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Employee ownership in Spain: worker cooperatives and *sociedades laborales*

Employee
ownership in
Spain

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Carmen Marcuello

Department of Business Administration, University of Zaragoza, Zaragoza, Spain

Abstract

Purpose – The aim of this paper is to describe the main characteristics of the two most recognised models in Spain: worker cooperatives and worker-owned companies (*Sociedades Laborales*).

Design/methodology/approach – To this end, a review will be carried out of the main factors from the regulatory and financial framework and the support structures of these **organisations** model.

Findings – The main findings are the constant decrease in the number of SLL over the past ten years and a certain decrease in the number of worker cooperatives. Some of the reasons put forward for this decline are the lack of effective favourable tax treatment; the establishment of more favourable measures for capitalist companies; the change of the single payment of unemployment benefits; the lack of knowledge and training professionals and politicians.

Originality/value – The main contribution of this paper is to provide a recent analysis of the regulatory changes and developments in the field of worker cooperatives and worker-owned companies in Spain.

Keywords Worker cooperatives, *Sociedades laborales*, Worker-owned companies

Paper type Research paper

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1. Introduction

Worker-owned companies in Spain have a long history. The two most recognised models are worker cooperatives and worker-owned companies, or *Sociedades Laborales* (SLL). Both legal forms are part of the broader sector called the social economy and, specifically, Law 5/2011 on Social Economy (Article 5). Cooperativism has a long tradition in Spain. The first cooperatives were created in the mid-19th century. As indicated by Salinas (2003), “from the 1930s onwards, cooperatives of all kinds (production, consumer, agricultural . . .) emerged in different parts of Spain, and even the subsequent developments of the Cadiz Constitution of 1812 recognised the establishment of industries, including cooperatives.” According to Reventós (1960) and Chaves and Monzón (2008), the first production cooperative in Spain was created in 1842 in Barcelona and was called *Compañía Fabril de Tejedores* (Weavers’ Manufacturing Company). In Valencia, the production cooperative, *La Proletaria*, and the railway workers’ consumer cooperative *El Compañerismo* were created in 1856 (Charterina, 2011), while in Andalusia, the *Asociación de Obreros Agrícolas e Industriales* in Morón de la Frontera was created in 1870, and the *Sociedad Cooperativa de Agricultores del Campo de la Verdad* (Cooperative Society of Farmers of *Campo de la Verdad*) was set up in Cádiz the same year. However, the Historical **Yearbooks** of the Spanish National Statistics Institute [1] only provide information on cooperatives in Spain from 1932 onwards, with 592 recorded as having been set up that year.

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The development of the SLL took place at the end of the 1970s in Spain. Coinciding with the worst years of the economic crisis, public aid was created to mitigate the loss of employment, mainly in industry, in such a way that the workers in these industries were made co-responsible for the crisis, so that when they were forced into unemployment, they took on the dual role of employers and workers, buying the assets of the companies and initiating the necessary modernisation processes. They did so, as far as possible, with reduced aid and investment. The significant response of workers to the closure of their



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companies led to the first law on SSLL (Law 15/1986 of 25 April 1986) being passed in the 1980s (Melgarejo *et al.*, 2007, p 186).

According to the available data, there were about 17,600 worker cooperatives in Spain directly employing about 305,000 people in 2021. Women represented 49% of the people working in worker cooperatives and occupied 39.3% of management positions [2]. As for SSLL, according to the Ministry of Labour and Social Economy, there were 7,801 companies with 54,954 workers in 2020.

The aim of this paper is to describe the main characteristics of these two worker-owned companies in Spain. To this end, a review will be carried out of the main factors from the regulatory and financial framework and the support structures of this organisation model.

The structure of the paper is as follows. In the next section, I show the main data concerning worker cooperatives and SSLL as a model of worker-owned enterprises. Section 3 describes the main characteristics of the models of worker-owned companies through the regulatory framework and takes into account how the democratic model and the rights of right to control, surplus and wealth are ensured. Section 4 discusses the main measures, opportunities and problems for the creation of worker-owned enterprises both *de novo* and by the transformation of an existing enterprise. Section 5 focuses on the problems of equity capital and financing. Finally, Section 6 presents the main conclusions.

2. Main data on employee-owned companies in Spain

Worker cooperatives and SSLL share a common essential characteristic: they are entities integrated into the social economy. Law 5/2011 on the Social Economy (Article 5) states, “The social economy includes cooperatives, mutual societies, foundations and associations that carry out economic activity, *Sociedades Laborales* (SSLL), work integration social enterprises, special employment centres, fishermen’s guilds, agricultural processing companies and singular entities created by specific regulations that are governed by the principles set out in the previous article.” According to the Spanish Confederation of Worker Cooperatives (COCETA) [3], employment in worker cooperatives represented 1.54% of total employment in Spain in 2021. There were 17,603 worker cooperatives with 305,291 workers Table 1.

However, the SSLL have experienced a continuing decrease in the number of companies and workers. According to the Ministry of Labour and Social Economy, there were 19,932 labour companies with 97,755 workers in 2009. In 2020, however, the total number of SSLL was 7,801 and the total number of workers was 54,954 Table 2.

Considering the data published quarterly by the Ministry of Labour and Social Economy and taking as a reference the data as of June 30, 2020 (there are no updated data after the second quarter of 2020), in the period between the approval of the Law—2015—and 2020, it is observed that there has been a decrease of 26.92% in the number of SSLL in terms of employment and a 16% decrease in members.

