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SEMINAR:

“THE DRAFT LAW IN SUPPORT OF SPANISH ENTREPRENEURS:
LOTS OF LITERATURE AND FEW RESULTS?”

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Outline of main points

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 - o Review of the European Employment Strategy (2002)
 - o Review of the Lisbon Strategy (2005-2008)
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1. BACKGROUND ON THE PROFILE OF ENTREPRENEUR AS A TARGET GROUP FOR THE DEVELOPMENT OF ACTIVE EMPLOYMENT POLICY MEASURES UP TO THE 2020 EMPLOYMENT STRATEGY

Although the aim of this paper is to analyse active employment policies, specifically the entrepreneurship support measures¹ developed in the Draft Law on Support for Entrepreneurs, from the perspective of the Economic and Social Council,² it is necessary to review the history of such measures, to capture the importance they have had at international, European and national levels, to examine the measures taken in Spain with the introduction of this Bill in light of the European strategies and programmes that have emerged in parallel with entrepreneurship development strategies.

1º) The international perspective:

- In 1964,³ Convention and Recommendation no. 122 of the International Labour Organisation (ILO) on employment policy considered it mandatory to develop programmes promoting full employment through active policies and stated that these should be examined in order to achieve the objectives set out in Art. 1 of the same document. It also required the involvement of the social partners in designing and implementing the measures set out in employment policy, especially the measures on employment of young workers and measures for the long-term unemployed.

- In 1988, the preamble to Convention No. 168 on employment promotion and protection against unemployment recognised that policies promoting sustained and non-inflationary economic growth and having a flexible response to change and to the creation and promotion of all forms of productive and freely chosen employment (including small businesses, cooperatives, self-employment and local initiatives for employment) offered the best protection against the harmful effects of involuntary unemployment. It suggested that resources devoted only to

¹Supporting entrepreneurship, supporting the growth and development of business projects.

²Dictamen sobre el anteproyecto de Ley de Apoyo a los Emprendedores y su Internacionalización Opinion on the Draft Law on Support for Entrepreneurs and Internationalisation.

³Others international (ILO) standards concerning: Recommendation No. 189 on Job Creation in Small and Medium-sized Enterprises, 1998; Recommendation No. 193 on Promotion of Cooperatives, 2002; Recommendation No. 136 on Special Youth Schemes, 1970

funding the assistance of businesses be redistributed towards activities likely to promote employment, such as guidance, training and retraining. The convention recognised that involuntary unemployment existed and that it was important, therefore, that social security systems provided an aid to employment and financial support to people who were involuntarily unemployed.

The third milestone from an international perspective is the observations, made in 2012, by the Committee of Experts on the Application of Conventions and Recommendations (CEACR),⁴ in particular in relation to the application of Convention No. 122 and its invitation to the Spanish government to show evidence of compliance with three articles concerning employment policies. The Committee referred to the following articles:

- The application of Art. 2, i.e., the completion of a review of the measures and policies adopted to achieve the objectives of Art. 1.
- The involvement of the social partners.
- The impact of the measures taken to facilitate the return of the long-term unemployed and the young unemployed to the labour market.

It is conceivable that in the wake of this “polite invitation” to “do their homework” that the Spanish government included point 4.9 in the Youth Employment Plan as part of its National Reform Programme of Spain 2012 (which we shall look at later), promoting self-employment as an alternative to employment, i.e. job creation through entrepreneurship. However, in light of a recent report published by the CCOO (Confederación Sindical de Comisiones Obreras, the Trade Union Confederation of Workers’ Commissions) in Spain, the issue is still a concern for the CEACR, because it seems that this breach of the Convention No. 122 continues and many deficiencies persist in the implementation of employment policies.⁵

2º) Within the European sphere: entrepreneurship in the European Employment Strategy and the Lisbon employment strategy.

