

NEW CROPS Policy and Regulation Questionnaire / Report

SPAIN

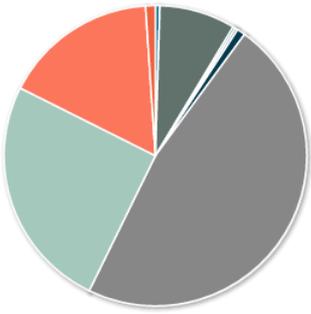
The report will cover two categories of entities –i) cooperatives¹ (hereinafter “cooperatives”) and ii) social enterprises (hereinafter “SE”). However, since SE vary greatly in legal form, and since the majority of SEs are cooperatives, when dealing with specifics, we will deal with cooperatives only for most questions.

For the most part we are dealing with “national” law and policy, but where this is not the case relevant regional policies will be referred to.

Links to the legal documents in the national language are provided at the end.

ORGANISATIONAL LAW AND POLICY ASPECTS OF COOPERATIVES AND SE	
1	General legal form for cooperatives and SE
1.1	Cooperatives: Briefly describe the legislation and business forms available for cooperatives in your country. Is there one single cooperative law? Or are they governed by type (credit, agriculture, consumer, worker, etc.)?
	Cooperatives: Spain has 17 different autonomous communities, almost each with their own cooperative law. As well, there is a national law. They are general cooperative laws with special sections for different types of cooperatives. Some regions have more than one cooperative law, such as the Basque country that has a special law for small cooperatives. Cooperatives are considered part of the “social economy” in Spain. For agricultural cooperatives, the legal forms available are: Co-operatives (Agricultural or Community Exploitation of Lands (“Explotación Comunitaria de la Tierra) or Agricultural Transformation Companies-S.A.T. (“Sociedades Agrarias de Transformación”), which are a hybrid form specifically for agricultural and forestry related activities, where in certain cases voting is in relation to capital.
1.2	SE: Is there a legal definition of “social enterprise” (or similar term) in your country? Describe the legislation on SE. Which legal business forms are available for SE (i.e. non-profit, association, foundation, special legal form for cooperatives and social enterprises) ?
	In Spain a Social Economy law was brought into force in 2011 (Ley5/2011 29 March to promote the recognition, visibility and development of the social economy sector. More recently, Law 31/2015, 9 of September was approved. The recent law includes provisions on self-employment and adopted measures for the promotion of self-employed work in social economy. It is a general framework law, which

¹ Cooperatives which substantially fulfill the traditional concepts of user owned, user controlled and user benefit and/or the ICA definition

	<p>outlines the social economy in Spain. In article 5, the law sets out the entities that form part of the social economy: Cooperatives, mutuals, foundations and associations that carry out economic activity, labour societies, work insertion companies, special employment centres, fishermen societies, and SATs (see above), as well as self-employment. However, each one of these types of social enterprise entities is governed by the laws governing their legal form. There is no “social enterprise” legal form.</p>
<p>1.3</p>	<p>Which legal business form is most frequently used?</p> <p>i) for cooperatives—regional cooperative legislation</p> <p>ii) for SE—these social enterprises must be formed under their specific legislation. The following Social Economy Entities chart from CEPES http://www.cepes.es/social/estadisticas&e=entidades_evolucion shows the total number of SE entities in Spain (42,929). Almost 50% are cooperatives (20,258), followed by approx. 25% worker societies (10,828), and approx. 15% associations for people with disabilities (7,092).</p> <p style="text-align: center;">Número de entidades de la Economía Social 42.929</p>  <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <ul style="list-style-type: none"> (**) 206 N° empresas de inserción (***) 3.483 N° empresas de Economía Social con otras fórmulas jurídicas (*****) 107 N° fundaciones de Economía Social (**) 132 N° cofradías de pescadores (**) 373 N° mutualidades (*) 20.258 N° cooperativas (*) 10.828 N° sociedades laborales (*****) 7.092 N° asociaciones del sector de la discapacidad (***) 450 N° centros especiales de empleo enmarcados en la Economía Social </div>
<p>1.4</p>	<p>Does the national law force the use one or more specific legal business forms for cooperatives and SE? If so, how and in what way?</p> <p>i) for cooperatives—yes, in order to be a cooperative, it must be governed by either regional or national legislation.</p> <p>ii) for SE—the type of social enterprise follows its own legal framework, depending on its characteristics and objectives.</p>
<p>1.5</p>	<p>Does the national law actively stimulate the use of a specific legal business form for cooperatives and SE, and if so, in what way? (eg.</p>

