

A BENEVOLENT LEGAL LOOK AT THE SOCIAL AND SOLIDARITY ECONOMY ACT*

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The law passed last July was presented as a major piece of legislation that would reinvigorate and restructure the social and solidarity economy. Apart from official statements, reactions to the law have been guarded or critical. These reservations mirror the expectations that the law generated, expectations that a lawyer might consider unrealistic. The law does not appear to be fundamentally different from its counterparts in Spain and Quebec at least in its organisational aspects. In the French context, however, the law is a departure from the previous law in 1992, which had comparable ambitions. Besides the influence of the issues raised by the solidarity economy and social enterprises, the law features fewer attractions for capitalist mechanisms and reaffirms and strengthens principles that are more specific to the social and solidarity economy.

La loi sur l'économie sociale et solidaire: un regard juridique bienveillant

La loi sur l'économie sociale et solidaire votée en juillet dernier est présentée comme une grande loi, à la fois rénovatrice et structurante de l'ESS. Les commentaires qu'elle suscite sont, si l'on excepte les officiels, prudents ou critiques. Ces hésitations sont à la hauteur des attentes qu'elle suscite et que le juriste juge parfois démesurées. La loi n'apparaît en effet pas fondamentalement différente de ses émules espagnole et québécoise, du moins dans sa fonction structurante. Sur le plan strictement national, elle tranche avec la précédente, de 1992, qui avait une même ampleur. Outre l'influence des débats suscités par l'économie solidaire, voire l'entreprise sociale, elle se caractérise par la baisse de l'attraction pour les mécanismes capitalistes et la réaffirmation ou le développement des principes plus spécifiques à l'ESS.

La ley de economía social y solidaria: una mirada jurídica benévola

La ley votada en julio pasado ha sido presentada como una grande ley, a la vez renovadora y estructurante para la Economía solidaria. Los comentarios que suscita son, aparte de los oficiales, prudentes o críticos. Tales vacilaciones están a la altura de las expectativas que la ley ha suscitado y a veces estas son consideradas excesivas por el jurista. En efecto, la ley parece no fundamentalmente diferente de sus equivalentes española y de Québec, al menos en su función estructurante. Al nivel puramente nacional, la ley contrasta con la precedente que tenía la misma importancia en 1992. Además de influir en los debates sobre la Economía solidaria, incluido la empresa social, se caracteriza por el descenso de atracción para los mecanismos capitalistas y por la reafirmación o el desarrollo de los principios más específicos de la Economía solidaria.

(1) Social Economy Act, *Boletín oficial del Estado*, 30 March 2011, no. 76, sec. I. p. 33023.

(2) Social Economy Act, *Compilation* 2013, chapter 22.

(3) While the terms vary between countries, the variations do not always reflect the same level of substantive differences. For example, the legislation in Quebec uses “social economy” but the fourth clause refers to a “sustainable solidarity economy” (*économie solidaire et durable*). This is certainly not an allusion to the terminology in France whose sometimes petty quarrelling on the subject has not been exported.

(4) These organisations are specifically designated in the Quebec legislation (art. 5) while the Spanish legislation defines the conditions of their representativeness (art. 7).

Last July 21st, French Parliament conclusively passed the bill on the social and solidarity economy (SSE) without opposition or subsequent referral to the Constitutional Council. It was thus swiftly signed into law and published in the *Journal officiel* on the 1st of August 2014. In the absence of general transitional provisions, the law came into force on August 2nd. Consisting of around one hundred articles spread over some eighty pages, it is remarkably long. In this respect, it differs from its counterparts in Spain⁽¹⁾ and Quebec⁽²⁾. Those two laws are much shorter (some ten articles contained in fewer than five pages) and share a similar content of defining the social economy⁽³⁾, placing the social economy in public policy, and determining the partner organisations for developing these public policies⁽⁴⁾.

In contrast, the French law may initially appear much more ambitious. It also defines the social and solidarity economy as well as determines a framework for developing public policy and the sector’s official representation. These foundations are however expanded by a large number of provisions that concern every branch of the social and solidarity economy, although the multitude of provisions can be seen as a weakening of the whole through dilution. In addition, the law does not establish its overall integration into public policy as its foreign counterparts have done. Be that as it may, the law is part of the growing interest in the sector’s enterprises internationally. Even the European Union, whose retreat has been complained about since the end of southern Europe’s predomance on the issue, has launched a number of initiatives these past few years.

