

Chapter 7

The Law on the Social and Solidarity Economy (SSE), France

The French Law on the Social and Solidarity Economy (SSE), adopted in 2014, provides an enabling and encompassing regulatory framework to better support traditional SSE organisations and new social enterprises. This chapter describes the objectives and rationale of the Law, along with its main measures. It identifies some strengths, weaknesses, opportunities and threats that have come to light, despite its recent implementation. Finally, it features some lessons learnt and conditions for potential replicability.

Summary

Described during the opening of parliamentary debates as a “founding act” by Benoît Hamon, then deputy minister in charge of the social and solidarity economy, and consumption, Law No. 2014-856 of 31 July 2014 on the Social and Solidarity Economy (SSE) aimed to:

- meet the need for recognition of SSE actors
- recognise SSE as a specific model of entrepreneurship
- be part of an approach initiated at the European level
- complete or reform a range of tools aiming to foster the development of SSE actors, particularly by facilitating access to financing and public procurement, consolidating the network of SSE actors, facilitating the return to work of salaried employees, modernising the legal status of co-operatives, and strengthening sustainable local-development policies.

The Law’s specificity lies in the construction of a new conceptual framework encompassing more than the traditional statutory actors (i.e. co-operatives, mutual societies, associations and foundations), until now designated as “SSE organisations”. While recognising these historic actors, the Law also includes in its purview a number of commercial enterprises, provided they respect specific principles, such as conducting a social utility purpose activity

or directing profits towards this activity. Even though initiatives taken at the European level in the context of the “Social Business Initiative” (SBI) may have exacerbated the existing schism at the national level between traditional SSE actors and new social entrepreneurs, they have also had a positive impact on the evolution of the SSE ecosystem, as witness the adoption of the French Law. After the 2012 presidential election, the French government considered the elaboration of a law defining a common conceptual framework for all SSE organisations, and applicable to different sectors, as a political and economic opportunity. Indeed, several studies have demonstrated the resilience of social enterprises in the wake of the economic and social crisis of the early 21st century, thanks to their emphasis on social values, as well as their local roots and capacity to seed different fields of activity.

Key facts

When the draft SSE Law was launched in 2012, data on the SSE sector only covered its traditional statutory forms. According to the 2012 *Panorama* produced by the national SSE Observatory (Observatoire national de l'économie sociale et solidaire, 2012), in 2012 these organisations represented 10.3% of total employment and 13.9% of private employment in France. Associations accounted for the highest employment rate (accounting for 78.6% of total salaried employees in the SSE sector), followed by co-operatives (13.1%), mutual societies (5.4%) and foundations (2.9%).

Some activity sectors are predominantly staffed by enterprises operating in the SSE sector. This is particularly true of the social sector (63% of sector jobs), and sports and leisure (56%), but also applies to financial, banking and insurance activities (30%), culture (29%) and teaching (19%). The numbers are completely different, however, in the productive sector. Thanks to the agriculture sector and agricultural co-operatives, SSE structures in the food industry account for 4.6% of sector employment.

Both the study published by the SSE Observatory in October 2012 (Observatoire national de l'économie sociale et solidaire, 2012) and the study published by the Research & Solidarity Institute in June 2012 (Institut Recherches & Solidarités, 2013) show the potential of the SSE sector in terms of job creation: employment in these structures showed great resilience during the 2008-10 crisis, and generational renewal may produce an additional 600 000 jobs between 2012 and 2020.

Rationale

Deputy minister Benoît Hamon put forward the initiative of legislating the SSE and social entrepreneurship on 29 May 2012 at a meeting of the Office of the Higher Council on the Social Economy (Bureau du Conseil supérieur de l'économie sociale).¹ Several working groups within the Council had already begun to study the feasibility of a legislative project, following the publication in April 2010 of a report by parliamentarian Francis Vercamer produced at the request of then-prime minister François Fillon. The important research performed on the occasion of this report (Vercamer, 2010) highlighted that SSE actors wished for an ambitious policy to be implemented. After several weeks of concertation with actors and administrations, about 50 propositions were formulated. They aimed to obtain better statistical knowledge on the SSE economy, modernise and simplify the legal environment, expand the range of financing tools, and recognise and integrate the SSE at different levels (national, regional, local) of public policy. Thus, as indicated in an OECD study (Mendell, Enjolras and Noya, 2010) commissioned by the Interministerial Delegation for

Innovation, Social Experimentation and the Social Economy (Délégation interministérielle à l'innovation, à l'expérimentation sociale et à l'économie sociale), it was necessary to reverse policymakers' tendency to "underestimate" the ESS.