	subsidies, promotion, tax advantages, etc.)														
	<p>Article 129.2 of the Spanish Constitution establishes that the public powers must efficiently promote the diverse forms of participation in companies and promote, through adequate legislation, cooperative entities.</p> <p>i) for cooperatives— At the state level, apart from the free registration of cooperatives, the principle stimulus for the constitution of cooperatives is a privileged tax regime. These are being reduced in significance, given the decline in other company taxation.</p> <p>ii) for SE-this depends on the type of social enterprise and its corresponding law. For work insertion or special employment centers there are tax advantages and subsidies. Foundations and Associations not for profit would be subject to corresponding tax treatment.</p> <p>*There is an important difference between support policies for cooperatives developed in some autonomous communities and others. Some autonomous communities have regulations which stimulate the creation of cooperatives in general (reduction of set up costs and maintenance, the possibility to capitalize unemployment payments for setting up a cooperative, support for creation and development of agricultural cooperatives.)</p>														
1.6	Are there relevant developments in and changes of the promotion/regulation/taxation of cooperatives and SE in the last 10 years? Please specify, citing particular promotion initiatives if possible.														
	<p>The national cooperative law has undergone very few changes since 1999. However, the autonomous communities have changed their cooperative laws to allow for more flexibility in objectives, voting rights, financing and distribution.</p> <p>i) for cooperatives- Currently there are incentives in the agricultural sector to consolidate and reach economies of scale.</p> <p>ii) for SE-the relatively new Social Economy Law is meant to promote SEs, but it is only a framework law. Recently self employed people (“autonomas”) may be considered to be a SE entity.</p>														
1.7	Provide data on number of cooperatives and SE, by type, number of employees/users/members, if possible.														
	<table border="1"> <thead> <tr> <th>Type</th> <th>Number</th> <th>Workers</th> </tr> </thead> <tbody> <tr> <td>Cooperatives</td> <td>20,258</td> <td>277,390 total Agricultural-25,6663 Industrial-63,906 Construction-9,045 Services-178,776 *farmer members.1,179,323</td> </tr> <tr> <td>Worker Societies</td> <td>10,828</td> <td>63,536</td> </tr> <tr> <td>Special Employment Centers</td> <td>505</td> <td>29,831</td> </tr> </tbody> </table>			Type	Number	Workers	Cooperatives	20,258	277,390 total Agricultural-25,6663 Industrial-63,906 Construction-9,045 Services-178,776 *farmer members.1,179,323	Worker Societies	10,828	63,536	Special Employment Centers	505	29,831
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	Associations for People with Disabilities	7,092	105,694
	Work Insertion	174	2,646 non salary 2495 salary
	Fisherman Associations	132	35,000
	Mutuals	373	1,360
	Foundations	107	
	Other SE legal forms	3,483	-147,848 -391,932 Self-employed
<p>Membership: In Spain there are 8,841,541 associates of Coop/SE entities; 8,485,428 non worker members and 2,550,000 mutualists.</p>			
2	Founding & Registration		
2.1	<p>Are there specific provisions with regard to the legal objective of the cooperative or SE business form that are considered to be restrictive, e.g. restrictions in the objective or business activities? Profit distribution constraints? Asset lock?</p>		
	<p>Co-operatives in Spain may carry out any type of business activity.</p> <p>i) There is a constraint on the distribution of profits. There are mandatory obligations to contribute to reserve funds and education and social funds. There is a partial asset lock.</p> <p>ii) for SE-this depends on what kind of SE, but they must fall within the objectives outlined in their specific regulations. Restrictions may relate to distribution of profits, voting and control rights and asset locks, as well as limitations on types of commercial activities.</p>		
2.2	<p>Registration procedures:</p> <p>a) Where and how is the entity registered (trade registry? business registry? Is there a special registry for that type of entity? What are the institutional arrangements for keeping such a registry?</p> <p>b) Describe main requirements regarding registration of a cooperative/SE: membership requirements (number and type), capital requirements, registration procedures.</p>		
	<p>i) for cooperatives</p> <p>a) Cooperatives have their own registry, depending where they are domiciled and depending on whether they chose to be governed by regional or national cooperative legislation. The initial cost is the contribution of social capital, normally in an amount not less than 3,000 Euros. Usually co-operatives would use a professional company advisor for its constitution. The official Registry of co-operatives reviews the statutes without charge (confirming that they are in accordance with the law).</p> <p>Notary costs are not avoidable. Notary fees are per page (.30 cents) in Spain in addition to a percentage of the transaction. While fees may be significant in many kinds of commercial transactions for co-operatives, it is approx.1% of the equity capital upon establishment.</p> <p>b) Requirements vary according to which regional or national cooperative</p>		