3. Overcoming the organisation problem – the model

A noteworthy factor is that worker cooperatives and SSLL have institutional recognition in the Spanish Constitution. Article 129.2 of the Constitution states that, “The public authorities shall effectively promote the various forms of participation in the company and shall encourage, by means of appropriate legislation, cooperative societies. They shall also establish the means to facilitate workers’ access to ownership of the means of production.” Likewise, in different regions, the statutes of the Autonomous Communities also include this constitutional mandate as an essential part of the policies to be developed.

Employee ownership in Spain

Autonomous community	Worker coop number	Worker members	% workers/employed population
Andalusia	3,851	57,169	1.81
Aragon	633	8,868	1.53
Asturias	205	5,660	1.45
Balearic Islands	107	1,654	0.30
Canary Islands	120	3,414	0.40
Cantabria	102	1,582	0.65
Castilla León	679	5,671	0.58
Castilla La Mancha	711	10,033	1.18
Catalonia	3,361	38,037	1.11
Valencian Community	1,820	34,829	1.69
Extremadura	342	4,812	1.21
Galicia	893	4,150	0.38
Madrid	785	29,412	0.94
Murcia	1,602	21,404	3.34
Navarre	432	8,059	2.84
Basque Country**	1,847	68,851	7.42
La Rioja	90	1,194	0.85
Ceuta	12	178	0.67
Melilla	10	315	0.98
Total	17,603	305,291	1.54

Note(s): *This figure corresponds worker members of the Cooperatives. This figure does not include employees

**Basque Country include the Mondragon Cooperatives (not only the group like only one coop) only with the figures of the worker members. This figure does not include employees of the cooperatives

Source(s): COCETA Informe de Gestión 2021 and INE

Table 1.
Worker cooperatives in Spain 2021

Autonomous community	Number of SSLL	Workers	% workers/employed population
Andalusia	1702	10,615	0.34
Aragon	278	1,358	0.24
Asturias	292	1,900	0.49
Balearic Islands	77	475	0.09
Canary Islands	204	1,158	0.14
Cantabria	105	1,028	0.43
Castilla y León	460	2,317	0.24
Castilla La Mancha	691	3,610	0.44
Catalonia	628	5,761	0.17
Valencian Comm	587	4,336	0.21
Extremadura	224	1,624	0.42
Galicia	417	2,272	0.21
Madrid	890	6,528	0.21
Murcia	483	3,663	0.60
Navarre	221	2,048	0.74
Basque Country	509	6,047	0.66
La Rioja	28	162	0.11
Total	7,801	54,954	100%

Note(s): **Autonomous Community in which the worker members and pay Social Security contributions

Source(s): Ministry of Labour and Social Economy. Social Economy Database. Taken from Orellana (2021)

4*Data referring to the Autonomous Community in which the company has its headquarters

Table 2.
Sociedades Laborales in Spain 2020

3.1 Worker cooperatives

Worker cooperatives are regulated at the national level by Law 27/1999, of 16 July, on Cooperatives. However, 15 of the current 17 regions (autonomous communities) have developed their own legal frameworks. Consequently, there are currently 15 laws on cooperatives in addition to the national law. On the one hand, the establishment of their own regional regulatory frameworks and public policies have allowed them to get closer to the needs of cooperatives in their regions, but on the other hand, they have also been an important barrier to the development of cooperatives active in various regions. Fajardo (2020) indicates that “the cooperative ceases to be used because its legal regime has become very extensive and complicated and because it is not sufficiently understood. Therefore, everything that contributes to simplifying its regime and disseminating the model will be beneficial for its development.” [4]

Owing to the variety and diversity of worker cooperative legislation in Spanish regions, the present paper focuses only on national legislation—Law 27/1999, of 16 July, on Cooperatives. The definition of Cooperative Society, according to the State Law of 1999 in Article 1, reads: “The cooperative is a society constituted by persons who associate themselves, in a regime of free adhesion and voluntary withdrawal, to carry out business activities, aimed at satisfying their economic and social needs and aspirations, with a democratic structure and functioning, in accordance with the principles formulated by the international cooperative alliance, in the terms resulting from the present Law.” Likewise, in the preamble of the law, reference is made to the fact that cooperatives are based on cooperative principles: “The ethical values that give life to the cooperative principles formulated by the International Cooperative Alliance [5], especially those that embody solidarity, democracy, equality and social vocation have a place in the new law that consecrates them as indispensable elements to build a viable enterprise with which the members identify themselves by appreciating in it the realisation of a project that guarantees their employment and professional life.”

The definition of worker cooperatives is found in Chapter X, Section 1: On worker cooperatives, Article 80.1: “Worker cooperatives are those whose purpose is to provide their members with jobs, through their personal and direct effort, on a part-time or full-time basis, through the joint organisation of the production of goods or services for third parties,” and in Section 7, it is specified that “The number of hours/year carried out by workers with an employment contract may not exceed 30% of the total number of hours/year carried out by worker-coop-members.”

In other words, worker cooperatives mainly associate natural persons who, through their work, carry out any economic or social activity of the production of goods or services for third parties. The law also establishes three other types of worker cooperatives to be regulated by the same rules as worker cooperatives.

- (1) Transport Worker Coop: its social objective is to **organise** and provide transport services. It can be established that the cooperative income and expenses are imputed internally to each vehicle that has produced them, each one constituting a management unit (Article 100) (e.g. Drivers of trucks. Transcoop; <https://transcoop.online/>).
- (2) Worker Teaching Coop: associates teachers and non-teaching and service staff to develop teaching activities at different levels, stages and modalities, and may also carry out extracurricular activities, related and complementary to them (Article 103) (e.g. Florida Centre de Formació, Coop. V).
- (3) Social Initiative Coop: its main purpose is the support, promotion and development of groups that, due to their particular characteristics, require special attention, in order

to achieve their welfare and full social and labour integration, through the provision of services and the development of business activities of a welfare, educational, preventive, integration and insertion nature (Article 106) (e.g. Centre Ocupacional Tola Coop.V; <https://blog.fevecta.coop/tola-coopv/>).