⁴ Committee of Experts on the Application of Conventions and Recommendations, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-es/index.htm>

⁵ <http://www.nuevatribuna.es/articulo/economia-social/-ccoo-denuncia-el-fracaso-de-las-politicas-del-gobierno-de-espana/2013061414505293525.html>

- As we know, there has been a growing interest in the EU in the promotion of employment policies, starting with the Amsterdam Treaty⁶ (2 October, 1997); prior to this treaty the issue of employment was of little concern to the Community. The justification for this new departure in the treaty was based on the discussion initiated in the context of the negotiation of the Maastricht Treaty (1992) with the addition of a social protocol to strengthen its social dimension⁷, and the publication of the Delors White Paper (1993) entitled “Growth, competitiveness, employment: The challenges and ways forward into the 21st century”.⁸ This allowed for the inclusion in the Amsterdam Treaty of a new Title VIII on employment, grouped under items 125-130.⁹ These items do not establish guidelines to follow to achieve a high level of employment, but aim to develop coordination¹⁰ of the mechanisms at Community level, which must then be implemented in each of the Member States through employment policies.

Notably, in relation to the matter that is addressed in this study, the observation was made in the White Paper prior to the treaty that SMEs are regarded as one of the main sources of employment creation, and to that effect the White Paper proposed the elimination of the administrative and taxation barriers that they bear.¹¹

⁶The Amsterdam Treaty was signed on October 2, 1997 and came into force on 1 May, 1999. This delay is due to the differences that existed between the various Member States on the ratification of the treaty. Spain approved ratification in parliament later that year. See http://europa.eu/eu-law/treaties/index_es.htm.

⁷<http://eur-lex.europa.eu/es/treaties/dat/11992M/htm/11992M.html#0094000018>.

⁸<http://ec.europa.eu/white-papers/>

⁹Art. 125 of the treaty regulates joint action between national policies and the economic policies of the Community at the time of developing a coordinated strategy for employment, as well as Art. 127.2 of the treaty on the implementation of Community measures. The Community has to take into account one of the objectives for a high level of employment, the achievement of these objectives is developed in Art. 128, which states that the Council shall review annually the employment situation in the Community and adopt conclusions and as well as guidelines which the Member States have to take into account in their employment policies, basing it on a joint annual report prepared by the Commission and the Council, after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee. In the implementation of these guidelines, Member States and the Commission will need to inform the Council through a report with the measures that need to be implemented in its employment policy. Having national reports by the Employment Committee, the Council will annually review the policies adopted, and it may make recommendations to the Member States.

¹⁰MONEREO PEREZ, J. L., 2011, “Manual de política y derecho del empleo” Madrid, Tecnos, El método abierto de coordinación (MAC)

¹¹ <http://ec.europa.eu/white-papers/>

The position taken in the Amsterdam Treaty was not to give power to EU institutions to set employment policies. Instead the responsibility would fall to each of the Member States to develop actions on social issues, while the Community would maintain support based on the experiences of other Members States.¹²

This position has not altered in any way. In the current Treaty on the Functioning of the European Union (TFEU) the positions taken are virtually identical to Arts. 125-130 of the Amsterdam Treaty; that is to say, they have been incorporated into the new Arts. 145-150 under Title IX “Employment” of the consolidated version of the TFEU. It is important to note the similarity to show that despite this most recent version it has continued to maintain the same line; there is still no binding legislation on employment in Member State, because according to Art. 148.1 of the TFEU, the open method of coordination (OMC) continues as the procedure to follow.

The objective of the treaty is the coordination and standardisation of employment policies among Member States, but it avoids introducing regulatory reform. As a result, there is no guarantee that governments will implement Community guidelines on issues of employment policies. A government’s failure to follow guidelines leads to the issuing of a Recommendation accompanied by a significant political sanction,¹³ which damages the government in public opinion.

¹²ALVAREZ ALEDO, C., 1998, “Nuevos retos para las políticas activas de empleo”, *Económistas*, No. 77.

¹³The Lisbon Treaty introduces specific proceedings for cases where a Member State does not communicate the measures for transposing a Directive from the Commission. In such a case, the Court may impose a pecuniary penalty on the Member State concerned from the date of the first judgment on the failure to fulfil an obligation. See

http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/114550_es.htm

– **The Luxembourg European Summit 1997:**

At the European Summit of 20-21 November, 1997¹⁴, the heads of European governments adopted the European Employment Strategy (EES), which had been provided for in the Amsterdam Treaty, in order to give a boost to more active employment policies over a period of five years (1997-2002). The first guidelines¹⁵ (for 1998) included 19 specific actions grouped under four pillars. This study is concerned with the second pillar, “entrepreneurship”, i.e. promoting self-employment as a means to development and employment growth.

