

Article

The Development of Legislation on the Social Economy in Continental Western Europe

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Abstract: One of the main instruments for local development is the regulatory legal framework of the so-called Social Economy, a term and concept that is yet to be fully defined. The society's approach to the generation of wealth encompasses different concepts, movements, approaches, and ways of acting, all of which pose a challenge to the determination of a precise definition. Within the European Union (E.U.), a common legislative base has been developed, although the specific legislation developed by each Member State has been uneven. The legislation may have started from the same common principles, but each country has adopted different legal forms. This work aims to outline the diverse ways of legislating on a concept that is still under construction and within similar legal frameworks, illustrating the lack of harmony between European states that, despite the sharing of borders and having common legislative foundations, distance themselves in the final legislation, a situation that does not benefit the economic unity of entrepreneurs with social principles.

Keywords: social economy; solidarity-based economy; historic evolution; European legislation

1. Justification of This Research

Territorial development, either local or rural, and the social economy (S.E.), are concepts that undoubtedly have common ground. In fact, as the canon of research has unanimously pointed out, the entities of the S.E. are responsible for generating the entrepreneurial framework in rural areas, generating economic growth and development [1] (p. 128). However, in order to achieve consistent local development within the E.U. an instrument as relevant as the S.E., with common institutions in the E.U., and a generally accepted understanding of the term by the supranational organization, the European Commission (E.C.), has assumed different legal forms in various E.U. States.

One possible consequence of the different legislation within the Member States of the EU., with an intended single market, with regulations and directives for the common economic development such as the Directives of the European Parliament and Council 2014/23/EU and 2014/24/EU, relating to the awarding of public contracts and the interest in strengthening the value of the social clauses in the tenders for public contracts, the lack of legislative uniformity of the different Member States of the EU in the matter of recognition of the S.E. enterprises and organisations, is that this could be seen as an impediment for this type of business in public procurement in another country, since their condition as such could either be recognised or ignored in a public tender, depending on the internal law of the national administration of the E.U. which has made a contract bid.

In order to carry out the analysis and draw relevant conclusions, this paper has studied the three most western continental European countries -Portugal, Spain, and France, given that these countries have common legal traditions, the Latin Continental Law system which contrasts with other legal systems such as the Anglo-Saxon Common Law system, or those closer to the Central European law systems.

Another reason for choosing to analyze the internal legislation of the aforementioned countries is that they are the first within the E.U. to publish an internal standard of development of the concept of S.E.: Spain in 2011, Portugal in 2013 and France in 2014. (While the first law on S.E. was passed in Greece in September 2011, the current Hellenic law was not passed until 2016).

The final reason for analyzing the domestic legislation of Portugal, Spain and France as the main focus of this work, is the fact that, following the states of the Iberian Peninsula, the traditional French model of S.E., with two very similar legislations, as we will see, in France, when legislating on the S.E., the term “solidarity economy” was incorporated. This extended the measures of the S.E. in terms of promotion and empowerment to capitalist entities which turn out to be social enterprises due to their social purpose or because they project internal values close to those traditionally considered to be those entities of the S.E. [2].

The methodology used in this work is based on the historical institutional and legal analysis, and the comparative system, starting from the doctrinal, institutional and political backgrounds, which are common to all the states of the E.U., and focusing, later, on the singular development of these three countries. It concludes with the similarities and differences in the legal treatment, and the possible effects of such differences as an instrument of territorial development.

2. Introduction: S.E.—Concepts and Content

We must, from the beginning, point out the variety and diverse nature of the terms used in different countries to describe the concept of S.E. as a way of generating wealth in the economy. As highlighted by Alfonso Sánchez (2010), “the debate about the various names given to S.E. . . . includes the solidarity-based economy and/or the third sector. In fact, the terms S.E., Non-Profit sector, Social Enterprises and Third Sector are used in several countries of the Union and co-exist with other widely accepted concepts. In the United Kingdom, Malta and Slovenia, concepts such as the Volunteer Sector, Non-governmental Organizations (NGOs) which are similar to Non-profit organizations, are widely accepted in both scientific and political circles. In relation to the francophone countries (France, Wallonia-Belgium and Luxembourg), these recognize the concepts of Solidarity Economy, S.E. and Solidarity, too. Meanwhile in Germanic countries such as Germany and Austria, the concept of *Gemeinwirtschaft* (S.E.) is well-accepted” [3] (pp. 10–11).

The term S.E. was first used in scientific literature by the French economist, Charles Dunoyer (1830), in his article entitled, “*Nouveau Traité d’Économie Sociale*”, published in 1830, in which an ethical approach to the economy was defended. In that same decade, the University of Louvain created a course focused on S.E. [4] (p. 62). The scientific community continues to contribute to the scientific and academic concept, being influenced by a series of ideological thoughts such as utopian socialism, liberalism and Christian solidarity [5].

The doctrinal development of the concept of S.E. has, historically, been an attempt to engage with economic policy from a different angle, with the priority being given to community interests and the supremacy of the human over capital (A specific historical description of the evolution of the concept of S.E. [4] (pp. 62–63). The analysis of the origins of the S.E. [6] (pp. 5–8) is also descriptive.) Consequently, the ultimate goal of S.E. is a commitment to the individual and their surroundings and the formation of associative forms in which diversity, collaboration, pluralism and a participatory system are built on essential elements, which, at the same time, contribute to a more equitable society.

