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Mapping European Social Economy:
Employment, Social Dialogue
and the European Pillar of Social Rights

Country report

SPAIN

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/01

Introduction

The MESMER+ project aims to establish an up-to-date in-depth mapping of the activity and representation of social economy players – on both employers’ and employees’ sides – within social dialogue institutions and various industrial relations settings in nine European countries.

The research objective of the MESMER+ project aims for a better and up-to-date critical description and understanding of the representation and participation of the social economy in the social dialogue institutions as organised in the above-mentioned countries.

Research methodology is based on the triangulation of different data sources: desk research, interviews and a policy lab involving key experts from relevant organisations such as CEPES, CCOO, CEOE-CEPYME and the Ministry of Employment and Social Economy. Each of these experts has a relevant position in one of these organisations and they are involved in social dialogue in various forms (including participation in the Economic and Social Council in Spain).

Spain is one of the biggest countries in the EU in terms both of surface area (slightly over half a million square km) and of population, with slightly over 48 million inhabitants, the fourth largest in the EU. Regarding its main political features, Spain is a constitutional monarchy with a quasi-federal structure where the 17

autonomous regions enjoy highly developed policy-making powers similar to those of a federal state¹. Nevertheless, these are unevenly distributed, i.e. the devolution process is always bilateral (state-region) and this produces differences in degrees of devolution, with some regions enjoying much more decentralised policy-making powers. Furthermore, this structure is not paired with a classic bicameral federal system (such as in Germany or the USA). Thus, though there exists a chamber representing the federal structure, the Senate (also called the Upper House) has very little power compared to the Bundesrat or the US Senate, and the senators are elected in provincial constituencies (in direct elections) with a minority (56 of 264) being appointed by the legislatures of each region. In the Lower House (also called Congress) the members of parliament are chosen by direct election and proportional representation (corrected), and have more hard and soft power (visibility, influence in public life, etc.) than the Upper House. The territorial division is also reflected in the Congress through the presence of regional political parties which have gained a significant presence because of the votes concentrated in their constituencies/regions and the

¹ With different sizes, some bigger than many EU and including several provinces in them, and some others made up of only one province and having less than 400,000 inhabitants.

electoral system².

With regard to its industrial relations system (IRS), Spain can be considered a highly developed neo-corporatist state that does not fit into the typology proposed by Visser (J. Visser and Kaminska 2009). Furthermore, Spain, like other EU member states, has been undergoing a process of homogenisation reinforced by its integration into the EU. As signalled by Meardi (2018), such development includes not only a trend towards liberalisation but also re-politicisation and, especially in the last five years (after the publication of Meardi), the strengthening of trade union capabilities. Therefore, the associational governance trend³ of the Spanish IRS are currently higher than what was analysed in 2009. Thus, after a period in which the tripartite social dialogue suffered and the scope of bipartite agreements diminished (after the 2007-08 financial crisis), the capacity of trade unions to channel their views into bipartite and tripartite social dialogue has significantly increased (especially since 2018). Also, the most representative employers' association seems to praise this revitalisation of the social dialogue and the capacity of both parties (trade unions and employers) to reach agreements with the potential to be translated into law.

In this scenario, the reaction to the COVID-19 pandemic (with a prominent use of the different social and institutionalised civil dialogue tables both

2 Thus, we found completely different results (in terms of seats) with very similar votes (percentages). For example the IU party (a present at national level) obtained 2 seats in the Congress with 3.77 % of votes, meanwhile the CIU (a regional party only present in Catalonia) obtained 10 seats with 3.03% of votes.

3 "Associational governance" is a concept based on the associational power concept by Wright (2000). It opposes State governance of the IRS and signifies a greater centrality of workers in such governance.

at the national and regional levels) and the results of the answer provided with the above-mentioned reinforced associational governance, leads to a very positive assessment of the current situation of the social dialogue and the so-called industrial democracy of Spain (Eurofound 2018). Also, the recent signature of the fifth Employment and Collective Bargaining Agreement in March (and its coming into force after its publication in the Spanish official journal in May) demonstrates that the recent uncertainty as a result of the Ukraine war has impacted positively on the social dialogue.

Regarding the most relevant economic and political trends, the big picture seems to be more positive than that in many EU counterparts. Thus, many economic indicators, such as GDP, employment, inflation and debt, are behaving better in comparison to previous trends and to other EU countries.

- ✦ Spain's GDP has grown consistently above the EU average since 2021;
- ✦ Spain's employment growth has exceeded the EU average since Q3 2022, with records being set in employment creation such as last April (almost 240,000 new jobs in that month) and an all-time record in social security affiliation in 2022;
- ✦ Quality of employment has increased with records in terms of indefinite contracts;
- ✦ For the first time in recent history, employment has decreased less than GDP in a period of crisis;
- ✦ Current inflation is at its lowest (along with Belgium) in August 2023 and is consistently ranked among the lowest three member states since the start of the year.

/02

Industrial relations: national context

In order to understand the current situation in Spain we may need to mention events that date back to the 1970s. With the death of the dictator and the advent of democracy, Spain started to solve some of the most menacing issues inherent in its industrial relations system.

The ratification of many important ILO conventions was made possible by political and social change. For instance, it took until 1977 for the Freedom of Association and Protection of the Right to Organise to be ratified. Another key moment in this normalisation process was the approval of the Constitution in 1978. Two significant articles in the Constitution are Article 7, which guarantees freedom of association for workers and employers:

Worker unions and business associations contribute to the defence and promotion of their own economic and social interests.

and Article 35, which protects the right to work:

1. Every Spaniard has the duty to work and the right to work, to choose freely his/her profession or activity, to promotion through work and to a sufficient remuneration

to satisfy his/her needs as well as those of his/her family, without any discrimination on the grounds of sex.

2. A Law will regulate a statute of the workers.

The current social dialogue legal framework is still governed by these articles in the Constitution.

The industrial relations system then evolved rapidly from one addressing issues such as working conditions and employment relationships to include (first) wider economic and political issues and (second) wider societal concerns such as gender equality and environmental sustainability.

First, it is important to note the signature of the Moncloa Pacts on 15 October 1977. These were political agreements signed by major political parties and some of the main trade unions, which were fiercely opposed by the newly-formed employers' association (CEOE, founded in 1977). However, they established the foundation for social dialogue today: broad tripartite agreements that extend beyond industrial relations and define the scope of legitimate participants at the highest level. They were signed

by representatives of the two major trade unions (CCOO and later UGT) and the government, but were rejected by the National Confederation of Workers (*Confederación Nacional de Trabajadores*, CNT). The purpose of the pacts was to stabilise the transition to the democratic system during a period of high annual inflation and political and social unrest. This highlights the political will behind the social dialogue's design and implementation, as well as its neo-corporatist nature.

