



This is a draft of the entry for *Encyclopedia of the Social and Solidarity Economy* (forthcoming 2023) published by Edward Elgar Publishing Limited in partnership with United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE). This work has been funded by the Government of the Grand Duchy of Luxembourg.

For more details, please visit the Edward Elgar's Companion Website ( <https://www.e-elgar.com/textbooks/yi/> ) and Main book page ( <https://www.e-elgar.com/shop/gbp/encyclopedia-of-the-social-and-solidarity-economy-9781803920917.html> )

## **Legal Frameworks and Laws for the Social and Solidarity Economy**

*David Hiez*  
*University of Luxembourg*

### Bibliographic information

**David Hiez. Forthcoming 2023. Legal Frameworks and Laws for the Social and Solidarity Economy. Edited by Ilcheong Yi, Peter Utting, Jean-Louis Laville, Barbara Sak, Caroline Hossein, Sifa Chiyoge, Cecilia Navarra, Denison Jayasooria, Fernanda Wanderley, Jacques Defourny, and Rocío Nogales-Muriel. *Encyclopedia of the Social and Solidarity Economy*. Cheltenham and Northampton, MA. Edward Elgar Publishing Limited in partnership with United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE).**

Or

**David Hiez. Forthcoming 2023. Legal Frameworks and Laws for the Social and Solidarity Economy. Edited by Ilcheong Yi et al. *Encyclopedia of the Social and Solidarity Economy*. Cheltenham and Northampton, MA. Edward Elgar Publishing Limited in partnership with United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE).**

June 2022

### **UNTFSSSE Knowledge Hub Draft Paper Series**

For more details, please visit the Edward Elgar's Companion Website ( <https://www.e-elgar.com/textbooks/yi/> ) and Main book page ( <https://www.e-elgar.com/shop/gbp/encyclopedia-of-the-social-and-solidarity-economy-9781803920917.html> )



The responsibility for opinions expressed in this document rests solely with their author(s), and availability on the SSE Knowledge Hub for the SDGs ([unsse.org](http://unsse.org)) does not constitute endorsement by the United Nations Inter-Agency Task Force on Social and Solidarity Economy (UNTFSSSE), or its institutional members, partners or observers, of the opinions expressed in it. No publication or distribution of this document is permitted without the prior authorization of the author(s), except for personal use. This document is made available on the SSE Knowledge Hub for the SDGs in the form and language in which it was received.

## Abstract

It is common nowadays to observe the multiplication of laws for SSE, even if the scope and number of these are still debated. This trend raises issues about the function of law, as well as the possible contribution of SSE to the debate about the elaboration of law. The immediate difficulty is to measure the number of SSE laws, which must be distinguished from legislation dealing with SSE. The specific purpose of existing SSE legislation is the establishment of a framework that is able to promote SSE and set up suitable policies. Their primary focus is the definition and delimitation of SSE. Given the impossibility of a legal regime applicable to the myriad enterprises included in the SSE category, the umbrella laws dealing with SSE state common principles which may, at least, be useful as guidelines.

## Keywords

legal definition; legal principles; umbrella legislation; law; Port Royal Logic; legal forms of SSE

## **Introduction**

It is common nowadays to observe the multiplication of laws for SSE, even if their scope and number is still debated. However, two points must be made before examining their content and purpose. Firstly, the apprehension of SSE by law is not only resulted from scientific research. The apprehension of SSE in the law is also a political statement since it takes place in the controversial context of the definition of SSE and/or its pertinence (see the entry “Statistical measurement of the SSE”). In this sense, the existence of laws for SSE is rather the outcome of a balance of power. And the existence of laws for SSE and their multiplication strengthens the argument in favour of SSE.

