Recommendations for improving the legal-regulatory framework of the social and solidarity economy in the 6 countries of the MedTOWN Project

MedTOWN Project

Legal report on Social and Solidarity Economy in the 6 countries of the MedTOWN Project (Spain, Greece, Jordan, Palestine, Portugal and Tunisia).

EXECUTIVE SUMMARY

As a result of the Comparative Study of the Regulatory and Legal Framework of the Social and Solidarity Economy in the Countries Participating in the MedTOWN Project, the following proposals for improvements are made regarding the legal and regulatory framework of the social and solidarity economy in the different countries that are part of the MedTOWN project.

- Some of the proposals relate to cross-cutting issues applicable to all Social and Solidarity Economy (SSE) legal systems in 6 countries participating in the MedTOWN Project. (Spain, Greece, Jordan, Palestine, Portugal and Tunisia).

- Other proposals will be more concrete and will deal with procedures, formulas or instruments that facilitate better implementation of SSE actions and that are applicable to different legal frameworks.

- Some of the different themes on which the proposals will be carried out are:

  a) Principles governing the framework for the implementation of the SSE.
  b) Public procurement.
  (c) Subsidies
  d) Collaboration agreements between public and private bodies.
  e) Formulas for the application of complementary local currencies.
  f) Flexible Remuneration
  g)etc

September 2022

Document produced by Antonio Almansa Morales with the MUSOL Foundation (Valencia, Spain) with the financial support of the European Union through the MedTOWN project "Co-production of social policies with social and solidarity economy (SSE) actors to fight poverty, inequality and social exclusion" belonging to the Mediterranean Basin Programme 2014-2020 (ENI CBC Med) through the government of the Autonomous Community of Balearic Islands (Spain). The contents of this document are the sole responsibility of its authors and can under no circumstances be regarded as reflecting the position of the European Union or of the Programme's management structures.

Documento confidencial

Proposals for improving the legal-regulatory framework of the social and solidarity economy

Proposals will then be made to improve the normative and regulatory-legal framework related to the SSE in the countries included in the MedTOWN project by virtue of the regulations and documentation provided by each local *partner*, in addition to any others that may have been collected and considered relevant to the subject.

However, as the demonstrative actions and pilot projects are implemented in each of the countries and, in view of the difficulties or drawbacks that these projects encounter, new proposals will be made in the final document, expanding and further specifying those that are currently underway.

As already mentioned in the comparative study report, the regulation of the SSE, in those countries where it exists, is relatively recent. This has meant that many of the regulations are very similar to each other.

This is precisely what is happening in the European countries, or at least in the EU member states that are the subject of this study, whose regulations concerning SSE started to be drafted around 2010, and we can find many similarities in the first Portuguese, Greek and Spanish regulations.

On the other hand, there are other countries that have not yet legislated on the SSE. Without going any further, among the countries covered by this study, we find that Jordan and Palestine do not have approved legislation regulating the SSE, and in Tunisia the law regulating the SSE is very recent, having been approved in 2020.

It is common to find that more developed countries do have regulations on the SSE while developing countries usually do not have regulations on the SSE.

The lack of specific SSE regulation can be seen as a negative, but at the same time as a positive option as it is an opportunity to develop more appropriate and practically adaptable rules for the development of SSE policies.

Some of the proposals and recommendations are set out below, although as each of the projects develops and legal difficulties arise in the implementation of the projects, these proposals will be analysed and further elaborated in the final deliverable.

The proposals will be differentiated into *General Proposals* applicable to the SSE legal frameworks as a whole, as well as *Specific Proposals* containing concrete instruments for better implementation, execution of SSE projects and actions.

Therefore, as general proposals, the first of the recommendations regarding the legal regulatory framework of the SSE are, among others, the following:

<u>GENERAL PROPOSALS</u>:

1) Drafting and approval of regulations governing the Social and Solidarity Economy in those countries where they do not exist.

Documento confidencial

As seems logical, the first proposal is the adoption of SSE regulations in those countries where there are no specific regulations on the subject.

