takes a different form. Article 16 of the Law of 2012 stipulates that “In order to achieve its objective and exercise its competences, the Institute shall comprise the following bodies:

- I. An Advisory Board, composed of the Director-General, six advisors elected in an honorary capacity by the National Congress and ten advisors appointed by the Secretary of the Economy;
- II. A Director-General, freely appointed and dismissed by the Chief Federal Executive at the suggestion of the Secretary for the Economy;
- III. The bodies, administrative units and officials required for the achievement of its purpose.”⁹⁰

The composition of the Mexican National Institute is not so detailed, as the Law is far more concerned with its internal structure. The general differences, however, are visible enough: whereas the French Higher Council endeavours to ensure that the players concerned are as well-represented as possible, including local elected officials and civil servants from the ministries, Mexico’s National Institute comprises only civil servants. The former resembles an independent administrative authority, the latter a more traditional administrative body.

What are the consequences of directly involving a ministry?

The appointment of a collective body is beneficial in that it supplies a basis for collective discussion and action. However, such collective bodies often only play a preparatory and consultative role. This is a valuable function, but there must also be a decision-making body within the government to act as a driving force.

Two possibilities arise: the SSE law may specify the relevant minister, such as the Minister of Labour and Immigration in Spain⁹¹, the Secretary of the Economy in Mexico⁹², the Minister of Municipal Affairs, Regions and Land Occupancy in Quebec⁹³; or it may refer more generically to the Minister in charge

90. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012, article 16. [Click here](#)

91. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, article 6. [Click here](#).

92. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, article 17. [Click here](#).

93. Quebec, Social Economy Act No. 27-2013, 10 October 2013, article 6. [Click here](#).

of the SSE, as in France⁹⁴. Both solutions have their advantages and drawbacks and combine legal safety and flexibility in varying degrees. Indeed, the choice of the ministry in charge of the SSE may change according to political agreements or changes to the concept of the SSE. In any case, it is essential that a relevant ministry be appointed to guarantee administrative support for the SSE. To guard against any loss of political support, it is also advisable to involve it in the sector's structure in order to guarantee the long-term existence of a department, as in Luxembourg⁹⁵.

Tunisia is one instance of a country that has embraced both solutions, with on the one hand the Higher Council of the Social and Solidarity Economy, which is a joint body⁹⁶, and on the other the Tunisian Agency for the Social and Solidarity Economy⁹⁷. The latter is unusual in that, although it answers to the Minister in charge of such enterprises, it is a public entity with financial and administrative autonomy.

Which competencies should be given to the appointed body?

A distinction needs to be made between the competencies specified by an SSE law and those subsequent to government choices. Competencies derived from an SSE law generally apply to non-governmental bodies, or are highly technical.

Non-governmental bodies are not subject to political vagaries, so that they are easier to include in a reference SSE law. This applies for instance to the Panel of Social Economy Partners in Quebec, which advises the Minister on “any question on the subject of the social economy”.⁹⁸ The French Law is far more detailed⁹⁹: the Higher Council for the Social and Solidarity Economy is in charge of “ensuring dialogue between the players in the Social and Solidarity Economy and the national and European public authorities”. In the following paragraph, the French Law specifies that it “shall be consulted on all draft laws and regulations common to the Social and Solidarity Economy, as well as all draft provisions concerning social entrepreneurship”; and that “it shall publish a report on the evolution of the taking into account of the

94. France, *Loi n°2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 1. [Click here.](#)

95. Luxembourg, *Loi portant création des sociétés d'impact sociétal*, 12 Decembre 2016, article 12. [Click here.](#)

96. Tunisia, *Loi n° 2020-30 du 30 juin, relative à l'économie sociale et solidaire*, 30 june 2020, article 7. [Click here.](#)

97. *Op. cit.*, article 8.

98. Quebec, *Social Economy Act No. 27-2013*, 10 October 2013, article 11. [Click here.](#)

99. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 4 (amended by Law No.2018-699 of 3 August 2018). [Click here.](#)

law and policies of the European Union at three-year intervals”. Paragraph 3 complements these provisions by stipulating that it “shall contribute to the definition at three-year intervals of a national development strategy for the Social and Solidarity Economy”; it “shall be in charge of drawing up a report on equality between men and women in the Social and Solidarity Economy at three-year intervals.” Although it has a power of initiative, this can only be used to issue opinions and it has no decision-making powers. Its only contribution as a “conductor” is the drawing-up of a code of good practice to which SSE enterprises must measure their compliance¹⁰⁰; i.e. it can only make decisions in the area of soft law.

The example of Quebec: full and successful development

The most successful instance of institutional development is probably that of Quebec. This is based on three complementary structures: the Minister (Art. 6), the government (Art. 7) and the Panel of Social Economy Partners (Art. 11). These provisions specify the competencies of each of these bodies and impose a positive obligation on the government: “all ministers must, in their actions and with respect to any agency referred to in section 4 [the administrations] for which they are responsible, recognize the social economy as an integral part of the socioeconomic structure of Québec by taking it into consideration in measures and programs, when updating those measures and programs, and in developing new tools for enterprises.¹⁰¹ This means the social economy must be taken into account and supported by all public policies. Moreover, a specific public policy is required: a five-year government action plan¹⁰², including the publication of an official report no later than 18 months before the review, in the preparation of which all public and private partners must take part.

FAIR TAXATION

Does the SSE require special tax law?

Taxation is one of the most controversial issues relating to the Social and Solidarity Economy, where a balance must be struck between fair taxation and undue privilege. The positions on either side are far less entrenched than may appear at first, and a certain amount of flexibility needs to be exercised when addressing this question.

100. France, *loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 3. [Click here.](#)

101. Quebec, Social Economy Act No. 27-2013, 10 October 2013, article 7. [Click here.](#)

102. Quebec, Social Economy Act No. 27-2013, 10 October 2013, article 8. [Click here.](#)

For instance, in 2006, it was being said in France that on the booming personal-care market, historically understood to be unprofitable and therefore the preserve of nonprofits, “there is bound to be stiff competition in this sector between the SSE and capital-based companies. The former operate under a tax system deemed advantageous by the latter. Conversely, the financial resources of the SSE appear derisory compared with the clout of capital-based companies, and the SSE is often unable to advertise itself. Companies newly arrived on the market are being accused of sacrificing quality to quantity in order to remain profitable. A war is raging.”¹⁰³

Concerning the arguments in favour of a specific tax system for social-economy enterprises, one can mention: beneficial social and environmental effects; e.g. in terms of achieving the SDGs; lack of profitability or limited profitability, which prevents the influx of private capital; the costs generated by democratic decision-making processes; etc. Although convincing, such arguments are not neutral and induce choices as to the extent of the beneficiaries and the tax systems applied. They also need to be balanced against the counter-arguments set out in connection with the same fiscal choices.

Other arguments have been expressed against a special tax system: discrimination against capital-based enterprises, despite the latter’s proven efficiency and ability to satisfy the requirements of the majority; the risk of attracting enterprises not driven by the values of the SSE to the sector; the stigmatisation of SSE companies rather than the showcasing of their advantages, etc.

Obviously, the arguments for and against special SSE tax systems cannot, in actual fact, be truly understood in so general a manner. Fiscal regulations are highly complex, relating as they do to VAT, the taxation of a company’s results, tax deductions for donations to SSE enterprises, the processing of rebates and much more. Moreover, SSE companies themselves can also be very different: they may be non-profitable or have limited profitability, constitute strong or weak competition for capital-based companies, operate within a local base or engage in international activities, etc. None of the above arguments yields a similar analysis of each actual situation, and it is up to the lawmakers or public authorities to make detailed choices.

What would be the conditions for specific tax legislation?

The arguments in favour of special tax legislation for the Social and Solidarity Economy are convincing enough to be transposed into law; however, special

103. “L’Économie Sociale et Solidaire, en quoi jeunes dirigeants sommes-nous concernés?”, Interdépendances n° 61, May-June 2006, p. 10.

attention must be paid to the conditions to be fulfilled in order to qualify. This at least deals with the risk of opportunism. One instance is the Belgian legislation. Belgium's legislation on cooperatives used to be highly flexible¹⁰⁴, on the basis of the idea that cooperative members should be able to design their own organisation. A number of not particularly cooperative enterprises soon availed themselves of this loophole in order to enjoy the benefits of the special tax system. To counter this unwanted side-effect, the Belgian lawmakers set up an approval system for cooperatives¹⁰⁵, that imposed compliance with the cooperative principles and the special tax system was applied only to approved cooperatives.

Beyond such protective measures, attention also needs to be paid to the actual operation of genuine SSE enterprises. The complex American provisions on tax breaks for charities require not only nonprofit status but also restrict the goals charities are able to pursue. Thus, they do not only concern themselves with the organisation's formal operation, but with its purpose: should an organisation that combats poverty in a particular geographical area be accorded the same treatment as a body that promotes the bearing of firearms, even if the latter is a nonprofit? Needless to say, the answer will not be the same in each country.

My last example is a ruling issued in 2010 by the Court of Justice of the European Union¹⁰⁶, the European Union's highest court of law. This constitutes an interesting solution as it establishes oversight by the European Union of national tax systems, over which it has no direct jurisdiction, on the basis of competition law and using the concept of State aid. European Union law considers that all favourable fiscal treatment of a company constitutes State aid: although the State may not be directly aiding that company, it is supplying indirect aid by exempting it from a tax that other enterprises must pay. This amounts to distortion of competition. Although not all State aid is prohibited, all of it is strictly controlled, whether in the form of general exemptions or individual authorisations. In this case, the issue of the compliance with EU law of an Italian fiscal measure in favour of certain cooperatives was raised

104. Belgian law on this point was comprehensively overhauled in 2019 and cooperatives are now regulated far more stringently. For further details consult: T. Tilquin, J.-A. Belcorde & M. Bernarts, "A new paradigm for cooperatives societies under the new Belgian Code of companies and associations", *IJCL*, 2020, Issue 3.

105. Belgium, *Arrêté royal du 8 janvier 1962 fixant les conditions d'agrément des groupements de sociétés coopératives et des sociétés coopératives*.