	<p>laws.</p> <p>ii) for SE</p> <p>a) varies according to legal form and the relevant requirements, but the majority of SEs are cooperatives.</p> <p>b) varies according to legal form and the relevant requirements</p>
2.3	<p>What are the initial costs of setting up the cooperative or SE legal business form? What are the costs of maintaining the legal status of the business (eg. yearly fees, taxes, filings, cost of mandatory audits, etc.?)</p>
	<p>Normally there are not costs related to such maintenance, given that the functions of legalising the social books and accounts, the registering of agreements and the deposit of annual accounts are done without charge by the co-operative registries in the various autonomous communities. This differs from the charges that a commercial enterprise must pay for these services of the Commercial Registry.</p> <p>There is also a waiver for certain tax fees under “Tax on capital transfers and documented legal acts” in relation to constituting societies which applies to co-operatives.</p> <p>ii) for SE-depends on legal form chosen.</p>
3	Membership
3.1	<p>Does applicable law regulate voting rights? If so, describe how votes are determined.</p>
	<p>With respect to such departure of “one person, one vote” or a “plural vote” in the General Assembly, there are notable differences in the contents of the distinct cooperative laws in Spain. However, in all cases, the plural vote must be in proportion to the volume of cooperative activity realized by such member. As well, there is a limit to such votes.</p> <p>The national law permits that the bylaws provide for such possibility for members.</p> <p>In agricultural cooperatives, the plural vote cannot exceed 5 social votes, and members cannot hold more than one third of the total votes of the cooperative.</p> <p>Catalonia cooperative law uses a criteria even more open-ended in allowing that any cooperative of the first level, except for those that are worker cooperatives, consumer co-operatives or user cooperatives, may establish in their statutes the possibility of votes weighted in function of the member’s cooperative activity, which in no case can be greater than 5 times that of one vote. Much more restrictive on this point is theAndalucian law, which does not allow for the existence of a plural vote in first level co-operatives.</p> <p>However, all co-operative laws in Spain allow a plural vote for second level co-operatives if the statutes provide for it. Such vote must be proportional to the participation of the member entities in the co-operative activity and/or the number of active members that are</p>

	<p>incorporated in the member entity. Limits are usually established so that a member cannot have the majority of the social votes.</p> <p>With respect to SATs, the relevant regulation makes reference to the possibility of the existence of votes per person or votes in relation to capital, although with respect to the latter, such votes in relation to capital can only be exercised if the taking of the decision would carry economic obligations. In this way, a plural vote is allow in economic matters, but not in the same manner as in agricultural cooperatives, which allows for such plural vote in proportion to volume of cooperative activity carried out and with a limit of votes per member.</p>
3.2	<p>Does applicable law allow non-members/users to have voting rights?</p> <p>i) for cooperatives. Certain non-user members are allowed voting rights.</p> <p>ii) for SE-depends on legal form chosen.</p>
3.3	<p>Does applicable law allow specific requirements to be met on the admission of members/users? E.g. the obligation to pay an entrance fee, specific characteristics of the member, etc.?</p> <p>i) for cooperatives With respect to joining the co-operative, the members have the obligation to subscribe and pay up part of the social capital, and, on occasion to pay a membership subscription fee.</p> <p>The co-operative statutes fix the minimum obligatory amount of the social capital for each member, which can be different for the different classes of members or for each member in proportion to the obligation or potential use of each member assumed in relation to the co-operative activity. However, in a first grade co-operative a single member subscription cannot exceed a specified percentage of the total subscribed capital (25% in the national law, but up to 33% in regional laws.)</p> <p>Agricultural co-operatives can and usually do fix entrance fees. In the determination of the amount of such entrance fees the co-operatives often are constrained, as the laws usually establish specific limits for new member fees. The majority of the co-operative laws fix this limit so as not to exceed 25% of the amount of the obligatory contribution to social capital that is required by the co-operative to enter the co-operative. In keeping with the principle of open membership, the co-operatives can only deny admission to new members when there are objective motives and justified reasons. However, the various co-operative laws of Spain differ in their regulation as to the reasons to deny such admission: some of them permit denial of admission of members for objective, reasonable or justified reasons and others, like the national law, cede to what is established in the statutes/bylaws.</p> <p>ii) for SE-depends on legal form chosen</p>
4	Internal Governance
4.1	<p>Which governance bodies are mandatory? (e.g. board, assembly, supervisory board, auditors, etc.)</p> <p>In the national cooperative legislation, there are 3 obligatory bodies: The General Assembly, the Management Board and the “Intervenors”, which</p>

	<p>overlook accounts. The General Assembly is the body composed of all the members of the co-operative and the Management Board is the administrative body.</p>
4.2	<p>How does the regulation provide for members/users to effectively influence/participate in the decision-making process?</p>
	<p>i) for cooperatives: The legal mechanisms principally include: the right to attend and participate in debates, put forth proposals and vote in the General Assembly and other social bodies which form a part of the cooperative (art. 16.2.a.); the right to information (art. 16.3) and the right to challenge or oppose the social agreements of the General Assembly or the Management Board (art. 31 and 37). Members choose the members of the Management Board through the General Assembly and in any moment can dismiss them (art. 35.5).</p> <p>As well, national and autonomous laws grant a series of rights to the minority of members which can be useful to encourage or make effective the willingness of the members to participate in the taking of decisions. For example, the right that the national law concedes to members which represent 20% of the vote (art. 23.3) or the right to demand the presence of a notary in the General Assembly when it is solicited by members who represent 10% of the membership (art. 29.4)</p> <p>ii) SE-depends on legal form</p>
4.3	<p>Do legal requirements allow a composition of the board of directors partially or wholly by non-member/user professional managers?</p>
	<p>i) for cooperatives The national law allows the possibility that the cooperative bylaws provide for the naming of members of the Management Board that are not members. The number of non-member managers cannot be more than one third of the total members of the Management Board and must be people that are qualified and experts in their fields. In addition, such non-members are prohibited from being the President or Vice-President. (art. 34.2).</p> <p>On this point, there are differences between the various Spanish co-operative laws. The majority, like the national law, fix the percentage of the non-member managers to one third. Other laws are more permissive, requiring that a majority of their members carry out the principal activity the co-operative. Others are more restrictive, establishing that the limit be one quarter of the board managers. Some autonomous laws require that all members of the board of managers be members of the cooperative, although the latter permits a non-member to be named as secretary.</p> <p>ii) for SE-depends on legal form chosen.</p>
4.4	<p>If not, is this considered to be a problem in having an effective board of directors?</p>
	<p>i) for cooperatives Where regional co-operative laws prohibit or limit significantly the existence of independent non member managers, the effectiveness of the management board may be limited due to the fact that the cooperative cannot take advantage of professional managers.</p>