Secondly, the major actors of the industrial relations system have been increasingly involved both in the governance of key agencies and institutions and in policy design in all fields (social affairs, tax, culture, education etc.).

According to research conducted by Molina and Miguélez (2016), the first 15 years of this century can be divided into two distinct periods. The first period was marked by a thriving tripartite dialogue, which unfortunately turned turbulent in the aftermath of the 2007 economic crisis. However, since 2013, there has been a slow but steady recovery which has resulted in a total revitalisation of the social dialogue. Despite the challenging economic and political climate, employers' and workers' organisations demonstrated remarkable resilience, coordinating collective bargaining efforts. As noted by Eurofound (2018), Spain was among the countries that underwent significant changes in wage-setting regimes due to the adjustments proposed by international and national authorities in response to the crisis.

The past 20 years have been crucial for reforming the Spanish industrial relations system, as various issues have demanded political attention. Labour laws have undergone significant changes that sparked protests from trade unions. However, the current government's commitment to addressing urgent and controversial matters from previous reforms has brought about a new era of collaboration. These issues were addressed by a labour reform approved in January 2022 and include strengthening collective bargaining, imposing stricter conditions for temporary contracts, and eliminating employers' ability to unilaterally change certain working conditions. Furthermore, a proposal to draft a new Statute of Workers was launched in May 2022, but this promise was not fulfilled due to the election held in July 2023.

2.1 MAIN FEATURES OF THE SYSTEM

Concerning the description of the industrial relations system in Spain, the typology proposed by Jelle Visser (2009) may not be useful. It lumps together countries that may share some traits but also show bigger differences as regards other elements.

Spain's industrial relations arrangements show the relevance of the four institutional pillars mentioned by Visser (2009): "[1] strong or reasonably established and publicly guaranteed trade unions; [2] a degree of solidarity wage setting based on coordination at the sectoral level or above; [3] a fairly generalised arrangement of information, consultation, and perhaps co-determination at the firm level based on the rights of workers and unions to be involved; [4] and routine participation in tripartite policy".

Regarding the first pillar: Trade union density (% of employees) 12.5% (in 2019) on a falling trend with the highest density in 1978 (44.5%) and more recently in 2009 (18.3%). This means that they show a low density compared with, for example, Nordic countries.

In the case of the second pillar, we can highlight these elements:

- ✦ Adjusted bargaining (or union) coverage rate (% of employees with the right to bargain) 80.1% (in 2018)
- ✦ There is also a high level of employee representation (40% vs. 29% in the EU, 2019), even if this could also be a sign of union strength despite the low density mentioned above.
- ✦ According to Visser and Kaminska (2009) the bargaining coordination composite index of Spain is amongst the highest in the EU-27 (4 on a scale of 1-5 for 2004-6)

Regarding the third pillar, as signalled by Visser and Kaminska (2009) “The ability of workers, directly or through their unions, to set up and be represented by an elected works council or system of representation within the firm” is now mandatory, following Directive 2002/14/EC establishing a general framework for informing and consulting employees. Another very relevant matter is their capacity to co-determine.

Finally, **regarding the fourth pillar** in Spain, as mentioned above, we have undergone different periods during the last three decades, but we can say that such tripartite agreements have always been relevant but the reaction to the 2007 crisis by

national authorities (and the role of the EU Council and other international organisations such as the IMF) severely affected this pillar. However, with the two Sánchez governments, and especially with the current employment minister (Yolanda Díaz) such tripartite agreements are central. This is also the case at the regional level, even in regions such as Andalusia or Murcia, which are governed by the right (who are opposition at the national level).

2.2 OTHER RELEVANT ELEMENTS OF THE INDUSTRIAL RELATIONS SYSTEM

The resulting industrial relations system in Spain presents a series of features which it may share with others in the EU. Firstly, as mentioned, trade unions and employers’ representatives are embedded in the general political framework beyond the narrow framework of the strict management of workplaces or the labour market in general. Secondly, the recognition of their representation is qualitatively different from any other type of representation of civil society (such as consumer associations). Thirdly, their legal recognition guarantees their representation of the interests of workers and employers in each case.

Besides this, another relevant feature of the Spanish ecosystem may be the high level of **employers’ organisation density** (% of employees): 77% (in 2018). However, one can argue that there may be issues with how this is measured. Some actors claim that the role and representativeness of employers’ organisations would be better established with more legal certainty in the future Statute of Workers. Another relevant issue is the great level of employer centralisation. There is (basically) one organisation –

CEOE – representing all companies, and within it, there are sectors and specialised types of organisations representing companies, such as CEPYME, which represents SMEs.

This means that in practice there is complete unity in the representation of employers. According to Pensabene Lioni, this unity is reflected in the “almost total absence of contrasting ideological elements within the respective business organisations”. Additionally, he notes that “almost all public companies undergo collective bargaining exclusively at the business [organisation] level”. To overcome the shortcomings produced by this singularity in the representation of employers, this author also requests for “a mechanism for accreditation of business representativeness”. (Pensabene Lioni 2019).

/03

Social dialogue

As we mentioned above, social dialogue evolved rapidly as Spain moved from being a dictatorship to being an industrial democracy. Initially, the social dialogue legal framework was developed to design a modern IRS with the signature of the most relevant ILO conventions and aligned with Western democracies. The initial pattern was of a state-centred IRS due to the role of the newly democratic state in its development. Liberal trends were also favoured later during the process of EU integration (especially during the years 2007-2015) but never to the point of becoming a liberal IR regime such as those in Ireland or Malta (Visser 2009).

The role of the state not only in tripartite but also in bipartite agreements is very relevant but one can argue that this role is lately aiming to reinforce the vitality and strength of the social dialogue, as demonstrated by the answer to the last big crises (COVID and the Ukraine war).⁴ Therefore, it can be considered as a social dialogue system closer to those of social partnership countries such as Belgium, the Netherlands and Slovenia.