106. CJUE, 1st Ch; 8 Sept. 2011, Ministero dell'Economia e delle Finanze and Agenzia delle Entrate vs. Paint Graphos Soc. coop. arl. et al., Joined Cases C-78/08 to C-80/08, OJEU 311, 22 Oct. 2011, p. 6; Rev. Sociétés 2012. 104, Note G. Parleani.

before the Court of Justice; even more unusually and interestingly, the cooperative in question was not non-profitable. After listing the original characteristics of cooperatives according to the specific EU regulations¹⁰⁷, the Court of Justice came to the conclusion that this particular tax system was licit in so far as the actual cooperative was in a particular situation:

“In the light of those special characteristics peculiar to cooperative societies, it must therefore be held that producers’ and workers’ cooperative societies [...] cannot, in principle, be regarded as being in a comparable factual and legal situation to that of commercial companies – provided, however, that they act in the economic interest of their members and their relations with members are not purely commercial but personal and individual, the members being actively involved in the running of the business and entitled to equitable distribution of the results of economic performance.”¹⁰⁸

In which texts should the requirement for a special tax system be specified?

It is not enough to define the specific provisions to be enacted in order to take into account the special characteristics of SSE enterprises; the appropriate type of provision also needs to be determined. This will often depend on the importance accorded to the SSE and on the legal level at which it is enshrined. In view of the scarcity of constitutional provisions relating to the SSE, it is hardly surprising that there are hardly any relating to its taxation. A single instance, however, is to be found concerning cooperatives in Article 146 of the Brazilian Constitution:

“A complementary law shall: III. establish general rules for tax legislation, particularly as to: [...] c. adequate tax treatment for the cooperative acts performed by cooperative entities.”¹⁰⁹

This is an inspiring example that goes some way towards compensating for the lack of tax-related provisions in most SSE legislation. Although some authors do connect the establishment of SSE-specific fiscal measures with the setting-up of dedicated public institutions¹¹⁰, this is only an indirect effect. It seems to me that matters can be taken further without, however, going into too much detail. This is true of the Portuguese Law that specifies that

107. Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society, OJ L 207, p. 1.

108. Point 61 of the *Paint Graphos* case, viz. supra.

109. Brazil, *Constituição do Brasil*, 1988, article 146, para c).

110. C. Caire & W. Tadjudje, “Vers une culture juridique mondiale de l’entreprise d’ESS? Une approche comparative internationale des législations ESS”, *RECMA*, vol. 353, n° 3, 2019, pp. 74-88.

“social-economy entities shall have a more favourable fiscal status defined by the law in accordance with their specific status and nature.”¹¹¹

It would also be possible to supply a few general guidelines on desirable changes or the criteria to be given priority, but in view of the diversity of the existing situations one cannot consider going further than that. Only detailed measures specific to each type of enterprise will be truly able to establish a tax status that can be applied by the enterprises and, if necessary, overseen by the law courts.

FINANCING SSE ENTERPRISES AND ORGANISATIONS

Knowing the needs of SSE enterprises in each country in order to draw up an effective public policy

The difficulties encountered by SSE enterprises in their quest for funding are almost consubstantial with their very existence. However, a general Statement as to their lack of funding takes on an absolute quality that makes it difficult, if not impossible, to design an appropriate response. The most recent studies therefore emphasise the variety of the existing situations. Thus, even before highlighting the difficulties, it should be noted that funding sources vary according to the legal form of the enterprise¹¹². Moreover, ESS France has undertaken a highly detailed study in France itself¹¹³. Such a study can be used as a methodology for the preparation of an appropriate public policy, as it endeavours to distinguish exact requirements: deadlines for the payment of subsidies to associations, the lack of own funds that can serve as collateral for bank loans, special needs at the time of starting up or upscaling, etc. Whatever the conclusions – since in any case they will vary from one country to the next – detailed knowledge of actual financing requirements is required to design an effective public policy.

From public subsidies to hybrid financing for SSE enterprises

Public financing policies cannot apply only to the SSE and must of necessity be coordinated with the economic and governmental structures of each country or continent, as well as with other public policies. The following proposals therefore rely only on methods traditionally used to finance the SSE,

111. Portugal, Basic Law on the social economy, No. 68/XII-1, 8 May 2013, article 11. [Click here.](#)

112. International Labour Organisation, “Social finance for social economy, working paper No.67”, 2015.

113. ESS France, “Le financement des entreprises de l'Économie Sociale et Solidaire”, Report by the Committee chaired by Frédéric Tiberghien, 2017.

and choices need to be made for each actual situation. Subsidies have long been considered to be the source of choice for the financing of the SSE, as well as a childhood stage to be left behind when an enterprise enters the market. One of the contributions of the SSE has been to expose the falsity of this opposition, as many forms of production require hybrid financing –both public and private– to accommodate the complex nature of the goods of services produced, which may be in both the public and the private interest. Indeed, people need to remember that subsidies are not specific to the SSE: we are all aware of the existence of agricultural, export or oil-exploration subsidies.

Should subsidies be defined?

French law does so: “Subsidies, within the meaning of this law, are optional contributions of any kind, valued in the act of attribution, decided by the administrative authorities and the bodies responsible for the management of an industrial and commercial public service, justified by the general interest and intended for the performance of an action or investment project, as a contribution to the development of activities or for the overall financing of the activity of the beneficiary private-law entity. Such actions, projects or activities shall be initiated, defined and implemented by the beneficiary private-law entities. These contributions may not constitute remuneration for individualised services meeting the needs of the authorities or bodies granting them.”¹¹⁴

The advantage of defining a subsidy is that it is given a legal framework and differentiated from other financial flows between the State and an enterprise. Indeed, a monetary transfer between the State and a Social and Solidarity Economy enterprise may be underpinned by very different realities and not constitute a subsidy. For instance, when the State contractually remunerates a cooperative that takes in young offenders or sorts waste, this is usually not a subsidy, but payment for a service supplied to the community, a service that might also be supplied by a capital-based company. It is important that this distinction be made as there is a twofold risk: for one, the conversion by the State of a subsidy into payment for the supply of services reduces the enterprise’s action to implementing tasks defined by the State; also, the enterprise’s economic activity may be concealed by a mistaken belief that subsidies account for all of its resources.

¹¹⁴. France, *Loi n° 2000-321 relative aux droits des citoyens dans leurs relations avec les administrations*, 12 april 2000, art. 9-1.

Donations and legacies

In some countries and sectors, these are a major source of funds. They are private in origin and may be made by individuals or legal entities such as companies. Public policy plays an important part in their development or otherwise by facilitating or even encouraging them.

Strictly speaking, donations are not banned unless the public authorities display reticence concerning certain Social and Solidarity Economy enterprises, or with regard to certain sources of funding (e.g. funding from overseas); further limitations may also be placed by restrictions on the freedom to dispose of one's assets, for instance in order to protect family members. The funding of certain activities may also be regulated, as in the case of political parties. Certain activities may also be rejected as being nefarious and their funding by donations discouraged by religious or moral precepts which may even have been transposed into law. Conversely, supportive public policies may be set up, especially in the form of tax incentives. Taxation of certain donations may be reduced, and rebates on income tax may even be granted to donors.

Are donations a good or a bad thing? The argument in favour would be that private contributions to SSE enterprises can supplement public support. Conversely, any fiscal incentives to private donation ultimately oblige all citizens to contribute to the preferences expressed by the donors.

Social impact bonds and other similar mechanisms

Over the past ten years or so, a new financing system has emerged in the form of "social impact bonds". However, these are being seriously questioned. In May 2019, Nadine Pequenez, who has made a film¹¹⁵ on the subject, counted 151 instances in 29 countries.

What exactly are social impact bonds? Social impact bonds are investments made by private individuals that complement public financing, and concerning which the investor agrees at the time of the investment that their repayment be subject to the achievement of specific social goals. In practice, this system is not regulated by public law and the existing variations are infinite in number. Nevertheless, they are the result of public decisions, since they constitute a new form of public-private partnership and are initiated by public entities; often, they are local partnerships. The purpose of this system, which was created in France at the national level in 2016, was to supply a legal safety net: "[...] a call for projects, drafted in the form of a

¹¹⁵. The Invisible Heart, HitPlay Productions, 2019.

set of specifications, offers social actors and their private financial backers a secure legal framework for concluding a contract with a social impact.”¹¹⁶ By the end of 2019, six contracts had been signed with a view to disseminating their development¹¹⁷.

So, are social impact bonds a good or a bad thing? On the face of it, this mechanism benefits the community in every conceivable way: either the social goals are achieved and private investors can be repaid without further ado, or they are not and the cost is borne mainly by these investors. Nevertheless, a number of objections have been raised concerning such investments: the risk that projects will be financed that are already successful rather than genuinely innovative, the financial cost of assessing social impact to determine whether the investor should be repaid/remunerated, the risk that this assessment will be quantitative rather than qualitative, the high cost of remunerating investors in return for their risk-taking, the oversimplification of complex issues generated by focus on a single operation, etc.

The societal impact company

Luxembourg has set up an innovative type of SSE enterprise, which is based on the concept of social impact: the societal impact company (SIS)¹¹⁸. This type of company is subject to ministerial approval under a variety of conditions. Here, I shall restrict myself to mentioning the obligation to draw up an annual impact report. Not only may approval be withdrawn should the company's operation not fulfil the legal requirements; the composition of its capital is also unusual¹¹⁹, in that it must comprise “impact shares” that generate no remuneration, as well as performance shares, remuneration on which is contingent on the company's social impact. To date, however, the capital of all approved societal impact companies comprises only impact shares, as only the latter benefit from tax advantages.

Social outcome contracting or autonomous development funds?

It is possible to set up or encourage the setting-up of a development fund internal to the Social and Solidarity Economy. Such funds may be spontaneously set up by enterprises in the sector, but also positively encouraged by the public authorities. There is a government-funded development fund in Greece, but as yet it is too early to draw any conclusions. Without a doubt,

116. Excerpt from the Interministerial Call for Social Impact Contract Projects by Martine Pinville, 14/03/2016. [Click here](#).

117. AVISE, “Contrats à Impact Social : où en est-on ?” Published 21/10/2019 – Updated 18/02/2021. [Click here](#).

118. Luxembourg, *Loi portant création des sociétés d'impact sociétal*, 12 Decembre 2016.

119. Op. cit., article 4.

the most mature instance is to be found in Italy, with its cooperative development funds. Under Article 2545 of the Civil Code, cooperatives must allocate 30% of their net surplus to legal reserves, and also a portion of this surplus to a mutual fund for the promotion and development of cooperation¹²⁰. Law 59/1992 specifies the conditions of application of this provision, in particular the share to be allocated, which is 3% of profits¹²¹.