One definition of S.E. is that recorded in the First S.E. Congress held in Madrid and organized by CEPES (Confederación Empresarial Española de la Economía Social, in English, “Spanish Business Confederation of the Social Economy”) in December 1993. In its Manifesto-Program it defined S.E. as any economic activity, based on people working in association with democratic and participatory enterprises that prioritize the personal contributions of people and their labor over capital” [7] (pp. 35–36).

At a scientific level, the conceptualization of S.E. has been the subject of debate between a consideration of the structures which the intervening agent may adopt in the market, and a discussion

of the particular economic activity being carried out. As to the “definition” proposed by the Commission of European Communities (E.C.) in its Communication to the Council, on the 18th of December 1989, this stated that “S.E. enterprises are those whose economic activity are carried out in specific organizational structures. These structures or organization techniques are based on the principles of solidarity and participation (usually used in the context of “one man, one vote”) of its members, whether they are producers, users or consumers, as well as the values of autonomy and citizenship. For the most part, these enterprises take the legal form of cooperatives, mutual societies or associations” [8] (pp. 35–36) with the legal form of the enterprise being the focal point, rather than its economic activity. This is the definition that has been adopted by the International Centre of Research and Information on Public, Social and Cooperative Economy (CIRIEC), as well as by other European legislative bodies, which will be discussed further in this article. However, other definitions of S.E. focus their attention on the manner in which the economic activity is carried out by the intervening party, as well as the consequences derived from this activity, that is, if in the course of carrying out the economic activity, the enterprise respects S.E. principles and protects the interests of the individuals, or if the activity is of a social nature designed to improve the conditions of people and society in general. Based on these concepts, the content will vary.

3. The S.E. Charter and Its Principles

In the establishment of a single unequivocal idea of S.E., a key role was initially played by French cooperative enterprises, mutual societies and associations, and later by foundations, in defining its basic characteristics, giving precedence to its social goals, creating its own definitive branch within the economic space as well as considering future opportunities.

In the 1970s, France established the Comité National de liaison des activités coopératives, mutuelles et associatives (National Liaison Committee for Mutual Activities, Cooperatives and Associations) in conjunction with other entities such as the Fédération Nationale de la Mutualité Française (National Federation of French Mutual Societies) or the Groupement National de la Coopération (National Consortium of Cooperative Associations) which were crucial in embedding the idea of S.E. in French society. On the 22nd of May 1982 they underwrote the so-called “S.E. Charter” in which the concept is described along general lines and assuming the form we know today.

This Charter defines the S.E. as “a group of private enterprises not belonging to the public sector that, with democratic and participatory business management and equal rights and duties of its partners, practice a special regime of ownership and distribution of profits in which surpluses of the exercise are used for the entity growth and for the improvement of services to partners and society.” In an initial examination of the subject, the perspective of those involved in the S.E. which is centered on the private nature of the enterprises that form part of this branch of the economy is highlighted. At the same time, the Charter describes the economic activity, its system of governance and the importance given to the balance between rights and duties of the organization’s constituents. It also endorses its democratic system and highlights the special mechanisms for distributing the profits for the benefit of the enterprise itself well as the partners and community involved. The Charter frames S.E. in the arena of those entities that are made up of cooperatives, mutual societies, association and latterly, foundations.

In April of 2002, the European Confederation of Cooperatives, Mutual Societies, Associations and Foundations (CEP-CEMAF-the predecessor of the current association, S.E. Europe-created a Charter outlining the principles of S.E., a significant step in the definitive conceptualization of the term. The Charter identifies several key principles of S.E.: (1) the primacy of the individual and social objective over capital, (2) voluntary and open membership; (3) democratic control by the membership; (4) the combination of the interests of user members and the general interest; (5) the defense and application of the principle of solidarity and responsibility; (6) autonomous management and independence from public authorities and (7) the use of the surplus to carry out sustainable development objectives, services of interest to its members or of general interest. All these items are

closely related to international cooperation principles established by the International Cooperative Alliance in 1995.

As a result of the 2002 Charter of Principles and the Report published on the 26th of January 2009 by the European Parliament on S.E., the singular nature of social enterprises is specifically recognized, forging the idea that the enterprises that form part of the S.E. share some common characteristics as outlined in the said Charter [9] (p. 11). The Parliamentary Report expressly solicits that the E.U. and its Member States incorporate this branch of the economy and its related enterprises into its policies and legislation, and in recognition of this reality, the creation of a legal framework.

Both the Charter and the subsequent report from the European Parliament have gradually determined that each Member State should regulate the sector, with the intention of setting clear delimitations and its promotion.