The subsequent European summits held in Cardiff (June 1998) and Cologne (June 1999) contributed to the consolidation of the European Employment Strategy.

From this time, each of the Member States was required to develop a National Action Plan¹⁶ for Employment on an annual basis. Implementation of the strategy was monitored by the Council of Ministers, which examined these plans and assessed whether or not they followed the Community Guidelines, as well as deciding the actions necessary to draft guidelines for the following year.

– **The Lisbon Strategy on employment (2000):**

On 23 and 24 March, 2000, a Special European Council was held in Lisbon, with the goal of invigorating EU policies, using the positive economic climate¹⁷ to begin reforms that would facilitate the elimination of long-term unemployment and increase the employment rate of older workers.

¹⁴Presidency Conclusions, Luxembourg, 20 and 21 November 1997. See http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300.htm.

¹⁵These guidelines were established at the Extraordinary European Council meeting on employment, Luxembourg, 20 and 21 November, 1997. Presidency Conclusions are available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300.htm.

¹⁶You can consult the Spanish plans at http://www.empleo.gob.es/es/sec_trabajo/debes_saber/pnr/

¹⁷Lisbon European Council, 23 and 24 March, 2000. Presidency Conclusions are available at www.europarl.europa.eu/summits/lis1_en.htm.

The new aim was to become a knowledge-based economy, more competitive and dynamic, able to grow economically in a sustainable way, with more and better jobs and greater social cohesion

This strategy, like the previous ones, was designed to enable the Union to reach the same goal set in the strategies described above, full employment, by improving policies for the information society and R&D, and improving processes. It introduced a new open method of coordination (OMC), accompanied by guidance and a more effective supervision of activities.

At the conclusion of the Presidency, as regards entrepreneurship, the Commission was instructed to submit a multiannual programme for enterprise and entrepreneurship for 2001-2005, and the Council and the Commission together were called on to undertake a comparative exercise on the cost and the time required to start a business.

– **Review of the Employment Strategy (2002):**

In July 2002 the Commission drew up a balance sheet for the five years of implementation of the EES,¹⁸ highlighting the significant improvement of the labour market in those years. Notably, it was from this review that the strategy introduced a change of direction into the formulation of national policies, shifting from managing unemployment to managing employment¹⁹ growth, culminating in a Commission proposal concerning employment guidelines for 2003.

In conclusion, one might think that when the EES was first implemented, it seemed that the solution to unemployment was employability. However, this

¹⁸Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 17 July, 2002: Taking Stock of the Five years of the European Employment Strategy [COM (2002) 416 final - not published in the Official Journal].

¹⁹COM/2002/0416. Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions. Taking Stock of Five Years of the European Employment Strategy.

concept has been extended to include issues such as early school-leaving, unemployment prevention and continuous professional development.

The communication from the Commission to the Council on the draft employment report of 2002,²⁰ emphasised the promotion of entrepreneurship, among other measures, in order to boost entrepreneurial activities: “Promoting action for employment at local and regional level.” In this regard, the communication recognised “that sufficient efforts have not been made to reduce administrative burdens that companies have to bear” and noted that some Member States had set quantitative targets²¹ to reduce the time and cost of starting a business. This communication noted that all Member States recognised the importance of self-employment in job creation, and (much along the lines of Royal Decree-Law 4/2013, of 22 February) proposed that employees and unemployed people should be encouraged to work for themselves. At the same time, it recognised that the difficulties involved in setting up a business discourage people to become entrepreneurs.

In conclusion, one might think that in light of this dual perspective, that is, on the one hand, the aim of encouraging entrepreneurship and, on the other, the difficulties identified in achieving this end, it was thought to encourage entrepreneurship through education to overcome barriers to self-employment. Prior to this communication from the Commission to the Council on the draft employment report of 2002, the European Council at its meeting in Barcelona in March 2002, also urged the Council and the Commission to streamline the relevant processes of policy coordination, arguing that they had to focus on implementation, rather than the annual preparation of guidelines.²²

²⁰Brussels, 13.11.2002. COM(2002)621 final. Communication from the Commission to the Council. Draft Joint Employment Report 2002.