After the 2012 change of government, this previous work provided a framework for part of the legislation's preparatory work by seeking to address economic issues. This is evidenced, for instance, by the Law's intent to provoke a "co-operative shock" in the face of difficulties encountered by enterprises that fail to successfully transfer ownership, or whose business activity sharply declines, leading to liquidation procedures. In both cases, the co-operative model could provide a solution to help maintain activity. The goal was to double the number of co-operatives over a period of three years.

Legislating on ownership transfers was long presented as one of the Law's highlights. The objective was not only to respond to a significant economic problem – the National Institute of Statistics and Economic Studies noted a continuous drop in business acquisitions between 1998 and 2010 (Ministère de l'économie et des finances, 2013) – but also to illustrate a reversal in the prevailing ideology, by focusing on collective enterprises that prioritise human capital over economic and financial capitalisation, in order to allow them to maintain or improve their activity.

The upswing in social entrepreneurship at the European level, recognised and encouraged by the European Commission, had already resulted in the adoption of the SBI, led by Commissioner Michel Barnier in October 2010, which identified a social enterprise as "an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion, and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involve employees, consumers and stakeholders affected by its commercial activities" (European Commission, 2011).

However, this evolution created some tensions between traditional SSE actors and new social entrepreneurs. Following the principle that "status does not signal virtue", these new entrepreneurs have kept the same legal (particularly associative or co-operative) status, but have endeavoured to defend an entrepreneurial approach distinct from the traditional entrepreneurship model, and characterised by a social commitment and purpose. While certain stakeholders have chosen to remain publicly funded operators, others have applied management criteria more in keeping with the traditional entrepreneurial model.

Even though the European influence (particularly the adoption of certain directives) has somewhat divided SSE actors in France, it has also steered the Law in several respects – particularly with regard to public procurement and the conditions allowing SSE structures to access the public authority market – by advocating for the inclusion of social clauses.

Objectives

The French Law primarily intends to respond to traditional SSE actors' aspirations, within the framework of the European SBI, by recognising their contribution to economic growth and social cohesion. It intends to be the first "inclusive" law that sets a common framework encompassing multiple organisations with diverse legal statuses. In France, organisations comprising the current SSE ecosystem are governed by a number of longstanding legislative texts.²

The Law's objectives are clearly expressed in the legislator's text – particularly in Article 1 – which, by explicitly defining a “specific mode of entrepreneurship”, meets the desire for recognition of SSE actors. By opening this “mode of entrepreneurship” to commercial companies, the text is also aligned with the European SBI.

The legislator, however, did not wish to limit the Law to mere declarations of intent. Through specific measures targeting different categories of enterprises, the Law aims to complete or reform a set of tools fostering the development of SSE actors. Among these tools, the Law intends to encourage the creation of enterprises and the development of activities, particularly by:

- consolidating the network of SSE actors to reinforce their legitimacy in the public debate
- facilitating their access to financing and public procurement
- facilitating employees' takeover of their companies to preserve jobs
- modernising the status of co-operatives, e.g. by allowing them to band together for increased efficiency.

The Law also aims to enhance local sustainable development policies, particularly to incentivise the creation of jobs that cannot be outsourced, e.g. by relying on the territorial hubs of economic co-operation (*pôles territoriaux de coopération économique*). In this manner, the legislator demonstrates the capacity of the SSE to generate new forms of partnerships and employment, thereby reflecting the recommendations of the OECD (Mendell, Enjolras and Noya, 2010).

Main measures of the SSE Law

Structure the network and grant legal recognition to representative SSE institutions: the ambitious and innovative Law of 31 July 2014 has far from yielded its full potential, and several related tools – particularly the advisory bodies, e.g. the Higher Council for the Social and Solidarity Economy (*Conseil supérieur de l'économie sociale et solidaire*) and the Higher Council for Co-operation (*Conseil supérieur de la coopération*) – were developed over a year after it was enacted. Each of these bodies has an essential role in structuring the network and setting the legislative provisions ensuring legal recognition of SSE institutions.