The drafting of such SSE legislation should focus on all levels of public administration, local, regional and national, as SSE policies are cross-cutting and related to all these administrations and should have a holistic approach.

This also applies to countries that already have proven SSE legislation in place, as this is not always the case for all administrations, especially at the local level.

Specifically, within the countries that are the subject of this study, we must highlight this proposal to draft specific regulations in Jordan and Palestine, as there are no regulations governing the SSE in these countries.

Special mention should be made of Tunisia which, although it has recently approved regulations governing the SSE, for practical purposes its application requires the approval of a large number of implementing regulations.

It would be advisable for the drafting and approval to observe the SSE standards already approved in other countries, taking into account the peculiarities of each territory, adapting it to the country concerned and improving those issues that have been seen in practice to be problematic.

It is recommended to consult the numerous studies carried out on the subject, as well as the period for receiving proposals and suggestions from institutions and civil society organisations involved in the implementation of SSE actions, such as NGOs, Cooperatives, Associations, Universities, Social Integration Companies, etc. ...

2) Further specification of existing SSE standards to facilitate their enforcement and implementation in practice.

In other countries where SSE regulations already exist, such as Spain, Portugal, Tunisia and Greece, although in the latter country the regulations are more specific than in the rest as a result of having passed several SSE regulations, the last one in 2016, we find that the SSE regulations tend to be very generic.

They include general principles and "declarations of intent" that make it difficult to demand and develop SSE actions in practice.

The general SSE regulation is not sufficient and is established as a mere "declaration of intent" that requires further development or implementation of its principles through other sectoral regulations, which makes its practical implementation difficult and risky.

3) Flexibility and streamlining of SSE regulatory changes, as well as bureaucratic dependence on higher administrations.

It is common to find an excessive bureaucratic dependence of private SSE initiatives on the intervention of the different public administrations, which hinders and slows down their success and the development of projects.

Documento confidencial

Moreover, to make matters more difficult, such dependence is often established with respect to institutions or administrations higher than the local one, as is clearly the case in Jordan's Public Private Partnerships regulation or the rest of the SSE regulations.

The processes for creating or amending legislation on the SSE, as on other matters, are not accessible and involve considerable bureaucratic complication as they require the involvement of the Council of Ministers or, where appropriate, of a specific number of national parliamentarians, which means that they are time-consuming and are not done in a swift and expeditious manner.

4) Promotion of greater autonomy and participation of Local Entities through their inclusion in the general SSE regulations.

There is a "remoteness" of the entities and institutions responsible for the implementation and promotion of actions related to the SSE, as they are usually at the State or National level and not at the local level, which is where there is greater proximity to the social projects that impact on the neighbourhood community.

Given that most SSE projects are citizen-oriented and usually take place at local level, it is considered appropriate that state SSE legislation should grant competence and capacity to local and regional administrations, such as local councils or associations of municipalities, to adapt the processes and specific actions of the SSE in their territorial and jurisdictional area within the framework of general SSE legislation.

In short, the SSE and its impact is mainly of local application, so there should be greater protagonism, autonomy and involvement of Local Administrations.

The problem encountered in the regulation and organisation of SSE entities and NGOs is the limitations and restrictions established by state regulations, their direct bureaucratic and administrative dependence on the state government, which reduces the agility and delays the actions of the organisations.

5) Inclusion in the SSE regulation of public funding mechanisms, bonuses and tax incentives for the implementation of SSE actions.

A common problem in practice is the weak, or non-existent, direct and sufficient funding for the implementation of SSE initiatives, due to the absence of private investors and insufficient public funding.

In this respect, the Greek SSE regulation contains in a more specific and comprehensive way various forms of promotion and support for the SSE that seem suitable for replication in other SSE regulations.

Thus, it mentions and facilitates access, at least theoretically, to specific funds for financing SSE entities, such as the Social Economy Fund and the National Fund for Entrepreneurship and Development.