	ii) for SE-depends on legal form chosen
4.5	What are the legal requirements on the composition of the supervisory board or entity?
	<p>i) for cooperatives In Spain there is no true supervisory board for co-operatives. It is true that there are Intervenors, which have limited legal powers to supervise the Management Board. This is coherent with the Spanish company law, where a single administration body system of company administration rules exist, and where a supervisory board is not required for public limited companies, nor for limited liability companies.</p> <p>ii) for SE-depends on legal form chosen</p>
4.6	Is the legal structure and rules on the supervision of the board of directors effective with respect to the accountability of the board towards members? Are non-members/users allowed?
	<p>i) for cooperatives No. The law results in low professionalization and little control over the activity of the managers. It barely functions as a supervisory body.</p> <p>ii) for SE-depends on legal form chosen.</p>
4.7	Does the law stipulate rules on the appointment and dismissal of the board of directors and the supervisory board?
	<p>i) for cooperatives The national law establishes that the Management board can grant powers to any person, and in particular, name the administrator, general director or a similar position, as the principal authority for the co-operative. (art. 32).</p> <p>In terms of the election of the members, they are chosen by the General Assembly by secret vote and by a majority of votes. The statutes, bylaws or internal rules of the cooperative governs the electoral process. The actual positions of President, Vice President and Secretary are chosen, amongst the members, by the Management Board or the General Assembly, according to the provisions of the relevant statute.</p> <p>With respect to the termination of board managers, they can be dismissed by agreement of the General Assembly (art. 35.3 LCoop).</p> <p>ii) for SE-depends on legal form chosen.</p>
5	Financing of Cooperatives and SE and Profit/Benefit Distribution, Asset distribution in case of liquidation
5.1	What legal methods and instruments for financing/raising equity are allowed?
	i) for cooperatives - Equity can be raised through member contributions to the social capital. Contributions can be obligatory or voluntary.

	<p>Mandatory obligations are, as their name indicates, obligatory for all members. The company statutes or bylaws fixes the minimum obligatory contribution for each member (the amount can vary depending on the different classes of membership or for each member in relation to the proportion of obligation or potential use that is assumed by the cooperative activity (art. 46.1); which is qualified by the principle of equality of treatment. All members have the obligation to subscribe for contributions of an obligatory nature and have the obligation to pay up when the subscription is formalized, at least 25 %, with the remainder paid up in established time periods.</p> <p>Voluntary contributions cannot be required as a condition of membership (art. 47). This provision and the corresponding provisions in the autonomous legislation, provides that the General Assembly or the Management Board can, if the cooperative statutes and bylaws allow, agree to the admission of this type of contribution which must be paid up at the time of subscription. The national law states that these contributions have the character of permanent social capital which serves to function as a form of financing. The interest in making such voluntary contributions is tied to the right of the members to receive remuneration for the paid up contributions (art. 48). This is a relative right in that it only is available to members if provided for in the statute.</p> <p>The search for financing that guarantees stability and solvency for the cooperative has resulted in the admission by some Spanish cooperative laws of subordinated instruments to capture resources that, in certain instances, have the treatment of social capital. This is the case with what are name “special participations” (art. 53) which are patrimonial contributions made by members or third parties. These have a complex nature, similar to subordinated loans, in that they have much in common with a loan, although they are linked to a certain extent to the performance of the risk of the cooperative. In the national cooperative legislation, this form of financing is allowed (art. 53) and in the principal autonomous laws.</p> <p>Members and non member third parties can contribute to the cooperative equity with other financial instruments. The national law establishes that the General Assembly can agree, when dealing with issues in series, to the acceptance of member or non-member voluntary financing of any legal form with the terms and conditions as established by the cooperative. The national law refers to the possibility of cooperatives issuing participating shares and bonds.</p> <p>Participative shares are a form of voluntary financing by members or non-members, which give the right to remuneration which is established at the moment of issuance The right of return must be in function of the progress of the cooperative activity. Participative shares are provided for in art. 54.2 of the national law and in all the autonomous laws. The holders of such shares have the right to a mixed return, made up of a fixed interest and a variable amount, established upon issuance, in function of the cooperative’s results.</p> <p>With respect to the issuance of bonds, (art. 54.1), as well as the autonomous laws, are subject to the general applicable legislation.</p> <p>ii) for SE-depends on legal form chosen</p>
5.2	What are the rules on the distribution of profits and benefits?