The second point is about the definition of SSE itself. The definition of SSE is usually given by the law, but laws that do not refer explicitly to SSE which regulate firms or activities that have SSE characteristics are also, sometimes, considered SSE organisations. Two very different examples can be taken to illustrate this phenomenon: the United States and Italy. Italy is known for its successful social cooperatives and social enterprise. The power of its cooperatives is also a well-known factor. Nevertheless, Italian legislation does not acknowledge SSE; rather it refers to the third sector. The United States is also well known for the development of social enterprises and has many cooperatives but the legislation does not refer to SSE. Moreover, both Italy and the United States have laws on philanthropy that often deal with SSE organizations and enterprises (SSEOs). In these contexts, to consider US or Italian legislation as SSE, it is required to find a definition out of the law which is very tricky. Nevertheless, this is a logical necessity in order to qualify such legislations as SSE law. In this entry, to avoid any essentialist position, only laws that refer explicitly to SSE, or at least to the social economy or solidarity economy will be considered.

While limitations of space preclude a detailed description of SSE legislations and their content, this entry will focus on a few key issues raised within the literature. To present the legal framework for SSE, the starting point must be the traditional debate about the utility of law (section 2), followed by aspects of positive law, i.e. the diverse ways it may regulate SSE (section 3) and the geographic development of SSE legislation (section 4). And then the entry goes further in the analysis of the content of these laws (section 5) and the necessity of a complementary regulatory framework (section 6).

### **1. The utility of law for SSE**

The birth of SSE is not related to the adoption of any law. In other words, the phenomenon of SSE came first and the term was used and defined later. In such a context, the question arose whether a special law was necessary for promoting SSE. Since many SSE-related laws have been passed, the answer seems obvious nowadays, but that statement has not always been true. Indeed, as a regulatory instrument, the law may be a means for the state to control the organisations concerned. The SSEOs are private organisations and, in many cases, the state has tried to control them because it feared their activity, or to utilise them as a public policy tool (see the entries “SSE and public policies” and “SSE and co-optation, isomorphism and instrumentalization”). This has been observed both in some European countries when SSEOs emerged in the 19th century, but also in countries of the Global South after independence. Therefore, many SSEOs have often preferred general rules to regulations specific to SSE.

Two trends contributed to reversing this position. On the one hand, from a legal perspective, the strong law and development school of thought has highlighted the issue of the importance of law for economic development. On the other hand, SSE has become less marginal in numerous societies and economies.

After decolonisation, the wish to facilitate the development of newly independent countries in the so-called third world gave rise to the question of the function of law. Throughout its history, the law and development school utilized law as a tool to reach the goal of development. At that time, the point was very controversial. From a Marxist perspective, the law is only a superstructure and can only be secondary, like a mirror of the mode of production. But within the growing body of neoliberal thought, many authors claimed that liberty, if not the invisible hand, was the foundation of law (albeit in favour of legal enforcement of voluntary contract). One of the major contributions of the law and development school of thought has been the argument that law was necessary to allow and secure the perennial development of any economic and social institution. This reasoning may be transposed to SSE, even if law and development never considered it in itself, as an appropriate legal framework is necessary to allow the functioning of the free market, and SSE could benefit from a suitable regulation.

The second evolution derives from SSE itself. For diverse reasons, depending on each national or regional context, the distance between SSEOs and public powers decreased. In many countries, SSEOs have been more or less normalized and, therefore, their relations with political power have been stabilized and strengthened. In other countries, notably in Latin America, the development of more activist SSEOs has been accompanied and facilitated by the leftwing governments who were supportive of SSE. In other words, mistrust between public powers and SSEOs has diminished, leading to the harmonization of perspectives on the utility of a special regulation for SSE rather than general rules.

Nowadays, there is more of a consensus on the benefit of law for the development of SSE. To limit the scope of this entry, it is necessary to establish a distinction between law dealing with SSE and law for SSE.