The example of Italian mutual funds

Such mutual funds can be created by the national organisations that represent cooperatives. Their exclusive statutory purpose is the promotion and financing of new enterprises and initiatives for the development of cooperation, with a preference for programmes dedicated to technological innovation and the development of the South. To this end, the funds may promote the foundation of cooperatives or groups of cooperatives, as well as purchase shares in cooperatives or the companies they control. They also finance special programmes for the development of cooperatives and groups of cooperatives, organise vocational training for the management, administrative or technical staff working in the cooperative sector, and promote economic and social research on subjects of interest to the cooperative movement. Strictly speaking, such allocation is not mandatory, in so far as a cooperative may well not be a member of a representative organisation or that the latter does not necessarily have a mutual development fund; in such cases, the obligation to allocate 3% of profit remains, but the money must be paid to the Ministry of Labour.

However, this Italian instance cannot be matched to the Social and Solidarity Economy in general, since the concept does not exist in Italy and these provisions cannot, therefore, be transposed “as is”. Nevertheless, they can serve as sources of inspiration for the funding of the SSE. One preliminary condition needs to be fulfilled, however: for federations or any other group of SSE enterprises to receive and manage project funding, they must have a degree of legitimacy and trustworthiness; in other words, the sector must be designed so to have an adequate degree of sustainability. Such a solution would, for instance, be imaginable in the context of the Cameroonian legislation, provided the lived reality were close enough to the legal framework.

Encouraging employee savings schemes

To encourage investment in the SSE, French law has endeavoured to encour-

120. Italy, Civil Code, Article 2545 quater 2.

121. Italy, Law No. 59/1992 on new provisions for cooperative companies, Article 11 Para 4. [Click here.](#)

rage employee savings schemes. To understand this mechanism, one needs to remember that for several decades France has been operating a policy of employee participation in company results. As such, employees are entitled to receive part of the company's profits, and savings mechanisms have been set up to encourage or impose investment in the productive sector.

Since 2001, savings schemes set up by companies must enable investment in solidarity-based enterprises¹²², which are now known as "socially useful solidarity-based enterprises" (ESUS). An ESUS is subject to approval by the public authorities and meet the following criteria¹²³: it must be an SSE enterprise; have a socially useful purpose; the charges generated by its socially useful activities must significantly impact its income Statement; it must limit the remuneration of its CEO to ten times the minimum wage and the average remuneration of its five best-paid employees to seven times the minimum wage; finally, its equity securities may not be listed or traded on the stock exchange. It should also be noted that some enterprises achieve approval more easily, such as enterprises for integration through economic activity and enterprises in the medico-social sector.

As far as employees are concerned, this mechanism is not in the least mandatory; however, it must be included in all participation agreements so that employees can choose to invest in this way, which supplies an indirect incentive. This issue is not easily separated from that of the place and status of salaried workers in the Social and Solidarity Economy. At any rate, it enables employees to own a stake in their employer and play a part in its management when they themselves have no managerial status.

So, are employee savings schemes a good or a bad thing? Such a system needs to be viewed in the light of the economic traction gained by salaried staff via pension funds¹²⁴ or even sovereign funds. Salaried workers can also be savers and guide economic decisions through their investment choices, provided they are well-organised enough to lend the quantitative mass of their savings sufficient weight. This may well constitute an important lever for the Social and Solidarity Economy.

Crowdfunding

Although crowdfunding is not primarily used by SSE enterprises – it is far

122. France, Labour Code (*Code du travail*), article L.3332-17.

123. Op. cit., article L.3332-17-1.

124. G. Klec & D. Mum, "Trade union influence on companies via pension fund investment", in Long-term investment and the Sustainable Company: a stakeholder perspective. Vol. III, ETUI, 2015, pp. 119-146. [Click here.](#)

more commonly used for startups – it does have a special place in the SSE in so far as it brings an enterprise into contact with the general public and collective financing can substitute for one-time institutional funding despite the small amount of each individual investment. It should simply be remembered that crowdfunding is above all a method which can be used for various ends. The money collected can be used as a gift with or without a counterpart, to subscribe capital, or to make a loan¹²⁵. It is a private activity that does not require a dedicated public policy; however, its secure development does require the enactment of a secure legal framework, especially on intermediaries.

PUBLIC CONTRACTS AS A LEVER

Taking into account social and environmental considerations in public tenders

Not only is the State an issuer of legislation, it is also an economic player, and as such exercises influence as a principal. Such influence has always existed and the choice of economic partners is inevitably affected by political considerations. The State's clout in the economic sphere has increased considerably, and thus its potential influence. At the same time, public-tender practices have become more formal and more transparent. This, however, has not stopped public authorities from continuing to use public tenders as a lever on all continents by imposing a number of conditions on their contractual partners: employment of a minimum number of disabled persons, unemployed, persons of colour, etc.¹²⁶ Another, similar mechanism has been to reserve a number of public contracts for certain kinds of enterprise. This traditional practice has been undermined by the pressures to which the State is subjected by the prevailing economic neoliberalism. Apart from transparency, the main, if not the sole, criterion for the selection of tenderers for public contracts has been restricted to the best price. In such conditions, social or political criteria have fallen by the wayside. These past years, however, calls for dynamic action on the part of the public authorities have multiplied, especially in favour of the Social and Solidarity Economy and of environmental considerations.

125. For a recent summary: A. Rey-Marti, A. Mohedano-Suanes & V. Simon-Moya, "Crowdfunding and Social Entrepreneurship: Spotlight on Intermediaries", *Sustainability*, February 2019, 11(4):1175. [Click here](#).

126. C. Mccruden, "Using public procurement to achieve social outcomes", *Natural resources Forum*, vol. 28, Issue 4, November 2004, pp. 257-267. [Click here](#).

Take the United Kingdom, for instance. Under the terms of Article 38, Para 1 of the Utilities Contracts Regulations 2016, No. 274, utilities may:

“a) reserve the right to participate in procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or b) provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.”¹²⁷

This new solution was made possible by the adoption of a new European directive¹²⁸ on the subject, which in particular stipulates that:

“Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.”

In their transposition of European law, the French have enshrined the ability to reserve contracts for SSE enterprises, as specified by Article L.2113-15 of the Public Tenders Code¹²⁹:

“Contracts or lots of a contract which relate exclusively to social services and other specific services listed in a notice annexed to this code may be reserved by a contracting authority, including when it is acting as a contracting entity, for companies in the Social and Solidarity Economy as defined in Article 1 of Law No. 2014-856 of 31 July 2014 on the Social and Solidarity Economy or for equivalent organisations, when their purpose is to perform a public-service mission linked to the provision of the services mentioned on this list.”

However, such practices are not exclusive to the European continent, as shown by this Korean example: Article 12 of the Social Enterprise Promotion Act of 2007¹³⁰ specifies that:

“(1) The head of a public institution [...] shall promote preferential purchase of goods or services produced by social enterprises.

127. United Kingdom, Utilities Contracts Regulations, No. 274, article 38, para 1, 2016. [Click here.](#)

128. European Union, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, article 20.

129. France, *Code de la commande publique*, Article L.2113-15. Article L.2113-15.

130. South Korea, Social Enterprise Promotion Act of 2007 (Act No. 8217, Jan. 3, 2007), article 12. [Click here.](#)

(2) When the head of a public institution draws up a purchase plan [...] [they] shall include a separate plan for the purchase of social enterprise products.”

The option of reserving certain public contracts

As demonstrated by the Luxembourgish law, it is not enough to draw up abstract clauses favouring Social and Solidarity Economy enterprises. The Luxembourgish Union for the Social and Solidarity Economy (ULESS) has invested heavily in the writing of a guide to the implementation of the social clauses in public contracts¹³¹. Luxembourgish law enables certain public contracts to be reserved for “sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers”¹³². In view of their purpose, this undoubtedly applies to a number of Social and Solidarity Economy enterprises. However, the only instance of such a clause – in a public invitation to tender by a municipality – did not benefit an SSE company for the simple reason that there were no SSE tenderers. One reason is the frequency with which such enterprises opt for nonprofit status; the jurisprudence has ruled that nonprofits cannot not submit tenders for public contracts¹³³. The conclusion is a simple one: context is all-important.

Brazil supplies an interesting instance of a holistic approach to access to public contracts. Indeed, as early as 1988 its Constitution proclaimed that mining cooperatives were to be given priority:

“The cooperatives [...] shall have priority in obtaining authorizations or concessions for prospecting and mining mineral resources and deposits in areas where they are operating and in those fixed in accordance with art. 21, XXV, as provided by law.”¹³⁴

However, this does not exactly fall within the scope of public contracts. In this respect, it does teach us that the regulation of public contracts needs to be inserted into a more general policy, of which it can only be one aspect. For instance, the widespread use of e-communication in the area of public invitations to tender – even their dissemination – may prove an obstacle to Social and Solidarity Economy organisations, since if their access to this form

131. ULESS, *Les clauses sociales dans les marchés publics*, 2016. [Click here](#).

132. *Op. cit.*, article 15, para 1.

133. Luxembourg, Administrative Court – Rulings 24416C – 24427C of 2 December 2008

134. Brasil, *Constituição do Brasil*, 1988, article 174§4.

of communication is more limited than that of other players, this will negate any preference they might otherwise be given¹³⁵.

THE IMPORTANCE OF STATISTICS

Strictly speaking, there is no doubt concerning the importance of statistics; there is a general agreement concerning the need to be aware of the quantitative importance of an object before claiming and achieving appropriate treatment. Indeed, most of the laws enacted in favour of the Social and Solidarity Economy – for instance Article 12 of the French Law or Article 7.2 of the Cape Verdean Law – mention the statistical aspect; this is, however, ignored in the Cameroonian Law.

What to count?

Much uncertainty still remains concerning the issue of quantitative assessment. The first question is: what to count? The actual number of companies, their weight within the economy, the number of employees, the number of beneficiaries? The first and basic step is certainly to count the enterprises concerned, which is done by entering them in special registers or adding special categories to existing registers. One instance of the former solution is Cameroon's General Register of social economy units (*Registre général des unités de l'économie sociale*)¹³⁶. Although it is unclear whether this register is intended for the purpose of information or oversight, it can at any rate be used as a source of information. For its part, France has added a special category to its Register of Commerce, the Social and Solidarity Company Enterprise, a status for-profit companies can achieve provided they meet certain conditions¹³⁷. Whatever the case, there is always some form of intervention by the public authorities, which supply an upstream definition of a Social and Solidarity Economy enterprise.

A register, to what purpose?

Once past this first stage, problems begin to multiply. Not only is it necessary to know whether or not an enterprise is an SSE enterprise, but the ways of counting and studying them can be very different. In this regard, Article 6

135. L. F. Forestí, R. S. Arantes & V. Rossetto, "The Use of the Public Procurement Power to Promote the Development of Small Businesses: The Brazilian Experience, International Public Procurement Conference", 2005, pp. 334-372.