3.2 Sociedades Laborales (SSLL)

Sociedades Laborales (SSLL) are trading companies (*sociedad mercantil*) [6] and their regulation in Spain is exclusively carried out by the State. Barea and Monzón (2008) define SSLL as non-financial companies set up with the aim of creating or maintaining stable employment for their members and in which the majority of the share capital is owned by the workers who control the firm's management bodies organised in a self-managed manner. These are companies in which the workers' share capital is equally distributed among themselves, so that they are characterised by the existence of democratic decision-making processes and equitable profit distribution. Currently, Law 44/2015, of 14 October, on Worker Owned and Participated Companies (*Ley 44/2015, de 14 de octubre, de Sociedades Laborales y Participadas*) regulates their operations. Article 1 of this law defines the main characteristics of SSLL [7], which can be of two types, as indicated in Table 3.

The requirements for these to receive the qualification of *labour* are as follows (Law 44/2015):

- (1) The majority of share capital must be owned by workers who provide paid services under an employment relationship for an indefinite period of time.
- (2) No shareholder may hold shares representing more than one-third of the share capital, unless:
 - The workforce-owned company is initially set up by two worker shareholders (each with 50% of the share capital and voting rights) with the obligation to adapt the company within 36 months to meet all the legal requirements.
 - In the case of shareholders that are public entities, entities with a majority public shareholding, non-profit entities or social economy entities, in which case the shareholding may be higher without reaching 50% of the share capital.
- (3) The number of hours/year worked by workers hired for an indefinite period of time who are not members may not exceed 49% of the total number of hours/year worked by all worker-members. For the calculation of these percentages, workers with a degree of disability equal to or greater than 33% will not be taken into account.

3.3 Models securing democratic ownership: worker cooperatives

- (1) Membership types, entry and exit

Worker cooperatives define two types of members: worker members and collaborating members.

Types of worker owned companies	Number of members to create	Social capital to create
<i>Labour Limited Liability Company</i>	Minimum 2 members	Minimum share capital 3,000€
<i>Labour Corporation</i> **	Minimum 2 members	Minimum share capital 60,000€

Note(s): **No one of SSLL is traded on listed stock markets in Spain

Source(s): Law 44/2015 of 14 October on worker-owned and investee companies

Table 3.
Types of worker
owned companies and
requirements

3.3.1 Worker-members. The worker-members have a partnership relationship with the cooperative. In general, the minimum number of members is three. In some regions, the qualification of “small cooperative enterprise” is allowed, in which case they will have at least two members. There is also a limit to the number of workers employed by the cooperative who are not members (Article 80). The number of hours/year carried out by workers with an employment contract with the cooperative may not exceed 30%-35% (depending on the region) of the total number of hours/year carried out by the worker-members.

Admission as a worker-member can take place, initially, as a promoter member of the entity, or after the setting up of the cooperative, by the favourable agreement of the Governing Council. The worker-member must have the legal and physical capacity to carry out the work that constitutes the corporate purpose of the cooperative and pay the contributions to be made according to its statutes. Admission may be on a trial basis.

In order to join the cooperative as a worker-member (Article 81), the statutes may provide a probationary period for new worker-members that shall not exceed six months. The probationary period may be reduced or abolished by mutual agreement. The articles of association may also extend this period up to twelve months for managerial, senior technical or other posts, which, because of their characteristics in terms of trust or special dedication, are determined by the governing body or, where appropriate, by the general meeting. The number of working members on probation may not exceed 20% of working members with full rights and obligations at a time. This limitation will not be applicable during the first two years of the cooperative’s constitution.

An employee with a permanent contract with more than two years’ seniority who meets the requirements established in the bylaws must be admitted as a member, upon application and after passing the probationary period, if provided for in the bylaws, and may not be required to fulfil obligations greater than those already carried out by existing members.

According to Article 81.3 of the Cooperatives Act, “New worker-members, during their probationary period, shall have the same rights and obligations as worker-members, with the following special features: (a) They may terminate the relationship by free unilateral decision, a power that is also recognised for the Governing Council. (b) They may not be elected to the offices of the company’s governing bodies. (c) They may not vote at the General Assembly on any point that affects them personally and directly. (d) They shall not be obliged or empowered to make contributions to the share capital or to pay the entry fee. (e) They shall not be affected by the imputation of losses that occur in the cooperative during the trial period, nor shall they be entitled to the cooperative return.”

Worker members may leave the cooperative by personal decision with rights to the return of the share capital contributed, provided that the conditions established in the statutes are fulfilled and within the stipulated period of time. Leaving members have the right to get back the current value of their shares. Worker-members can also be removed from the cooperative. Article 82.3 states that the expulsion of worker-members may only be agreed on by the Governing Council. The expelled worker-member may appeal, within fifteen days of notification of the expulsion, to the Appeals Committee, which shall decide within two months, or to the General Assembly, which shall decide at the first assembly to be convened.

3.3.2 Collaborating members. Each worker cooperative can decide if it considers the possibility of the existence of collaborating members who contribute to the capital and voting capacity, but these cannot exceed 45% of the capital and 35% of the votes (Article 14). These collaborating members can be natural or legal persons who, without the ability to develop or participate in the cooperative activity proper to its social object, can contribute to its achievement. The collaborating members may not be required to make new contributions to the share capital nor may they carry out cooperative activities within the company. Those members who, for justified reasons, do not carry out the activity that led them to join the cooperative and do not request their cancellation, may become collaborating members.