## **2. Law dealing with SSE and law for SSE**

While the definition of SSE in law varies, it is always based on a reference to specific groupings or activities. The observer must distinguish between laws that regulate these enterprises or activities (which can be named “laws dealing with SSE”) and “laws that aim at establishing and promoting SSE *stricto sensu* (laws for SSE)”. Indeed, SSE is a constellation and an umbrella concept composed of many various objects, with the most common groupings involving cooperatives and mutuals. These objects, at least some of them, have been regulated for a long time. The concept of SSE, however, is relatively new in the legal world. As already noted in relation to Italy and the United States, most jurisdictions in which SSE is unknown within the law, regulate the objects which constitute SSE. In other words, SSE is, above all, a concept that encompasses diverse pre-existing objects.

The distinction between laws dealing with SSE and laws for SSE, explains the coexistence of the different types of SSE laws in terms of their purpose and methods. On the one hand, laws dealing with SSE can regulate the objects that constitute SSE (cooperatives and fair trade, for example), generally without mentioning SSE itself. On

the other hand, laws for SSE can provide some general principles and definitions in order to recognize and legitimize SSE. The former legislation is detailed and technical which provides precise conditions for the creation of the grouping or the activity whereas the latter is general and abstract. The following sections will focus on these laws for SSE.

### **3. The multiplication of laws for SSE**

For several reasons it is very difficult to count the exact number of countries in which laws for SSE have been adopted because the definition of law for SSE is debatable. Caire and Tadjudje (2019), for example, consider the Italian law n°106 of 16 June 2016 as SSE law because they find it shares some common features with laws for SSE. Yet Italy deals only with the third sector and does not experience the same institutional environment. Geographical considerations are another issue to make the debate complex as several countries have no national laws for SSE but some provinces have adopted such laws. In such a case, it is difficult to decide if the country does or does not have a law for SSE. The same difficulty can arise where a supranational regional law for SSE has been adopted while some countries of the region have not embraced such legislation. For these reasons, this entry does not aim to provide a precise estimation.

Nevertheless, it can be said with a certain level of certainty that the number of laws for SSE has increased in the past 15 years and that this trend continues. The first wave of legislation started in Latin America, with the first manifestation in Honduras in 1985 and more substantially in Columbia in 1998. But the real expansion started at the end of the 2000s in Latin America and Europe, and in addition, the rather isolated case of Québec in North America. In Africa this came later, with the first law in Cabo Verde in 2016, Tunisia, Cameroon and Senegal have since followed suit and several countries are still in the process, notably South Africa. Asia and Oceania remain behind, but the absence of general programmatic laws hide the adoption of regulatory measures and institutional arrangements in several countries, notably in South Korea and the Philippines. Today, there are about twenty laws for SSE in force and the most complete and updated data may be found on the website of socioeco.org (socioeco.org 2022).

### **4. The core content of law for SSE**

#### **4.1. The objectives of law for SSE**

While laws for SSE do not always explicitly outline their objective, they have a similar purpose. They provide the legal regime of SSE, without prejudice to special norms applicable to a specific entity. They encompass different types of SSEOs subjected to the laws and provide the measures to incentivize SSEOs' activity in conformity with their principles and goals. The Cabo Verde law is a good example (Lei n.o 122/VIII/2016, de 24 de março, art. 1) (ILO 2016).

Specifically, the laws contain three aspects:

- « *without prejudice to special norms applicable to each entity* ». The point is that laws for SSE usually do not provide norms applicable to a specific SSE entity. As SSE is a constellation of various entities, all entities belonging to SSE are within the same legal framework, i.e. the law for SSE. As a matter of

principle, the law for SSE does not remove any previous law, nor replace any provision. SSE is a constellation and its law is a framework of this constellation.