4. The Current State of the S.E. in the E.U. Legislation

From a European perspective, and despite the appreciation of the importance and transcendence of this sector, this activity is not explicitly contemplated in the primary law of the E.U. although in art. 58 of the EEC constitutive Treaty of 1957 (TFEU), cooperatives were recognized as companies included in the right of establishment in the Community. In the EU Treaty of 1992 (T.E.U.), only the progress, development and the economic and social cohesion were considered, but without express mention of the term S.E. in the treaty of Rome of 2004, in which an ultimately failed attempt was made to establish a European Constitution, only makes a brief mention with the phrase “social market economy” (Article 1.3.3). This term, “Social Market Economy (S.M.E)”, is also used in the final modification of the T.U.E. for the Treaty of Lisbon, of 2007, in article 3, but without further scope. The term “market”, which was added to the only mention of the S.E., removes the economic model of the EU from a concept that needs defining, consoling the model in the European arena [10] (pp. 3–4), establishing it as a general economic framework, which does not require specific legislative development.

The question of the capacity of the E.U. to legislate for this matter with unitary character [10] falls outside of the objectives of this paper, since we focus on the specific legislative development of different countries within the same institutional framework and the economic and social development with common fundamentals and with different results.

Even if, at legislative level, the E.U. has not been able to develop a great deal further than regulation such as the right deriving from certain enterprises and organizations belonging to the S.E., such as the European Foundation, the Institutions that make up the EU has produced a great number of reports and produced policies with regard to S.E., a fact that can be traced back to December 1989 with the Communication of the Committee to the Council with the recognition of “the S.E. enterprises and the creation of the European market without borders” and the transcendence of the role performed by the diverse entities grouped under this category of S.E. for the purpose of achieving a market without restrictions as covered by the Single European Act. Furthermore, although the document recognizes the notion of S.E., it does not constitute an institutional conceptualization at the Single European Act level, although, as already mentioned, the individual Member States validate the importance of the concept.

The primacy given to the defense of the S.E. by the European Economic and Social Committee (EESC), in which representatives of the sector participate, is evidenced by the introduction of the “S.E. Category” which has led to the dissemination of various judgements on this issue. Similarly, the European Parliament (E.P.) has, since 1990, established the European Parliament Intergroup on S.E. In spite of the existence of such institutions, the difficulty that European institutions face in developing the sector due to the insufficient legal base that supports it and the limited conceptual specification can be appreciated. Equally, the lack of categorical mention in the Constitutional Treaties of the E.U. is a cause of this limited presence, to which the terminological confusion in the denomination must be added.

In 1992, the E.C. proposed the creation of various legal statutes, including the Regulation of the Statute for European Associations; the Regulation of the Statute for a European Cooperative Society and the Regulation of the Statute for European Mutual Societies. However, in 2002, as a result of a report by a group of experts in societal matters, advised against the creation of Statute for Associations, Mutual Societies and Foundations in Europe, on the grounds that a prior agreement was to keep the national precepts of the subjects in question. In 2003, the Council Regulation (EC) No 1435/2003, for the Statutes of European Cooperative Societies was ratified. Nine years later, in 2012, the European Commission (E.C.) approved the proposal for a Council Regulation on the Statute for a European Foundation (COM 2012/35), intended to “facilitate the establishment of foundations and their operation in the single market. It will allow foundations to have more efficiently channelled private funds to public benefit purposes on a cross-border basis in the EU ...”. The Statute regarding mutual societies and association is yet to be developed.

From an E.U. standpoint and notwithstanding the existence of numerous reports, opinions, and proposals on the subject, the reality is that the legal instruments that could form the basis of the S.E. sector remain scarce and are generally focused on its legal structures. Despite this, the report commissioned by the European Parliament on S.E. was published on the 26th of January 2009. Known as the TOIA Report, it included the final observations of the European Conference on S.E. held in Toledo in May 2010. The report highlighted the fundamental role played by the S.E. in the European economy, and concluded that political, legislative and executive pressure should be exerted to develop the European Statutes for associations, foundations and mutual societies, together with the compilation of related statistics and recognition that the sector can be an active agent and play a key role in the dialogue and social pact as part of reaching the 2005 Lisbon Objectives pertaining to the promotion of sustainable growth, full employment, local development, and social cohesion and to attain the goals set out in the Europe 2020 Strategy.

Consequently, at the level of internal legislation in the Member States of the E.U., since 2011 different regulations have been approved thus giving visibility and promotion e to S.E. at an internal or at the national level.

In the report produced by the European Economic and Social Committee for CIRIEC undertaken by Monzón Campos and Chaves Ávila in 2012, with the Spanish law and the first law of the Greek S.E. having already been published, the conclusion was reached that there was a need to advance the legal delimitation in the area of the S.E., as well as for the requirements with which its members must comply in order to avoid, among other matters, the loss of its social usefulness [11] (p. 109).

In October 2017, the European Parliament published the document “The future of E.U. policies for the Social Economy: Towards an Action Plan”, which looked at the institutional evolution of the E.U. regarding the S.E.; the contribution the S.E. has made to the E.U., proposing a European Plan of Action for the enterprises and organisations of the S.E. which should “address de economic and social development and social cohesion of all citizens, with a particular emphasis on the disadvantaged and vulnerable ones, and should involve—Through specific system actions—all actors operating in the social economy” [12] (p. 6). This five-year plan is proposed as a key element to execute a strategy for the attainment of the Sustainable Development Objectives (S.D.O.) which the U.N. has set for 2030. To that end the plan includes 20 policy measures and 64 actions structured in 7 pillars, the first of which is to establish a common understanding of social economy enterprises and organisation in the U.E. [12] (p. 8), which in turn calls for a review of the current internal regulations of the Member States of the E.U.