Viewed within the national context, the law reflects both the return of government support, even if it is short-lived and patchy, and confirms that the reforms of the sector’s organisations are no longer influenced by conventional company law. Indeed, this law was initiated by a left-wing government as part of its electoral promises and championed by a proactive government minister (Benoît Hamon). While recent developments have reflected a retreat in the government’s commitment, the social and solidarity economy law nonetheless shows the government’s renewed interest following a gradual withdrawal during the years 2000-2010. At the same time, the content of the law promotes the sector’s traditional values. After a wave of modernisation based on making these principles more flexible to accommodate capitalist mechanisms that are supposed to stimulate the growth of SSE enterprises, the current climate has swung around in favour of promoting initiatives and building on experiences and practices. The earlier developments are not in question, and some have even been extended, but they are no longer the core of the law.

This rapid presentation is not intended as an exhaustive survey of the contributions of the SSE Act⁽⁵⁾. Our aim is more of an overview to convey the new direction. We will try to show how two main areas that seem to us to characterise the spirit of the law are expressed. Government support principally appears through the development of a legal framework for the sector, which includes the basis for determining relevant

(5) A more systematic technical study will appear in *Revue des sociétés* in early 2015.

public policies. As for the end of liberalisation, this is reflected in various innovations that are difficult to summarise in a single idea without succumbing to ideology or bias. These innovations firstly entail financial measures, but they also already show that capitalist techniques are no longer the only ones available. The law thus consolidates the traditional mechanisms of the SSE, envisages multiple possibilities for partnerships with the sector, and aims to improve the legal certainty for the sector's enterprises. We will discuss these different points in order but will not cover every provision of the law.

Elements of a legal framework for the SSE

Definition

We will skip the new definition given for a cooperative (law of 1947, art. 1, par. 1)⁽⁶⁾, which is more concise and appropriate. We will only mention that it unfortunately only refers to the collective interest of members even though the introduction of the community-interest cooperative (*société cooperative d'intérêt collectif*, or SCIC) in the general law of 1947 was explained by the wish to make it something other than just a new special category. What is really important is the definition of the SSE itself and its enterprises. The SSE is defined by principles (art. 1.I)⁽⁷⁾ that can be variously applied to its component parts but certainly characterise the whole sector. These principles are the following: an objective other than sharing profits; democratic, transparent and participatory governance; and policies aimed at developing the business with indivisible capital reserves. Yet it must be made clear that the SSE is not considered only at the micro level of its enterprises. Indeed, the first words of the law assert that the SSE is a "form of entrepreneurship and economic development".

An important and much discussed innovation was the removal of a purely statutory definition of the SSE's scope. Agents involved in production, processing, distribution, and trading goods and services must first be historical agents (art. 1.II.1°), namely cooperatives, mutuals (in the broad sense), and non-profit organisations and foundations. A broad definition is probably necessary to include the new endowment funds. However, the definition also includes conventional companies that, in addition to adhering to the principles of the SSE mentioned above, also pursue a social objective and allocate 20% of annual profits to a development fund and 50% to retained earnings and mandatory reserves and do not seek to buy back their shares (art. 1.II.2°). These conventional companies are only allowed to publicise that they belong to the SSE if they are listed on the Trade and Companies Register as an "SSE enterprise" (art. 1.III). It is hard to evaluate how useful this provision is. It suggests the relative distrust towards the statutory definition of the SSE and in this sense can be seen as originating from the solidarity economy and, more recently, the social enterprise movement. Nonetheless, the demands made by these movements have not been taken to their conclusion, and the substantive criteria are only used for including new enterprises in the SSE and not for excluding ones that satisfy the statutory criteria⁽⁸⁾. The idea of a label was also abandoned.

(6) Rather than mention the amending provisions of the SSE Act, we simply refer to the amended provisions themselves.

(7) When we do not indicate the law whose articles we cite, this concerns the SSE Act itself, which not only consists of amending provisions but also autonomous provisions.