- « *the legal regime of social economy* ». Positively, the first purpose of the law for SSE is to provide a legal regime for SSE. but this goal sounds ambitious. Indeed, the wording itself may be misleading, even if meaningful. Considering SSE is a constellation, it is difficult to imagine a legal regime applicable to all entities of SSE. A universally applicable legal framework would contradict the principle of maintaining previous laws or provisions for specific SSE entities. Therefore, the legal regime in fact has a limited scope, consisting mainly of a definition and few institutional frameworks. For instance, the provisions about the creation of SSE entities are very rare. They are considered only when the specific SSEOs have their own registers. In that case, the conditions required to be registered must be stated. Apart from the definition, most laws for SSE, if not all, also provide principles for SSE. These principles are very important since they are the substitute for the special rules that cannot be adopted because of the pre-existence of special regulations for each of the various entities of SEE. The word « principles » designates clearly the generality, fitting with the necessity to build common elements for all these entities.
- « *the measures to incentivize its activity* ». The second positive element involves measures to incentivize its activity. Explicitly, the law is presented as support for SSE. It is not only a regulation to allow its existence but a political gesture in favour of SSE. This does not necessarily mean that the law for SSE is ideologically oriented: for instance, the law for SSE was adopted in Québec by the unanimous consent of Parliament.

#### 4.2. The definition of SSE

It is common for a law to define its objects. This is a particularly important aspect of laws for SSE because they aim at incentivizing the activity of SSEOs. Therefore, it becomes crucial for public bodies to be able to decide if an activity is included in SSE or not. However, the definition is not only instrumental but also provides the official recognition of SSE. Here, at least two orientations can be found: definition by intention or by extension.

According to the Port Royal Logic (Arnauld, Nicole, and Buroker 1996), it is possible to define a concept either by intention which indicates the internal content of a term or concept that constitutes its formal definition or by extension which indicates its range of applicability by naming the particular objects that it denotes. Most legal definitions of SSE employ these two definitions simultaneously. However, these two definitions should be distinguished. The traditional definition of SSE is usually based on the “by extension” method, i.e. a list of entities considered as SSE entities. This list differs from jurisdiction to jurisdiction, but the core of these entities are cooperatives, mutuals, associations (usually when they run an economic activity) and foundations. Some more specific entities are often added, characterized by their collective dimension, but different depending on the cultures. The examples include but are not limited to: rural groupings, workers’ groupings, and some religious entities. Some entities such as social enterprises may be or may not be included in SSE depending on the countries’ legal and cultural traditions (see the entry “Social enterprise”)

The controversies about the classification of social enterprise are partly due to the various development trajectories and the nature of social enterprises worldwide. In many countries, especially where the SSE sector has a long tradition, the traditional SSE entities consider the social enterprises and their development as a stratagem by for-profit business entities to conquer new markets. In these countries, traditional SSE entities have been strongly advocating against the inclusion of social enterprises in the SSE category. At least in Europe, however, the intensity of controversies has decreased and the latest EU Communication on SSE clearly declares social enterprise an entity of SSE, which means also that social enterprise must comply with SSE features and principles, defined in the Communication as: “...*the primacy of people as well as social and/or environmental purpose over profit, the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users (“collective interest”) or society at large (“general interest”) and democratic and/or participatory governance...*” (European Commission 2021, 5).

The definition by extension can be applied either to the activities included in SSE or to the groupings that run these activities. The case of Cabo Verde is a good example as its law defines SSE by its activity. But there is a strong connection between the grouping and activity-based definitions as in the case of the Cabo Verdean law. The Cabo Verdean law recognizes all those activities pursued by entities of SSE as SSE activity. Although legal definition based on entities is dominant, legal definition by activities is also frequently used.

As mentioned above, the definition by extension is usually accompanied by the definition by intention. However, several countries use the definition by intention exclusively. In those countries, laws for SSE give a substantial definition of SSE that includes major features of SSE or its entities. For instance, Cameroonian law defines social economy as a set of economic activities run by organizations and enterprises, based on principles of solidarity and participation, which aims at the collective interest of their members and/or the social and economic interest of the community (Cameroonian law 2019/004, 25 April 2019, art. 2 line 4.) (Republic of Cameroon 2019). Luxembourg has probably adopted the legislation that goes the furthest in this regard, since it provides absolutely no list of SSE entities, apart from the societal impact company (Luxembourg law, 12 December 2016, art. 1) (Travail, Emploi et Économie sociale et solidaire 2016).