Headed by the minister in charge of SSE, the Higher Council for the Social and Solidarity Economy develops a national SSE development strategy every three years. For example, it adopted the guide on “defining the conditions for continuous improvement of good practices” (Ministry of the Economy, Industry and Digital Technology, n.d.), whose application as of July 2016 will help reinforce and clarify the governance principles ruling social economy enterprises, as defined in Article 1 of the Law. The Council is also expanding its scope to consider transversal questions, e.g. the status of gender equality in the workplace and the dissemination of SSE principles among young people.

The Higher Council for Co-operation, for its part, acts as a watchdog responsible for establishing the procedural principles and standards governing the co-operative review procedure, to re-ingrain co-operative principles at the heart of co-operative governance.³

These two councils highlight one of the Law's major objectives, i.e. formal co-construction of a public policy with the representatives of the traditional SSE organisations, as well as the new social enterprises. Each council brings together representatives from these two “families”, along with SSE experts and government officials operating in the relevant sectors.

Along with these councils, a newly instituted French Chamber of the Social and Solidarity Economy ensures a strengthened representation and promotion of SSE enterprises at the national level.

The regional SSE chambers (*Chambres régionales de l'économie sociale et solidaire*), which have existed for a number of years, have been confirmed as representatives of enterprises at the regional level. The new territorial organisation makes them major regional actors for economic development, thanks to:

- their co-organisation of regional conferences, to be produced jointly by the decentralised government and the region, with the goal of establishing a “regional SSE strategy”
- their compulsory consultative role during the drafting of regional economic development plans – key instruments for implementing each region’s economic competencies.

Recognising SSE as a specific entrepreneurial approach: the Law proposes a clear definition of the structures included in the SSE perimeter, allowing explicit recognition of this model of entrepreneurship, and enhancing both public and private funders’ understanding of the SSE economic model. Thus, this new framework includes long-standing statutory stakeholders (co-operatives, mutual societies, associations and foundations) and commercial companies with a social purpose (i.e. respecting principles such as the pursuit of an activity with a social utility, or directing profits to this activity). The Law also sets precise criteria defining “social innovation”, thereby facilitating recognition by funders.

Furthermore, in an effort to reorient solidarity savings exclusively towards companies with a strong social purpose, the Law now reserves the “social and solidarity-based enterprises” accreditation for SSE enterprises whose activity presents a significant social impact. While this accreditation is neither a brand nor a label, it recognises enterprises belonging to an alternative development model, thereby facilitating their access to solidarity-based employee savings schemes.

Facilitate access to financing and public procurement: it is still too early to estimate the impact of the measures promoting the financing of SSE enterprises – especially the establishment by the public investment bank Bpifrance of the Social Innovation Fund (*Fonds d'innovation sociale*), endowed with a EUR 40 million budget targeting major actors of social innovation who struggle to obtain financing at normal market conditions. The first experimental phase, spanning eight regions, mobilises EUR 10 million of that total budget. The rest of the budget will be awarded depending on the assessment results of this first experimental phase.

However, it should be noted that Bpifrance has established solidarity-based participatory loans and dedicated equity capital direct investment. In June 2015, the loan reserved for SSE enterprises (*prêt économie sociale et solidaire*) was the first measure offering SSE enterprises a non-guaranteed loan up to EUR 100 000.

The Law also improves associative bonds, and creates mutualist and joint development certificates, thereby allowing associations, foundations and mutual societies wishing to expand to avail themselves of the relevant financing tools.

Another public funding body, the Caisse des Dépôts et Consignations (CDC), was entrusted with managing the EUR 100 million “Investing for the Future” programme (*Programme d'investissements d'avenir*) from 2010 to 2015. Along with public and private stakeholders, on 30 June 2016 the CDC launched a new EUR 100 million investment fund to support SSE enterprises, NovESS – Le Fond ESS. NovESS also establishes a social-impact measurement and monitoring tool, MESIS (Caisse des Dépôts, 2016).