Finally, it should be remembered that members' economic liability is limited to the cooperative's share capital. Likewise, the contributions made by the members to the capital can only be transferred (Article 92) between persons and only to other members of the cooperative (*inter vivos*) or to the heirs of the member who has died (*mortis causa*).

- (1) Member participation: control, surplus and wealth

3.4 Control

All members of the cooperative are part of the General Assembly, the most important decision-making body of the cooperative, in which each member has one vote (Article 20).

The General Assembly elects the Governing Board from among its members (Article 32). This Governing Board is an administrative body that must be composed of at least three members. It can also take the form of (a) one or two members in cooperatives with less than 10 members; (b) all members sitting on both the Governing Board and the General Assembly in cooperatives with less than five members. The governing board has the duty to carry out the assembly's decisions, manage the cooperative, supervise management and represent the cooperative.

In addition, all cooperatives have a special figure for controlling the Board, called *interventores*, that is, the auditor or auditors elected [8] by the General Assembly (Article 38). These auditors can be members of the cooperative or external (the latter cannot exceed 30% of auditors).

3.4.1 Surplus distribution. Regarding the cooperative's surplus, several aspects must be taken into account: (a) the worker-members are entitled to receive, periodically, within a period not exceeding one month, payments on account of the cooperative's surpluses, called corporate advances, which are not considered as salary, according to their participation in the cooperative activity (Article 80); in other words, each worker-member receives a remuneration based on his or her contribution to the cooperative in advance of the distribution of the profit. In other words, it is not a salary but an advance distribution of the cooperative's surplus; (b) annual profits or losses are distributed among the members according to the cooperative activity they carry out and not according to the capital they hold in the share.

For the calculation of the cooperative surplus (Article 57), it must be taken into account that all cooperatives have the obligation to allocate at least 20% [9] of the cooperative surplus to the Obligatory Reserve Fund (Article 55) (the assembly can fix a higher percentage). The purpose of this fund is the consolidation, development and guarantee of the cooperative and it is non-refundable (indivisible reserves) among the members. Likewise, all cooperatives are obliged to create an Education and Promotion Fund (Article 56) and allocate at least 5% of the cooperative surplus (the assembly can fix a higher percentage). The purpose of this Education and Promotion Fund will be (a) the training and education of its members and workers in cooperative principles and values, or in specific matters of their corporate or labour activity and other cooperative activities; (b) the dissemination of cooperativism, as well as the promotion of inter-cooperative relations; and (c) the cultural, professional and welfare promotion of the local environment or of the community in general, as well as the improvement of the quality of life, community development and environmental protection actions.

Finally, the remuneration of the contributions to the share capital shall be conditional on the existence in the financial year of positive results prior to their distribution, limiting the maximum amount of remuneration to the aforementioned positive results and, in no case shall it exceed the legal interest rate set by the Central Bank by more than six percentage points.

3.4.2 Tax treatment. The tax treatment of worker cooperatives must be differentiated into two areas: the taxation of the members as workers and the taxation of the cooperative.

- (1) Taxation of working members: The cooperative's worker-members will pay Social Security contributions, and the cooperative may choose to assimilate all its worker-members as employees or self-employed workers (General or Self-Employed Scheme, u).
- (2) The taxation of cooperatives is regulated by Law 20/1990 on the Tax Regime of Cooperatives. In general, all cooperatives apply a rate of 20% to the taxable amount of cooperative results and the general rate (25%) to the taxable amount of extra-cooperative and extraordinary results in corporate income tax. Worker coops are considered "specially protected cooperatives." They also enjoy the freedom of depreciation for the acquisition of new fixed assets acquired during the first three years of the company and also entitled to a 50% rebate on the full amount of the corporate income tax. There is an special case for the worker cooperatives that have at least 50% of disabled members coming from unemployment, they will enjoy a rebate of 90% of the full quota (all income obtained by the cooperative during the first 5 years of its social activity), as long as the aforementioned percentage of members is maintained.
- (3) Rules for the dissolution of worker cooperatives.

When a worker cooperative is dissolved, Law 27/1999 on Cooperatives differentiates between the share capital and the reserve funds as follows (Articles 70 to 76).

The Education and Promotion Fund is compulsory in all cooperatives and is endowed with 5% of the surplus. The Education and Promotion Fund is non-seizable and non-refundable among the members, even in the case of liquidation of the cooperative, and its allocations must appear on the liabilities side of the balance sheet separately from other items (Article 56.5). Likewise, the fund's amount will be placed at the disposal of the federative entity to which the cooperative is associated. If this is not the case, the General Assembly may designate the federative entity to which it will be allocated. If no such designation is made, the said amount will be paid into the National Confederation of Cooperatives of the type corresponding to the cooperative in liquidation, and if the corresponding Confederation does not exist, it will be paid into the Public Treasury for the purpose of setting up a Fund for the Promotion of Cooperativism (Article 75.2.a).

The share capital and the reserve funds (compulsory reserve and voluntary reserve funds) cannot be distributed until the debts contracted by the cooperative are paid.

Regarding the share capital, the members shall be reimbursed the amount of their credited contributions after payment or deduction of any profits or losses from previous financial years, starting with the contributions of the cooperating members, the voluntary contributions of the other members and then the compulsory contributions.