Also, the scope of the social dialogue has evolved from covering issues strictly falling within the realm

of working conditions or employment relationships to wider societal or political issues. Now the majority of laws are consulted with the social partners and there are bodies such as the so-called “Big Table” of the social dialogue where the government sits with trade unions and employers to consult them on issues such as the answer to the COVID pandemic or the Ukraine crisis. Indeed, the initial steps taken after the end of the dictatorship also pointed in that direction but the current system has a much wider scope.

However, it can be argued that there are two types of social dialogue. In the case of bipartite agreements, they almost entirely relate to employment issues that “ascend” from negotiations at the company level between workers and employers to the sectoral and regional/national levels. On the other side, tripartite agreements have developed well beyond these issues such as working conditions, salaries, etc., and most of the issues addressed by the above-mentioned “big” table fall into the category of economic governance or even just policy design (because they reach far beyond strictly economic/industrial relations laws). This evolution seems to respond to a consensus among most political and societal actors as to the legitimacy of trade unions and employers collaborating in such economic governance, and it seems to derive from the understanding that the increasing complexity of

⁴ With Joaquín Nieto considering Spain as a world champion in addressing COVID through social dialogue. (Sánchez-Silva 2021)

problems requires further development of political and economic governance. However, Spain remains a firm neo-corporatist state in terms of political governance, i.e., not all actors are considered fully legitimate and granted the same level of voice or agency in policy design.

Regarding the “traditional” social dialogue, its main features can be summarised as follows:

- ✦ There is a high collective bargaining coverage (84.39% this year);
- ✦ Negotiations take place at national, industry and company levels, with a national agreement generally providing a framework for lower-level bargaining (known in Spanish as AENC or Agreement for Employment and Collective Bargaining);
- ✦ Elected works councils are the main channel for workplace representation for employees (but they are mostly controlled by trade unions);
- ✦ They have information and consultation rights and bargain on pay and conditions at the company level.

Regarding the bodies, it is worth highlighting that all actors interviewed distinguish between institutionalised civil dialogue and social dialogue. In the first case they refer to all policies addressing the structured collaboration between the government and (organised) private actors (including trade unions and employers organisations), for example the Cooperation for Development Council. In the second they refer to all mechanisms regarding bipartite and tripartite collaboration in industrial relations.

Having this distinction in mind, the actors interviewed

also highlighted the fact that the Spanish Economic and Social Committee cannot be fully considered a body of the social dialogue, to the point that all elements discussed there must be addressed before in bipartite or tripartite sessions before being subscribed by the main social partners (UGT and CCOO for the trade unions and CEOE for the employers). Therefore, the main bodies of the Spanish social dialogue are:

- ✦ The “big tables” (where representatives of UGT, CCOO and CEOE meet with the government to address high-level political issues such as the answer to the pandemic or a table to co-design the recovery plan to be submitted to the EC in 2021). These tables are also used for policy design (such as in the case of the riders or telework laws);
- ✦ Bipartite tables (such as those signing the above-mentioned AENC, setting the scene for the collective bargaining negotiations);
- ✦ Bipartite tables at industry and company levels;
- ✦ Works councils.

The social economy is not represented in any of these (except for company-level negotiations in social economy companies) but it has specific “tables” and councils for institutionalised civil dialogue (see below).

The most relevant legal development that followed the approval of the Constitution was the signature of the first version of the Statute of Workers in 1980. This law was amended in 1995 and reformed in 2003, 2015 and 2020. Other relevant laws are those that concern issues regarding trade union legitimacy and representativeness, such as Organic Law 11/1985 on Trade Union Freedom or the Regulation on the

Election of Workers Representatives of 1994. The resulting legal framework is not symmetrical: it has a high degree of clarity about the representativeness of trade unions (through elections) and legitimacy (with a variegated set of laws specifically addressing them); however in the case of employers' associations there is only one article and one additional disposition referring to legitimacy (see below) and no regulation or legislation regarding elections or instruments to guarantee such representativeness, to the point that it is challenged by some actors (especially at regional⁵ and sectoral levels). This may be related to a different "embeddedness" of employers' associations in the constitutional definition of roles: freedom of association (art. 22) vs. freedom of unionisation (art. 28 of the Constitution) and a different insertion into the legal framework, i.e. deriving from a practical recognition by the other social partner (the trade union) (Pensabene Lioni 2019). However, the law developing art. 22 on the freedom of association specifically mentions that employers' associations will be regulated by specific legislation (in this case the Statute of Workers).

Concerning legitimacy and representativeness of employers' associations in the social dialogue, the Statute of Workers in its Art. 87.3. asserts:

On behalf of the business owners, the following will be authorised to negotiate:

- ✦ *In company or lower-level agreements, the employer himself;*
- ✦ *In company group agreements and those that affect a plurality of companies linked for organisational or*

productive reasons and nominatively identified in their scope of application, the representation of said companies;

- ✦ *In sectoral collective agreements, business associations that in the geographical and functional scope of the agreement have ten per cent of the employers, in the sense of article 1.2, and provided that they employ an equal percentage of the affected workers, as well as those business associations that in said area employ fifteen per cent of the affected workers;⁶*

In those sectors in which there are no business associations that have sufficient representation, as provided in the previous paragraph, the state-level business associations that have ten per cent or more will be legitimised to negotiate the corresponding sector collective agreements. of companies or workers at the state level, as well as autonomous community business associations that have a minimum of fifteen per cent of the companies or workers.

This poses two problems: firstly, such figures are not as easily ascertained as the figures on the trade union side because there are no elections, and secondly, they are biased towards those associations including big companies since they will more easily reach the threshold of workers.

Also, the sixth additional provision on institutional representation of the employers states:

For the purposes of holding institutional representation in defence of the general interests of employers before the

⁵ See references below regarding the CEPYME vs. COMPYME confrontation.

⁶ Translated by the author.

Public Administrations and other state or autonomous community entities or bodies that have it provided for, employers' associations that represent ten per cent or more of the companies and workers at state level shall be understood to have this representative capacity.

Likewise, business associations of autonomous communities that have a minimum of fifteen per cent of the employers and workers in that community may also be represented. Business associations that are members of federations or confederations at the state level shall not be included in this case.

The business organisations that have the most representative status in accordance with this additional provision shall have the capacity to obtain temporary transfers of the use of public property under the terms established by law.

It is worth mentioning that this article and this additional disposition have remained almost untouched since the first draft of the law back in 1980.