The Law also clarifies the legal regime for subsidies, by building on the jurisprudence criteria that differentiate it from public procurement, thus protecting this vital financing model for the associative sector.

Finally, to facilitate SSE entities' access to public procurement, the Law promotes the use of social clauses in public procurement, making them obligatory for municipalities and regions whose annual public procurement exceeds EUR 100 million.

Strengthen the local sustainable development policies and the network approach: another characteristic of the SSE Law is that it strengthens the network approach, by taking into consideration the new territorial organisation and facilitating exchanges among different public policy levels in the regions. The establishment of regional ESS conferences, and the participation of regional chambers in the design of the regional plans for sustainable development and territorial equality (*schémas régionaux d'aménagement de développement durable et d'égalité des territoires*), are cases in point.

The SSE Law also reinforces proximity and support mechanisms, such as the local support mechanism (*dispositif local d'accompagnement*). Above all, SSE enterprises can now constitute their own regional network, through a **regional economic co-operation hub** (*pôle territorial de coopération économique [PTCE]*), and implement common development and innovation strategies, in co-operation with all relevant economic and institutional stakeholders. By supporting these original projects, which bring together traditional companies and SSE enterprises, communities, training centres and research centres, the government fosters the creation of jobs that cannot be outsourced. The second call for projects for PTCEs, issued in April 2015, was endowed with a EUR 2.5 million budget, jointly financed by several ministries. This innovative mechanism had first been experimented prior to the adoption of the Law, whose implementation strengthened the mechanism's governance – particularly from the standpoint of the project's legal framework – and resulted in a 20% decrease in the number of eligible projects.⁴ The actual quality of the projects will, however, only be determined at the end of the experiment, in 2018-19.

Facilitate employees' takeover to preserve or re-establish jobs: other directly applicable and innovative mechanisms have had some media impact. The creation of a transitional status for seed co-operative and participative companies (*statut transitoire de société coopérative et participative d'amorçage [SCOP]*) is one such novelty, which has contributed to the "co-operative shock" called for by minister Benoît Hamon. This status allows salaried employees to take over an enterprise as a SCOP by initially owning a minority share in the capital while having the majority vote. The idea was predicated on the simple observation that too many companies – particularly small and medium-sized enterprises – do not plan for their succession; the political objective was to promote the purchase of these companies by their employees. These new modalities are the direct consequence of the introduction in the Law of mechanisms to inform employees of an upcoming transfer of ownership: henceforth, the head of the company is obligated to inform employees at least two months prior to any sale, and employees must be kept informed regularly, to facilitate the purchase when the time comes.

Modernise the status of co-operatives: the Law authorises the creation of SCOP groups that were previously forbidden by the law of 1978.⁵ Prior to the adoption of the 2014 SSE Law, SCOPs wishing to expand and remain competitive had to create classic branches unrelated to the co-operative model.

The Law also promotes the development of “activity and employment co-operatives” (*coopératives d’activités et d’emploi*), which allow an entrepreneur to launch an activity within the framework of a co-operative while benefitting from the status of salaried employee of the co-operative on permanent contract.

Challenges encountered and impact

The Law was enacted less than two years ago, and the regulatory texts were adopted only a few months ago – indeed, some only went into force on 1 January 2016. Hence, its relative novelty permits neither a quantitative study nor a qualitative evaluation of the overall initiative. Nevertheless, Table 7.1. presents an analysis of the strengths, weaknesses, opportunities and threats (SWOT) that can already be identified regarding its implementation.

Table 7.1. **SWOT analysis of the Law the Social and Solidarity Economy**

Strengths	Weaknesses
<ul style="list-style-type: none"> ● Framework law ● Carried by a ministry ● Transversal policy ● Implementation of various measures, tools and institutions promoting SSE development 	<ul style="list-style-type: none"> ● Weak administrative capacities ● Limited public financing dedicated to SSE
Opportunities	Threats
<ul style="list-style-type: none"> ● Gratitude of SSE actors for the political action undertaken ● Regional structuring of PTCEs and regional SSE chambers 	<ul style="list-style-type: none"> ● New political organisation of French regions can slow down implementation of some measures provided for in the Law ● Network egocentrism ● Difficulty in accessing financing owing to permanent divide between funders and organisations

Lessons learnt and conditions for potential replicability

While the SSE Law was described as a “founding law” (Blein and Fasquelle, 2016), which included for the first time in the legislation the notion of an alternative economy within the larger context of a pluralistic vision of the economy, it can also be considered the legal culmination of a long process aiming to recognise traditional SSE actors.