The Compulsory Reserve Fund is non-refundable among the members. In the liquidation process, it will be used to pay debts contracted and in the event that it still has funds, it will be placed at the disposal of the cooperative society or federative entity that is expressly included in the Statutes or designated by agreement of the General Assembly.

The Voluntary Reserve Fund may be created on a non-refundable or distributive basis among the members by the decision of the General Assembly. In the event of liquidation, once all debts have been paid, members may be reimbursed for their share of the voluntary reserve funds that are distributable by statutory provision or by agreement of the General Assembly, the funds being distributed in accordance with the rules laid down in the Statutes or in the said agreement and, failing this, in proportion to the activities carried out by each of the members with the cooperative during the last five years or, for cooperatives whose duration has been less than this period, since their constitution (Article 75.2.c).

3.5 Models securing democratic ownership: *Sociedades Laborales*

Law 44/2015, of 14 October, on *Sociedades Laborales* and employee-owned companies (*Ley 44/2015, de 14 de octubre, de Sociedades Laborales y Participadas*) regulates SSLL. It should be added that because they are capital companies due to their form, the rules relating to limited liability and joint-stock companies apply to them (Preamble Law 44/2015) [10].

Likewise, these companies may lose their classification as *workforce-owned* in the following cases:

- (1) If the number of hours/year worked by non-member employees exceeds 49% of those worked by working members for more than 12 months. The Registrar of Companies may grant up to two extensions of 12 months each, provided that it can be shown that progress is being made in adapting the limit exceeded.
- (2) When any member exceeds its shareholding by more than one-third of the share capital. The company has a period of 18 months to accommodate its members' situation.
- (3) Lack of insufficient provisioning or misapplication of the Special Reserve Fund.

3.5.1 Membership types, entry and exit. We can distinguish between worker-members, non-working (capitalist) shareholders and workers.

- (1) Worker-members are those who hold shares and holdings in worker-owned companies and whose employment relationship is for an indefinite period of time. The shares and holdings are known as worker class. The total number of shares will be more than 50.01%.
- (2) Non-working (capitalist) shareholders: capitalist shareholders are those who hold shares and holdings in the workforce-owned company. These shares and holdings are known as the general class.
- (3) Workers: for the hiring of workers on a permanent basis by SSLL, it will be taken into account that the number of hours/year carried out by the workers hired on a permanent basis may not exceed 49% of the total number of hours carried out by the worker-members. However, authorisation may be obtained to exceed this limit on a temporary basis. Indefinite-term workers with a disability of any kind to a degree of $\geq 33\%$ and fixed-term workers will not be taken into account. Regarding workers hired on a temporary basis, there is no limitation [11].

The entry and exit of shareholders may take place through the transfer of shares or holdings: (a) *inter vivos*; (b) *mortis causa*; or (c) by termination of the employment relationship. The shares and holdings, unless otherwise provided for in the Articles of Association, may be freely transferred to worker-members and non-member employees with an indefinite term contract (Article 6.1). For the rest of the actions, in case of concurrence, it will be done in order of preference (Article 6.2): (1) non-member permanent workers, in direct relation to their length of service in the company; (2) working shareholders, in inverse proportion to the number of shares or holdings they own; (3) general class members, *pro rata* to their shareholding in the share capital; and (4) the company.

3.5.2 Member participation: control, surplus and wealth. According to the law that regulates these SSLL (Article 13), it is indicated that there will be a management body that must be defined in the bylaws of SSLL. The distribution of profits will be made on the basis of the shares and defined in the company's Articles of Association.

In addition to the appropriate legal or statutory reserves, SSLL are obliged to set up a Special Reserve Fund, which will be set aside with 10% of the net profit for each financial

year, until a figure of at least double the share capital is reached. This fund may only be used to offset losses if there are insufficient other reserves available for this purpose and/or to purchase their own shares or holdings in the company (Article 14).

3.5.3 Tax treatment. Sociedades Laborales do not have a specific tax law in the same way as cooperative societies do. The tax treatment of these companies is partly set out in Law 44/2015, of 14 October, on Worker Owned and Participated Companies, which was passed under the mandate contained in Law 5/2011 on the Social Economy.

SSLL are subject to the general regime for Corporate Income Tax, Value Added Tax, Transfer Tax, Stamp Duty and local taxes and duties, with the following exceptions:

- (1) In the Tax on Transfer Tax and Stamp Duty (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados*), companies classified as labour companies will enjoy a rebate of 99% of the fees accrued for onerous transfers for the acquisition of assets and rights originating from the company from which the majority of the employees of the labour company originate. In relation to this tax, and in application of Royal Decree-Law 13/2010, the incorporation of companies, capital increases, contributions made by shareholders that do not involve a capital increase and the transfer to Spain of the effective management headquarters or registered office will be exempt.
- (2) However, in the case of corporation tax, worker-owned companies are free to depreciate tangible and intangible fixed assets used to carry out their activities, acquired during the first five years from the date on which they are classified as such. In order to obtain tax benefits, it is necessary to comply with a twofold requirement associated with classification as a workforce-owned company and with the special reserve.
 - The requirement to maintain worker-owned company status is linked to not exceeding the limits established in Article 1 of the Law (see p. 12), which refer to:
 - It is very important not to lose classification as a workforce-owned company because, in the event of disqualification, this would entail the loss and reimbursement of profits and public aid from the time the company incurs the cause of disqualification (see p. 13).