There are also specific programmes to support the economic, employment and entrepreneurial activity of these entities that can benefit from entrepreneurship support programmes carried out by the Employment Agency and public territorial organisations (municipal and regional).

In addition, there are very interesting sections regarding the possibility of using public assets, including specifically the possibility of transferring assets to SSE entities, under certain conditions, through public concession processes, as well as the provision for the conclusion of contracts with public administrations.

The differential fact that is of great importance is that in Greek legislation these favourable conditions are expressly included in the SSE Law, giving it greater strength and conviction with respect to other legislation

Documento confidencial

in which such favourable conditions, when included, are scattered in regulations governing other matters, but not directly in the SSE Law.

In my opinion, this is a major plus point of the Greek regulation that could be applied to the other SSE regulations of the other countries involved in this study.

6) Specific procurement regulations for ESS and local authorities

In the different regulations observed with regard to public procurement, we have hardly found the existence of specific regulations for local entities, with the particularities of these, as they are very different from other higher administrations, and even less specific procurement regulations focused on the SSE.

It is considered highly appropriate that, given the proximity and importance of local authorities in the implementation of SSE projects close to the citizen, this matter of public procurement should be specifically regulated from the point of view of the needs and characteristics of local authorities and the implementation of SSE actions.

In addition to the general proposals outlined so far regarding the legal framework of the SSE, more concrete and specific proposals can also be put forward that can help to better achieve SSE actions.

SPECIFIC PROPOSALS:

In this sense, and from the perspective of private actors involved in the implementation of SSE projects such as Associations and NGOs, I believe it is appropriate to classify these measures and concrete proposals for the implementation of SSE actions according to two different formulas:

A) **Reactive formulas.** Those whose initiative for the implementation of policies for the execution of SSE actions and projects comes from Public Administrations and Institutions.

B) **Proactive formulas.** Those whose initiative for the implementation of policies for the execution of SSE actions and projects comes from private actors (Associations, Cooperatives, NGOs, ...).

Reactive Formulas.

By reactive formulas we refer to actions that are initiatives, which are taken by public administrations and institutions on their own initiative and have a place in the legal-regulatory framework of the SSE.
In this case, private actors react and adapt to the provisions established by public administrations for the implementation and development of SSE actions or projects.

These formulas are included, to a greater or lesser extent, in some of the regulations approved and currently in force in the countries covered by this study and, in any case, they are replicable and adaptable to all the legal frameworks of the rest of the countries.

Documento confidencial

Thus, we find and can propose the inclusion of the following instruments in the legal-regulatory framework of the SSE:

1. **Inclusion of Social and Environmental Clauses in public contracts as conditions of performance.**

   This involves establishing a series of social and environmental requirements in the specifications and conditions for public contracts of the different administrations, compliance with which is obligatory for interested parties in order to be able to access the awarding and performance of the contract.

   This can be found in the regulations of the EU member states under study, such as Greece, Spain and Portugal, as a result of the transposition of the European procurement directives into domestic legislation.

   Their inclusion as conditions of contract and their application is done by the contracting public administrations.

   It should be included in the public procurement rules and, in addition, it should be expressly inserted in the procurement documents by the contracting public administrations.

2. **Reservation of Contracts in favour of special centres.**

   Possibility of reserving a minimum percentage of contract awards in favour of Special Employment Centres of social initiative and insertion companies for the inclusion of workers with disabilities or in a situation of social exclusion.

   They must be included in public procurement regulations and, in addition, must be expressly approved and planned for by contracting public administrations and in procurement documents. Some argumentation, why?

3. **Reservation of contracts for social, cultural and health services to certain organisations.**

   This possibility is very interesting for the participation of SSE entities, especially with the characteristics of cooperatives, in tendering procedures for the execution of contracts for the provision of social, cultural and health services, as it establishes a percentage of the number of contracts and the amount to be awarded to companies, associations, NGOs or other private SSE actors for the conclusion and execution of public contracts, normally in the field of services.

   They must be included in public procurement regulations and, in addition, must be expressly approved and planned for by contracting public administrations and in procurement documents.