	<p>i) for cooperatives- Once the cooperative has obtained its results and deducted its losses, cooperative law requires that certain funds be assigned in advance to pay Corporate Tax and the distribution of benefits.</p> <p>All co-operative laws impose the obligation to set up and to periodically assign funds to an Obligatory Reserve Fund (ORF) which is dedicated specifically to the consolidation, development and guarantee of the cooperative (art. 55). According to such law the amount to be assigned to this fund is a minimum of 20% of the cooperative results and 50% of extra-co-operative and extraordinary results, in addition to membership fees and the deductions from contributions as a result of unjustified membership-leaving. Except for certain legal exceptions, the co-operative has to assign such funds during the entirety of its existence.</p> <p>As well, contributions to the Education and Promotion Funds is also obligatory, such fund having the purpose of training and education of its members and workers, the spreading of cooperativism and the cultural, professional and assistance promotion of the local environment or the community in general. A minimum of 5% of the cooperative results and 50% of the extra-co-operative results must be assigned to this fund (art. 58 LCOOP).</p> <p>In the analysis and comparison of the different Spanish co-operative autonomous laws, one can see significant differences in the contribution to such funds. See Annex I, Tables 1, 2 and 3.</p> <p>After contributions to the obligatory funds are made and the tax obligations satisfied, if the results are positive, the question of distribution of excess and benefits obtained by the co-operative on behalf of its members and third parties can be dealt with. Art. 58 of the national law provides that after taxes, such excess and benefits be applied, in accordance with the relevant statutes and bylaws or agreements, to the “co-operative return” (based on the cooperative activity carried out by each member) and the assignment of funds to the voluntary reserves or the increasing of obligatory funds.</p> <p>The “cooperative return”(“retorno cooperativo”) is how Spanish cooperative laws define the right to participate in the surpluses in a manner proportional to the activity carried out through the co-operative (art. 16.2 (d) and 58.4 of the national law) which in some co-operatives is calculated following a model contained in the statutes. This is not an absolute economic right of the member by virtue of the existence of surpluses. The General Assembly can agree on a different destination of such surpluses, for example to increase contribution to the funds. As well, there are different ways in which co-operative returns can be distributed (payment to the members, through the incorporation of equity capital, the incorporation into a determined fund, etc.). The General Assembly takes this decision on how to realize such amounts and the member is subject to this decision.</p> <p>ii) for SE-depends on legal form.</p>
5.3	Are the rules flexible or restrictive with regard to the distribution of profits

	to members/users/donors?
	<p>i) for cooperatives- The rules are considered restrictive as they limit the end use or application of such <u>positive co-operative results (surpluses)</u>, especially those of the extra-co-operative (obtained from transaction with non member third parties) and Extraordinary, which are usually delegated by the law as forming part of the non distributable obligatory funds. However, some of the most recent autonomous co-operative laws have allowed for a much higher level of flexibility that that of the national law with respect to the distribution of benefits.</p> <p>In contrast, the regulations for the distribution of <u>benefits</u> are quite flexible and only require that the distribution of benefits are carried out in function of the participation of each member in the activity of the entity.</p> <p>ii) for SE--depends on legal form</p>
5.5	Does national law/applicable regulation allow non-member/user participation in the equity capital of the social enterprise? Financing members?
	<p>i) for cooperatives--The national law and the autonomous laws allow for the possibility of co-operatives with capitalist (i.e. shareholder, for profit companies) members (art. LCOOP) or mixed co-operatives (art. 107 of the national law).</p> <p>Although using different terminology, (e.g. collaborating partners, capitalistic associates), the co-operative laws usually allow, in the attempt to capitalize co-operatives, the existence of members who do not carry out any co-operative related activity yet who may provide capital contributions. The existence of this type of member appears to go against one of the basic principles of co-operativism which is the direct participation of the member in the object of the co-operative. However, in order to compensate for this, there is a legal limit in relation to the social capital for which these members may subscribe (45% of the total according to the national law) and in relation to the percentage of votes to which they can hold (30% according to national law). Some laws usually establish limitations on these members in forming part of the management board. Such members must pay up the economic amount determined by the General Assembly, which body decides the criteria of weighted participation of such members in the socio/economic rights and obligations of the co-operative, especially the rules regarding the right of separation from the co-operative.</p> <p>The national law and some regional laws allow the existence of mixed co-operatives where elements of both co-operative and capitalist companies coexist. In such case, the system of distributing benefits is neither in function of the co-operative activity realized by each member, nor in function of the investment in social capital. With respect to mixed co-operatives it depends clearly on the particular legislation of the equity participations that are attributed to investor members: that is, which are considered negotiable shares and which are regulated by stock market regulation (art.107.1 national law) and by the company law (law in relation to shareholder owned companies) regulations for shares (art. 107.3 national law).</p>