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Furthermore, the partners of these companies do have some additional tax benefits for Personal Income Tax (IRPF): (a) unemployment benefits received in the form of a one-off payment will be exempt, subject to the maintenance of the share or participation for a period of 5 years; (b) exemption on the delivery of shares or holdings in the company to its employees, up to €12,000 per year, provided that it is made under the same conditions to all the company's employees and none of them alone or with their family members exceeds 5% of the share capital; (c) deduction of 30% of the tax liability for "investment in a new or recently created company," although with many conditions, among others that the acquisition must be at the time of incorporation of the company or in the three years following the incorporation, and that it cannot exceed, together with the spouse or relatives up to the second degree, holdings in the same company that exceed 40% of the share capital.

- (1) Rules for the dissolution of an employee owned/democratic firm

According to Article 15.6, the Articles of Association may establish the loss of the company's status as a "Workforce-owned company" as a cause for dissolution. The SSLL's members have the right to participate in the distribution of the company's profits and in the assets resulting from the liquidation. This right may have two effects: on the one hand, it facilitates

the dissolution of SSLL in comparison to cooperatives; on the other hand, it is also a factor that could encourage the creation of SSLL as opposed to cooperatives.

4. Overcoming the problem of start-up of democratic firms *de novo* or through take-overs

4.1 *De novo*

The creation of new worker cooperatives and worker-owned companies has received the attention of different research ([Baez-Melia, 2011](#); [Chaves and Savall, 2013](#); [Sanchis *et al.*, 2015](#); [Campos, 2021](#); [Catalá y Chaves, 2022](#)). In order to encourage and support the creation of worker cooperatives and worker-owned companies, measures have been developed by:

- (1) The federations and platforms of worker cooperatives and worker-owned companies themselves. For example, the Spanish Confederation of Worker Cooperatives (COCETA) indicates that its priority objective is the creation and maintenance of worker cooperatives. The role played by COCETA and its member organisations is fundamental for supporting and accompanying new worker cooperatives, as well as reinforcing existing ones.
- (2) There are numerous experiences of worker cooperatives and cooperative groups that promote cooperative intra-entrepreneurship and the creation of new cooperatives [12].
- (3) In Spain, the Ministry of Labour and Social Economy was created in 2019. However, for over 20 years, there has been a Directorate General for Self-Employment, Social Economy and Corporate Social Responsibility, traditionally located in the Ministry of Labour. In addition, different regional governments have developed special units for the promotion of the creation and development of cooperatives and worker-owned companies. In 2019, the amount of public funding for the promotion and development of the social economy by region was very heterogeneous. For example, Catalonia dedicated over €13.6 million, Andalusia €6.3 million, the Basque Country €5 million and Madrid €2.7 million (Spanish Confederation of Social Economy, [CEPES, 2020](#)).

4.2 Takeovers – defensive worker buy-outs or retiring owners want to sell to the employees

In the case of companies that, due to a crisis situation or the owners wanting to sell the company to the workers, several measures are available.

- (1) Preferential acquisition by employees: in 2020, measures were established in the area of insolvency aimed at favouring the right of preferential acquisition for workers whose companies, in a situation of insolvency, were already affected by insolvency or pre-insolvency proceedings, facilitating their continuity through worker cooperatives and worker-owned companies. This measure was published in Royal Legislative Decree 1/2020 of 5 May, approving the revised text of the Insolvency Act and the measures contained in Royal Decree-Law 16/2020. [Section 3](#) of Article 224 is of Royal Legislative Decree 1/2020 on the “Request for insolvency proceedings with presentation of an offer to acquire one or several production units” states that, “the binding written proposal for acquisition may be made by workers interested in the succession of the company by setting up a cooperative, SSLL or worker-owned company.”
- (2) Employees may use unemployment benefits/severance pay as input capital. In Spain, there is the possibility of applying for the single unemployment payment for (1) the start of an activity as a self-employed worker; (2) joining a cooperative, whether

existing or newly created, as a worker or stable working member; (3) the incorporation of a worker-owned company or the incorporation of an existing one, as a worker or stable working member; or (4) the creation of a newly incorporated business entity (or the incorporation of one that has been created in the previous 12 months, if the members are going to have control of it).

Gutiérrez (2022) points out that the incentive measures provided for the promotion of cooperatives and SSLs through Law 5/2011 on Social Economy may have unintended effects: “On the one hand, most of the time, for the purposes of the application of such incentives, no distinction is made as to how membership is achieved.” Thus, it makes no difference whether this is the result of the creation of a new cooperative, the conversion of a capitalist company into a cooperative managed by its workers or the incorporation of former workers into the cooperative.

Finally, in September 2022, the reform of the Bankruptcy Law was approved and included the recognition of worker cooperatives as a solution to the problem of companies in crisis. Thus, workers have a preferential acquisition right to continue the business activity as worker-members of worker cooperatives. It is necessary to wait to be able to assess the impact of this measure. In any case, over 400 companies have been recovered by their workers through worker cooperatives over the past three years [13].

5. Overcoming the capital problem – financing

Financing is a fundamental issue in the creation and development of worker cooperatives and worker-owned companies (Bel and Fernández, 2002; Souza, 2003; Bastida, 2012; Pachón, 2016). In Spain, financing instruments can be classified into (a) tools specific to worker cooperatives and SSL; (b) the cooperative banking system; and (c) aid from public administration. In general, access to traditional bank financing for cooperatives is more difficult because of their low level of capitalisation, but no data are available. On the other hand, there are no tax advantages for loans that can be provided by worker-members to cooperatives, nor are there tax benefits for cooperative banks. Finally, there are no tax incentives for employee savings in the funds of cooperatives or worker-owned companies.