These two kinds of definitions have their pros and cons. The provision of a list of SSE entities, based on their legal forms, has the major advantage of simplicity and certainty. The list of SSE entities makes it easy to provide certainty for all the SSE stakeholders, including public authorities and clients. Moreover, since the related legal forms have their own regulation, the law for SSE does not need to state its own institutions for regulatory control. The disadvantage of the definition by the list of entities is its rigidity; even if legal entities meet the SSE principles, when they are not in the list of SSE entities, they cannot be recognized as SSE entities. Unsurprisingly, the substantial method, i.e. the definition by intention, also has advantages and disadvantages which correspond to disadvantages and advantages of the definition of extension, i.e. the provision of the SSE list. To take advantage of the strengths of these two approaches, many countries have chosen to adopt a definition that provides both a list of SSE entities and a residual SSE category for the legal entities which are not included in the list of SSE entities but comply with SSE principles. It means that the laws for SSE should provide SSE principles. SSE principles also vary across the countries depending on their cultural or political specificities. Apart from these differences, there are strong commonalities that can be

summed up with five principles: people centeredness; limited profitability; democratic management; collective property; and activity beneficial for the community.

These common principles have two major functions. On the one hand, they complete the legal definition of SSE and make its identity more precise. On the other hand, they clearly distinguish SSE entities from others, such as public or for-profit private entities. As principles, they create room to allow other laws and regulations to deal with SSE entities and sufficient grounds to allow other laws or regulations to go into these details. This should not be considered a limitation. It must be kept in mind that capitalist enterprises themselves do not rely on a unique definition and regulation. On the contrary, many legal forms are available for capitalist enterprises and it is an illusion to expect otherwise for SSE. In all likelihood, the more SSE will gain in extension, the more numerous will be its legal forms. Therefore, what could be considered an element that undermines the purity of SSE may in fact be one that strengthens SSE.

What is important here is that regardless of the forms they take, SSE laws, both laws for SSE and laws dealing with SSE, should serve the adoption of specific measures to promote SSE and incentivize SSE activities.

## **5. Public policy as a complementary framework to law**

SSE legislation does not usually adopt specific measures incentivizing the development of SSE's activity. Rather, it creates an institutional environment where specific measures for SSE can be established. Among these measures are public policies including official statistics which are central to the promotion of SSE (see the entries "SSE and public policies" and "Statistical measurement of the SSE").

To create an enabling institutional environment, laws for SSE must create the appropriate institutions to design and implement public policies. The most common approach outside of authoritarian states is to establish institutions composed of civil servants, representatives of political bodies, and of representatives or SSE organizations which have real powers. The success of such arrangements relies on the pre-existence of a coordinated structure of SSE organizations. In addition, many laws designate a political organ to manage SSE. Such a structure is also important since it avoids the dilution of responsibilities among many institutions associated with SSE.

As SSE is by nature anchored in territories, laws for SSE usually create local institutions to set up public policies. Some laws for SSE provide orientations for public policies, for example, fiscal incentives. Other policy measures include public procurement, targeted financing, social impact bonds and subsidies for training (see entries "Financing for SSE").

When referring to public policy, a special mention must be made of statistics. It has long been noted that traditional statistics and public accounting were structurally unable to portray the reality of SSE, and that what is not counted cannot be taken into account (see the entry "Statistical measurement of the SSE"). To address this problem, many laws for SSE stipulate the necessity to create or improve statistical systems to establish SSE statistics. A prime example is the case of Québec, where an accurate statistical system for SSE now exists. This question is directly connected to legal questions, not only because the system is adopted through law, but because the main difficulty for official statistics is to adjust their traditional categories by adapting to new criteria established by law.

As described above, laws have significant impacts on SSE but it is also important to consider how SSE affects law. For instance, certain SSE practices have strongly influenced some legal arrangements, as demonstrated in the works of Boaventura de Sousa Santos (2015). But SSE also has another kind of influence on the law which concerns the legal model for future enterprises. To the extent that capitalism has diverted attention from collective forms of organisation and principles of solidarity, one of the benefits of the law for SSE is that it opens new perspectives. To realize the transformational potential of SSE, law for SSE must be considered and treated as a true legal question, notably by lawyers, in both its technical and theoretical dimensions. This is necessary for the development of SSE to allow the law to be adapted to present and future challenges.