4. **Finalist Grants.**

Documento confidencial

Although I do not consider public subsidies to be the best way of guaranteeing the sustainability of a project over time, I do consider it advisable, at least initially, to obtain public aid to finance SSE projects, given the difficulties that SSE actors often encounter in obtaining private funding.

Given that the purpose of SSE projects usually coincide with the interests, objectives and even services of public administrations, it is considered appropriate to promote and provide subsidies for private SSE actors that carry out actions that coincide with the interests of public administrations. Such aid need not only be in cash, but may also be in kind and in the form of the delivery or transfer of movable or immovable property.

They must be included in the subsidy regulations and, moreover, must be expressly approved and planned by public administrations in budgets and public calls for proposals.

Proactive Formulas.

Proactive formulas refer to proposals that are the initiative of private SSE actors and are directly proposed by them to public administrations and institutions involved in SSE actions.

In this case, it is the private actors who can approach public administrations to present or request actions that facilitate the implementation of SSE projects and policies.

All this, under the scope of protection of the general principles established in the different regulations governing the Social Economy, previously studied in the report, which inspire the rest of the legal system and commit the public administrations to promoting and carrying out policies and actions that foster the social economy.

These principles are inspiring for the entire public sector and therefore administrations can be required to protect and promote the implementation of actions in the field of the SSE.

Thanks to these principles, all public administrations will be competent to carry out SSE actions, so it cannot be given as an excuse that one or another administration cannot carry out actions that promote the SSE because it is not within its competence and obligations.

These formulas are applicable and adaptable to the SSE legal frameworks of the countries under study, as well as others.

We can therefore propose the following instruments:

1. **Creation of Grant Collaborating Entities.**

Documento confidencial

In connection with the planning and call for grants in the field of SSE projects and purposes, it is interesting to study the possibility of acting through collaborating entities.

They act as an intermediary between the granting authority and the beneficiary, receiving the funds for subsequent delivery, distribution and management of the subsidies to the beneficiaries, acting in the name and on behalf of the granting body.

In practice, it is common to find numerous difficulties in managing and justifying projects financed through public subsidies, with huge delays, complex audits, excessive bureaucracy, distrust of the administration, etc.
For this reason, the intermediation of Collaborating Entities specialised in the distribution, management and justification of subsidies related to the SSE is a very interesting instrument that facilitates the processing of the aid to be received and speeds up its single or simplified justification with respect to the granting administration.

These collaborating entities can be both public and private legal entities, so it is possible that entities specialised in the SSE can act as collaborating entities.

Thus, SSE actors can propose to administrations interested in granting subsidies for projects for this purpose that are carried out through and with the collaboration of partner organisations.

To this end, this formula must be included in the subsidy regulations, as well as in the bases and specific call for applications that regulate the granting of subsidies.

2. Collaboration Agreements on SSE projects.

The formula that possibly seems most interesting to me is to implement public-private cooperation for the co-production of public policies by means of partnership agreements.

Such cooperation agreements may be entered into between public administrations and private entities and require the concurrence of general interests common to both parties for the benefit of society.

There is no doubt that most actions related to SSE projects pursue a purpose of general and social interest that coincides with the object, purposes and competences of public administrations.

This facilitates the possibility of entering into collaboration agreements in which each party undertakes to carry out a series of actions, provide services and/or fulfil obligations in order to achieve a goal of common interest.

Documento confidencial

The possibilities for collaboration through these agreements are very broad, as they only exclude matters that do not fall within the competence of the administration and those actions that must be subject to public procurement, which must be governed by procurement regulations.

These public agreements may or may not involve the contribution of financial amounts by the parties. Those agreements that involve a financial contribution from the public administrations are just as important as those that do not and which require other actions such as advertising, promotion, project guarantees, etc., which facilitates their implementation and acceptance by the public as they have the backing of the administrations.
If a financial contribution is made by the administrations, financial control is required.

To conclude with this measure, in terms of the SSE, of the different public actors that can enter into collaboration agreements, the most important administration is the local administration which, as has already been said on several occasions, plays a leading role in the implementation of SSE policies.