136. Cameroon, *Loi-cadre régissant l'Économie Sociale*, Loi 2019/004 du 25 avril 2019, Article 6.

137. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 1, II.

of the South Korean Law of 2007¹³⁸ stipulates that:

“The Minister of Employment and Labor shall conduct a factual survey on the activities of social enterprises every five years and notify the Employment Policy Council of the results thereof.”

The Spanish Law has created a body for this purpose – the Council for the Promotion of the Social Economy – the competencies of which are specified by Article 13, Para g of the 2011 Law:

“To issue a prior report concerning the adoption of the measures relating to statistical information on social economy entities under the terms of the first additional provision of this Law.”¹³⁹

Its first Additional Provision specifies that:

“The Ministry of Labour and Immigration shall, in collaboration and coordination with the ministerial departments and administrations that may have competency in the area of the registration of social economy entities, and further to a report from the Council for the Promotion of the social economy, take the necessary measures to guarantee the procurement of statistical information concerning these entities as well as their representative organisations, periodically updated and adjusted in their classification to the catalogue supplied in Article 6 of this Law.”¹⁴⁰

Nevertheless, political will faces a technical difficulty, which is the precise identification of the enterprises concerned. When the legislative approach is mainly statutory, i.e. comprises a list of the legal statuses included in the Social and Solidarity Economy, the difficulty is less, at least when the country has a reliable record of enterprises and their legal form. However, the legislation most often references general characteristics, which raises the issue of how they should be taken into account¹⁴¹.

The example of the Institut de la statistique du Québec (Quebec Institute of Statistics)

Quebec supplies an interesting instance of the compilation of statistics on the basis of the legal definition¹⁴². The Institut began by drawing up a “census

138. South Korea, Social Enterprises Promotion Act, Act No. 8217, Jan. 3, 2007, Article 6.

139. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, Article 9.

140. Op. cit.

141. A. Artis, M. J. Bouchard & D. Rousseliere, “L'économie sociale compte-t-elle? Comment la compte-t-on? Représentations de l'économie sociale à travers les indicateurs statistiques”, Working Paper, CIRIEC 2015/02.

142. Institut de la statistique du Québec, “L'économie sociale au Québec. Portrait statistique”, 2016, pp. 199. Click here.

base” to which a filter was then applied. The census base mainly comprised the enterprises with the statutes principally considered by law to belong to the Social and Solidarity Economy, to which were added all companies claiming to be social economy companies or that were associated with the latter by other parties. The Institut sent all these companies a survey, the questions in which were intended to determine whether the characteristics specified by law were or were not present. The advantage of this type of treatment is that it enables social economy enterprises to be identified with precision, even though one needs to remember that the enterprises were being selected not from all enterprises but from a census base.

The method applied in Quebec has another advantage, in that it is especially valuable to anyone who wishes to take law seriously. Other statistical projects with supranational pretensions have developed methods of their own; the best known being the Johns Hopkins Comparative Nonprofit Sector Project. However, like its aspiring competitors, this project has the major drawback of disconnecting itself from national contingencies, precisely because its purpose is to apply to more than one country. Although a statistical project can be refined and integrate an ever-increasing number of enterprises, it will still encounter two major difficulties. The first of these is that the variety of definitions and methods highlights their political underpinnings. Also, if such proposals were to be adopted in a supranational geographical area, it is likely that they would soon overlap with any legal definition provided, as the abstraction of the law would carry little weight in the face of the reality of figures.

The satellite-account option

It appears essential, therefore, that statistics be based on the law rather than develop in its margins. It is not enough to identify the enterprises concerned; the greatest possible amount of relevant information also has to be collected. In this respect, Tunisia has set an example with the creation of a dedicated satellite account at the National Institute of Statistics, in accordance with the Register of Companies¹⁴³. This in no way impedes the development of complementary indicators to measure quality of life, human development, social progress and economic sustainability, as well as their integration into existing publications that comprise the traditional economic indicators¹⁴⁴.

143. Tunisia, *Loi-cadre sur l'Économie Sociale et Solidaire*, 17 June 2020, article 12. [Click here](#).

144. Belgium, Article 108, Para 1) of *Loi du 21 décembre 1994 portant des dispositions sociales et diverses, modifié par la loi du 8 mars 2009 et par la loi du 28 février 2014, modifié par l'Article 2 de la loi sur les "indicateurs complémentaires" du 23 janvier 2014*. [Click here](#).

ORGANISING THE SECTOR: NETWORK-BASED STRUCTURES

The self-organised nature of the Social and Solidarity Economy is an obvious constant that can be supported by legislation, and one of the requisite conditions for registration as an SSE enterprise. Its purpose is the empowerment of its economic activities and the maximisation of the social benefit generated by horizontal networking on an equal footing with other Social and Solidarity Economy organisations¹⁴⁵. Laws may have very diverse objectives which mainly depend on the State structure as well as the degree to which the sector is structured. Broadly, the choices to be made can be divided into three main categories: free or guided structuring, political or economic structuring, and the power of representation and oversight.

FREE OR GUIDED STRUCTURING

Both ends of the spectrum are present on the African continent. On the one hand, there is considerable freedom in Cape Verde, where SSE enterprises may freely form associations, unions, federations and confederations, of which they themselves determine the statutes and which they manage¹⁴⁶. Cameroon sits at the other end, in that social economy units may form groups¹⁴⁷, however, such groups must take the form of horizontal and/or vertical networks¹⁴⁸, and the operating principles of such networks and their representatives in institutional participation bodies are set by regulations¹⁴⁹.

145. Greece, Law No. 4430/2016 on the Social and Solidarity Economy, 31 October 2016, article 3. [Click here.](#)

146. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 8.

147. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun* Loi 2019/004, 25 April 2019, article 13, para 1.

148. *Op. cit.*, para 2.

149. *Op. cit.*, article 14 para 2.

Beyond the difference in the amount of red tape involved in the sector's organisation, the assigned function does remain the same: the representation and defence of the interests of the entities concerned. Traditionally, its organisation has a pyramid structure, but this can be combined with differentiation by activity sector or even the legal status of the enterprises concerned.

ECONOMIC OR POLITICAL STRUCTURING

The most obvious type of structuring is political, in so far as it reflects the defence of the members' interests. Yet the organisation of the sector can also be given an economic dimension in the form of an endeavour to have Social and Solidarity Economy enterprises coordinate or even cooperate. If the collective nature of an enterprise is justified by the need to empower its individual members and achieve cooperation on the grounds that it is more efficient than competition, the same reasoning can be applied to enterprises that share the same values. It may be in the interest of such enterprises to cooperate, and they may also require a legal framework to express this. Indeed, it is explicitly envisaged by Greek law in the area of economic cooperation¹⁵⁰, which may take the form of a contract or a more structured group, both of which are subject to the same legislation and may become Social and Solidarity Economy enterprises. French law supplies an interesting instance in the form of a dedicated structure, the social economy union (Union d'économie sociale)¹⁵¹.

To encourage such cooperation, the French lawmakers designed a structure on the cooperative model and which therefore complies with the traditional requirements applied to Social and Solidarity Economy enterprises. Within such organisations, two thirds of the members must belong to the SSE, as must the majority of the board of directors. Their purpose is to manage the joint interests of their members and the development of their activities, making them a tool for economic development through cooperation. Without requiring a specially dedicated entity, Tunisia demands that such enterprises exercise "mutual cooperation and assistance"¹⁵², from which one may conclude that the scope of such collaboration is not merely political.

150. Cap-Vert, *Loi d'économie sociale n° 122/VIII/2016*, 24 mars 2016, article 7. [Click here](#).

151. France, *Loi n° 47-1775 portant statut de la coopération*, 10 September 1947, arts. 19 bis à 19 quater.

152. Tunisia, *Loi-cadre sur l'Économie Sociale et Solidaire*, 17 June 2020, Article 4, Para 4. [Click here](#).

REPRESENTATIVE AND SUPERVISORY FUNCTION

As a minimum, the function of the federative entities of the Social and Solidarity Economy is to represent their members and to thus form a kind of lobby, which is often recognised by law. The law may even give them a place within official bodies such as Tunisia's economic and social council¹⁵³. However, one may well ask whether the SSE's federative organisations should not take over the regulation of the sector as well as acquire disciplinary powers. Of course, all enterprises concerned are bound by the laws that govern them as well as the laws specific to their legal status, but complementary, more specific obligations can also be added, the determination of which can be left to the Social and Solidarity Economy organisations in the form of soft law. This requires both a firm structuring of the sector and enough trust on the part of the political authorities, i.e. great maturity; the instances are few.

French law offers an interesting instance of gradual construction. On the one hand, it has entrusted the Higher Council for the Social and Solidarity Economy – the body in which the public authorities and sectoral representatives meet – with drawing up a guide that specifies the conditions for the continuous improvement of good practices¹⁵⁴. Indeed, most Social and Solidarity Economy enterprises must supply evidence of their compliance with this guide. The second level is specific to the cooperative sector and includes an audit mechanism; i.e. a report by a person or entity that is both independent and approved by the public authorities, and that confirms compliance with the principles of cooperation¹⁵⁵. The *Loi coopérative* entrusts the Higher Council for Cooperation (*Conseil supérieur de la coopération*) with the issuance of the regulations governing cooperative audits¹⁵⁶. Further still, in the agricultural sector, the entire cooperative-audit mechanism, up to and including sanctioning by withdrawal of approval, is directly or indirectly the province of the High Council for Agricultural Cooperation (*Haut Conseil de la Coopération Agricole*)¹⁵⁷. The spectrum of possible options is therefore very broad.

153. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016. [Click here.](#)

154. France, *Loi n° 2014-856 relative à l'Économie Sociale et Solidaire*, 31 July 2014, article 3. [Click here.](#)

155. France, *Loi no 47-1775 sur le statut de la coopération*, 10 September 1947, Article 25-1 s. [Click here.](#)

156. *Op. cit.*, article 5-1.

157. France, *Code rural* (Rural Code), article 528-1.



WHY PROMOTE THE SOCIAL AND SOLIDARITY ECONOMY?

Helena Almirati, a member of the Uruguayan social-economy Coordination who took part in the writing of the latest Social and Solidarity Economy law, has replied: “We live in a world where the economy puts the accumulation of capital at the center of preoccupations [rather] than human development, or the environment, and where there are public policies, legislation, educational programmes built throughout the history of the country that seek to strengthen and develop this system and its values. The development of the solidarity economy, legislation and public policies that support it, therefore deserve all our attention and effort.”¹.