5. The Spanish Legal Framework of S.E.

To put things in context, it is worth pointing out that the 1978 Spanish Constitution includes in its Preamble the will of the Nation to guarantee democratic coexistence within the Constitution and “laws, in accordance with a fair economic and social order”, and further declares in Article 1.1 that “Spain [...] is established as a social and democratic State”. Article 38 further states that “free enterprise is

recognized within the framework of a market economy . . . in accordance with the demands of the general economy and, as the case may be, of economic planning.”

A scientific concept of what S.E. might be did not exist when the Constitution was ratified. However, the Magna Carta did include, on the one hand, a socialized concept of economic activity, as envisioned in Article 33.2 in the right to private property and inheritance and points out that “the social function of these rights shall determine the limits of their content in accordance with the law”, or in Article 128 where it affirms that “the entire wealth of the country in its different forms, irrespective of ownership, shall be subordinated to the general interest”. On the other hand, the Constitution makes specific references to entities which are integrated in the specific sector of S.E. To wit, Article 129.2 points out the transcendence of cooperative societies, establishing that “the public authorities shall efficiently promote the various forms of participation in the enterprise and shall encourage cooperative societies by means of appropriate legislation. They shall also establish measures to facilitate access by workers to ownership of the means of production”; Article 22 also recognizes the fundamental right of association; while Article 34 consecrates the right to create foundations, stating “the right to set up foundations for purposes of general interest is recognized in accordance with the law”. Even with regards to a particular sector of the doctrine, Article 41 of the Constitution sets out the obligation of the public authorities to maintain a public Social Security system and recognize the rights of citizens to access adequate social assistance, a behavior which in fact admits and fosters the economic activity of mutual societies, a pivotal player in the S.E. sector [13] (pp. 137–138).

Aside from the contents of the Spanish Constitution already mentioned, the doctrine, almost unanimously, places the institutional acceptance of S.E. in Spain with the creation of the “Instituto Nacional de Fomento de la Economía Social” (National Institute for the Promotion of S.E., INFES, in the Spanish initials). The institute was established by Law 31/1990 on the 27th of November, and was included in Article 98.1 of the General State Budget of 1991 stating, “The INFES, is created as an autonomous administrative organization, attached to Ministry of Labor and Social Security . . .”. Part 3 of the article states that “actions involving Cooperatives, Employee-owned companies, Foundations and other entities which in the future may be established by legislation, shall cooperate with the Ministerial Departments which are responsible for the actions that promote the creation of the Entities previously cited . . .”.

The basic organic structure and functions of the autonomous organization, the National Institute for the Promotion of Social Enterprise are set out in the Royal Decree 1836/1991, of the 28th December 1991, and regulates the basic structure and the specific functions of the official body, attributing to it the role of managing S.E. policy, and stipulating, in Article 2, its specific mission, and identifying the specific entities that make up the S.E. in an open legislation.

In spite of the ambiguity and regulatory restrictions with regard to the concept of S.E. which are confined mainly to cooperatives and labor enterprises, it leaves the way clear for other types of enterprises, including individual self-employment [14] (p. 23), and even though the Institute finally disappeared as an autonomous organization, its competencies were assumed, first by the “General Directorate of S.E.” and later by the “General Directorate of S.E., Self-Employment and Enterprise Social Responsibility,” all under the auspices of the Labor Ministry.

However, at the state level, the absence of an express directive regulating the sector persisted, without prejudice to the fact that the competencies are the preservation of the regional authorities in S.E. issues, in the respective Autonomy Status, both at a general level and at the legal figures and entities that are part of it.

Given this background, Spain undertook the task of developing a national law which would specifically deal with S.E. and facilitate its perception. On the 30th of March 2011, the Official State Bulletin (BOE) published the current Law 5/2011 of the 29th of March on S.E., subsequently modified by the Law 31/2015, of 9th September 2015, in which the regulations regarding self-employment were modified and measures for the fostering and promotion of self-employed work were adopted.

One question of special relevance in the Spanish legal system is that of the State configuration of different autonomous communities with legislative competences, having assumed various aspects of its legal system, as recognized in art.3 of the Law 5/2011, of S.E. in which the national law ought to safeguard autonomous legislative competences in this matter, such as promotion of cooperativism (as pointed out in art. 58 L.O. 2/2007, of 19th March, in the reform of the Autonomous Statute for Andalusia; or in art. 9.1.17.L.O. 1/2011, of 28th January, in the reform of the Autonomous Statute of the Autonomous Community of Extremadura).