3. Soft Impact" public-private partnerships.

The regulations studied when referring to public-private partnerships (PPPs) tend to focus on large infrastructure or service management projects.
What is now proposed is that the regulation should provide for other types of public-private partnerships, understood as "alliances" that focus on the implementation of small and medium-sized proximity projects that improve the quality of life of citizens, the development of regions and neighbourhood communities.

These types of partnerships can be considered as "SOFT IMPACT", in the sense that they do not refer to large actions that require huge investments, but to small collaborative formulas that help to achieve public policy co-production objectives related to the SSE.

However, specific regulations are needed for public-private partnerships for "minor" or "low impact" projects and actions with a "soft impact" and close proximity to citizens, since in the regulations consulted, the references and requirements for this type of partnership tend to refer to large infrastructure projects and demand requirements in line with such projects.

The contracting and other regulations consulted do not encourage or benefit the creation of such PPPs, and even less so with regard to SSE entities for the co-production of public policies.

4. Goods and Services Concessions

Although this proposal can be derived from either of the two previous proposals, I consider it appropriate to highlight the possibility existing in various regulations studied in the field of SSE and public goods, which include the possibility of concessions of public services and goods in favour of

Documento confidencial

private entities that meet certain requirements and have a justified general and social interest as their purpose.

This possibility is regulated in Spanish property legislation, which provides for transfers to non-profit entities whose purpose is of general interest, as well as in Greek SSE legislation, which contains very interesting sections regarding the possibility of using public property, specifically including the possibility of transferring property to SSE entities, under certain conditions, through public concession processes.

I think it is an interesting formula to apply in the regulatory framework of other countries as a possibility of support for the implementation of SSE actions and projects.

In other countries, these means of concession of goods are used for the co-production of public policies, and I would like to highlight the case of the concession for the management of urban parks in the city of Sao Paulo, which has had considerable success, as it has some similarities with the Campolide Agroforest project in Portugal, despite being different projects and not involving financial compensation in Campolide.

In this case, a public-private partnership between the City Council and private associations and companies was set up for the management of urban parks.

The City Council decided to partner with private individuals to improve, maintain and operate 6 urban public parks. To do so, it designed an innovative scheme, which integrates the total costs of operation, maintenance of the parks and the potential revenues that the operating partner can earn, based on a detailed list of environmental and operational obligations that fall on the private operator.

The financial consideration of the private operator consists only of the ancillary income that the operator may receive for such things as the management of the food service and others that will be its only source of income, so that entry to the parks will always be free of charge.

5. Flexible remuneration for employees of businesses and local authorities.

Flexible remuneration for local public employees, as well as other local industry and businesses, is another way in which local and proximity consumption can be encouraged.

It consists of paying part of the salary of public employees who request it by means of payments to companies, businesses and establishments in the municipal area, such as nurseries, restaurants, supplies of computer equipment and consumables, etc.....

Documento confidencial

There is legislation that provides for the possibility of flexible remuneration, and the condition is that the services to be paid for out of the employee's flexible remuneration must be related to the employee's professional duties.

Flexible remuneration can contribute to the better and more effective performance of the employee's duties.

For example, through the direct payment by the City Council to the specific local establishment, from the employee's flexible remuneration, of lunches when their presence is necessary for the performance of their duties in split morning and afternoon shifts, or the provision of childcare to allow a better work-life balance, the purchase of computer equipment to facilitate teleworking from home when deemed appropriate, etc. .....

For the implementation of Flexible Remuneration, a three-party agreement between the employee, the business establishment and the municipality or company is necessary.

Flexible remuneration is a form of payment in kind that benefits the employee, as the prices offered will normally be more competitive as the business supplying goods and services targets a much larger number of potential customers. In addition, there are tax benefits for the employee that encourage the use of this formula since, up to a certain limit provided for by law, payments in kind are not taxed.

On the other hand, it benefits local businesses and establishments, in favour of sustainable local consumption and production patterns that promote the SSE.