The Law promulgated on 31 July 2014 undeniably owes its success to the will of its proponent, Benoît Hamon, and to the work of the parliamentary assemblies. The project’s overall coherence – particularly the inclusive definition provided in Article 1 of the Law – might not have been possible without the collaborative work of the different SSE “families”. The desire to respect the specificity of each stakeholder category allowed everyone to emerge from the legislative process with innovative tools. Indeed, the Law stipulates specific mechanisms for different types of SSE enterprises, as well as new financial tools (mutualist certificates, associative titles, foundation bonds, subsidies), thereby consolidating its transversal approach.

Thus, the Law cannot be reduced to the social entrepreneurship principle advocated by the European Commission. Indeed, an “anglicising” of the Law that would cover only social enterprises, would destroy its inclusive nature. The French Law imposed itself precisely because it combined homogeneous values with diverse statutes, purposes and goals – a philosophy that should allow it to resist passing fads.

Nevertheless, the wavering around the concept of social entrepreneurship and social enterprise is still cause for concern. While at the European level, the Commission in place since October 2015 is steering away from the directions established by the Barnier initiative,

a new discourse is developing, which inverts the conception of Article 1 of the Law: it would no longer be a matter of SSE including social enterprises, but rather, of social enterprises including all co-operatives, mutual societies, associations and foundations.⁶

If this new direction is confirmed, the Law of 31 July 2014 would no longer relate to the SSE economy, but rather to social enterprise itself. Faced with the reticence of numerous stakeholders, the secretary of state responsible for the SSE has reverted to the project of “developing the social economy in Europe”⁷ – a philosophy in line with the “open and inclusive” vision advocated by the SSE Law.

This debate shows that despite the collaborative work undertaken, the Law of 31 July 2014 has not resolved the divergences among the various SSE stakeholders, many of whom are unhappy with the number and diversity of bodies that can lay claim to the SSE status today. Thus, ancient cleavages between an altruistically driven economy and co-operative enterprises that have leading positions in competitive markets are reaffirming themselves.

Notes

1. Advisory body established in October 2006, which in 2010 became the Higher Council for the Social and Solidarity Economy (Conseil supérieur de l'économie sociale et solidaire).
2. Firmly established in the French landscape, mutual societies and co-operatives were governed by a legal structure as early as the 19th century; co-operatives were given a new legal regime in 1947. As for associations, they were governed by the founding law of 1901.
3. Established in October 2015, in just a few months this Council was able to establish the framework for recognising “reviewers”, i.e. the persons in charge of drafting reports on co-operative practices implemented by the company; this form of audit should lead to an appraisal of co-operative practice.
4. Decree No. 2015-431 of 15 April 2015 on the call for projects by regional economic co-operation hubs, particularly Article 3.
5. The law of 1978 aimed to facilitate cooperatives' creation by employees, particularly by allowing the creation of SCOPs in the form of Limited Liability Companies. However, the law forbids a SCOP from holding majority voting rights in another SCOP (Ministère de l'économie, de l'industrie et du numérique, n.d. b).
6. This reversal was expressed by the French representative to the Expert Group on Social Entrepreneurship (GECES), during the Plenary session of GECES on 14 April 2016: “We recognise ourselves in the term ‘social enterprises’ because we use in France the term ‘social enterprise’ to designate the French concept of SSE, which encompasses all at once associations, foundations, co-operatives, mutual societies and commercial companies that have a socially beneficial activity and respect certain clearly defined management rules and apply democratic governance modes. With a common European terminology for social enterprises we propose that, by the principle of shared recognition, these two words reflect the diversity of concepts in the different Member States.”
7. Speech delivered by Mrs Martine Pinville on 17 June 2016 on the occasion of the launch of the “Scale me up” project.

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