5.1 *Own funds of worker cooperatives*

The own funds generated by cooperatives are financing items generated during the life of the company through the retention of profits generated, which improve its financial situation, allowing its consolidation and growth. They form part of the company’s permanent capital and represent a guarantee or solvency of the company with regard to third parties. This last aspect has special relevance in cooperative societies, since, due to the variability of the social capital, “only the reserve funds constitute a vehicle for guaranteeing the financial stability of the company in the long term” (Celaya, 1992, p. 229).

Cooperatives have to endow the following own funds on a compulsory basis (Articles 55 and 56): the Mandatory Reserve Fund and the Education and Promotion Fund. They can also create a Voluntary Reserve Fund. The Reserve Funds provide the cooperatives with solvency and financial capacity, while the Education and Promotion Fund can only be used for such activities, training and dissemination of the cooperative model.

Furthermore, the worker cooperatives can create other instruments, such as (1) voluntary contributions enable the cooperative society to obtain its own resources without agreeing to new compulsory contributions; (2) the membership fees are an additional disbursement, with respect to the amount that was established as the minimum compulsory contribution to the share capital, required from new members as an operating measure to avoid or at least

mitigate the dilution effect or decrease in the net worth/member ratio when new workers enter; (3) periodic subscriptions are the contributions made by the members of the cooperative to cover the expenses agreed in each case, which may be of the most varied nature. Membership fees and periodical subscriptions may be different for different classes of members, or according to the physical or legal nature of the members, or for each member in proportion to their respective commitment or potential use of the cooperative activity. In either case, they may be fixed by the statutes or by the General Assembly. They do not form part of the share capital and are not refundable.

Another important tool for financing is the credit sections of worker cooperatives. “According to Article 5 of the Spanish Cooperative Societies Act (Law 27/1999).”

Cooperatives of any kind, except credit cooperatives, may have, if their Articles of Association so provide, a credit section, without legal personality independent of the cooperative of which it forms part. The operations of the credit section may only be carried out with the cooperative itself and its members. The section may make its surplus cash available through financial institutions. Under no circumstances may the volume of the credit section’s lending operations exceed 50% of the cooperative’s own resources. “In Spain, the credit sections are mainly distributed in Catalonia, Valencia, Andalusia, Extremadura, Castilla-La Mancha and Galicia”. The main sector is undoubtedly agriculture although there are other sectors, such as pharmaceuticals (Climent and Palacio, 2006).

5.2 Credit union system

There is a long tradition of cooperative banking in Spain. The Cajas Rurales, some of which are over a hundred years old, have been fundamental in the financing of numerous cooperative projects. At present, the main institutions that form part of the cooperative credit system are as follows:

The *Caja Rural Group* includes a group of rural savings banks (credit cooperatives) at the regional or local levels whose central banking function is the cooperative bank [14]. The financial group was set up in 1990 and is composed of 30 rural savings banks and relies mainly on the bank’s support, *Rural Servicios Informáticos* (RSI) and the insurance company RGA to carry out its business activities. In 2021, the Caja Rural Group had over 1.5 million members, €82,760 million in total assets and €6,395 million in equity, accounting for over 54% of the total volume of assets of the Rural Savings Banks [15].

Grupo Cooperativo Cajamar is currently formed by 19 entities. It is the benchmark financial group for cooperative banking in Spain at the national level, with 3.5 million customers and 1.5 million members, 898 branches, 5,330 employees, 115 financial agents, as well as six travelling branch vehicles that provide financial services to 42 towns with less than 1,500 inhabitants in rural areas. As of September 20, 2021, it had €57,594 million in assets, a managed business volume of €93,530 million, a solvency ratio of 15.74% and a CET1 phased-in ratio of 13.31%. In the new European Banking Union, *Grupo Cooperativo Cajamar*, due to its size and volume of assets, is considered one of the 10 most significant institutions in the Spanish financial system [16].

Laboral Kutxa Group was created in 1960 [17] within the Mondragon Group. It is a credit cooperative in which most of the capital is in the hands of the cooperatives of the Mondragon group and active or retired worker-members. In 2020, it had €27,904 million in assets and €1,835 million in equity. In 2020, it had over 1.1 million customers, 1,739 active members and 309 employees (see Arando and Herce, 2023).

On the other hand, in Spain, there are, in Spain, different institutions linked to ethical banking that provide services, especially to workers’ cooperatives and worker-owned companies. The most relevant institutions are *Fiare Banca Ètica*, Coop 57, Oikocredit, *Caixa Pollença*, *Caixa d’Enginyers* and FonRedess.

5.3 Public funding

The Ministry of Labour and Social Economy, as well as the different regional governments, annually establish aid aimed at social economy entities, including worker cooperatives and the SSLL. They can also apply to other types of general aid that are not specifically restricted to worker cooperatives and SSLL.

- (1) Subsidies for the creation and consolidation of employment in worker cooperatives and SSLL: To promote the incorporation, on an indefinite basis, as worker-members in worker cooperatives and SSLL, of unemployed people and workers with temporary employment contracts in the same cooperative or SSLL in which they are integrated as members, as well as to support the development of projects for the creation and modernisation of this type of social economy companies by improving their competitiveness, thus facilitating their consolidation.
- (2) Subsidies for activities to promote, foster and disseminate the social economy.
- (3) Subsidies for the development of activities to promote, foster and disseminate the social economy and to defray the operating costs of the associative entities of worker cooperatives, SSLL, work integration social enterprises (WISE), special employment centres and other entities representing the social economy at the regional level.