6. Legal Framework of S.E. in Portugal

As in Spain, Portugal does not possess a specific legislative concept of S.E. as a singular category. Notwithstanding, a series of regulations of a differentiated and related nature, regarding the various types of entities that make up the S.E. sector, has been published. Cooperatives, mutual societies, and associations, which carry out activities of an economic and social nature, have all been regulated. The importance of this group of legal structures has been recognized as they share many characteristics such as not being ruled by capitalist principles and not being part of the public sector.

Within the 1976 Constitution of the Republic of Portugal, there are several references to the organization of the economy. The document is impregnated with socialist doctrines and principles, as in the case of its general principles and its socio-economic foundation. Article 80 states, "The economic and social organization of the Portuguese Republic is based on the development of socialist production relations, through the collective appropriation of the main means of production and soils, as well as the natural resources, and the exercise of the democratic power of the working classes. State intervention is the dominant note. However, in subsequent modifications of the Constitution, particularly in 1982 and 1989, the precepts dedicated to economic organization took a different bias, with growing neoliberal tendencies. Article 80 has now been completely dispossessed of any type of doctrinal wording, and now states the "Co-existence of the public, the private, and the cooperative and social sectors with respect to the means of production ownership". Article 82 defines three specific sectors, with Section 4 making specific mention to the cooperative and S.E. sector, including: (a) The means of production that belong to and are managed by cooperatives in accordance with the cooperative principles; (b) The community's means of production that belong to and are managed by local communities; (c) The means of production that are collectively exploited by workers; and (d) The means of production that belong to and are managed by on-profit legal entities, whose principal objective is social solidarity, specifically mutual societies."

Note, therefore, the constitutional recognition of entities such as cooperatives, associations and mutual societies within the framework of the private sector as long as they are non-profit in nature and are with aims based on the principles of S.E. The social sector also includes, in its subsections, three other types of organizations: community, autonomous and solidarity-based. The first of these uses community resources and is focused on local collaboration; the second is attributed to collectives of workers, and the third, with legal entities in the non-profit sector whose main mission is social solidarity, among which mutual societies are included [15] (pp. 48–49).

From a constitutional point of view, Article 82 of the Portuguese Constitution, specifies three sectors of ownership of the production means, and also specifies its sub-sectors that are part of the S.E.; it also recognizes that this precept entails the synchronization that must operate in the three sectors. The highest priority is given to two rational principles, the principle of coexistence and protection, and, tacitly, the principles of autonomy and freedom which must also be normatively adhered to.

If we stop to consider the singular normative scope of the entities that are part of the S.E., the preponderance of the cooperative sector stands out. Guiding rules of cooperative development have been updated and emphasize their social nature in contrast with the capitalist model. The current Cooperative Code of 2015—Law 119/2015, replaces the previous one from 1996, which had itself been an update of another one from 1980, dealing with the common rules for the different branches of the S.E. sector. Each of these fields, separately, are subject to regulation, by means of Law-Decreets.

In parallel other legal regulations exist which govern the cooperatives which are of public interest (Regies cooperativas), with members made up of public bodies [2] (pp. 55–56), and which have been of great interest to the legislature [16].

Associations and Foundations are basically contained within the 1996 Civil Code, although the legislation is complemented by specific legislation related to the different modalities of associations. These modalities are made up of two principal groups, the so-called “Misericordias”, created at the end of 15th century [2] (p. 69), which are autochthonous philanthropies of Portugal; and the local development associations, which generally operate in the agricultural sector.

Mutual Societies are one of earliest corporate structures of social assistance which complement the work of the Social Security system for the benefit of its members. These entities belong to the Union of Portuguese Mutual Societies, which can boast its own Code since 1990, approved by the Law Decree 72/90 published the 3rd of May.

Lastly, and briefly, it is worth mentioning the Instituciones Particulares de Solidaridad Social (IPSS) (Private Institutions of Social Solidarity), which operate in many fields related to social assistance. These are non-profit in nature and also have their own private Statute included in Law Decree 119/83 of the 25th of February and later modified by Law Decree 172/2014, which includes various legal forms [4] (pp. 69–70), such as associations, foundations, and mutual societies.

This Law Decree was published on the 8th of May in the *Diário da República* (Official Journal) 88/2013, Law No. 30/2013, *Lei de Bases da Economia Social* (Base Law of S.E.).

7. The S.E. Legal Framework in France

As already discussed, the expression “social economy” or S.E., was coined by Charles Dunoyer in 1830, although the concept was fleshed out by authors such as Pecqueur, Vidal, Benoit Malon, or Marcel Gaus, or the future prediction made by the long-established worker-owned and operated “Bucheian” newspaper, “L’Atelier” which was published between 1840 and 1850.