Furthermore, in those sectors in which there are no sufficiently representative business associations, as provided for in the previous paragraph, state-level business associations that represent ten per cent of the employers or more will be entitled to negotiate the corresponding sectoral collective agreements of the companies or workers at the state level, as well as the business associations of the autonomous community that have a minimum of fifteen per cent of the companies and workers in them. These thresholds results in overrepresentation for large companies in a country characterized by an industrial landscape predominantly composed of small (micro) enterprises.

Also, as Pensabene Lioni (2019) points out “the Organic Law on Union Freedom of 1985 (LOLS) omits to regulate business associations, resulting, therefore, its subjective scope being limited to unions”.⁷

Interestingly, some actors refer to mutual legitimacy to strengthen the case for the legitimacy of the actors being present at national agreements. Thus, legitimacy is also the result of “mutual legitimacy”, i.e. the major trade unions accepting that CEOE and its affiliates are their legitimate counterparts and vice versa. However, this seems to be an argument that predates the drafting and approval of the specific legislation (the Statute of Workers).

Nevertheless, this absence of a mechanism that certifies and supervises this data has led to increasing tensions, especially at the regional level and also from the point of view of the size of businesses. Thus, in 2021 a new SME confederation was created (CONPYME) to challenge the representativeness and legitimacy of CEPYME, the SME confederation which is part of CEOE and helps the defence of CEOE as a unique representative of all employers. This new confederation claims it has a sufficient representation to be present at sectoral and national agreements. It even sent a request to the ministry on 9 August 2021 that was answered with “Despite the important functions that the labour legislation grants to representative business organisations and the time that has elapsed since the approval of the Workers’ Statute, up till now no instrument or public registry has been implemented to measure the real representativeness

⁷ Translated by the author from the original in Spanish.

of these organisations. When determining the participation of business organisations in the bodies of institutional representation, there is a presumption of representativeness that is maintained until the contrary is alleged and proven” (Torres 2022).⁸ CONPYME’s case is also built on the previous efforts of the regional SME federations, the most relevant being PIMEC from Catalunya which has successfully claimed its primacy in this region (the most relevant in number of companies in Spain).

This tension regarding the representation of SMEs is linked to the over-representation of big companies, also for legal reasons (with the 10%+10% rule mentioned above) and the weight of these big companies within the CEOE (also resulting in their share of the own resources of this organisation) with CONPYME claiming that CEPYME always defends the interest of the big companies.

Concerning this, an analysis of the budget of CEOE shows the importance of big companies. For example, the total amount of public grants received by this association in 2021 was around €27m, along with €12.9m from fees and sponsorships, giving a ratio of €2 of public funds for each euro from its own resources (the latter coming almost exclusively from big companies). Being the only recognised national representative at the highest level leads to a mutual reinforcement of its economic capacity. If compared with the situation in the case of the social economy’s representation, the total amount of public grants received by CEPES (the employers association

representing the social economy) in the same year was a little less than €1m while its and fee income was around €0.2m (also giving a ratio of 5:1), signalling its weaker position in terms of private fundraising for the social economy. This may also be related to a low level of “associationism” among Spanish enterprises, and maybe also due to the prevalence of micro- and small enterprises.

Moreover, this confrontation also exists concerning those employers’ organisations representing “self-employers”, with CONPYME claiming that ATA (the major federation of this type of employers within CEOE) is not representative or legitimate. More interestingly, for some time this organisation (ATA) belonged to CEPES-Andalucía, which was the first regional organisation that proposed to include relevant “self-employers” within the “social economy”. This regional confederation from the most populated region in Spain and with the highest number of registered social economy companies managed to include several organisations representing self-employers within its membership (UPA and COAG representing farmers, and CEMPE and ATA representing all sectors). This confederation existed from 1993 until 2016 when the crisis and internal tensions led to its disappearance. These two elements (the claims from CONPYME and the inclusion of many self-employed associations within CEPES-Andalucía) demonstrate the difficulty of sustaining the argument that the unitary representation of employers actually defends the interest of all types of them, especially the smaller ones.

This could also be related to the above-mentioned absence of contrasting ideological elements.

8 Jose María Torres is the president of CONPYME.

However, this should not be read according to a reductionist view of “ideology”, but a complex one pointing for example to different schools of economic thought. Thus, recent decades have witnessed an absolute predominance of the neoliberal school but recently other heterodox economic proposals have gained relevance. It is in this context that the social economy, as another institutionally heterodox school of thought, can be seen as not only a business practice but a business practice that relates to a different framework of analysis of economic processes.

Nevertheless, the strength of the current structure of the social dialogue also lies in the acceptance of the major political actors of this composition, hence facilitating the translation of bipartite and tripartite agreements into laws or other policies. In relation to this, during the policy lab it was noticed that improving the legislative framework does not necessarily involve an improvement in the social dialogue, not only because of potential problems with the quality of such new legislation but also because of insufficient capacity by key actors (including public ones), misuse of the law, or setbacks due to other obstacles such as decreased trust, increased atomisation, potential challenges to existing agreements or the breakdown of the consensus among political forces that facilitates the translation of social dialogue agreements into legislation.

Finally, for the purposes of this research it is worth mentioning that up until a recent ruling by the Supreme Court in 2019, there existed a legal battle on the right of worker members of a cooperative to be able to affiliate to a trade union to defend their strictly professional interests. This ruling ended a long

legal battle initiated (in 2015) by a minor trade union (CNT). The main argument for this interpretation by the Supreme Court (SC) is the following:

The SC recognises that the relationship that links the worker members with their cooperative has a corporate nature, but in the opinion of the SC, it is a relationship with a strong labour component, as these people carry out work in conditions of subordination, due to their subjection to the organisation and management criteria of the Governing Council of the cooperative. It can therefore be presumed that, regardless of their formal status as members and the corporate nature of their relationship with the cooperative, they have interests of a strict labour nature, for the defence of which they may need the assistance of a union organisation, regardless of the channels of participation in the governing bodies of the cooperative derived from their status as members (García Murcia and Ángel Quiroga 2019).⁹

It is important, in relation to this issue, that the governance of workers cooperatives and the issue of the so-called false cooperatives was one of the elements of the negotiated Social Economy Integral Law that was prepared to be submitted to parliament when the election was called (29 May 2023).