	ii) for SE-depends on legal form
5.7	Are the rules on distribution of profits (e.g. asset lock) facilitating or restricting for cooperatives and social enterprises?
	<p>i) for cooperatives- The rules are restrictive, given that it is not attractive for third parties to invest in co-operatives given the legal limits on both political rights (limitations on voting percentage and limitations on accessing the administrative body) and economic rights of such investors.</p> <p>ii) for SE-depends on legal form</p>
6	Exit provisions
6.1	Does the national law allow specific restrictions on exit of members?
	<p>i) for cooperatives- It is a right for all co-operative members to leave the cooperative. Although it is possible to impose a certain minimum term, which cannot be above a determined time (for example, 10 years in the agricultural co-operatives of Andalucía). The only restriction that exists is that if the departure is unjustified, the amount of return on equity capital can be reduced (up to 20% in the case of a justified leaving and until 30% in the case of expulsion).</p> <p>Spanish co-operative laws contain distinct regulations in each of their cases with respect to terms and conditions of liquidation and the payment of refunds of equity capital (art. 52 of the national law and the corresponding autonomous provisions). In reality the member does not have the right to a refund, but to the liquidation of their contributions in the moment at which they leave according to the balance at the close of the accounting period, which could signify a quantity greater or less than that contributed by the member. This liquidation will depend as well on the existence of imputed losses or that imputed to the member and the type of leave, as in both cases the value of the amount returned may be reduced.</p> <p>Historically, the exercise of this right could not be denied, although it could be limited both quantitatively and temporally. However, after the approval of International Accounting Standards, things have changed. Certain contributions to the social capital of the co-operative can be considered to be equity capital, the national co-operative law and some autonomous co-operative laws allows cooperatives to decide how to structure contributions by members to the social capital in terms of its refundable character. In this way, co-operatives which are regulated by such laws have two categories of contributions: refundable or non-refundable.</p> <p>ii) for SE-depends on legal form</p>
6.2	If so, are these restrictions reasonable and fair or do they cause problems? Please explain.

i) for cooperatives-The joining and leaving of a co-operative is a fundamental right of the member, recognised by co-operative laws, including recognition by the Spanish Constitution. That said, the fact that such right to leave by a member of co-operative is recognised, does not mean that the manner in which such member leaves the co-operative (behaviour, method of request, notice requirements and cause) can be determined by the co-operative, that is, the method in which to repay contributions and to possibly sanction such member.

The national law, as well as the rest of Spanish co-operative laws, give a wide margin for the co-operatives to regulate certain aspects of the members' exit from the co-operative (cause of leave voluntary or obligatory, characterization of the leave as justified or not, obligation of a certain term, obligation to give notice, etc.). Upon entering the co-operative, members know, or should know, the relevant operating rules of the co-operative (set out in the statutes and bylaws) which will come into play upon leaving such cooperative. In this sense, the member's right to leave the co-operative as well as the following right to a pay out, should be in keeping with the content of co-operative law with the goal of protecting the general interests of the co-operatives. The fact that such rights exist to voluntarily leave the co-operative, even if justified, doesn't mean that the members shouldn't have to comply with the formal requirements to do so.

All co-operative laws provide for the possibility that the statutes and bylaws of the co-operative can regulate a minimum term and a notice requirement, the rationale of which is to lower the voluntary leaving of the co-operative thus avoiding the danger of an unexpected or automatic mass exodus of members.

The notice period, which is set out in the statutes, cannot be superior to 1 year (art. 17.1 national law) and noncompliance can lead to a corresponding indemnity for damages.

The required period of membership is fixed by Statute and the law sets out the maximum limit on such required period. The national law establishes a time frame up to 5 years and in certain autonomous communities such as Andalucía, there is a required period of 10 years..

This provision and the obligation of a minimum term is fundamental to avoid the danger that affects cooperative societies of variable capital and "open doors": the "domino effect" created by the leaving of members could provoke an abandonment by the members, prejudicing those who stay and the actual social project. The noncompliance with the minimum term and notice periods suggests bad faith on the part of the leaving member and should be sanctioned in light of the damages which could be suffered.

The national law and some autonomous laws permit, at the discretion of the individual co-operative, the structuring of social capital by "refundable" and "nonrefundable" contributions in the case of the leaving of a member. For accounting purposes, the nonrefundable contributions are considered as equity. In the case of nonrefundable contributions, the management body is given the discretionary power as to whether it will "unconditionally refuse" or not such refunding, resulting in a possible inequality of treatment of members. This excessive discretion should be avoid and should instead be based on objective criteria to avoid too much discretion on the part of the management board.

ii) for SE-depends on legal form.