²¹Brussels, 7.11.2002. COM(2002)610 final. Communication from the Commission to the Council and the European Parliament. Better Environment for Enterprises.

²²Presidency Conclusions, Barcelona European Council, 15 and 16 March, 2002. See Part I, point 49 of the Conclusions of the Presidency.

– **Review of the Lisbon Strategy (2005-2008):**

This review came as a re-launch of the EES under the title “Working together for growth”²³, following the report of the High Level Group²⁴ chaired by Wim Kok, which confirmed that there was a need to act quickly. According to Kok “Time is short and we cannot afford complacency”. Europe needed to improve productivity and create more jobs.

Despite being inspired by real optimism, the review was quite clear in saying that Europe had to keep its promises, not neglect its objectives and ensure that words were translated into results. This review was a wake-up call, possibly because the EES was not achieving the expected results, since, according to this report, Europe had not made sufficient progress in achieving the objectives set out in the Lisbon Strategy.

The actions²⁵ proposed in this review to achieve growth and create jobs were “to make Europe a more attractive place to invest and work”, promoting entrepreneurship and young, innovative companies.

There is little more to add, because although there was a wish to express optimism about the results obtained from the EES, it has been said that much has been written, but few results have been achieved.

– **Strengthening the Community Lisbon Programme (2008-2010):**

This new Community Lisbon Programme (CLP) for the following three years was established in order to solve the shortcomings of previous programme. The Commission proposed a programme with 10 objectives. The third objective

²³Brussels, 2.2.2005, COM (2005) 24 final. Communication to the spring European Council. Working together for growth and jobs. A new start for the Lisbon Strategy. Communication from President Barroso in agreement with Vice-President Verheugen. {SEC(2005) 192} {SEC(2005) 193}.

²⁴Brussels, 2.2.2005, COM (2005) 24 final.

²⁵Brussels, 26.1.2005 COM(2005) 12 final. Strategic Objectives 2005–2009. Europe 2010: A Partnership for European Renewal. Prosperity, Solidarity and Security. Communication from the President in agreement with Vice-President Wallström.

referred to the entrepreneur and, among other proposals, it suggested giving another chance to entrepreneurs in cases of business failure.

As a conclusion to this review, it should be noted that thanks to the re-launch of the Lisbon Strategy in 2005 and its reorientation towards growth and jobs, Europe advanced, although goals in some areas such as setting up a business were not achieved fully; this was attributed to a lack of entrepreneurial culture.²⁶

Finally, as a general assessment of this employment policy, one may conclude that there were positive and negative factors, such as the establishment of the EES. Despite the ambition of the strategy to achieve growth through measures such as generating entrepreneurial employment, it did not achieve the expected results, although from the Luxembourg Summit (1997) entrepreneurship through self-employment was promoted, and later, in 2000, the Lisbon Strategy mandated the Commission to establish the actual costs of starting a business. Moreover, the review of the Employment Strategy in 2002, particularly in the communication from the Commission to the Council on the draft report on employment, recognised the importance of self-employment in job creation and even encouraged employees and unemployed people to consider self-employment.

Reasons why job creation through entrepreneurship was not successful:

- 1) The view given in the communication made to the Council²⁷ stating that entrepreneurship was not developed enough is commonly shared.
- 2) If we analyse the evolution of the EES and the Lisbon Strategy on employment (2002, 2005 and 2008), they demonstrate the difficulties in achieving the objectives, despite the fact that proposals were quite similar. This reiteration of guidelines without introducing real improvements could hardly achieve the desired objectives.
- 3) Finally, perhaps the problem was not based only in the line of action proposed by the EU, but also in the lack of participation by the Member States, in

²⁶Communication from the Commission to the spring European Council - Strategic Report on the renewed Lisbon strategy for growth and jobs: Launching the new cycle (2008-2010) - Keeping up the pace of change - Assessment of the national reform programmes, COM(2007) 0803 final.

²⁷Brussels, 2.2.2005 COM (2005) 24 final. Communication to the spring European Council. Working together for growth and jobs. A new start for the Lisbon Strategy.

particular Spain, to achieve this goal, since the implementation of this objective, or other measures in general, can be applied or not, or only partially, by Member States. In other words, there is no rule that requires the implementation of the Lisbon Strategy, and its implementation uses the open method of coordination, which this means that the reforms proposed in the Strategy are followed very differently among Member States. Possibly a solution would be to standardise employment policies, or at least in part.