1. Héléna Almirati, interview with the RIPESS, 2019. [Click here.](#)

The international development community has reached the same conclusion: it has acknowledged the need to rethink development. The status quo has done nothing to prevent the recent financial and food crises, climate change, the persistence of poverty and the widening of inequalities. Within the context of the 2030 Agenda for Sustainable Development, the Social and Solidarity Economy needs to be considered as an important way to “transform our world for the better”.

Even the scientific literature acknowledges the commonalities between the Social and Solidarity Economy and sustainable development, as well as the former’s potential to enable the latter. I shall be basing myself on the paper by Ananya Mukherjee Reed and Darryl Reed², which distinguishes four concepts of development identified during the past decades as well as four types of enterprise. The Reeds show that social economy enterprises are the most likely to achieve successful in-depth development. First of all, in connection with development, they contrast the liberal approach to development, which is largely economic, with the three models that succeeded it and are more grounded in human rights. The latter three are divided into a concept based on capacity (improvement of opportunities, capacities and freedoms), a concept based on redistribution and the reduction of inequalities, and finally a concept based on the reconfiguration of social powers. The latter is the most recent and is required to develop the agency of local populations and their effective acquisition of control.

The authors also distinguish four types of enterprise with which players in development and State enter partnerships in order to contribute to development. These are conventional businesses, socially responsible businesses, businesses engaged in a process of corporate accountability, and finally social economy businesses. The abandonment of the purely economic development model has led to a questioning of the ability of conventional businesses to contribute to development, and hence to a quest for partnerships with businesses that are more sensitive to human rights. Despite the advantages of corporate social responsibility or corporate accountability, both continue to face sustained criticism and are suspected of retaining traces of neoliberalism, as their commitment, however genuine, cannot change their underlying nature, but only impose marginal constraints. The superiority of social economy enterprises in the area of development hinges on a threefold characteristic: their collective dimension, their democratic

2. A. M. Reed, D. Reed, “Partnerships for Development: Four Models of Business Involvement”, *Journal of Business Ethics*, 2008, Volume 90, 2009, JSTOR, pp. 3–37. [Click here.](#)

mode of operation and cooperation between enterprises. All three of these characteristics constitute a highly appropriate response to the challenges of development and make a strong contribution to the reconfiguration of social powers.

Beyond the general convergence between the SDGs and the Social and Solidarity Economy, a report by the UNRISD³ highlights four key attributes of the SSE⁴ that may facilitate the achievement of the SDGs: its democratic and multiple-player dimension encourages the resolution of conflicts between the various purposes; its localisation and the participation of local populations may favour the necessary adaptation of the goals to local contexts; its empowerment of the most vulnerable, and especially the weight of women in the sector, can ensure policies benefit the poorest and prevent capture by the elite or institutional capture; finally, the principle of subsidiarity based on solidarity beyond the locality (the inter-cooperation dear to the SSE) is likely to facilitate solidarity across local areas and create a general-interest context.

Five common points require especial emphasis: humanistic values, the response to the fast-expanding concerns of today, environmental issues and future generations, housing and planning, and finally the democratic culture.

3. GSEF, "Spotlight On The Social Economy In Seoul", 2018, pp. 1-140 et UNRISD, Social and Solidarity Economy for the Sustainable Development Goals, Spotlight on the social economy in Seoul, July 2018. Click [here](#).

4. Op. cit., Chapter I, pp. 2-3.

THE HUMANISTIC VALUES PROMOTED BY THE INTERNATIONAL ORGANISATIONS

The commitment of Social and Solidarity Economy enterprises to humanistic values is obvious in the case of cooperatives. “Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility, and caring for others”⁵. This is far from being a purely abstract Statement as it is embodied in the cooperative principles.

A similar, if differently expressed, concept is to be found within the Intercontinental Network for the Promotion of Social and Solidarity Economy (RIPESS):

“The inherent nature of RIPESS includes the objective of contributing to systemic, transformative change. It does this by demonstrating how much SSE contributes in terms of real answers at local level to the existing system that is clearly showing its limits. RIPESS members believe in the importance of the globalisation of solidarity, and the ability to build and strengthen an economy that places people and planet at the centre of its activities.”⁶ The transformative aspirations of RIPESS are based on a view of the current economic and political context that may not be shared by all, but is nonetheless rooted in the primacy of human beings and the planet. In this sense, its goals overlap perfectly with those of the main international organisations.

Thus, it is significant that the United Nations’ High-Level Week of 2019 bore the title “Action for People and Planet”⁷. More broadly, the UN Stated that the UN ensured the preservation of peace and international security, pro-

5. International Cooperative Alliance, Statement on the Cooperative Identity, 1995. [Click here.](#)

6. Intercontinental Network for the Promotion of Social and Solidarity Economy (RIPESS). [Click here.](#)

7. United Nations, 2019 Summit. [Click here.](#)

moted development and supplied humanitarian assistance to those who required it; guaranteed international law, protected human rights and promoted democracy; and its member States were working together to combat climate change.

Among the organisations cited, the United Nations is the most generalist, and its goals are identical to those of the Social and Solidarity Economy.

For all that, there is no point in taking a black-and-white view of the “good” Social and Solidarity Economy and the “bad” capital-based company. The International Chamber of Commerce manifests clearly enough the involvement of capitalistic enterprise in the world. The ICC defines itself in the following terms: “ICC is the world business organization, enabling business to secure peace, prosperity and opportunity for all. Everything we do at ICC aims to promote international trade and investment as vehicles for inclusive growth and prosperity. From resolving disputes when they arise in international commerce to supporting global efforts to streamline customs and border procedures, we support multilateralism as the best way to address global challenges and reach global goals. Having witnessed the power of international commerce to lift millions of people out of poverty, today we have our sights set on the future of globalisation, working to promote inclusive and sustainable growth to the benefit of all.”⁸

Nevertheless, there is a fundamental difference between the involvement of capital-based enterprises in the world and that of the Social and Solidarity Economy. Whereas the latter proclaim their commitment to the humanistic values supported by international organisations and most States, the former remain neutral in this respect; they merely assert that business contributes to economic prosperity and therefore to the achievement of well-being for all. Concerning this point, I have no opinion and am only able to note that the ICC’s Statement does not coincide with the humanistic values; both assertions are made at different levels.

8. International Chamber of Commerce website. [Click here.](#)

A RESPONSE TO THE CONCERNS OF TODAY: THE COMMONS, THE SHARE ECONOMY, ETC.

The political and economic context is central to all businesses, since these only make sense if they meet the requirements of the population as defined by the latter's political aspirations as well as by economic conditions. The reason the cooperative movement soared in the 19th century is that it was developing alongside capitalism. The economic activities of nonprofits have prospered due to the apparition of new demands not covered by the market, and the solidarity economy has emerged in Latin America as its dictatorships waned.

The development of a platform economy

The social, economic and political context has changed, and two new phenomena have materialised, among others: the development of platforms, also known as "uberisation", with the advent of smartphones, and a call for the joint clawback of goods and services in response to commodification and its corollary, private appropriation. Social economy enterprises cannot be unconcerned by these developments, as they supply a response to the issues generated by platforms and also have many points in common with the theory and practice of the commons, which are a fruitful source of inspiration for such initiatives.

The platform economy has several names, such as "share economy" or "collaborative economy", since it has multiple origins and forms a part of several converging trends. Above all, it has been enabled by technical developments, first the Internet, and then smartphones, which have made it more accessible. It is now considerably easier for individuals to connect, which has fuelled the development of services of all kinds supplied by one individual to another. The design of the economic and legal model of this new rela-

tionship may take several forms; the commonest, however, is the creation of a platform owned by a third company which manages the relationships. The platform's function stops there, as it is careful not to develop any kind of direct connection with the service supplier or user (disintermediation). This has had the effect of simultaneously weakening two of the legal structures that underpin our contemporary societies: the user's status as a consumer and the supplier's status as a salaried worker. Users no longer deal with structured companies that supply both a service and the protection required by law, but rather with a micro-entrepreneur whose status as a professional is questionable and whose work comes with far fewer guarantees. At the same time, the suppliers' status as salaried workers is in doubt despite the fact that their working conditions are not always noticeably different and their position is highly vulnerable.

Some instances: The Drivers Co-op and CoopCycle

It might once have been possible to imagine direct peer-to-peer encounters between producers and consumers, but in actual fact economic conditions have been determined by external entities, i.e. platforms. However, due to their collective nature, Social and Solidarity Economy enterprises are a particularly appropriate incarnation of a fairer model. They enable producers to join organisations that act as platforms and do away with the middleman. Several initiatives of this kind have been taken, including The Drivers Co-operative in New York or the CoopCycle federation in France.

The Drivers Coopérative⁹ is a drivers' cooperative which openly competes with Uber but relies on collective ownership by the drivers, democratic operation and the channelling back of profits to the drivers. Change needs to happen, and soon. In New York City, its competitors Uber and Lyft operate by exploiting a labour pool of 85,000 drivers, 91% of whom are immigrants. The drivers are pushed into poverty as they are forced to pay a commission of up to 40% on each trip and also have to pay for their own vehicles, insurance, and maintenance as well as bear the business risk. The drivers are wrongfully identified as self-employed entrepreneurs so that they do not have to be paid a minimum wage or given benefits and basic workers' rights. Even prior to the crisis, over 70% of the drivers had less than 1,000 USD in savings, which reflects New York City's deep wealth divide along racial lines and the predatory nature of car-sharing platforms.

9. The Drivers Cooperative – <https://drivers.coop/>

For its part, CoopCycle is an organisation which includes bicycle delivery drivers' cooperatives and is helping them increase in number. Its model is anti-capitalistic and based on the principle of the commons, the development of the CoopCycle platform software (software and UI/UX), as well as political lobbying, legal tools and team coordination¹⁰. It is, in fact, a Social and Solidarity Economy enterprise that combines several legal structures in order to supply a variety of services and develop a fairer economic model. It should be emphasised that, depending on the context, multi-member Social and Solidarity Economy enterprises have the particular advantage of enabling the various players involved to collaborate, for instance in the case of deliveries: the delivery staff, the companies that require deliveries, the delivery customers and – why not? – local communities.

Some instances: The Drivers Co-op and CoopCycle

As far as the commons are concerned, there are a great many people on board and their definition remains incomplete, especially in the case of public property. They are the result of the clawback of a number of material or immaterial goods and of services by the citizens. After the underlying theory was demolished by Hardin in "The Tragedy of the Commons"¹¹, they had their good name restored by Elinor Ostrom, who has demonstrated that they can be efficiently managed by local communities¹². This community management, which remains independent of the public authorities, causes them to resemble the Social and Solidarity Economy in intent. Indeed, explicit bridges have been built, such as Coop des communs in France¹³, or the Foundation for P2P alternatives¹⁴. These comparisons have been understood by the international organisations, and within the Internet Social Forum the Solidarity Economy is mentioned as a promising alternative to the dominant Internet trends, next to commoning or open-source projects¹⁵.