(8) It should be pointed out that, to the best of our knowledge, only Luxembourg has taken this approach and only indirectly.

The interesting question is whether many conventional companies will want to join. Apart from some exceptions that are very small companies and would not justify the cost of implementing this sort of change, its success is doubtful. The required conditions to qualify are very strict (much stricter than some SSE enterprise constitutions), and the benefits that can be gained are unfortunately only as high as the (low) level of government investment in the SSE. One can only welcome this theoretical innovation, which neither Spain nor Quebec included in their respective laws, while remaining sceptical of its usefulness in practice.

Article 2 supplements the legal arsenal by defining social utility (art. 3). More precisely, it establishes alternative criteria to be met for an enterprise to be considered as pursuing this goal. Through its activity, the enterprise must help vulnerable people; fight social exclusion and inequality; or contribute to sustainable development, the switch to renewable energy or international solidarity, on the condition that the enterprise is pursuing one of the previous two objectives.

Besides this formal definition, the SSE Act explicitly envisages certain activities, which means that, in the minds of the lawmakers, they are part of the SSE. This concerns environmental organisations (arts. 88-92) and fair trade businesses (art. 94). Given that membership in the SSE is decided enterprise by enterprise, it is clear however that this only represents a bias which does not affect whether the enterprises that perform these activities qualify. The same observation applies for work-integration enterprises (*entreprises d'insertion par l'activité économique*, or EIAE), which will have representatives on the Higher Council of the SSE (art. 4.VI.5°). It should also be noted that social enterprises are not totally forgotten since they are one of the concerns of the Higher Council (art. 4).

Less representatively, the transformation of the SSE into a unified and independent sector continues through detailed provisions. The assets of a wound-up cooperative can still devolve to other cooperatives or now to SSE enterprises but no longer to a public-interest organisation or trade organisation (law of 1947, art. 19). Similarly, organisational types in the sector are more fluid, e.g. turning an endowment fund into a foundation (law no. 2008-77, 6 art. 140.XI), turning a non-profit association into a public-interest foundation (law no. 87-571, art. 20-2), clarification of the effect of turning a non-profit organisation into a community-interest cooperative (law of 1947, arts. *quindecies* and *sexdecies*), and the simplified conversion of an NGO into a community-interest cooperative through the clarification of the aims of the latter (law of 1947, art. *quinquies*). We will mention, only for this part of the law, that several of these hypothetical cases concern converting a non-profit organisation into another organisation.

Institutional structure

OVERALL STRUCTURE

Article 4 establishes a Higher Council of the SSE to act as an intermediary between social and solidarity economy organisations and national and European public authorities (par. 1). The Council is consulted for drafting the sector's legal rules and proposes an evaluation (par. 2). It helps form

a three-year national strategy (par. 3) and develops its own strategy for promoting the SSE among young people (pars. 4-7) and gender equality in the SSE (pars. 8-11). Its composition is traditional (VI) and its details, which will surely provoke bitter infighting in the sector, will only be made known through the issuing of an implementing order (VII). It should be noted, however, that the Higher Council is only an advisory body and is not meant to become an independent administrative authority. It is also interesting to note that its responsibilities extend to issues that are still being debated, such as social innovation, and for which it has to define positions that would allow identifying suitable projects (art. 15.III).

Article 5 defines a French Chamber of the SSE responsible for representing and promoting the SSE nationally and representing the interests of SSE enterprises in national public policy without affecting the mandates of sector organisations. This body is an association given the same powers as a public-interest non-profit organisation (*association reconnue d'utilité publique* or ARUP) and is composed of national organisations representing the different organisational forms in the social and solidarity economy, including commercial companies, and representatives from the National Council of Regional SSE Chambers (CNCRESS). The National Council supports, runs and coordinates the regional network (CRESS) and nationally consolidates the economic and qualitative data received by the regional organisations (art. 6, par. 2). The French Chamber has a political mandate, and the National Council a technical mandate. Would more time and effort have been wasted exposing the illogic of this arrangement than letting it continue? CRESS (art. 6) accomplishes on a local level what is not possible nationally and fulfils the same functions as the two higher authorities. It is thus a non-profit organisation with the same powers as the French Chamber. CRESS also updates and publishes the list of SSE enterprises (par. 11) and “has the authority to institute legal proceedings, in particular, to force enterprises that are part of their competence, under clause 2 of section II of article 1 of this law, to implement fully the conditions stated in this same article” (par. 10). This formulation is unfortunate because, in truth, the only power CRESS has in practice is to request the removal of the SSE designation of offending enterprises from the Trade and Companies Register.