A historical milestone in French legislation and extendable to the rest of the western nations, was the Law of the 1st of July 1901 referring to the contract of association, still in force and modified by the Law of S.E. and Solidarity of 2014, which defines the nature and characteristics of non-economic organizations that had been expressly prohibited following the French Revolution by the Le Chapelier Law, the 14th of June 1791, which abolished all guilds and professional associations. On the 10th of September 1947, Law 47-1775 was approved. This was a comprehensive General Statute of Cooperation which established specific rules and axioms which described the differences between cooperatives and mercantile companies per se. This text has been the subject of various reforms over the years, in 1985, 1987 and 1992. However, prior to the existence of these legal reforms, the 1980s saw a gradual development and implementation of the S.E. with instruments of relevance to the Inter-Ministerial Delegation of the S.E., attached to the Presidential Council of the French Government in 1981, which was entrusted with the mission of promoting and fostering mutual cooperatives and administrative associations [9] (pp. 13–14). Decree 81-1125 created this Delegation. The concept of S.E. was defined and brought into being with a list of enterprises which adhered to its principles [16] (p. 4). The Institute for the Development of the S.E. (IDES) was established in 1983. It was made up of mutual societies and cooperative banks with the State contributing 30% of the starting capital. In that same year, the French parliament approved the Law 83-657, of the 20th of July 1983. This law was considered by IDES as the first S.E. law in Europe, which also aspired to greater things and signaled the first step in establishing the legal foundation of S.E. It is worth noting that for the first time, the term S.E. is used in a legal text. It also permits other legal entities such as Unions of S.E. to be linked with this concept; or that the Statutes of certain cooperatives (crafts, maritime, housing or transport) be updated, adapted or instituted.

This law was complemented by another, Law 85-703 of the 12th of July 1985, which focused on reforming the Statute for Labor Cooperative Societies and Unions of S.E. Seven years later, the text was the object of a process of revision as a result of the Law of Modernization of Cooperative Societies.

Once again, the role played by cooperative societies in the S.E. sphere is striking, despite the succession of law reforms. In effect, the Law of Cooperation 47-1775, in Section 2 bis, Articles 19.2, 19.3 and 19.4 are entirely dedicated to the so-called “Unions of S.E.”, granting them the status of cooperative societies aimed at managing the collective interests of its members, in addition to promoting the activities of the same.

As a result of the passing of the Spanish Law of S.E. on the 29th of March 2011, France, following a failed attempt to gain approval of the projected law in 2001, once again continued its efforts to approve a law of S.E. This finally came into fruition with the law being approved by the French National Assembly on the 21st of July 2014. The Assembly passed the Law of Social and Solidarity Economy, Law 2014-856, of the 31st of July 2014.

8. Spanish Law 5/2011, Portuguese Law No. 30/2013, and French Law No. 2014-856

Law 5/2011, of the 29th of March on S.E. was the first substantive legislation on the topic in a Member State of the E.U., and was used to recognize, regulate and promote this alternative way of generating wealth within the parameters of equity, democracy and centered on the person and their environment. In its Preamble the law emphasized that the purpose of the regulation was to establish the legal scope of the social economic sector in such a way that it is endowed with a high degree of legal certainty by means of both the conceptual determination and the guiding principles that must be met by the entities integrated in the sector. These entities are cataloged in an *ex-lege* system of entities defined as “*numerus apertus*”, in constant review.

The regulatory regime addresses the attainment of three general purposes as well as others which are more specific and with limited impact [17] (pp. 123–125). The first objective deals with the establishment of the legal concepts of the S.E. sector based on the principles, structures and activities pertaining to these types of entities, and also addresses the attainment of the purposes of legal verification, institutional perceptibility, and superior legal protection, both of the S.E., and of its entities and the respective representative organizations. The second purpose deals with the general acceptance of the association right of the holders of S.E., entities for representative purposes and the safeguarding of their interests, as well as their grouping in federative and coalition forms. The last purpose deals with the recognition and promotion of the activity, seeking to improve the S.E., its entrepreneurs and representative organizations. It is, then, a “state law, pioneer, cross-sectional, minimal and that, for the most part, approves regulatory bases” [14] (p. 17).

The Law 5/11 structure is practically identical to the Portuguese legislation contained within Law 30/2013. Both begin by highlighting the object of the law itself, that is, a legal regime of its own for the S.E., with incentives addressed to the sector. In the case of the Spanish legislation, the law focuses on the Social Security field; and in the case of Portuguese law, on the fiscal benefits to the sector. In both cases the legislations establish the legal structures that make up the S.E.; and set the guiding principles for those entities.

Both these legal norms continue with an initial definition of S.E. as nothing more than the activity of the qualified entities to do so, conforming to the guiding principles that are enumerated in both laws.

Article 3 in both Law 5/2011 and Law 30/2013 continues to establish the scope of application which is that of all the entities integrated in the S.E. The first difference between Law 5/2011 and Law 30/2013 arises in the order of presentation of the guiding principles and the entities that make up the S.E. In Spanish law, Article 4 is intended to set the guiding principles, while Article 5 lists the entities of the S.E. In Portuguese law, Article 4 refers to the entities of the S.E., while Article 5 lists its principles.

Aside from the difference in the order of the corresponding articles in both laws, there begin to appear some more substantive differences between the Spanish and Portuguese regulations, both in terms of the guiding principles and in the definition of the entities. On the one hand, the Spanish legislation has four principles, while there are seven principles included in Portuguese law. However, each regulation, more or less states all those principles indicated by the other. On the other hand, with reference to the entities that make up the S.E., the differences only exist in terms of the legal and

endemic legal structures of each country. For example, Spain recognizes labor companies, while in Portugal, the *Misericordias* are also recognized, although in the latter case, these have been granted the gambling monopoly. In fact, the legal structure of the *Misericordias* is somewhat similar to that of the Spanish organization ONCE (National Organization for the Blind in Spain) for which a third additional provision in the law allows it to run lotteries, outside the public body of State Lotteries and Bets.