10. CoopCycle – <https://coopcycle.org/>

11. Garrett Hardin, "The Tragedy of the Commons", *Science*, 13.12.1968, vol. 162.

12. Elinor Ostrom, "Governing the Commons. The Evolution of Institutions for Collective Action", Cambridge University Press, 1990.

13. [Click here.](#)

14. [Click here.](#)

15. United Nations Commission On Science And Technology For Development, Working Group on Enhanced Cooperation Contributions from Observers to the guiding questions agreed during first meeting of the WGEC, 2017, p.6.

ENVIRONMENTAL ISSUES AND THE GENERATIONS OF THE FUTURE

The connection between the Social and Solidarity Economy and environmental protection should not be misunderstood. In this respect, all Social and Solidarity Economy enterprises do not share the same level of concern. Nevertheless, the Social and Solidarity Economy is structurally the most able to contribute to the achievement of this goal.

The Social and Solidarity Economy as a base for activism

The Social and Solidarity Economy developed in successive waves, the latest occurring in many parts of the world during the 70s and 80s. Depending on the country, these new initiatives have been fuelled by feminist campaigns or struggles against dictatorships; often, they have included early environmental concerns against a backdrop of rebellion against the dominant economic model and its emphasis on productivity. Many fairly recent SSE enterprises are therefore operating in the area of the environment or have strong environmental concerns. One need only consider organic farming and fair trade, which were largely initiated by such enterprises.

The Social and Solidarity Economy, an environmental priority?

Such enterprises, however, are not the majority within the Social and Solidarity Economy, and other companies do not always treat the environment better than the capital-based enterprises. Social or community-education goals do not necessarily lessen a carbon footprint, all the more so as the SSE also includes industrial ventures. Nevertheless, the Social and Solidarity Economy does harbour resources that may prove valuable for the environmental protection we so badly need.

First of all, SSE enterprises have always been based on a questioning of the values of the dominant economic model, not least in their attitude to

production and consumption. Whether in their struggle against social inequalities and the exclusion of the disabled, or their support for the sick and elderly, social-sector enterprises have developed a critique of the economic model that generates the injustices against which they fought while simultaneously endeavouring to supply a remedy. Similarly, consumer cooperatives, although their primary purpose was to improve the situation of consumers, also enabled and encouraged them to change their behaviour as consumers by altering distribution channels.

Ultimately, with Charles Gide's cooperative-republic model, the economic system came under fire as a whole. Gide proposed a form of economic organisation based on consumer sovereignty: consumer cooperatives would increase in size until they took over the distribution sector; they would start their own production companies and therefore move upstream to conquer another chunk of the economy; they would then only need to take control of farming enterprises to finally occupy the whole of the economy as a kind of "cooperative republic". This Utopian model was to achieve transformation without revolution, by means of successfully competitive cooperatives rather than expropriation¹⁶. Although the project failed, its subordination of production to consumption resonated a great deal. This century and more of reflection has contributed to a critique of productivism, and the solutions imagined and experimented at the time are still relevant to the debates on the model to be developed to ensure safe development.

Besides this intellectual contribution, the Social and Solidarity Economy also needs to be taken into consideration for its technical resources. One of the major concerns of environmentalism is the fate of future generations. The acceleration of time is leading to ever shorter-term measures with fewer and fewer built-in brake mechanisms that ensure sustainable development. In other words, environmental protection, i.e. protection of the minimum requisites for the development of all humanity, requires control over the individual selfishness that may tear it apart. It so happens that this has always been one of the major concerns of the Social and Solidarity Economy. Its collective dimension has caused the SSE to protect itself against the acquisitiveness of individual members, which might harm the others. Moreover, the existence of many different types of SSE enterprise members has generated

16. The phrase "cooperative republic" was coined by Charles Gide during a famous speech delivered on 8 September 1889 (*Des transformations que la coopération est appelée à réaliser dans l'ordre économique* in *La Coopération – Conférences de propagande*, fourth ed., Paris, Ed. Sirey, 1922, pp. 75- 104). The clearest and most concise (as well as the most enthusiastic) description of Gide's cooperative Utopia is to be found in this text.

an endeavour to ensure fair treatment of both early and late joiners. Many solutions to this problem have been proposed and experimented, and in that variety lies the wealth of ideas that can be used to nourish the debates of today.

However, one trait that is common to all Social and Solidarity Economy enterprises is the – at least partly – joint or collective character of the ownership of the enterprise. This does not mean that the economy needs to be collectivised, but people need to become aware of the excesses of individual appropriation and treat movements based on other mechanisms with due seriousness – an underpinning shared by both the Social And Solidarity Economy and the commons.

TEACHING DEMOCRACY

I earlier emphasised the democratic operation of Social and Solidarity Economy enterprises. This is what connects the SSE with other traditions of emancipation, and it is a particularly valuable dimension at a time when democracy is increasingly coming under threat around the globe.

Community education as a lever for emancipation

Although the Social and Solidarity Economy centres on economic activity, it takes many forms and derives from many sources. Its development has been more or less coeval with that of a number of social trends, and especially community education. At first sight, both traditions appear to be separate, as their goals and means are not the same; indeed, community education has no economic dimension. Nevertheless, there are many connecting points: Robert Owen theorised both cooperative action and education¹⁷, and the goals of the first experiments with workers' cooperatives included both productive activity and education.

From the inception of the Rochdale cooperative, the Equitable Pioneers established a newspaper rack, a library, a school for children and another for adults. In 1854, they specified in their statutes that 2.5% of their profits were to be spent on education. The extraordinary adventure of the Houses of the People that developed in certain European countries at the end of the 19th century also deserves a mention. They were intended to be meeting-places for the working class and were usually organised on the cooperative model. They housed not only the cooperative shop (often, in the early days, a cooperative bakery), but a coffee-house and meeting-room, a library, a printing works, a function hall and trade-union offices. They served as venues for protest campaigns, recreational events, and also education.

17. R. D. Owen, *Outline of the System of Education at New Lanark* (1824), Wardlaw & Cunningham, Glasgow, UK.

Since the 1970s, community education has been widely used in Latin America to support the action of solidarity-economy enterprises. This is brilliantly illustrated in the work of Paulo Freire and cannot be attributable to coincidence alone. Whether or not they claim to be a worldwide alternative to the capitalist economy, Social and Solidarity Economy enterprises at least have different objectives and practices, the achievement of which requires a critical approach to the dominant entrepreneurial model. The development of just such critical minds is one of the cornerstones of community education. Its emancipatory aspiration features in the works of both Condorcet, which date from the time of the French Revolution, and Paulo Freire, written during the last third of the 20th century.

Depending on the enterprise, this quest for emancipation may take different directions and forms. One of its central components, however, is a pushback against vertical power. Whereas in the modern era individuals have constantly sought emancipation, especially by democratising institutions, enterprises have bucked this trend. Whatever the degree to which a man or woman may be a citizen of a nation, he or she remains in the power of the company boss.

Social and Solidarity Economy enterprises have faced this issue more or less directly and systematically. However, this debate has not been limited to the SSE and has also influenced capital-based companies to varying degrees, depending on the country and the balance of power employees were able to strike. An oft-quoted example is the joint-management system implemented in Germany, under which most company decisions must be made equally by the management and the employee representatives; a system which has been credited with the relatively conflict-free operation of German companies. More broadly, the development of human rights within companies follows the same trend. The Social and Solidarity Economy has served as a laboratory, a pool and a stimulus for the democratisation of companies.

Potential limits on democratisation

Nevertheless, democratisation has reached its limits due to the apparition of new types of enterprise that are characterised by a scattering of the staff and new forms of domination. At the same time, the foundations of political democracy appear to be crumbling: more and more, people are accepting restrictions on their freedoms in return for security, propaganda is being substituted for debate, inequalities are growing more brutal and States appear to be losing their grip. This change has not been without its flashes of emancipation such as the Arab Spring, most recently in Yemen, Algeria's

Hirak, or the demonstrations in Lebanon, Hong Kong, Thailand, Colombia and Brazil. Experiments in new-style democracy have also been attempted, such as debates among groups of people selected at random rather than elected, and more broadly participatory democracy. It is likely that this democratic wobble is connected to the fact that the teaching of democracy has lost ground; to begin with, education increasingly aims to turn out future salaried workers rather than future citizens.

It so happens that the SSE is a superb vehicle for teaching democracy. Instead of purely theoretical knowledge, students at a Social and Solidarity Economy enterprise can learn it hands-on: the value and mechanisms of an election, the conditions for freedom of speech, the restrictions on collective debate, etc. Experimentation can show the benefits and limitations of democracy and helps increase its members' involvement in "the life of the city". Such practical learning is no substitute for knowledge of the theory, but is a valuable complement. Once again, the SSE creates a wealth that is more than merely economic. The Mexican Law on the Social and Solidarity Economy bears its explicit trace, as the sector is given the added objective of "contributing to the exercise and improvement of participatory democracy"¹⁸.

Among the civic movements of Latin America, the Solidarity Economy is presented as a response to the crisis of 2008-2009. This particular civic movement "has built new relationships between the social and political aspects that have led to new regimes and that have renewed understanding of the democratic necessity. It has reoriented the continent's evolution, thereby showing the importance of major regions in globalisation and faced with the crisis of hegemony by the United States"¹⁹. The similarity between the concerns of the World Social Forum as expressed in this paper – the State, the global market and forms of ownership – and those of the Social and Solidarity Economy is striking.

18. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012 2012, article 8. [Click here](#).