/04

Social economy

Spain is considered one of the world champions in terms of the relevance of social economy. The most significant data on this are the following:

- ✦ 43,192 SE organisations
- ✦ Around 10% of GDP¹⁰
- ✦ Almost 2,185,000 direct and indirect jobs
- ✦ Over 21,625,000 non-worker members of SE organisations (2m+ in mutuals, 10m+ in co-operatives, and 8m+ in other types of SE organisations)
- ✦ 49.45% survival rate of SE organisations after five years against 36% for all companies

Furthermore, the development of its ecosystem can be further described by some highly significant achievements:

- ✦ The first EU country to have a SE Law and the first worldwide if we exclude the (somehow failed) pioneers from the 90s (Honduras and Colombia);
- ✦ One of the most “relevant” SE organisations in the world from the point of view of its advocacy capabilities (CEPES);
- ✦ One of the highest (if not the highest) representation of social economy in a national government: a minister representing social economy (also holding

one of the vice-presidencies);

- ✦ Co-sponsor of the UN Resolution on Social Economy (2023);
- ✦ In the 2022-23 academic year 98 postgraduate actions were identified in the Spanish universities: 76 postgraduate training actions, 19 professorships and 3 doctorates related to the social economy

4.1 LEGAL FRAMEWORK

In this chapter we will provide some information on the inclusion of the social economy in some relevant laws, then discuss the recently approved Social Economy Law (2011) and finally make some minor references to the WISEs Law (2007).

Basic norms (constitution and statutes)

In the case of the Spanish Constitution (1978), one type of social enterprise, the co-operative, is included as a type of business that must be promoted by public authorities:

“ 2. The public authorities shall efficiently promote the various forms of participation in the company and encourage, by appropriate legislation, cooperative societies. Also, establish means to facilitate access for workers to ownership of the means of production. (Art. 129.2) ”

¹⁰ This figure should be interpreted with care since there is not a robust statistic instrument, such as a satellite account, behind it.

This clear and close relationship with workers' participation could serve to identify the instrumental vision of the social economy in general in Spain (by all actors, both public and private). Thus, we could point out that, in general, the social economy has been identified as a good instrument to fight unemployment (using self-employment), to improve working conditions (using employee-owned companies), and to bring about local/rural development (since self-employed enterprises tend not to delocalise and can also generate wealth in areas where external investment is insufficient).

Concerning regional basic norms, most statutes included the promotion of co-operatives, following the path established by the 1978 Constitution. However, the significance of the social economy in the last 13 years in public policy has facilitated the inclusion of this term in the last wave of reforms in these rules. This inclusion was fostered by several factors, the main one being the increasing presence of the social economy in different policies, the increased capabilities of SE organisations at the national and regional level, the main features of the decentralised Spanish system (with regions confronting the state in those areas where the Constitution does not specifically define competencies), etc. Thus, the social economy is included in the following Statutes of Autonomy: Andalusia (2007), Aragon (2007), Catalonia (2006), Castile and Leon (2007) and Valencia (2006).

The SE Law (2011) is a reduced one, originally comprising only nine articles (now having thirteen plus seven additional dispositions), and must therefore be regarded as the "icing on the cake" of the institutional

architecture of the Social Entrepreneurship Policy System in Spain.

It has the ability to provide a solid structure for social economy policy development and a firm basis for political recognition.

According to the analysis of Rafal Chaves et al. (2011), [the authors of the Report for the Elaboration of a Law on Social Economy commissioned by the ministry (Monzón et al. 2009)] the law had three explicit objectives:

- ✦ The establishment of a common legal framework for all entities of the social economy, since in Spain the legal framework had been developing for the last 30 years.
- ✦ "The second objective of the law is to recognise the social economy as a political actor, through its intersectoral representative entities, that is to say as a social interlocutor participating in the processes of developing public policies at the national level likely to concern the activities of social economy enterprises" (Chaves et al. 2011). This is a distinctive feature of neo-corporatist states and gives a high degree of control of the political agenda over newcomers.
- ✦ It sets several development policies to support the social economy, beyond these two (legal framework and recognition). These development policies can be grouped into four groups:
 - *Institutional measures aimed at removing legal obstacles to the development of the social economy;*
 - *Cognitive measures aimed at disseminating training, research and innovation in this field, such as promoting the principles and values of the*

social economy, promoting training and retraining in social economy entities, introducing references to the social economy into curricula at different educational levels, and facilitating access to the processes of technological and organisational innovation to entrepreneurs in social economy entities;

- *Institutional measures aimed at establishing a public body to promote the social economy (confirming the existing institutional architecture in this field, led by the Ministry of Labour).*
- *Institutional measures of explicit inclusion of the social economy in various sectoral policies, in particular active labour market policies, especially those in favour of the groups most affected by unemployment (women, youth and long-term unemployed people), rural development, social services for dependents and social integration; and the integration of social economy enterprises in strategies to improve productivity and competitiveness.*

However, such objectives and measures should not be understood as granting the social economy equal status to other forms of entrepreneurship or trade unions. It has certainly enhanced the institutionalised civil dialogue (although the “restoration” of the Council for the Promotion of the Social Economy” took ten years, appearing in the Official Journal in 2021) but the recognition of CEPES as a full social partner in the social dialogue is far from being a reality.

When it comes to the articles of the law, they address the basic elements of an item of framework legislation.

Article 2 addresses the definition and states:

“Social economy is the designation for the set of economic and entrepreneurial activities that are carried out in the private scope by those entities that pursue the collective interest of their members, whether the general economic or social interest or both, in accordance with the principles outlined in article 4.¹¹”

Article 4 explains the guiding principles:

The entities of the social economy operate based on the following guiding principles:

- ✦ *Primacy of the individual and of the social purpose over capital, which materialises in an autonomous and transparent, democratic and participative management, which leads to prioritising the taking of decisions according to the individuals and their work contributions and services provided to the entity or according to the social purpose, over their contributions to the capital.*
- ✦ *Profits obtained from the economic activity shall be distributed mainly according to the work contributed or the service or activity performed by its partners or by its members and, if appropriate, according to the entity’s social purpose.*
- ✦ *Promotion of solidarity internally and with society, promoting commitment to local development, equal opportunities between men and women, social cohesion, the insertion of persons with the risk of social exclusion, the generation of stable and quality jobs, the conciliation of private, family and work life and sustainability.*
- ✦ *Independence with regard to the public authorities.*

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This is an unofficial translation provided by CEPES.