The law only concerns public policy on a regional level. It can be argued that this level is more relevant in terms of effectiveness but the reality is perhaps, more prosaically, the government’s inability to really help the SSE. In any event, the law puts the region on the front line, which is actually already the case. The region develops a regional strategy (art. 7) together with CRESS and the concerned enterprises. The region can also pass agreements with organisations at a lower administrative level. The government’s involvement also takes place at the regional level through the organisation of a regional conference of the SSE (art. 8, par. 1) with the president of the regional council at least every two years, bringing together SSE enterprises, regional government officials and social partners. This event is part of the process of forming public policy and can also contribute to “co-construction” (art. 8, pars. 2-3).

SECTORAL STRUCTURE

The Higher Council of Cooperation was formed in 1918 but fell into disuse. It was revived by decree no. 76-356 of 20 April 1976. It is now propped up by legislative anointment (law of 1947, art. 5-1). Its responsibilities are those of the advisory bodies in its sector with a composition that is specified by government order. Besides its existing responsibilities in demutualisations, it also defines the methodology for social auditing in cooperatives (art. 5-1, par. 5). The question remains as to whether legislative intervention will give this body the force it has been lacking. This will not happen if its apathy is inversely proportional to the sector's collective conscience.

Similarly, article 63 of the SSE Act strengthens the powers of the Voluntary Sector High Council. The law formalises a body that had existed for several decades as the Voluntary Sector National Council before it was transformed and renamed the Voluntary Sector High Council by decree no. 2011-773 of 28 June 2011. It fulfils the traditional role of consultation, regulatory proposition, and public policy for the voluntary sector. A notable feature is the original way a given point can be referred to the High Council if it is on the initiative of "at least one hundred non-profit organisations covering at least three regions and having a comparable statutory objective".

Financial measures

Securities

Although not a security in the usual sense, the complementary local currencies that have been proliferating in various regions outside any legal framework are provided for by the new law (*C.mon.fin.*, arts. L.311-5ff.)⁽⁹⁾.

(9) See translator's note at the end for an explanation of the abbreviations of French codes cited in the article.

Their issuing and management are reserved to social economy enterprises who only have that as their aim. This provision also perhaps suggests another way of approaching financial issues.

Regarding financial instruments for raising capital, there are three interesting innovations that are all a continuation of the 1980s and 1990s, when several types of securities were made available to SSE enterprises. Firstly, there are the mutual certificates for mutual insurance enterprises (*C.assu.*, arts. L.322-26-8ff., *C.mut.*, arts. L.221-19ff.), and similarly there are joint certificates (*C.sécu.*, arts. L.931-15-1ff.). This is not a simple rebranding of the cooperative certificates that were created by the 1992 law, as mutual certificates cannot form part of share capital since mutual insurance enterprises do not have any. They can be bought by members, policy-holders of companies in the group, as well as other mutuals (art. L.223-26-8.I). Unlike their precursors, they are not tradable. They can only be transferred by redeeming them with the issuer, who can then sell them again within a two-year period (art. L.322-26-9). Their purpose is to augment the enterprise's development fund. Their rate of return, set at the annual general meeting, is variable, and a decree will set the maximum share of the profits of the last complete financial year and previous years that can be allocated to remunerating the certificates every year (art. L.322-26-8.V). The text specifies the information provided to subscribers (art. L.223-26-8.III), and a decree will specify the involvement of a prudential supervisory authority (art. L.223-26-8, par. 9).