19. G. Massiah, *The Dangers and Opportunities of the Global Crises*, 2009. Published 20 May 2009. [Click here](#).

HOUSING AND PLANNING

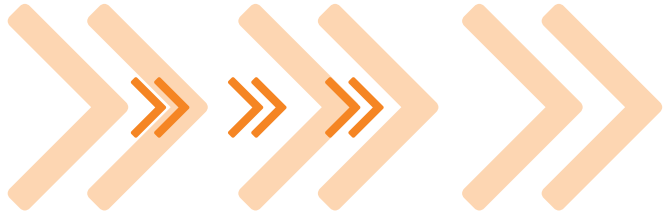
The link between housing and the Social and Solidarity Economy is a phenomenon of long standing. At the turn of the 20th century, the European cooperative movements concerned themselves with access to housing for the most vulnerable, and housing cooperatives became a major international movement²⁰. This link is further confirmed by the land disputes that occur when town redevelopment projects are planned in areas inhabited by the poor, who frequently do so informally. Although the connection to the SSE may not necessarily be explicit or direct, it most certainly is there by virtue of the collective aspect of the action, the partly collective nature of the ownership and the quest for the emancipation of the individual. Indeed, the Portuguese Constitution bears an explicit trace of this in its Article 65.2: “In order to ensure the right to housing, the State is charged with: d. Encouraging and supporting local community and popular initiatives that work towards the resolution of the respective housing problems and foster the formation of housing and self-building cooperatives.”²¹

The local and regional governments recently issued a reminder at the Third United Nations General Conference on Housing and Sustainable Urban Development²², in particular committing themselves to “foster[ing] inclusive economic development and decent jobs with a particular emphasis on the social and solidarity economies.” However, this is not a formal commitment, nor an isolated one, since a number of other commitments have a direct connection to the principles or values of the Social and Solidarity Economy: the circular economy, the co-creation of cities and territories by all citizens, local democracy, cooperation and peer-to-peer learning.

20. International Cooperative Alliance – www.ica.coop. The vast majority of housing cooperatives are geared to social housing or promote social diversity, although in a few countries the cooperative model has been used to develop housing communities for the wealthiest (e.g. in the USA).

21. Portugal, *Constituição da República Portuguesa de 1976*, Article 65. See also: Tajikistan, Constitution of 2003, article 36.

22. Declaration by the Second World Assembly of Local and Regional Governments at the Third United Nations Conference on Housing and Sustainable Urban Development – Habi tat III. [Click here](#).



RECOMMENDATIONS

FOR LAWMAKERS IN THE WIDER SENSE

- Understand the Social and Solidarity Economy as a developing concept which refers to both a thing and a word. Today, the Social and Solidarity Economy still appears to remain a staging-post with the capacity to bring together what is scattered and which has been agreed upon on the international scene. However, the local and regional expressions remain diverse and refer to similar realities that are often the subject of similar debates.
- It appears to me that for any State keen to give itself a legal and institutional framework for the SSE, the starting-point is to draw up an overview of SSE realities and practices on the ground, so as to be able to lay the groundwork for a definition of the Social and Solidarity Economy.
- Acknowledge that the chief characteristic of SSE enterprises and organisations is compliance with a number of basic principles. Even when no political ambitions whatsoever are being nursed, the choice of the Social and Solidarity Economy principles that will appear in a piece of legislation reflects the political dimension guaranteed by the Social and Solidarity Economy. For this purpose, Article 4 of the Colombian Law cites 11 principles¹, whereas the European Social Economy Charter mentions 7, all of which have been cited in the body of this Guide².
- Although the number and grouping of these principles, as well as the order in which they appear, vary from one piece of legislation to the next and

1. Colombia, *Ley de economía solidaria n° 454 de 1998*, 6 August 1998, article 4. [Click here](#).

2. European Union, European Social Economy Charter, article on "A diverse sector united by shared principles and common characteristics", 2018.

are the result of a political decision by all parties to the design of the text, it seems to me that the Social and Solidarity Economy rests on five principles. It is preferable to keep their number small and their wording more general, in keeping with legal concepts. They are:

1. the primacy of people,
2. limited profitability,
3. a democratic character,
4. collective ownership,
5. an activity that benefits the community.

Nonetheless, it should be the privilege of each State to define its principles in accordance with the aspirations of civil society as well as local realities. For instance, the Uruguayan Law has raised gender equality to a principle³.

→ As far as limited profitability is concerned, specific elements of its manifestation should be included, as well as guarantees that it will be applied. Indeed, besides proclaiming the primacy of people over capital and the emancipation (of users, employees or partners) intended by all Social and Solidarity Economy enterprises, some legislations take the matter further: for instance, the Spanish Law⁴ explores the expression of the supremacy of people by emphasising the way in which it manifests. The Portuguese Law⁵ establishes a link between the primacy of people and the purpose of the enterprise.

→ The concept of limited profitability needs to be added to positive law. This principle has never been enunciated as such by a Social and Solidarity Economy law, despite the fact that all related legislation includes principles and mechanisms that appear to translate the principle of limited profitability. This concept still remains to be defined and only a handful of doctrinal works have sketched its contours⁶. The principle of limited profitability enables a parallel to be drawn with the nonprofit sector and a bridge to be proposed between both sectors.

→ The democratic character is not only apparent in the manner in which the enterprise is managed; it signifies, at a deeper level, a commitment by all its members to the enterprise or organisation, whether to its management or

3. Uruguay, D.O. 8 ene/020 Social and Solidarity Economy Law – No. 30353 of 4 September 2019, Article 6. [Click here.](#)

4. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, article 4. [Click here.](#)

5. Portugal, Basic Law on the social economy, No. 68/XII-1, 8 May 2013, article 5. [Click here.](#)

6. L. Driguez, "Le but non lucratif en droit de l'Union européenne. Ou de la nécessité d'adopter une notion nouvelle de lucrativité limitée", MGEN, 2017.

economic life. The Cape Verdean Law⁷ est particulièrement précise eu égard du caractère démocratique. is especially specific regarding this democratic character. Indeed, Paragraphs b), c), d), g), j) and i) of its Article 6⁸ supply a good illustration of what a law can include on the subject of democracy. The degree of the democratic imperative varies according to the legislation. I therefore encourage the public authorities to define the democratic censor with respect to voluntary membership and the freedom not to join, control by the members, member participation in the management of the enterprise, the transparency requirement and responsibility or self-management.

→ Collective ownership of the enterprise is the principle of collective appropriation of an SSE enterprise, which highlights the collective dimension of the enterprise and may take matters further by mentioning the protection of surpluses against the members' appetites. Collective appropriation is also a result of the mandatory allocation of surpluses to the development of the enterprise in the form of allocation to reserves. Finally, it is guaranteed only when mandatory allocation is coupled with disinterested devolution, i.e. when the enterprise is wound up its members have no claim to the assets (asset lock). The Colombian Law speaks of "partnership- and solidarity-based ownership of production resources"⁹; the Cameroonian Law enshrines the pooling of resources¹⁰ and also mentions the mutualisation of production resources as characteristic of collective ownership; while France has even more clearly enshrined mandatory allocation to reserves¹¹. The concept of collective ownership may also be substituted for joint ownership.

→ By performing an activity in the community's interest, a Social and Solidarity Economy enterprise pursues a goal that procures an advantage for the community that may be its primary or corporate purpose. However, this does not have to be and enterprises may pursue several goals, including the durability of the enterprise, but at the very least these goals must be consistent with the general interest. The Cameroonian Law refers to collec-

7. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, article 6. [Click here.](#)

8. "Social economy entities are autonomous, emanate from civil society and are distinct from the public and private sector. They act on the basis of the following guiding principles:

[...] b) Free access and voluntary participation;

c) Political and managerial autonomy with respect to the State and other public organisations, except when, with regard to community production resources managed by and belonging to local communities, the representative bodies delegate their management to the local authority;

d) Democratic control of their bodies by their members [...]"

9. Colombia, *Ley de economía solidaria n° 454 de 1998*, 6 aout 1998, article 4, para 5. [Click here.](#)

10. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun*, Loi n° 2019/004 du 25 avril 2019, article 3, para 1. [Click here.](#)

11. France, *Loi n° 2014-856 relative à l'économie sociale et solidaire*, 31 July 2014, article 1, 3° b. [Click here.](#)

tive or social usefulness¹², and its Mexican counterpart to the interest of the community¹³, while the Cape Verdean Law poses the principle of the allocation of surpluses to the pursuit of the objectives of social enterprises in keeping with the general interest¹⁴.

→ Far from considering itself a legitimate description that differentiates enterprises belonging to the Social and Solidarity Economy from those that do not, this Guide is intended to assist public authorities and other relevant bodies to mark out the perimeter of what it intends to encourage. Indeed, my concept of the SSE is based on the definition that has earned a consensus within the UN's entities. However, I cannot deny that questions continue to be asked as to whether social enterprises, the informal economy and charity should be included in the SSE, although such questioning does show that the definition of the SSE, and hence its perimeter, are in a State of constant change.

→ Concerning the design of a legal framework for the Social and Solidarity Economy, it is essential that the constitutional level not be neglected. Although the SSE is not enshrined in constitutional law as no constitution on any continent whatsoever explicitly refers to this concept, some 20 constitutions around the world (Yemen, Philippines, Bolivia, Taiwan, Italy, Costa Rica, Portugal, etc.) acknowledge the role of cooperatives in the economic development of States. Such acknowledgement carries a symbolic and legal force that may supply the Social and Solidarity Economy with decisive support. I encourage States keen to promote the SSE to draft an amendment to their Constitution; amendments that constitutionalise environmental protection or the improvement of social and human rights may provide an excellent opportunity.

→ For a legal definition of the Social and Solidarity Economy, I recommend that the public authorities make the following series of choices:

The geographical level of the legislation: national or federal?

In the case of unitary States, the question need not even be asked. However, federal countries and countries that are divided into autonomous regions face the issue of regional legislation. For instance, the Argentinian provinces

12. Cameroon, *Loi-cadre régissant l'Économie Sociale au Cameroun*, Loi n°2019/004 du 25 avril 2019, article 3, para 1. [Click here](#).

13. Mexico, Regulation of Article 25(8) of the Political Constitution of the United States of Mexico on the social sector of the economy, 23 May 2012, *Ley de la economía social y solidaria*, 23 May 2012, Article 9, IV. [Click here](#).

14. Cape Verde, Social Economy Law No. 122/VIII/2016, 24 March 2016, Article 6, h. [Click here](#).

of Buenos Aires, Chaco, Mendoza, Rio Negro and Entre Rios have their own regional SSE legislation.

The type of law: a framework law or special law?

In most cases, the laws are of the framework type. They are very general and indicate a clear intention on the part of the authorities to frame the actions of the government as a whole in favour of the sector. Such laws are deliberately concise (around 20 articles). In other countries, such as France with its loi de 2014, a rather different approach is taken: the SSE law amends many other laws and is therefore detailed, with almost 90 articles.

Framework laws on the Social and Solidarity Economy are frequently followed by special laws – a process that sometimes occurs in reverse. Issues will arise as to the compliance of the special laws with the framework law. Special laws often complement framework laws. However, at this point in time, there is no special law on the SSE.

The approach: statutory or substantial?

Lawmakers have a choice between the abstract definition of the basic conditions and principles for the status of a Social and Solidarity Economy enterprise. This is known as the substantial approach, of which the Luxembourgish Law is a good instance.