Article 5 provides a list of types of entities:

- ✦ *Cooperatives, mutual societies, foundations and associations engaged in an economic activity, employee-owned enterprises, insertion companies, special employment centres, fishermen's associations, agricultural processing companies and unique entities created under specific rules that are governed by the principles outlined in the previous article are part of the social economy.*
- ✦ *Likewise, any entities that carry out economic and entrepreneurial activities and whose operating rules respond to the principles set out in the previous article, and included in the catalogue of entities outlined in article 6 of this Law may be part of the social economy.*

Article 7 refers to the organisation and representation of the sector and it states:

- ✦ *Representative state-level intersectoral confederations will have representation in the institutional participation bodies of the General Administration of the State that deal with matters that affect their economic and social interests. Likewise, state-level organisations that mainly group social economy entities will be represented in the bodies of the General Administration of the State, in all those representation activities that are specific to them due to their legal nature and activity.*
- ✦ *Likewise, the representative organisations, federations or confederations of each Autonomous Community will have representation in the institutional participation bodies of the Administrations of the Autonomous Communities that deal with matters that affect their economic and social interests, in the way in which is provided for by the Autonomous Communities.*

Finally, article 13 creates the Council for the Promotion of the Social Economy as the highest institutionalised civil dialogue body for companies of this type.

Apart from this, the most relevant measure as regards specific legal forms in Spain is the creation of the National Law for WISEs (Work Integration Social Enterprises) in 2007 (although there were regional ones before that date in several regions). This law lays down the basic requirements for these companies, including labour relations with their workers, relations with public administrations (paying special attention to Employment Services), promotion measures and the disciplinary regime.

This law took some time to be born and it had also had some problems in the first years since the register it foresees was only created in 2010.

Finally, it must be mentioned that most regional laws on cooperatives and the national one of 1999 include the status of social cooperatives, which are very similar to the two types of Italian ones (types A and B), but they have enjoyed less success in Spain than in its Mediterranean neighbour.

4.2 UMBRELLA ORGANISATIONS

In Spain, there is an umbrella organisation representing all types of social economy organisations, CEPES, which is highly authoritative and has the ability to influence policy.

CEPES, established in 1992, is made up of 29 organisations.¹² All of them are state or regional confederations and specific business groups, representing the interests of cooperatives, employee-

12 This is an unofficial translation provided by CEPES.

owned companies, mutual societies, insertion companies, special employment centres, fishermen's guilds and associations of the disability sector, with more than 200 regional support structures.

It represents 43,192 companies providing 2,184,234 direct and indirect jobs and involving 21,625,063 people¹³ associated with the social economy.

Its objectives are:

- ✦ To promote the social economy and the movements and sectors that make it up;
- ✦ To promote the visibility of the social economy in all economic, cultural, social and political areas of the state and the European Union;
- ✦ To influence the elaboration of public policies and legislation, at both the state and international levels;
- ✦ To contribute to the economic development of the country as a means of achieving stability and pluralism in economic markets;
- ✦ To provide society and the business community with a socially responsible way of doing business with specific values;
- ✦ To facilitate the modernisation of social economy enterprises and their response to the business challenges they face.

¹³ Including non working members engaged in the different types of SE organisations.

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Social dialogue and the social economy

The social economy does not have a distinctive mode of participation in the social dialogue and the different types of companies abide either by general rules for all types of company or, as in the case of workers' cooperatives, required of a Supreme Court ruling to clarify the role of trade unions in in-company negotiations. Thus, there exist work councils for SE companies with over 50 workers and staff representatives for SE companies with 10-50 workers. The social economy is not included in CEOE, which makes it difficult for it to participate in social dialogue at the national, regional or sector level. Some relevant SE companies are part of sectoral organisations included in CEOE such as Eroski (a supermarket of the Mondragon corporation) which is a member of ANGED (the sectoral organisation of CEOE). However, there seems to be a lack of data regarding the participation of relevant SE enterprises as leaders of any sectoral negotiation. More strikingly, SE organisations are left out of sectoral negotiations, even though they are the most important type of enterprise in sectors like agriculture. Thus, even though the total direct turnover of the agri-food cooperatives (including participative capital companies) makes up 68% of the value of final agricultural production and 28% of the net sales of

the Spanish food industry, the representative at the national sectoral negotiation on behalf of employers is only ASAJA (the CEOE sectoral organisation for farmers). In relation to this, it is important to notice that trade unions have also facilitated the creation of organisations representing other types of farmers (such as UPA or COAG) but from this point of view they sit on the other side of the table. Interestingly, these organisations were part of CEPES-Andalucía while this social economy organisation existed and they even held one vice-presidency.

As mentioned above, the SE is involved in the institutionalised civil dialogue and there exists a law that enshrines its rights to be considered a relevant partner when it comes to policy. It is also a member of the Economic and Social Committee but this is not considered a body of social dialogue *stricto sensu*.

However, there have been initiatives at the regional level to draw up tripartite agreements involving the social economy.

5.1 RELEVANT AGREEMENTS INCLUDING SOCIAL ECONOMY

In the first case, there are different programmatic agreements signed by some regional governments such as the “Andalusian Pacts for Social Economy” (this, signed for the first time in 2002, is the pioneer in this field and now in its third edition) and the Social Economy Plan of Murcia (2009-2011). Framework agreements of this type are milestones, and in the case of the Andalusian pact is all the more relevant given its scope (all regional ministries are involved), its tripartite nature (it is also signed by trade unions) and the region involved (the most populous region with a consolidated budget of over €31.6 billion in 2011).

Andalusia was the first region in the world to sign a tripartite document with a comprehensive and detailed policy programme for the development of the social economy, and it has inspired similar policy instruments in other contexts such as the Małopolska Pact (2008). The signatories were the regional government (which has extensive political competencies), the trade unions and the recognised unique representative of the whole social economy in Andalusia (CEPES-Andalucía). The Andalusian Pact included a follow-up system which foresaw a session

in the regional parliament to assess it. In all the sessions the assessments from all parties in parliament were highly positive and asked the government to pursue them. Andalusia became the leading region in terms of the number of social economy enterprises, employment in social economy enterprises and budget allocation, and it was recognised at the world level for its policy framework for social economy.