– **“The Lisbon Strategy after 2010²⁸”**

On the 4 and 5 November 2009, an opinion was presented by the European Economic and Social Committee (EESC) in which it was considered a priority to put a new strategy in place for the period after 2010 in light of the evolution of the Lisbon Strategy. The question asked in this opinion was “Business as usual or does Europe need a new agenda?” The EESC advocated the continuation of a global strategy, without returning to the Lisbon Strategy 2000 or opting for more of the same. According to the EESC a “greener”²⁹ approach was needed, and it proposed a change of name for the new European strategy. This proposal led to Europe 2020.

Among its seven objectives, the EESC opinion document included the objective “to promote industrial policy and entrepreneurship”, and the “creation of a suitable environment for SMEs”. This meant that despite the new objectives, the objectives of the Lisbon Strategy continued. The opinion pointed out that the new strategy should set more ambitious goals for 2015. Finally, in this opinion, the EESC recognised that the open method of coordination (OMC) had failed and that it was necessary to strengthen obligation to ensure compliance with the dictates of the strategy.

²⁸Official Journal of the European Union, 2010/C 128/03.

²⁹This term refers to new sources of employment, creating new green businesses, i.e. less CO₂ emissions.

– **A strategy for smart, sustainable and inclusive: Europe 2020**

On the March 26, 2010,³⁰ the Council of Europe agreed to a proposal from the Commission to launch a new strategy for employment. The guidelines for economic and employment policies were presented as two legally different but consistent measures. In this way, the Council adopted guidelines for economic policy through Art. 121 of the TFEU, and for employment policy through the Art. 148 of the same Treaty. The guidelines to be followed are presented differently:

- A Council Recommendation on broad guidelines for the economic policies of the Member States.³¹
- A Council Decision on guidelines for the employment policies of the Member States.³²

Focusing on the second item, the Council Decision on guidelines for the employment policies stated in Art. 9 that within the 2020 Strategy, Member States had to implement reforms to promote entrepreneurship and to help to turn creative ideas into products, services and processes. These reforms should be reflected in the various reform programmes that Member States were required to develop in line with this strategy. In summary, the guidelines contained in the Council's decision on active employment policies would be part of the Europe 2020 Strategy.

The Europe 2020 Strategy was adopted in the Council meeting of June 2010 and since then, several decisions and recommendations have been adopted,³³ including the promotion of growth while facilitating business creation.³⁴

³⁰Brussels, COM (2010) 193/3. Proposal for a Council Decision. On guidelines for the employment policies of the Members States.

³¹2010/410/EU. Council Recommendation of 13 July 2010 on broad guidelines for the economic policies of the Member States and of the Union.

³²Brussels, COM(2010) 193/3. Proposal for a Council Decision on guidelines for the employment policies of the Member States.

³³On 29 June, 2012, the Heads of State or Government took a decision on a Pact for Growth and Employment. On 28 November, 2012, the Commission adopted the Annual Survey on Growth, marking the beginning of the European Semester economic policy coordination 2013. On 14 March, 2013, the

In conclusion, the long journey of the Lisbon Strategy 2000, created in the interest of job growth, was intended to recognize the need to increase the productivity and competitiveness of the EU, while improving social cohesion, faced with global competition, technological change and the ageing population. The Lisbon Strategy 2005 served to re-launch the strategy after a mid-term review, following the same proposals – growth and the pursuit of more and better jobs. After subsequent revisions in 2005, 2006 and 2008, the Council approved 24 guidelines to establish the basis for national reform programmes, but the results have shown, as seen during the development of this Strategy, that the guidelines did not set priorities clearly enough. Furthermore, as regards the reasons why they have not been reached, the prevailing view is that Member States have not undertaken a coherent policy to achieve them, and that the method of coordination has not offered sufficient incentives for commitment to the Strategy. The report of the EESC (discussed above) also added that it has not achieved sufficient participation from the social partners and civil society.

With the new 2020 Strategy, it is hoped to achieve the objectives, but one might ask whether the position has changed in this new strategy, after the explicit recognition of the difficulty of achieving those objectives in the revisions of the Strategy?