In both legislations, the corresponding Article 6 pursues an updating of the catalogue or databases, in which the existing qualified S.E. entities are recognized and included, as well as those who could be included in the future, if they meet the qualifying criteria.

Article 7 in both Law 5/2011 and Law 30/2013 refers to the organization and representation of these entities, both at the level of representative integration in federations, sectorial or intersectoral confederations, as well as their participation in state bodies such as the Economic and Social Council of Portugal or in any body, both in Spain and in Portugal, of the National State Administration, or the regional Autonomous Administrations that deal with the matters that affect their economic and social interests in both Spain and in Portugal.

Article 8 of Law 5/2011 includes a provision for the promotion and dissemination of the S.E. by public authorities, corresponding to the provisions included in Article 10 of Law 30/2013.

Before entering the advantages or benefits for the entities of the S.E., the Portuguese Law requires that these entities, its members, users and beneficiaries comply with certain behaviors related to quality, safety and transparency. This requirement is not included in the Spanish law. Likewise, the Portuguese Law dedicates Article 9 to the relations between the State and the entities of the S.E., determining, solely for the State, diverse obligations such as economic stimulus, security in the cooperation, promotion of the representativeness of the organizations of the S.E. entities, and to guarantee the stability of the relations with the administration for these entities. In the Spanish law, some of these obligations are foreseen in the first and fourth additional provisions.

The incentives or advantages of the Spanish legislation focus on bonuses to the Social Security contributions and on the capitalization of the unemployment benefit to its beneficiaries when they join an entity of the social economy, advancing a large part of the subsidy for the purpose of investing in these entities, or to cover the Social Security contributions if self-employed. On the other hand, in the Portuguese Law, the incentives foreseen for S.E. entities are of a fiscal nature, benefiting from what the law itself defines as: “the enterprises and organizations of the S.E. enjoy a more favorable fiscal status defined by law according to his inherent nature” (art. 11 Lei).

A precept of the Portuguese Law, which is not included in the Spanish law, is the S.E. entities' subjection to the national and community norms with regards to social services of general interest in the scope of their activities, that is, the prevalence of the general interest over that of the entity. The Spanish norm does not expressly include such a precept, but its content is understood to be enforceable, based on the provisions in Article 38 of the Spanish Constitution, which makes business freedom subject to the demands of the general economy and, where appropriate, to economic planning.

The final article of the Portuguese legislation deals with the role of the legislator and the legislative development of the sector and its related principles.

In the Spanish legislation, the role and functions of the Council for the Promotion of the S.E. significantly affects the specific regulations on cooperatives and is based on Articles 108 ff. Law 27/1999, of July 16, on Cooperatives, and the promotion of cooperativism in the charge of the public Administration, that is, the Labor Ministry.

In short, the concept of S.E. for the Iberian legislators and their legislative development is practically identical, based on the entities that carry out the activity.

In contrast, the French legislators, without forgetting the economic agents that have traditionally been part of the S.E. (cooperatives, mutual societies, associations and foundations), focus on the evolution of the activities developed by various economic agents, or the way that entities are organized. In fact, article 1.2 of French Law 2014-856, relative to *l'économie sociale et solidaire* (S.E. and Solidarity),

also includes the activity of “commercial partners” in order to develop the S.E., albeit after fulfilling a series of requirements.

In essence, the French Law of Social and Solidarity Economy establishes what should be understood by the terms “social and solidarity economy”, and also establishes its principles of action, partially inspired by international cooperative principles [18] (pp. 5–10); its entities; public and private bodies of promotion and representation; financing systems; the possibility for workers to access the ownership of the company; and a wide adaptation of different regulatory norms for the diverse types of entities of the S.E., adapting them to the general normative framework of the S.E.. The aim of the legislators is to approve a new law that can, without replacing the current regulation in each branch of the business sector, establish the appropriate legal scope to recognize the specific presence of the S.E. It seeks to provide an appropriate level of legal security, through the adequate description of the concept and the determination of concrete rules that the entities integrated within the S.E. must comply with.

This legislation, which seems to differ from that of Spain and Portugal with regards to the detailed development of the legal framework of this economic sector and its entities, in reality takes the same structure as those described in the Iberian cases in terms of definition, principles, entities, promotion and representation agencies, sources of financing and future projection of social policies that may affect them. The expansion of this legislation lies in the number of articles that it proposes to modify. Including, on the one hand, specific legal provision for entities of the S.E., such as cooperatives including those of production, collective interest, retail, agricultural, artisanal and maritime traders- (Articles 23 & 50); insurance companies, mutual societies and welfare institutions (Articles 51–58); associations (modifying, in turn, the regulations related to the social ambit such as the National Service Code, a substitute of social benefits); the Education Code; the Law of Active Solidarity and insertion policy; or the Monetary and Financial Code (Articles 62–79); and foundations (Articles 80–87). On the other hand, the same projection of law aims to modify other more general legislations such as the Commercial Code (Articles 73 or 78), the Environmental Code, the Code of Consumption, of Work and of Public Health, as well as the law that regulates small and medium enterprises.