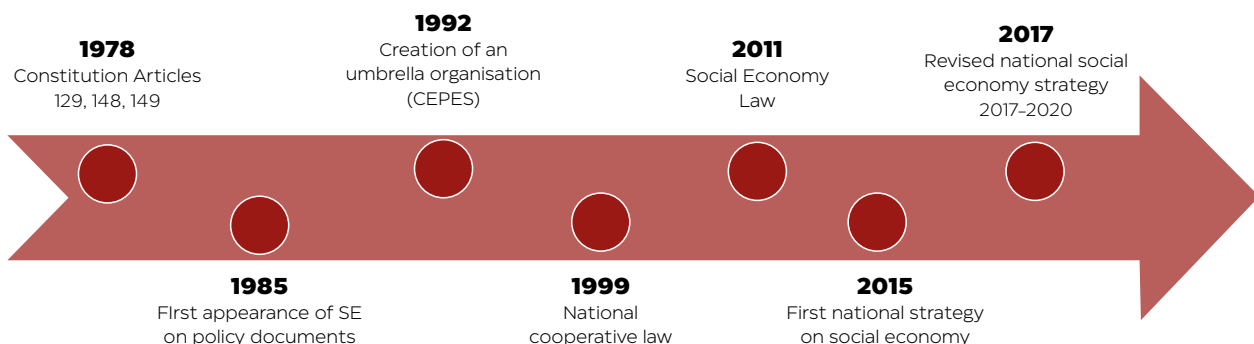
In the case of Murcia, it was a biannual plan which included measures in the following areas:

- ✦ Institutional coordination
- ✦ Business development
- ✦ Awareness raising
- ✦ Training and research

In this case, although the trade unions were not present at the signature, they participated directly through the Regional Council for the Promotion of Social Economy, where they have two seats.

Regarding the increased recognition of the social economy as a partner in policy design, the Spanish SE has come a long way to reach current levels (amongst the highest in the world). The following figure summarises this.

Figure 1. Spain: Timeline of some milestones on the recognition of the social economy (SE)



Source (OECD 2020)

Other relevant elements regarding institutional recognition and participation in the institutionalised civil dialogue are the Economic and Social Committee and the Council for the Promotion of the Social Economy.

There is an Economic and Social Committee (included in the law in 1980 but only established in 1991). Nowadays it has four SE representatives in the 3rd Group (out of 20).¹⁴

The 2011 law also foresaw another specific formal institution to allow for the interest of the sector to be heard: the State Council for the Promotion of the Social Economy. However, this council was inactive for ten years until it was recently reactivated by the current Ministry of Employment and Social Economy. Its functions are described in Article 13.2:

- ✦ *Inform and collaborate in the preparation of projects on any legal or regulatory provision that affects social economy entities.*
- ✦ *Prepare the reports requested by the Ministry of Labour and Immigration and other ministerial departments.*
- ✦ *Prepare a prior report, in accordance with article 6 of this Law, on the preparation and updating of the catalogue of social economy entities of the Ministry of Labour and Immigration.*
- ✦ *Inform the development and promotion programmes of the social economy.*
- ✦ *Carry out studies and reports on issues and problems*

¹⁴ This represents various sectors: agriculture (3 members), maritime and fishing (3 members), the social economy (4 members), consumer and user organisations (4 members), plus 6 experts in matters within the council's competence appointed by the government.

that affect the social economy especially on the reinforcement of knowledge, institutional presence and international projection of the social economy.

- ✦ *Ensure the promotion and respect for the guiding principles of this Law.*
- ✦ *Issue a prior report on the adoption of statistical information measures of social economy entities under the terms of the first additional provision of this Law.*
- ✦ *Any other functions and powers attributed to it by legal and regulatory provisions.*¹⁵

In sum, the path towards institutional recognition has not yet allowed the social economy to be a fully-fledged partner in the social dialogue in Spain. However, it has achieved a relevant status as a recognised partner in the institutionalised civil dialogue. For instance, recent achievements can be highlighted. Thus, in a busy 2021 year CEPES was able to participate in the preparation of the Spanish Social Economy Strategy 2021-2027; the Plan to Promote Vocational Training for Self-Employment and the Social Economy; and in the participation of the social economy in the Recovery, Transformation and Resilience Plan and the 2021-2027 multiannual financial framework, among other matters. Also, the government recently (in 2022) approved a PERTE (strategic project for economic recovery and transformation) on the social and care economy with over €800m in funding. Annex A shows the participation of CEPES in different public committees and councils, as well as other specific agreements with national ministries.

¹⁵ Translation by the author.

On the minus side, it is worth mentioning that CEPES is not consulted on the drafting of many laws which, according to existing legislation, should require such consultation. For example, in the case of the start-up law or the law on the creation and consolidation of companies. Even more importantly, laws which were intensively discussed in the social dialogue, such as the so-called Labour Reform law, required modifications because its negotiation at the social dialogue table did not involve social economy representatives, nor were the employers' representatives capable of noticing the problem it was going to cause in cooperatives. Such modifications concerned the loss of advantageous tax treatment because cooperatives were not able to have a certain level of permanent workers, and it also created obstacles for workers to become members using unemployment benefits (a highly relevant measure present since the eighties).

The concept of social dialogue has evolved along with society's development and Spain's integration into the

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Conclusion

international community of democratic nations. Spain has achieved a well-defined industrial democracy through this evolution, but the legislative framework governing it often lags behind. The Freedom of Association Law (approved only in 2002) is one example of this.

Nowadays, social dialogue is recognised for its role in economic governance during turbulent times. However, the norms governing its scope, opportunity, timing, and other issues are determined by the actors involved. The functioning of the social dialogue's "big table," which recently included UGT, CCOO and CEOE/CEPYME, in reacting to the COVID-19 pandemic is a prime example.

Nevertheless, social dialogue institutions are not inclusive of social economy organisations. The current interpretation of the legal framework does not allow social economy companies to be represented through their most relevant representatives at any level above the company. So, if social economy companies want to have their voice heard at the sectoral, regional, or national level in relation to bipartite negotiations and agreements, they must join mainstream employers' organisations.

However, it should be noted that the representative bodies of the social economy also lack a capillary

structure at the state level with the capacity to participate effectively and as of right in the social dialogue. This may also be due to a deficit of company participation in business associations given the dominant type of business in the economic fabric (micro- and small enterprises). This deficit has also been pointed out during research with regard to all types of enterprises, not only SEs. This has shown its limitations both concerning the understanding of the specificities of social economy organisations when it comes to tripartite agreements and its legitimacy at the sectoral level. This exclusiveness presents further problems in bipartite agreements at the sectoral level. It can be argued that social economy organisations' specificities are not adequately represented in bipartite agreements as a result of this limited understanding and the limitations of current instruments to carry their voice into such bipartite agreements.

The proposed path for the social economy players' voices to be heard through mainstream employers' organisations can be considered to be artificially promoted. It goes against the will of SE players and is not the most efficient means of involvement.