Alternatively, they may supply a list (which may or not be limitative) of the legal forms of enterprises considered, irrevocably or presumptively, to be part of the Social and Solidarity Economy. This is known as the statutory approach and is used in the French¹⁵, Spanish¹⁶, and Portuguese¹⁷ laws.

The register option: for all enterprises concerning which it not clear whether or not they belong to the SSE, lawmakers may decide to set up a register of Social and Solidarity Economy enterprises to enable all comers to determine easily whether or not a company meets that definition; many further options are then available to identify the keeper of this register, its legal force, whether or not registration is overseen, etc.

Choosing a generic definition

Whatever the approach, statutory or substantial, all laws include a comprehensive definition. Indeed, even when the law lists the enterprises concerned, lawmakers take care to specify what constitutes their identity.

15. France, *Loi n° 2014-856 relative à l'économie sociale et solidaire*, 31 July 2014, article 1. [Click here.](#)

16. Spain, Law on the Social Solidarity Economy No. 5/2011, 29 March 2011, article 6. [Click here.](#)

17. Basic Law on the social economy No. 68/XII-1, 8 May 2013, Article 4 Para h. [Click here.](#)

At this stage, lawmakers should ask themselves a number of questions:

Is the Social and Solidarity Economy limited to an economic activity or does it extend to a holistic dimension of human activity? The first debate is whether the Social and Solidarity Economy should centre on economic matters or adopt a more holistic definition.

What distinguishes the Social and Solidarity Economy from the dominant entrepreneurial system? Second, the position of the Social and Solidarity Economy in society with respect to other forms of entrepreneurship, mainly capital-based enterprises, but possibly also State-owned enterprises in Socialist countries, needs to be determined.

Which economic activities should the Social and Solidarity Economy include? It should be decided whether the Social and Solidarity Economy may include all economic activities or only some; I recommend the first option.

A comparative analysis is supplied on pages 52-59.

Which common principles?

The fifth component of the legal definition of the Social and Solidarity Economy relates to the principles with which Social and Solidarity Economy enterprises must comply. The selection of these principles is not neutral; indeed, it is a political decision. Enshrining the principle of non-discrimination, the obligation to be transparent or the mandatory publication of the accounts (as in the Cape Verdean Law) is an ethical and moral decision.

→ Besides the legal definition, the public authorities may also set up other mechanisms to identify SSE enterprises, such as labelling and approval or the issuance of regulations.

→ To create a legal framework for Social and Solidarity Economy enterprises, the public authorities may resort to a special law which complements the framework law, but may also specify how the legal provisions are to be implemented or interpreted. Generally, an SSE law supplies the general principles and basic characteristics of a Social and Solidarity Economy enterprise. By contrast, and in addition, it is for the special laws specific to each type of enterprise to strike the balances required for the implementation of these principles. The implementation of democratic principles is a good instance of the debates surrounding the implementation of an SSE law. The public authorities needs to ask themselves whether such democracy should be direct or indirect, how the top management should be selected, employee

status and transparency. Nonprofitability and manager motivation should also be given legal expression.

→ States that have created or wish to create a legal framework favourable to the SSE need to take great care with the implementation of the law, i.e. with the public policies that will prolong it. Indeed, there is a considerable risk that the enactment of an SSE law will be both a symbolic and a hollow gesture for want of means (financial, human, local relays, etc.). One of the mechanisms for the protection of SSE enterprises and organisation is the formulation of the law's purposes: this dissuades the public authorities from letting a purpose fall by the wayside, yet must not act as a brake on the development of public policy.

→ Appoint relevant public bodies to implement the Social and Solidarity Economy law. These leading bodies must therefore be identified (ministry, independent consultative body, etc.) as well as their competencies. In my view, Quebec has fully articulated this organisation, and in such a manner that it can function in the context of Quebec. However, such articulation should be adapted to the national institutional architecture.

→ Draw plenty of inspiration from what has been set up by Social and Solidarity Economy laws and is analysed in the body of this Guide.

→ Pay special attention throughout the process to the training of the civil servants in charge of implementing the law: at the local level, an ill-informed civil servant will apply the law as they understand it, which means the understanding that suits them best; and it is not uncommon for SSE players to know it better.

→ Promote the structuring of the players in the Social and Solidarity Economy. Although such structuring is first and foremost the business of these players, it can be facilitated and supported by acknowledging them and their structures as well as by the enshrinement of institutional functions.

→ Encourage the formation of networks of SSE enterprises and organisations. Social and Solidarity Economy organisations and structures can join up to cooperate economically: associations find it easier to get loans from cooperative banks, mutual-benefit societies use traditional communities for certain kinds of services, consumer cooperatives purchase from collectively organised farmers, etc. At the same time, Social and Solidarity Economy enterprises may require joint representation with the public authorities or a political structure of their own: advocacy can therefore be mutualised.

→ Adapt the political function of social-economy networks to the players' level of maturity. Politically, the minimum purpose of structuring the players is the organisation of joint representation. Once the structures have matured somewhat, they may take over the drawing-up of regulations for the sector and the supervision of player compliance, in part or in full and with varying degrees of cooperation with the public authorities. Such structures can be useful to the public authorities, which should, however, refrain from instrumentalising them.

FOR REGIONAL ORGANISATIONS

→ Insist on the need for a regional Social and Solidarity Economy policy, and therefore on a regional legal framework that supports the SSE. The 2011 Uniform Act enacted by the Organisation for the Harmonisation of Business Law in Africa (OHADA) and European Union law are endeavours to acknowledge Social and Solidarity Economy enterprises at the regional level. Such endeavours open the way for the registration and recognition of SSE enterprises in regional legislation, but remain inadequate. I therefore encourage the development and enactment of legal frameworks on the SSE by the European Union and the various regional organisations in the Americas (ALBA, UNASUR, MERCOSUR, CELAC, OAS), the Middle East and North Africa, as well as in the Balkans, Africa (OHADA, African Union) and Asia.

FOR THE GLOBAL SSE MOVEMENT, THE INTERNATIONAL ORGANISATIONS AND THE UNITED NATIONS AGENCIES, PROGRAMMES AND FUNDS

→ Acknowledge that the Social and Solidarity Economy cohabits with other human economic activities. Its existence therefore cannot be disassociated from the dominant economy. Depending on the country and culture, it explicitly presents itself as an alternative to the dominant economy or contents itself with setting up another way of doing business. However, it is always identified as another form of entrepreneurship.

→ Beyond the existing international conceptual reference documents and the declarations and recommendations relating to cooperatives that have recently been adopted in international forums, promote the adoption of international legal instruments that are more prescriptive – and even bin-

ding – and deal with the all aspects of the SSE, especially its contribution to inclusive and sustainable development with positive impacts on people and the planet, which make it a means of achieving some of the 169 targets of the 17 Sustainable Development Goals. For this reason, lobbying for a resolution to be adopted by the General Assembly of the United Nations would be a first step towards the issuance of international Social and Solidarity Economy law.

→ Encourage the global SSE movement (civil society, international organisations, agencies, programmes and United Nations funds (UNTFSSSE, OECD, ILGSSE, government initiatives)) to analyse the legal environment of countries in various parts of the world, paying special attention and – if requested – supplying technical assistance to countries that wish to draw up or have just enacted social-economy laws and strategies. This would have the advantage of sending an encouraging signal to third countries and lay the foundations for an international Social and Solidarity Economy community.

→ Promote the structuring of SSE players. Although such structuring is first and foremost the business of these players, it can be facilitated and supported by acknowledging them and their structures as well as by the enshrinement of institutional functions.

→ Encourage the formation of networks of SSE enterprises and organisations. Social and Solidarity Economy organisations and structures can join up to cooperate economically: associations find it easier to get loans from cooperative banks, mutual-benefit societies use traditional communities for certain kinds of services, consumer cooperatives purchase from collectively organised farmers, etc. At the same time, Social and Solidarity Economy enterprises may require joint representation with the public authorities or a political structure of their own: advocacy can therefore be mutualised.

→ Mobilise the Social and Solidarity Economy to support a change of the world for the better. Like the scientific literature, the international organisations agree on the fact that the current development model is unsustainable and that on the contrary the SSE is a model that may facilitate the achievement of the Sustainable Development Goals. These positions should therefore be implemented by facilitating the involvement of the Social and Solidarity Economy in the various actions taken and guidance supplied.

FOR ALL SSE PLAYERS ON ALL CONTINENTS AND AT ALL LEVELS OF GOVERNANCE

→ Associate the Social and Solidarity Economy enterprises with the promotion of the humanistic values. SSE enterprises are already affirming humanistic values in which they root their activities and mode of operation. These enterprises and their networks can therefore usefully be associated with the expression of these humanistic values as well as with their implementation and promotion.

→ Draw inspiration from the Social and Solidarity Economy to improve fairness in the share economy. The share economy is one of the greatest upheavals of the past 20 years and has many advantages which explain its success. However, it also has deeply harmful consequences due to its undermining of statuses and protection. The Social and Solidarity Economy provides instances of collective organisations that constitute platforms of another kind for the same services. It is advisable to encourage their development and involve the SSE networks in all debates relating to the oversight and structural improvement of the platform economy.

→ Encourage bridge-building between the SSE and the commons. The commons are a new way of organising the relationship between human beings and property in the best interests of the community. It has its own bases and specific characteristics. At the same time, it shares values and principles with the SSE, from which it sometimes borrows specific forms. Theoretical and institutional dialogue of any kind is therefore likely to nourish either movement.

→ Encourage the environmental trend within the Social and Solidarity Economy while using its specific technical resources. The Social and Solidarity Economy, which was partly born at the turn of the 20th century, has no reason to be particularly virtuous as regards environmental protection, which is a more recent issue. However, some SSE enterprises can serve as a vanguard. Above all, the collective and limited-profitability aspects can serve as a highly fruitful base for the development of new and durable practices within the SSE itself and also outside it.

→ Promote the SSE in order to contribute to the defence of democracy and the rule of law. All over the world, the gains of democracy, which had appeared to have taken firm root, are now under threat. The principles and operation of the SSE make it an outstanding training-ground for democracy.

It urgently needs to be involved in all measures that support democracy, and the increasing connection between the political and the economic needs to be acknowledged.

FOR PERSONS AND/OR BODIES THAT WISH TO CONTRIBUTE TO THE IMPROVEMENT OF THIS GUIDE

→ Encourage the relevant people and institutions to enrich this Guide to the Writing of Law for a Social and Solidarity Economy, so that it can be updated and serve as a reference tool for the writing of Social and Solidarity Economy law.

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