6. Conclusion

The Spanish Constitution of 1978 expressly states in Article 129 that, “the public authorities shall effectively promote the various forms of participation in business and shall encourage, by means of appropriate legislation, cooperative societies. They shall also establish the means to facilitate workers’ access to ownership of the means of production.” In 1987, the first cooperative law of the democratic period was approved (the previous law was from 1974 within the framework of the dictatorship). Subsequently, the 1990 law was adopted and finally, the 1999 law has shaped the current state of cooperativism in Spain. Each of these laws recognises the important role played by cooperatives from both economic and social points of view. In addition, tax incentive measures have been established over time for cooperatives (especially agricultural and labour cooperatives) together with specific public aid for the creation, incorporation of members and investment. On the other hand, the requirements for the creation of worker cooperatives with regard to the number of members have been relaxed. In the 1987 law, five members were required and now, micro cooperatives can be set up with only two members. The reasons given for favouring cooperatives in general, and worker cooperatives in particular, are their capacity to generate decent work and contribute to sustainable development, with stable, secure and inclusive jobs, and their link to the territory (Cortés, 2021; Colominas, 2021).

Sociedades Laborales, created in the 1970s as a method of collective self-employment by workers, also achieved constitutional recognition in Article 129.2 of the Spanish Constitution of 1978. The different laws of 1986, 1997 and 2015 on worker-owned companies highlight the role they played in the recovery of companies by the workers and the need to encourage worker participation. This legislation has also been accompanied by public aid for the creation and incorporation of workers and for investment (Canalda, 2019).

As a consequence, worker cooperatives and SSLL have spread throughout the country in all types of activities. Currently, worker cooperatives and SSLL are two fundamental legal formats in the social economy of Spain. The relevance of worker cooperatives has been consolidating and growing over time.

However, it is worth highlighting the continuing decrease in the number of SSLL over the past ten years and a certain decrease in the number of worker cooperatives. Some of the

reasons put forward for this decline are (1) the lack of effective favourable tax treatment for worker-owned companies; (2) the establishment of more favourable measures for capitalist companies, such as the reduction of the corporate tax rate for capitalist companies and the appearance of the *Sociedad Limitada Unipersonal* (since 2014, the general corporate tax rate has been 25% (previously 30%)); (3) the change in one of the most important measures to promote self-employment, such as the single payment of unemployment benefits for those unemployed who provide such benefits to become self-employed by starting up an economic activity (Gutierrez, 2022); (4) the lack of knowledge and training in the field of worker cooperatives and worker-owned companies in training, professionals and politicians. It is striking to note the lack of technical training on cooperatives and worker-owned companies among professionals involved in consultancy for the creation of new companies, which leads them to advise against the use of worker cooperatives or SSLs; (5) different legal instruments that facilitate workers' access to ownership of the companies in which they work as employees are sometimes counterproductive because they can weaken the position of workers (Gutierrez, 2019).

Notes

1. <https://www.ine.es/inebaseweb/25687.do>
2. <https://www.coceta.coop/coceta.asp>
3. Spanish Confederation of Worker Cooperatives (*Confederación Española de Cooperativas de Trabajo Asociado*) <https://www.coceta.coop/>
4. For example, in February 2023, the Madrid region approved a new law on cooperatives that allows the creation of a new cooperative with a minimum capital of one euro. In other words, in practice, and at least for the constitution, no prior capital is required to set up a cooperative (the final text has yet to be published).
5. <https://www.ica.coop/en>
6. A trading or joint stock company's purpose is to carry out commercial activities or, in general, an activity subject to commercial law. It also differs from a civil law company in that the latter does not include commercial activities in its corporate purpose.
7. They were legislatively defined for the first time in 1986 in Spain (first Law on *Sociedades Laborales*) and modified in 1997, with Law 4/1997, of 24 March, on *Sociedades Laborales* (BOE 72 of 25/03/97). Subsequently, Law 44/2015, of 14 October, on Worker Owned and Participated Companies (BOE no. 247, of 15 October 2015) repealed Law 4/1997. The 1986 law was adopted to solve the unemployment problem that existed in Spain at the time (21,03%).
8. Art 39.1. The annual accounts and the management report, before being submitted for approval to the General Assembly, shall be audited by the auditor or auditors, unless the co-operative is subject to the auditing of accounts referred to in Article 62 of this Act.
Art 38. Auditors may consult and check all the cooperative's documentation and carry out any checks he/she deems necessary.
9. This percentage can vary between 20% and 30% in regional laws. The requirements of the state law are included in the text.
10. Royal Decree 2114/1998, dated 2 October, on the Administrative Register of Worker Owned Companies, until the new Royal Decree regulating the Administrative Register of Worker Owned Companies established in the fourth final provision of Law 44/2015 is approved.
<http://www.ipyme.org/es-ES/DecisionEmprender/FormasJuridicas/Paginas/FormasJuridicas-DescripcionA.aspx?cod=SCTA&nombre=Sociedad+Cooperative+of+Work+Partnership&language=en-ES>
11. <https://inaem.aragon.es/sociedades-laborales-0>

12. An interesting experience is the creation of Social Markets in Spain (Bretos *et al.*, 2020).
13. <https://www.coceta.coop/noticias-coceta.asp?idnew=733>
14. <https://www.bancocooperativo.es/es>
15. https://www.bancocooperativo.es/sites/default/files/2021-05/quienes-somos_0.pdf
16. <https://www.cajamar.es/es/comun/informacion-corporativa/informacion-para-inversores/informacion-general/otra-informacion-relevante/ano-2021/>
17. https://corporativa.laboralkutxa.com/src/uploads/2021/04/Memoria_Sostenibilidad_2020_CAS_cleaned-1.pdf

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AQ: 16 Further reading

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Corresponding author

AQ: 8 Carmen Marcuello can be contacted at: cmarcue@unizar.es

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