6. **Inclusion of Social and Complementary Local Currencies.**

The above initiative, as well as others, can be implemented through local currency programmes that serve as a means of payment and that can be exchanged by the establishments and businesses that provide services both in the City Council and in other businesses and companies that accept local currencies and flexible remuneration.

In this way, local commerce and the circulation of economic activity through a Social and Collaborative Economy will once again benefit.

This action is "simply" a way of attracting customers to local businesses and a formula that is made available to the local economy in order to favour local commerce and to ensure that the benefits are passed on to the community.

In addition, in those areas or for those groups that have difficulties in accessing conventional financing through access to credit from financial institutions, this can be an alternative for obtaining the necessary financing for entrepreneurship and the start-up of economic activities.

Documento confidencial

While this initiative is very interesting, there are issues that need further refinement for its full success, such as the reliability of the currency, the recording of outstanding transactions and obligations, the ease and immediacy of transactions, the conversion of local currency into conventional currency, etc. .....

With regard to the regulations in this area studied in the different countries of the project, it should be noted that in the legal framework applicable to Spain, we can find regulations on the possibility of using complementary currencies and electronic money.

Jordan and Palestine also have regulations regarding electronic payment providers and means of payment, but they are not focused on the creation of complementary social currencies but on regulating which establishments can provide these services and under what conditions.

Returning to the Spanish legal framework, there is the possibility that public administrations, therefore also local authorities, can be payment service providers, issue electronic money and thus establish complementary social currencies, although it is true that the practical implementation of such processes can be complicated to apply given the numerous requirements and administrative controls involved.

Perhaps it could be more interesting, as a way of implementing a complementary local social currency, to establish a network of suppliers, both of services and supplies, professionals and local businesses that accept the local currency and incorporate it into their daily economic circulation in exchange for the services or products chosen.

It would be a payment tool whose value is limited to a series of businesses and a local territorial scope, so that wealth and its circulation does not leave a specific territory, in order to achieve a better circulation and refreshment of the local economy.

To this end, it would be necessary to consider different alternatives and practical formulas for the application of complementary social currencies that would help to achieve the proposed objective, considering as interesting the application of social coupons with specific purposes and indications for their use or an alternative accounting system for this type of currency that would allow it to be used in parallel to legal tender, etc.....

In the case of the use of complementary social currency, issues of utmost importance for the success and maintenance of the currency would have to be addressed:

a) General acceptance by users and suppliers
b) Removing barriers to entry for new companies at the local level
c) Preservation of the value of the social currency over time, allowing it to be used as a means of transferring present wealth to the future.
d) Easy convertibility of the complementary social currency into legal tender

Documento confidencial

e) Etc....

Interesting is the establishment of an "*oxidation rate*" of the social currency to encourage its use and circulation, since the passage of time would reduce its value. This is a measure similar to the existing inflation that causes the purchasing power of legal tender to fall progressively.

However, this measure could clash with c) above if the "oxidation rate" is high and would make the complementary social currency unattractive...there are many examples where due to runaway inflationary processes the value of the legal tender "collapses", there is a "*flight"* and rejection of the currency which makes it unusable.

Therefore, although the "oxidation rate" encourages consumption and circulation in the economy, it penalises savings, which is why a high loss of value of the complementary currency over time should not be established.

7. Monitoring and evaluation of the impact of SSE projects

In the regulations studied, no regulation has been found regarding the monitoring, evaluation and measurement of the social and economic impact of SSE actions by public entities that would show the public administration how interesting it is to participate in them.
Moreover, in practice, this lack of evaluation leads to a lack of confidence on the part of public administrations, and even citizens, with regard to associations and private entities in the SSE environment.

In this sense, it is proposed and considered essential to carry out evaluations and methods to measure the social impact and achievements of SSE projects.

The regulations governing the SSE, as well as calls for grants, agreements and other proposals, must contain evaluation methods that verify and accredit the success and suitability of the co-production of SSE public policies.

Documento confidencial