Although the EESC recognised the “Achilles heel” of the open method of coordination (OMC), its lack of visibility for citizens and its inefficiency at national level, the current 2020 Strategy has not changed. It is necessary that objectives be viewed as political obligations and not, as often tends to be the case, as desirable reference points. Furthermore, the EESC also acknowledged the lack of involvement of the European social partners. In the conclusions of the next section, which addresses how this strategy has been implemented at the Spanish national level, we can see with greater clarity if this Strategy is actually effective.

European Council endorsed the priorities for ensuring financial stability, fiscal consolidation and measures to promote growth.

³⁴ Brussels, 29 June, 2012. EUCO 76/12. European Council 28/29 June. Conclusions.

2. PROMOTING ENTREPRENEURIAL ATTITUDES THROUGH SMALL BUSINESSES

– The Charter of Santa Maria Da Feira (2000):

Starting from the Lisbon Strategy 2000 as the basis for European Community employment actions, which again opened public debate on the future of the European Union, the Charter of the European Council of Santa Maria da Feira³⁵ adopted a series of measures for the “preparation for the transition to a competitive, dynamic and knowledge-based” economy. This document emphasised the importance of small businesses and small entrepreneurs for growth, competitiveness and employment in the Community. According to the Charter small businesses are “a key source of jobs and a breeding ground for business ideas”. In Lisbon, a goal was set for the European Union to be more competitive and dynamic, capable of sustainable growth with more and better jobs and greater social cohesion. According to the Charter, small businesses were generating employment and it recognised entrepreneurship as a “valuable and productive life skill”.

According to the Charter, governments had to commit to strengthening a spirit of innovation and entrepreneurship through education and entrepreneurship training, especially for young entrepreneurs. They also needed to enable cheaper and faster start-up of businesses. This Charter had to define the concept of small business³⁶ (microenterprise) for job creation and entrepreneurship development. So the principle of “think small first”³⁷ was born, advancing the Lisbon goals. In addition, some examples from Member States such as the UK, were described, which had implemented guidelines for talking with small businesses. For example, the Small Firms Association organizes meetings with small businesses across the country and represents small business to the government. In other countries like Spain, research could be carried

³⁵ Presidency Conclusions, Santa Maria Da Feira European Council. 19 and 20 June 2000. www.consilium.europa.eu/.../00200-r1.en0.htm.

³⁶(2003/361/EC) Commission Recommendation of 6 May 2003, concerning the definition of micro, small and medium-sized enterprises.

³⁷Brussels, 21.1.2003. COM (2003) 26 final. Communication from the Commission to the Council and the European Parliament. Thinking small in an enlarging Europe.

out,³⁸ and a spirit entrepreneurship encouraged, offering training in how to set up and develop a company.

In conclusion, it could be said that these actions to promote entrepreneurship are part of the Lisbon objectives, but as in that strategy, most of the measures to improve the environment for small businesses were a national responsibility. This means that the Commission's work in this area aimed to help Member States improve their performance through the open method of coordination³⁹ (OMC); in other words, there was no regulatory obligation.

– **Strategy for SME policy actions (2005):**

At the same time as the re-launch of the EES under the title “Working together for growth and jobs”, implementing an SME⁴⁰ policy was being promoted, especially Guidelines Nos. 14 and 15 on better regulation, promoting entrepreneurial culture and creating a more competitive and SME-friendly environment, trying this time to implement the principle of “think small first”. The communication from the Commission in late 2005 established a strategic framework for SME policy action. It proposed new actions aimed at entrepreneurs, women entrepreneurs, embracing the older workers and young people, to promote the entrepreneurial spirit. It introduced a new competition, the European Enterprise Awards to demonstrate the promotion of entrepreneurship and SMEs at regional and local level and to facilitate the exchange of best practices in this area.

Comparing the growth of SMEs in the EU with the US, the growth of jobs increased by 60% in less than seven years in the US, and in the EU between 10% and 20%. Perhaps the problem lies in the role of SMEs being recognised only at the political level. In

³⁸COM(2003) 26 final. Students can learn about setting up a company in Belgium, Germany, Spain, Italy, Luxembourg, Netherlands, Austria and Norway.