On the other hand, and in relation to the challenges of the social dialogue in general, the question of the representativeness and legitimacy of employers'

associations represents a challenge and has been raised by some actors at the regional level and in the literature. The development of the legislative framework has been uneven when addressing how to calculate and demonstrate representativeness, and the concept of legitimacy is sometimes reduced to “mutual legitimacy”.

However, the strength of the current structure for social dialogue lies in the major political actors’ acceptance of this composition. This facilitates the transfer of bipartite and tripartite agreements into laws or other policies. This “path dependency” is an obstacle to achieving fully inclusive SD institutions, as well as one of the arguments against a reform of the legal framework that could weaken the capacity achieved so far.

Participation of SE players in the institutionalised civil dialogue is comparatively inclusive, with growing recognition, especially since 2011. They have specific mechanisms to have their voice heard, but the reduced scope of the existing mechanism does not correspond to the nature of the social economy (which is present in almost every sector of the economy). It is a key element in hindering the understanding of the needs of these actors both in policy design and in bipartite agreements.

There is a growing consensus that the social economy needs to be better incorporated into institutionalised civil dialogue. This includes strengthening the social economy ministry’s ability to convey the unique characteristics of these types of companies to other government departments and colleagues, as well as providing direct institutional recognition as stated

in the 2011 law. However, there is opposition to expanding the existing employers’ representative (CEOE/CEPYME) and including a representative of the SE, despite tensions among other actors such as SMEs and self-employed individuals at the regional level.

On the other hand, the enlargement of the social dialogue, and the far-reaching scope of the economic and political governance involving UGT, CCOO and CEOE/CEPYME, present some challenges derived from the increased complexity of issues and the exhaustion of the traditional recipes of orthodox economics.

In this light, the growing societal and political awareness of the social economy, the existence of a solid legal framework in relation to its institutional recognition, and the hard numbers concerning companies, sectors, employment and quality of these enterprises (for example their survival rate or the role of women) are strong assets for the social economy.

6.1 RECOMMENDATIONS

It is important to note that not all recommendations have received consensus from all participants in the policy lab. However, the first recommendation has received strong support from all of them.

- ✦ To continue to improve the effective participation of the representatives of the social economy in the institutionalised civil dialogue as envisaged in Law 5/2011, of 29 March, on Social Economy. A multiannual roadmap should be established with relevant milestones. This roadmap should at least include the creation of a mechanism ensuring that the voice of social economy players is effectively

heard and included in the initial consultations with social partners in all policy processes regarding social or economic issues.

- ✦ To advance the institutionalisation of social dialogue through the development of the legislative framework. This should address (at least) the following issues:
 - Develop legislation on the different areas of the social dialogue, clarifying when it is mandatory or at least advisable to set it up, its scope, composition, functioning, etc.; To reinforce the legitimacy and representation of employers' associations at national, regional and sectoral levels so that they achieve the same level of robustness as trade unions without the need for elections or similar instruments. This could include a public mechanism to assess the quantitative thresholds mentioned in the Royal Legislative Decree 2/2015, of 23 October, approving the revised text of the Workers' Statute, as well as ways to address the request for a more variegated voice from employers to be channelled to the different tables. However, it is important to bear in mind that a legislative change of this magnitude may bring a certain period of instability to the social dialogue and seems to be strongly opposed by the current employers' representation;
 - Strengthen the role of the Economic and Social Committee as a key institution of the social dialogue.
- ✦ Social economy players should also reinforce their capabilities to participate in the social dialogue with a bottom-up perspective, i.e. from the company to the sector at provincial, regional and national levels. Such reinforcement should address the issues of statistics, specific departments and public strategies at all levels for SE representatives, research (including a mapping of those SE actors which are also members of CEOE/CEPYME and its affiliates) etc.
- ✦ Social economy actors must reinforce their collaboration with trade unions on bilateral issues such as their role in worker cooperatives and other SE organisations with strong horizontal governance. These issues should also address highly sensitive issues such as "mutual recognition" at the big table of the social dialogue and how it can be improved to have more inclusive SD institutions, etc.
- ✦ Social economy actors must reinforce their collaboration with CEOE/CEPYME on bilateral issues, such as the affiliation of SE enterprises to CEOE/CEPYME, facilitating their candidacy and their potential to act as representatives or be elected as presidents in certain geographical areas or sectors in CEOE/CEPYME affiliates, intermediary mechanisms to improve the voice of SE at social dialogue institutions (until full recognition is attained), etc.
- ✦ The government should look for ways to involve SE representatives in initiatives leading to the strengthening of the social dialogue, especially in the view of a thorough reform of the Statute of Workers.
- ✦ Mechanisms should also be sought to encourage the associativeness of enterprises, especially micro- and small enterprises, particularly in sectors or regions where participation in employers' associations hinders the social dialogue and/or the capacity of the SE to participate in it.
- ✦ The creation of a permanent table with all three actors (CEOE/CEPYME, trade unions and CEPES) to address all these issues.

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Annex A

CEPES'S PARTICIPATION IN THE INSTITUTIONALISED CIVIL DIALOGUE WITH PUBLIC ADMINISTRATION

Advisory Councils and Committees where CEPES has designated participation (at national and international level), and the number of seats held in each one of them:

Economic and Social Council of Spain: 4 seats

European Economic and Social Committee: 1 seat

Council for the Promotion of the Social Economy (Ministry of Labour and Social Economy): 18 seats

State CSR Council (Ministry of Labour and Social Economy): 1 seat

Cooperation Council (Ministry of Foreign Affairs): 1 seat

State Council for SMEs and Entrepreneurship (Ministry of Industry): 1 seat

Sustainable Development Council (Ministry of Social Rights and Agenda 2030): 2 seats

Minimum Living Income Advisory Council (Ministry of Social Security and Social Inclusion): 1 seat

Monitoring Committees of the ESF 2014-2020 Operational Programmes on Social Inclusion and Social Economy and Youth Employment (Ministry of Labour and Social Economy): 1 seat in each committee

Standing Committee of the Social Inclusion Network Social Inclusion Network (Ministry of Social Rights and Agenda 2030): 1 seat

Executive Committee of the National Rural Network (Ministry of Agriculture): 1 seat

Public alliances and agreements

Agreement with the Ministry of Finance and Public Administration for the identification of administrative barriers

Protocol of Intentions with the Ministry of Education and Vocational Training

The main objective of the protocol is the improvement of the competences of social economy workers through vocational training.



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