Secondly, *titres associatifs*, securities that are issued by non-profit organisations, are extended to foundations (*C.mon.fin.*, art. L.213-20-1a). There have also been some changes to these securities to increase their take-up. It is now possible to issue bonds that can be redeemed at a term that is conditional on the issuer having built up, since the issue date, surpluses exceeding the nominal value of the issue, net of possible losses that arise during the same period (*C.mon.fin.*, art. L.213-9). In addition, the formal or informal directors of a non-profit organisation are forbidden from directly or indirectly holding bonds issued by their own organisation in order to prevent an indirect distribution of profits (*C.mon.fin.*, art. L.213-14).

Facilitating public and private funding

A certain number of provisions are aimed at facilitating raising funds for SSE enterprises, but the measures are often not exclusively financial. Besides the statistical monitoring of the financing of these enterprises (art. 12) and the participation of the sector's representative bodies alongside the Public Investment Bank in monitoring their access to financing (art. 17), public support takes various forms. There are some indications in the plan for promoting socially responsible public procurement (art. 13) as well as in the way the Monetary and Financial Code has been adapted for the European Fund for Social Enterprises (*C.mon.fin.*, art. L.214-153-1) and in the consolidation of local measures for support (art. 61). The other measures do not provide for any greater government support. Emblematically, a definition of subsidies appears in the law no. 2000-321 on the rights of citizens in their relationship with government at the beginning of the section on financial transparency: "For this law, subsidies shall comprise voluntary contributions of any kind, evaluated at the time of allocation, decided by the administrative authorities and organs responsible for managing an industrial and commercial public service, justified by a general or public interest and intended for carrying out an action or investment project, contributing to the development of a business or the overall financing of the activity of the recipient private law organisation. These actions, projects or business activities shall be initiated, defined and implemented by the recipient private law organisations. These contributions may not form the remuneration of individualised services that meet the needs of the authorities or bodies that grant them." We quote this provision at length as it is thought capable of cleaning up the practice of subsidies and thwarting the treachery of Brussels and the awe of local authorities. In reality, we do not see how a legal definition would stop decades of changing public policy or provide a shield against European competition law. Unfortunately, the incantatory virtues of legal language reach their limit here.

Also part of public involvement are the regional funds for developing the voluntary sector (art. 68). They are not clearly defined; it is simply indicated that non-profit organisations contribute to them, which implies non-profit organisations are not the only contributors. A confirmation can be found with the cooperative development fund (art. 23), where it is expressly stated that it is financed by cooperatives. Guarantee funds for contributions to the voluntary sector development fund can also be created (art. 77), which are intended to guarantee that the non-profit organisations who contribute can

recoup them. More positively, funding from public entities, mainly local and regional authorities, for community-interest cooperatives is facilitated since the cap on their equity stake is raised from 20% to 50% (law of 1947, art. 19 *septies*). Lastly, the use of financial participation and company savings plans is affected by the replacement of solidarity enterprises (*entreprises solidaires*) by community-interest solidarity enterprises (*entreprises solidaires d'utilité sociale*; *C.trav.*, art. L.3332-17-1). Registration of enterprises under this form is made easier in certain cases, in particular for work-integration enterprises.

Outside financial support, there is a desire to develop the SSE in order to allow converting across generations enterprises for which all the indicators suggest problems in the future. This is the intention of the mechanisms aimed at encouraging employee buy-outs. Before conversion, there is a provision for informing employees about the possibility of an employee buy-out using goodwill (*C.com.*, arts. L.141-23ff.) or a company (*C.com.*, arts. L.23-10-1ff.). At a later stage, the law provides a mechanism for conversion into a worker cooperative (various changes to the law of 1978 provided by article 27 of the SSE Act). We will not go into the details of this mechanism, but it consists of relaxing the conditions for converting a conventional company into a worker cooperative. While we wish these initiatives every success, we will have to wait a few years before we can measure their quantitative impact.

Enhancing SSE mechanisms

While the financial aspects already suggest a different approach than the major reforms of the 1980s and 1990s, the new direction is even more noticeable in the attempts at making the traditional principles of the SSE more effective. The key measure setting the tone of the new direction is undoubtedly the guidelines defining the conditions for the continued improvement of best practices among SSE enterprises (art. 3) that the Higher Council of the SSE has to prepare in the year after the publication of the decree specifying its composition and functioning. Given the broad scope of the guidelines and the obligation to address the various legal forms of enterprises, the Council will no doubt have a lot of work on its hands in its first year. How these guidelines will actually be used is not clear, but they are meant primarily for general meetings and also employees under the supervision of the Higher Council of the SSE.