The legislative part that refers to the social and solidarity economy, focuses on the setting of a definition of what the S.E. is, based on compliance with certain conditions: that the entity shall not be motivated by profit sharing and that it be managed in a democratic way not solely focused on investment. It is also based on some principles such as that the profits be used to prioritize the continuity of the company, the establishment of restricted reserves and internal financing systems that strengthen the company, and that, in case of dissolution, its assets be destined to enhance other entities of the S.E.

This legislation does not include descriptions or a list of principles which closely resembles the international principles of the S.E., but rather, by focus on the specific activities of those entities which it considers to be part of the S.E., can bring them closer to the principles contained in the Spanish & Portuguese laws and those advocated by the S.E. Charter and defined within the Spanish and Portuguese legislations. Indeed, the French law includes a series of social aims and projections of the activity of any legal structure that is devoted to supporting people at risk in fragile or precarious social and economic situations, be they employees, users, customers, partners or beneficiaries. It also considers entities that fight against marginalization, economic, cultural and social inequalities, and for access to healthcare, education for the citizenry, public education, the preservation and development of social relations; the maintenance and strengthening of territorial cohesion; or that contribute to sustainable development; protect the environment or that seek to strengthen international solidarity.

The fact that it does not list social typologies or define specific legal structures of entities of the S.E. differentiates the French law from the Spanish or Portuguese regulations. Thus, the French Law permits the inclusion, among others, of corporations based on their missions, thus introducing to the field of social and solidarity economy so-called social enterprises whose purpose is one of social utility [18] (p. 14). Indeed, it could be said that the French Social and Solidarity Economy Law has a teleological character in its determination of which entities may be included in this field.

The remaining articles of the French Law refer to the establishment of public and private organizations for the promotion and representation of S.E. entities, drawing attention to their variety and number (Superior Council of Social and Solidarity Economy, French Chamber of Social and Solidarity Economy, Regional Chamber of Social and Solidarity Economy, and National Council of Regional Chambers of Social and Solidarity Economy Articles 3–7). It also foresees the development of territorial policies for the development of the S.E., with restrictions to the remuneration policies of social enterprises; the systems of public and private financing for their development, including the specific monetary and financial regulation needed for the denominated local currencies (Article 16); and the system of public aid for the transfer of companies to their workers based on the number of employees.

Finally, the French legal regime on S.E. is focused on the economic activity being carried out, irrespective of the legal structure of the enterprise and based on a very few basic conditions and principles—Soft Law [18] (p. 26)—And is particularly concerned with the development policies of social enterprises, a model which distinguishes itself from the S.E. development model adapted by Spain and Portugal.

9. Conclusions

The Institutions of the E.U. have highlighted the relevance and need to promote the S.E. in its economic and legislative sphere as an instrument for territorial development. They have managed to develop regulation, for the entire E.U., covering specific entities of the S.E. such as European cooperatives and foundations. Despite this, there are other entities that are yet to receive uniform regulation through community regulations. This is a process that will legislatively unify different economic agents that are considered part of the S.E.

However, due to the insistence of the European Institutions of the need and benefit of strengthening the S.E. in the internal legislations of the different states of the Union, the national legislative developments of countries with similar legal foundations and geographical proximity such as Portugal, Spain and France, have differed, which does not help with an adequate adoption of this type of wealth creation in the intended single market of the Union, with the intervening agents instead being considered as enterprises and organizations of the S.E., or not, depending on their own internal laws. This differentiation in the legislation does not aid the adequate adoption of this concept as a way of generating wealth in the single market of the Union.

The lack of legislative singularity regarding the S.E. can be an unjustifiable grievance for entities that are recognized as belonging to the S.E. in some national legislations but not in others. Thus, for example, there may be entities that cannot compete on equal terms in a competitive public sector tendering process where social clauses have been established that assess offers if that country has not recognized the status of the S.E. Another example is where appropriate, institutional public aids and benefits could be offered, at a European level, to S.E. entities. In some cases, entities from certain countries of the Union may receive such aids or benefits, whilst others, with the same legal structure but with different internal legal recognition in other countries of the Union, may not have access to them.

This lack of uniformity in the consideration of enterprises and organizations of the social economy at a transnational European level places them in a position of weakness with respect to the influence they might have in the Institutions of the U.E., which has less influence by its presence in the texts of law origination from the E.U., assuming a legislative competence which allows the uniform development of all countries within the Union. The weakness of the S.E. enterprises and organizations also means less of a presence in social policies, impeding the balance between liberal economic development of market protection and the concern for wealth creation based on people.

Entrepreneurship, territorial development, and economic development in general, requires legal certainty, and in a globalized economic environment such as the E.U., the lack of a singular, uniform legal treatment of undifferentiated entities is not justifiable. In the three countries analyzed, Portugal,

Spain, and France, which are geographically and legally close, this research has not found just causes for the justification for the differences in the three legislations.

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