6.3	Does the current practice of restrictions on exit of members deter potential members/users to join the social enterprise?
	<p>i) for cooperatives--No, because according to the general law there are no restrictions on the leaving of members which would influence whether or not they join the co-operatives. However, this will depend on the statutes of each co-operative. Apart from the obligation of some permanence, there are no significant restrictions.</p> <p>ii) for SE--depends on legal form</p>
7	Change and Reorganisation
7.1	Does the applicable law provide effective tools/rules for cooperatives and SE to reorganise, e.g. through legal mergers or reorganisations or changing business form?
	<p>i) for cooperatives- The reorganisation of cooperatives are regulated by the national law (arts. 60-69) and the autonomous laws (mergers, transformation, division (splits) and in some cases laws which allow for the global assignment of assets and debt.</p> <p>The national law regulates the transformation of a cooperative with an ample criteria, and permits the transformation of any association, company or AIE into a cooperative and the transformation of cooperatives into civil or commercial companies of any class, which in no case affects the legal personality and its respective obligations of the transformed entity (art. 69) (that is, the entity continues). This wide criteria predominates in the autonomous cooperative laws, although not uniformly.</p> <p>When one is dealing with the transformation of a cooperative and a shareholder company or heterogeneous mergers, the general company law also applies and regulates the transformation of shareholder commercial companies and their merger.</p> <p>It is worth noting that although autonomous laws dedicate various rules and provisions to these reorganizations, and that various incentives are given to encourage cooperatives to participate in processes of integration, there is little thought given to the reorganization between cooperatives from distinct autonomous communities, which are thus rare.</p> <p>There are also disincentives for the transformation of a cooperative society into other types of entities as the non-distributable funds are destined for cooperative associations such as federations, confederations, etc. (art. 69.5 national law).</p> <p>Certain regional laws require that the transformation of a cooperative must be authorized by the relevant and competent Administrations.</p> <p>The national cooperative legislation does not contemplate the possibility of the assignment of assets and debt. However, some autonomous cooperative laws expressly allow and regulate such global assignment.</p> <p>ii) for SE</p>

7.2	Are reorganisations of cooperatives and social enterprises effected by rules on employee involvement? If so, in what way?
	<p>i) for cooperatives- If cooperative reorganizations affect the stability or permanence of the worker members or of the employees of the cooperative, the general law applicable to workers is applicable.</p> <p>ii) for SE</p>
7.3	Are reorganisations of cooperatives and social enterprises affected by rules of tax law? If so, in what way?
	<p>i) for cooperatives - In the reorganization of co-operatives the same rules apply as in the rest of commercial companies, regulated by the Law of Company Tax where a special regulatory regime is set out for restructurings (fusions, transformations, splits/divisions) in which there is a tax neutral result.</p> <p>This special tax regime is applicable to transactions which changes the domicile in a European Cooperative Society from one member state to another in the European Union, with respect to assets and rights situated in Spanish territory that are or will be affected by such change.</p> <p>ii) for SE</p>
8.	TAX LAW ASPECTS
8.1	Which tax law regime applies to the legal business form of the cooperative or social enterprise?
	<p>i) for cooperatives-A special tax regime applies to co-operatives wherein they receive a specific protective treatment- Law 20/1990, 20 of December-Tax Regime for Cooperatives (TRC), the basis of which is found in the Spanish Constitution. The co-operative tax regulations in Spain are both technical regulations and incentive regulations. The technical regulations “adjust” the inherent peculiarities of the co-operative form and function. The incentive regulations provide for specific tax benefits meant to benefit the cooperative entity.</p> <p>The taxes for which a special treatment for co-operatives is contemplated are:</p> <ol style="list-style-type: none"> 1. Corporations Tax 2. Tax on capital transfers and documented legal transactions 3. Two taxes with a local reach—the Trade Tax and Immovable Property Tax. <p>There is some regional differences, but they are not substantial.</p> <p>ii) for SE</p>
8.2	Are there any provisions in tax law fostering or promoting cooperatives and social enterprises? If so, in what way?

Cooperatives have a special tax regulation that allows them to enjoy certain tax benefits. These tax benefits depend on whether the co-operative complies with a series of financial, economic and social requirements.

The tax regime for cooperatives classifies 3 categories:

1.-non protected co-operatives: which do not obtain any tax advantage simply by virtue of being a cooperative.

2.-protected cooperatives: cooperatives which fit within the requirements of the national co-operative law or one of the regional co-operative laws and which do not fall within any of the excluded causes enumerated in such autonomous or national law. In such protected co-operatives the benefits are as follows:

Corporation Tax-

-Tax reduced to 20% base rate for co-operative results and in general 30% for the extra-co-operative results.

-Ability to choose method of amortization with respect to fixed assets acquired within the first 3 years

Waiver of the Tax on capital transfers and documented legal transactions:

-for the constitution of the co-operative, amplification of capital, mergers or splits/divisions

-for the acts of constitution and cancelation of loans

-for the acquisition of property and rights that are included in the pursuit of the objectives of the Education and Promotion Fund

-Trade Tax and Immovable Property Tax which applies to rustic property of the agricultural co-operatives and of the common exploitation of the land: a 95% rebate of the amount and charges (art. 124 of the LRHL establishes the possibility of a provincial rebate for the Trade Tax).