There are various other measures that also demonstrate the wish to enhance the principles of the SSE. We will touch upon them without going into details due to lack of space. Firstly, democratic management in mutual insurance companies is strengthened (*C.assu.*, arts. L.322-26-1-1, L.322-26-2). Furthermore, a report will have to be submitted to determine if strengthening the rights of mutual directors is appropriate (art. 52) and if the provision about the involvement of employees in the private sector or public agents in mutuals should be applied to mutual companies (art. 58).

Concerning non-profit organisations, there is considerable attention to volunteering. This is the case with the revival of volunteering in the non-profit sector (art. 64, which changes various provisions of the National Service Code). Looking ahead, a report will have to be presented in the next

six months on existing leaves to foster volunteering and on the creation of a community service leave for exercising voluntary duties (art. 67).

The evolution is also at least apparent in relation to cooperatives. Symbolically, several cooperative principles are moved in the law of 1947 to article 1. Other implicit principles are reasserted, such as the voluntary duties of members of the executive or supervisory board (law of 1947, art. 6). More surprisingly but with our entire approval, the conditions for leaving the cooperative form, introduced in 1992, have been tightened (law of 1947, art. 25). It is no longer possible to convert a cooperative into a conventional firm when the requirement of its growth demands it. However, the most important innovation in this sector is clearly the reform and general application of the mechanism of the cooperative audit (law of 1947, arts. 25-1ff.). The purpose of the audit was clarified. The audit checks that the organisation is adhering to cooperative principles and rules and serving members' interests as well as to any applicable specific rules and, if necessary, proposes corrective measures (law of 1947, art. 25-1), a provision that is virtually identical to an existing one for agricultural cooperatives. While the cooperative audit was sometimes indistinguishable from a form of financial auditing, it now clearly concerns the functioning of a cooperative and evaluating its adherence to cooperative principles. In addition, and this was much discussed, the cooperative audit shall now apply to all cooperatives, in particular cooperative banks.

Facilitating partnerships

Restructuring

All SSE enterprises are concerned by the trend of increasing consolidation, while there are not always set legal procedures. They applied to cooperatives by extension of company law, there was a provision for mutual companies, and now there is a provision for non-profit organisations (law of 1901, art. 9 *bis*) and foundations (law no. 87-571, art. 20-1). Mergers, demergers, and spin-offs are also regulated, based on the model of company law, with relevant changes for the particular case of non-profit organisations or foundations. The competent body to decide on restructuring is the organisation's general meeting acting in accordance with the required conditions for changing the articles of association (law of 1901, art. 9 *bis*, pars. 1 and 2). A plan for restructuring must be drawn up and announced through the publication of a legal notice (par. 4). Restructuring involves the transfer of all assets and therefore does not imply going into receivership (par. 6). The situation of bondholders is covered by referring to the Commercial Code (par. 8). In order to make the situation secure for non-profit organisations having government certification, excluding organisations registered as in the public interest, an organisation that plans to restructure can query the author of the certification, who must reply (IV). The legal regime is identical for foundations.

Groups

The new law also innovates by creating other types of groups in the SSE and through the changes to pre-existing rules. Unions of SSE enterprises, which had been introduced by an amendment, were not retained in the end, but

the government must present a report to parliament before the end of the year about their feasibility, which would be a clause inserted in the law of 1947 (art. 26).

More modestly, the aim of cooperative unions is expanded to include developing members' businesses (law of 1947, art. 5). Recognition of the integrated operations of cooperative networks has also led to authorising retailing cooperatives to have statutory provisions on pre-emptive rights over their members' goodwill (*C.com.*, art. L.124-4-1). Furthermore, cooperatives of sole traders "may implement, by any means, a common marketing policy, in particular through undertaking marketing and advertising operations, which may involve common prices" (law of 1983, art. 1, par. 2).