## **Bibliography**

Arnauld, Antoine, Pierre Nicole, and Jill Vance Buroker. 1996. *Logic or the Art of Thinking: Containing, besides Common Rules, Several New Observations Appropriate for Forming Judgment*. Oxford; New York; Melbourne: Cambridge University Press.

Caire, Gilles, and Willy Tadjudje. 2019. "Vers une Culture Juridique Mondiale de L'Entreprise d'ESS? Une Approche Comparative Internationale des Législations ESS." *RECMA* 353 (3): 74-88.

ILO. 2016. *Cabo Verde (5) Education, Vocational Guidance and Training*. Vol. 121/VIII/2016.  
[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=109481&p\\_count=5&p\\_classification=09](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109481&p_count=5&p_classification=09).

Cracogna, Dante, Antonio Fici, and Hagen Henry. 2013. *International Handbook of Cooperative Law*. Berlin: Springer-Verlag.

De Sousa Santos, Boaventura. 2015. *O Direito Dos Oprimidos*. Coimbra: Editora Almedina; São Paulo: Editora Cortez.

European Commission. 2021. "Building an Economy That Works for People: An Action Plan for the Social Economy." European Commission. Luxembourg: Publications Office of the European Union. 2021.  
<https://ec.europa.eu/social/BlobServlet?docId=24986&langId=en>.

Guerra, Pablo A, and Sergio Reyes. 2014. *Economía Solidaria, Cooperativismo Y Relaciones Laborales : Manual Universitario: Licenciatura En Relaciones Laborales*. Montevideo: Facultad De Derecho, Universidad De La República.

Harding, Matthew. 2018. *Research Handbook on Not-For-Profit Law*. Cheltenham: Edward Elgar Publishing.

Hiez, David. 2018. "The General Interest Cooperatives: A Challenge for Cooperative Law." *International Journal of Cooperative Law* 1 (1), 93-110.

Hiez, David. 2021. "Guide to the writing of law for the Social and Solidarity Economy." socio.eco.org. ESS Forum International. 2021. [https://www.socioeco.org/bdf\\_fiche-document-7866\\_en.html](https://www.socioeco.org/bdf_fiche-document-7866_en.html)

Means, Benjamin, and Joseph W Yockey. 2018. *The Cambridge Handbook of Social Enterprise Law*. Cambridge: Cambridge University Press.

The Republic of Cameroon. 2019. *Framework Bill Governing Social Economy in Cameroon*. Vol. 2019/004. <https://www.prc.cm/en/news/the-acts/laws/3558-law-n-2019-004-of-25-april-2019-framework-bill-governing-social-economy-in-cameroon>

Socioeco.org. 2022. "Socioeco.org - the Social Solidarity Economy Resource Website." Socioeco.org. February 14, 2022. [http://socioeco.org/index\\_en.html](http://socioeco.org/index_en.html).

Travail and Emploi et Économie Sociale et Solidaire. 2016. "Loi Du 12 Décembre 2016 Portant Création Des Sociétés d'Impact Sociétal et Modifiant: A) La Loi Modifiée Du 19 Décembre 2002 Concernant Le Registre de Commerce et Des Sociétés Ainsi Que La Comptabilité et Les Comptes Annuels Des Entreprises; B) La Loi Modifiée Du 4 Décembre 1967 Concernant l'Impôt Sur Le Revenu; C) La Loi Modifiée Du 1er Décembre 1936 Concernant l'Impôt Commercial Communal; et D) La Loi Modifiée Du 16 Octobre 1934 Relative à l'Impôt Sur La Fortune." Legilux.public.lu. Journal officiel du Grand-Duché de Luxembourg. 2016. <https://legilux.public.lu/eli/etat/leg/loi/2016/12/12/n1/jo>.