3. Co-operatives that are especially protected have a more favourable tax treatment than those simply protected and require that the co-operative must meet a series of conditions. Agricultural co-operatives (and community exploitation of land entities) are included in such category when they comply for example with limiting transactions with third parties or when physical persons who own agricultural land group together (e.g. Art. 9 and 10). They have the same benefits as protected co-operatives and in addition:

	<p>- Tax on capital transfers and documented legal transactions: waiver in acquisitions of property and rights directly related with carrying out their social goals</p> <p>-Corporation Tax: tax waiver of 50% of the amount, and waiver of 80% of the amount for priority associative exploitation which are specially protected agricultural co-operatives.</p>
8.3	<p>Are there any restrictions in tax law affecting cooperatives and social enterprises? If so, in what way?</p>
	<p>i) for cooperatives-To obtain tax benefits co-operatives need to be classified as protected or specially protected. The constitution of a cooperative society anticipates that its tax consideration, in principle, is protected. However, in the carrying out of its activities, a variety of situations may result in the loss of such status:</p> <ol style="list-style-type: none"> 1. non compliance with the regulation and the principles of the obligatory funds. 2. non compliance with the regulations governing economic activities 3. non compliance with the requirements derived from the principle of mutuality 4. the winding up of the cooperative <p>The tax regime for cooperatives reserves special benefits for the specially protected co-operatives amongst which are agricultural co-operatives and community exploitation of land entities which comply with the requirements of the law. (see above in 8.2)</p> <p>As well there are restrictions derived from indirect tax pressures from which co-operatives suffer, for example, the requirement to separate the accounting results of the operations with members and with non-members. The administrative cost that this implies and the added complexity of co-operative management is a special handicap for small and medium co-operatives.</p> <p>ii) for SE</p>
8.4	<p>How does the overall burden of the taxation of the social enterprise or cooperative and its members/users compare to the taxation of non social-enterprise investor-owned firms?</p>
	<p>i) for cooperatives-The legal and economic structure of co-operatives present a series of limitations that, in large part, derive from the co-operative principles and restrictive concepts about co-operatives and co-operativism. There are various reasons to suggest that the co-operative tax system in Spain does not establish sufficient tax benefits which compensate the limitations which are a result of co-operative organizational structure, functional and operational limitation and financial limitations.</p> <p>Certain “para-fiscal” charges, such as separate accounting for co-operative and extra co-operative results or the limitation on transactions with third parties, do not compensate for the fiscal treatment. In fact, some of the prescribed benefits in the co-operative tax regime, such as the waivers with respect to the constitution of the entity, the amplification</p>

	<p>of capital, mergers and splits/divisions and with respect to the cancelation of loans, are not exclusive to co-operatives but also can be utilized by other economic entities.</p> <p>The general rate of tax under the Corporation Tax law has been reduced in recent years, which has resulted, in comparative terms, in a prejudice against co-operatives, given that the general reduce tax rate of 20% has remained unchanged. As well, not all companies pay the general tax rate, as there are other reduced rates as well for various types of companies.</p> <p>ii) for SE</p>
9.	Other public policies that support cooperatives and SE
9.1	Describe public authorities that work with/support cooperatives and SE
	<p>i) for cooperatives-</p> <p>ii) for SE</p>
9.2	Describe public policies that support cooperatives and SE such as start-up initiatives or particular funding programmes, training systems
	<p>i) for cooperatives</p> <p>ii) for SE</p>
10.	Networks and umbrella organisations
10.1	Describe main networks for cooperatives and SE (e.g. Second tier cooperative, regional or national associations, federations, business alliances, etc. and their role (e.g. funding, providing information, providing services to members, etc.). Specify whether public or private.
	<p>i) for cooperatives-In Spain cooperative associations are generally organized along sectors. For example, Andalucía has an Andalucian Federation of Agricultural Cooperatives (as does each region) and then there is the Confederation at the National level (Cooperativas Agroalimentarias).</p> <p>CEPES http://www.cepes.es/ is an important national entity which represents the whole of the social economy in Spain, which includes, coopertives, work insertion companies, special employment centers, etc. Each region of Spain has their own regional chapter of CEPES. Worker cooperatives are represented by COCETA http://www.coceta.coop/ at both a national and regional level. Consumer cooperatives are represented by the Confederación Española de Cooperativas de Consumidores y Usuarios – HISPACOOOP http://www.hispacoop.com/home/</p> <p>The Spanish observatory on the social economy (Observatorio Español de la Economía Social) http://www.observatorioeconomiasocial.es/index.php was started in 2005 by CIRIEC-Spain, with the support of the Ministry of Labour and Social</p>

	<p>Affairs, the University of Valencia and the group of intitutes and universsities that Research the social economy (ENUIES network).</p> <p>It is an independent association that has 3 objectives: the identify, cuantify and evaluate the social economy. There is also a platform of the third sector, which has an agreement to work closely with CEPES (social economy) http://www.plataformatercersector.es/es</p> <p>ii) for SE</p>
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Links to main relevant laws, regulations, policies:

National Spanish Cooperative law <https://www.boe.es/buscar/act.php?id=BOE-A-1999-15681>

Social Economy Law <https://www.boe.es/boe/dias/2011/03/30/pdfs/BOE-A-2011-5708.pdf>