The creation of a group of worker cooperatives is more ambitious (law of 1978, arts. 47 *bis ff.*). This structure implies that the various participating cooperatives must be closely related in that some of their statutory provisions must be identical (art. 47 *bis*, par. 3), and an individual cooperative will not be able to change them (art. 47 *ter*, par. 3). Some decisions must also be adopted in the same terms, such as the admission of a new member (art. 47 *ter*, par. 2) as well as converting part of net profits into shares (art. 47 *bis*, par. 9). The interest in forming a group is primarily in the fact that the workers employed by one of the group's member companies are treated as cooperatives for calculating the limitations on voting rights in application of article 3 *bis* of the law of 1947 within the group's other cooperatives. In addition, it is even possible for a worker cooperative to have 51% of the capital shares in another worker cooperative in the group provided that the employees of the subsidiary worker cooperatives have a minimum percentage of the capital in the parent worker cooperative (art. 47 *quinquies*). The same solution applies for a conventional subsidiary should the parent worker cooperative decide to turn it into a worker cooperative regardless of the ten-year waiting period that is normally applicable (art. 47 *sexies*). This is an interesting initiative, especially if it leads large worker cooperatives to convert subsidiaries created for their growth into cooperatives. However, whether worker cooperatives want to get involved in integrated groups like these remains to be seen.

Lastly, a new type of group was introduced in the Mutual Companies Code (*C.mut.*, art. L.111-4-3) between mutuals and groups involved in public health, social services and managing social and healthcare facilities or between mutuals and groups involved in insurance, reinsurance and finance. The purpose of these groups is to facilitate and develop health, social and cultural businesses by coordinating them. These groups can accept statutory SSE enterprises as members (pars. 2-8) but the mutuals of the Mutual Companies Code have an absolute majority in general meetings, as they do on the board (par. 13). These rules give it financial control over its members' health, social and cultural operations (par. 14).

Partnerships

First of all, we will simply mention that the SSE Act regulates co-insurance contracts (*C.sécu*, arts. L.932-13-2 and L.932-14-1, *C.mut.*, arts. L.227-1ff., *C.assu.*, arts. L.145-1ff.). For the SSE more generally, article 9 defines economic cooperation zones known as *pôles territoriaux de coopération économique* (PTCE). These are formed by the grouping of SSE enterprises, conventional

enterprises, local authorities, research or educational institutions and any natural person or legal entity operating in the same geographical area to implement a joint and continuous strategy of mutualisation, cooperation or partnership for socially or technologically innovative economic and social projects that contribute to local sustainable development. The definition covers a variety of projects in progress. The provision only specifies that a cross-ministerial committee, including financial backers, shall choose the PTCEs funded by government, guided by advice from experts and local authority representatives. PTCEs are popular, and their legal certainty is welcome.

Improving legal certainty

Pre-existing legal mechanisms put into law

Without over-emphasizing the point, it is worth mentioning that the business and employment cooperative (*coopérative d'activité et d'emploi*) is enshrined by the SSE Act. This form is incorporated into the law of 1947 by Title III *ter*, which has a single article, 26-41. This is a slightly strange place. However much one may admire these new cooperatives, it is unclear why they appear in the law on the general statute of a cooperative. The desire not to include them in the law of 1978 on worker cooperatives would be an inadequate justification. Furthermore, the definition given for these cooperatives is disappointing. Their “main purpose is to support the creation and development of economic activities by individual entrepreneurs”. This notion of support, which is the counterpart for the support contract for entrepreneurship, is simplistic. Overall, the law is more satisfactory in its definition of the employee-entrepreneur and that person’s relationship with the cooperative, which is included in the new title of the Employment Code devoted to the employee-entrepreneurs of a business and employment cooperative (*C.trav.*, arts. L.7331-1ff.). The protection provided by the employee status is confirmed, which is the important issue. The rest would require a detailed examination, which would not be appropriate here.

Lastly, outside the SSE Act, it is worth mentioning two initiatives in 2014 that further develop the central cooperative concept of the double capacity of owner and user. This is the case in the cooperative contract for a cooperative of residents (*C.const.hab.*, art. L.201-8) as well as in the relationship between a cooperative member and an agricultural cooperative (*C.rur.*, art. L.521-1-1).

Greater freedom for SSE organisations

The greater freedom for SSE organisations can be seen either during the drafting of the articles of association or when the organisation carries out legal operations. When drafting their articles of association, several types of cooperatives have a greater choice of business form. This is the case for a worker cooperative (law of 1978, art. 3)⁽¹⁰⁾ and also for a community-interest cooperative (law of 1947, art. 19 *quinquies*), which can now take the form of a simplified limited company. Similarly, cooperatives of retailers are no longer required to take the form of a public limited company but can also take the form of a private limited company

(10) Bertrel M., “La Scop SAS: une nouvelle opportunité en faveur de l’entrepreneur”, *Recma*, no. 332, April 2014.

(*C.com.*, art. L.124-3). This flexibility perfectly matches the spirit of freedom and imagination that drives the SSE movement forward. The ending of the strict exclusiveness in cooperatives of retailers runs in the same vein (*C.com.*, art. L.124-2) since they are subject to the new general legal provisions on the matter, which authorise transactions with third parties up to 20% (law of 1947, art. 3).

At the stage of carrying out legal operations, the legal capacity of non-profit organisations is strengthened. The special legal capacity of non-profit organisations involved in humanitarian aid, charity work or scientific or medical research has been removed. Instead, a greater legal capacity is extended to all public-interest non-profit organisations, i.e. those organisations whose donors are entitled to a 66% reduction of taxes (*CGI*, art. 200.1.b)⁽¹¹⁾.

(11) The category is not a general one but corresponds to a list that appears in this provision of the general tax code. It is much broader than what was previously mentioned in article 6 of the law of 1901.

The increased capacity has two elements. On one hand, there is the capacity to receive donations and legacies (with the mechanism of prior notification established in 2005) and, on the other hand, there is the capacity to own and manage any immovable assets acquired free of charge. This extension of legal capacity is however conditional on a three-year waiting period after registration. This development, which benefits non-profit organisations, simplifies matters since it coordinates legal categories that were previously distinct, and therefore can only be applauded. The same comment applies for an ARUP (law of 1901, art. 11). On one hand, their ability to own immovable assets no longer has any restriction, while on the other hand the regulation about their financial investments has been revised to match the rule for institutions and enterprise groups engaged in insurance, as they are regulated by the Social Security Code. Lastly, the government may legislate by decree “in order to simplify the administrative procedures for non-profit organisations and foundations, in particular government registration, certification, the granting of public-interest status and the conditions for obtaining funding” (art. 62).

Several conclusions can be drawn from this rapid overview. First, the law has totally validated the social and solidarity concept and successfully joined together various strands to form a substantially coherent whole. Next, social entrepreneurship and social innovation only make a timid appearance in French positive law, which would confirm the hypothesis that this is a unifying European concept not meant to replace national conceptions. Lastly, there is still a long way to go to achieve a body of social and solidarity economy law. And yet there seems to be a real need as can be seen by the provisions repeated in several codes in order to cover all the special laws.

Is it an important law? Unquestionably. It will certainly not radically change practices, and we have even seen the fragility of the political support that it is supposed to reflect. Nevertheless, it crystallises the changes in perspective inside the SSE before the crisis, which the law now disseminates to the outside. Some of the technical provisions are important. There are definitely many of them, and they will consequently affect all SSE enterprises. But symbols are everything, and the institutionalisation of the sector, with its structure and future rituals, is essential. There could be numerous reasons to be unhappy, on both technical and political grounds but, when we look back a little, the ground covered no longer seems insignificant. The rest, as always, is up to the actors.

ANNEX

Key to the abbreviations for the French Codes cited in the text

- C.assu.: *Code des assurances*, Insurance Code.
- C.com.: *Code de commerce*, Commercial Code.
- C.const.hab.: *Code de la construction et de l'habitation*, Construction and Housing Code.
- C.mon.fin.: *Code monétaire et financier*, Monetary and Financial Code.
- C.mut.: *Code de la mutualité*, Mutual Companies Code.
- C.rur.: *Code rural et de la pêche*, Rural Code.
- C.sécu.: *Code de la sécurité sociale*, Social Security Code.
- C.trav.: *Code du travail*, Employment Code.
- CGI: *Code général des impôts*, General Tax Code.