³⁹Brussels, 21.1.2003. COM (2003) 26 final. Communication from the Commission to the Council and the European Parliament.

⁴⁰Brussels, 10.11.2005 COM(2005) 551 final. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee and the Committee of the Regions, ‘Implementing the Community Lisbon Programme: Modern SME policy for growth and employment.

addition, both the Single Market Review⁴¹ and the Small Business Act (SBA) initiative have confirmed that further initiatives are needed.

– **The Small Business Act (2008):**

The Lisbon Strategy 2008 coincided with the Small Business Act.⁴² This new law sought new ways to stimulate entrepreneurship and to encourage a more entrepreneurial attitude among young people. These principles had to be transformed into policy action, in other words, more entrepreneurs of the future had to be supported, especially among women and young people, simplifying the conditions for business transfers. To this end, the Commission launched, among other programmes, European SME Week in 2009 and Erasmus for Young Entrepreneurs in 2008 to promote exchanges of experiences and training, offering future entrepreneurs the opportunity to learn from experienced entrepreneurs and improve their language skills. A network of female entrepreneur ambassadors to EU was established to encourage women to start their own business. Entrepreneurship among university graduates was also promoted.

Of all the measures taken following the Conclusions of the Council of Santa Maria Da Feira, the initiatives directed towards the entrepreneur could be described as having been very positive. However, the desired results were not achieved, as occurs with Strategies: it seems that that the same goals are reiterated again and again. This could be because the success of the new SME policy depended primarily on the actions undertaken by Member States as they retained the main competence in business policy, while the EU policy framework only serves to support and complement their efforts. However, there was a great interest in the various programmes of the Commission. European SME Week was pan-European platform with over 1500 events and 3 million participants;⁴³ 250 successful European female entrepreneurs formed the European

⁴¹Brussels, 20.11.2007 COM(2007). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘A single market for 21st century Europe’.

⁴²Brussels, 25.6.2008 COM(2008) 394 final. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. “Think Small First”, a Small Business Act for Europe.

⁴³<http://ec.europa.eu/enterprise/policies/entrepreneurship/sme-week/>

Network of Female Entrepreneurship Ambassadors in 2009 to encourage women to become entrepreneurs.⁴⁴

According to the Review of the Small Business Act (SBA) for Europe (2011),⁴⁵ SBA implementation was progressing, but more had to be done, and it noted that in the Member States “progress in improving the business environment is slow”, since only Belgium, Denmark, Germany, Poland, Slovenia, Finland, Sweden and the United Kingdom had established national objectives. Others, such as Germany, Ireland, France, Cyprus, Lithuania, Hungary, Austria, Poland, Portugal, Sweden and the United Kingdom, began to promote the European Code of Good Practices. In none of the examples of progress was Spain named as an example.

The Review proposed that as part of initiative “An Agenda for new skills and jobs”,⁴⁶ the Commission would assess the future skills needs in micro and craft enterprises. Also the “Youth on the Move”⁴⁷ initiative emphasized training to ensure that education systems provided the right skills to set up and manage an SME. The annex to this Review includes examples of good practice in the implementation of the ten principles of the SBA.⁴⁸

– **The revival of entrepreneurship in Europe 2020 (2010):**

While one hand Europe 2020 was launched, in response to the plight that has faced Europe since 2008 due to the economic and financial crisis, and laid the groundwork to correct past mistakes, on the other hand, in line with the Strategy, the Entrepreneurship

⁴⁴ http://ec.europa.eu/enterprise/policies/sme/promotingentrepreneurship/women/ambassadors/index_en.htm

⁴⁵ Brussels, 23.2.2011 COM(2011) 78 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Review of the “Small Business Act” for Europe.

⁴⁶ Strasbourg, 23.11.2010 COM(2010) 682 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An Agenda for new skills and jobs: a European contribution towards full employment.

⁴⁷ Brussels, 15.9.2010 COM(2010) 477 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Youth on the Move. An initiative to unleash the potential of young people to achieve smart, sustainable and inclusive growth in the European Union.

⁴⁸ Brussels, 23.2.2011 COM(2011) 78 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Review of the “Small Business Act” for Europe

2020 Action Plan⁴⁹ was launched, which proposed entrepreneurship as a solution to job growth.⁵⁰ This Plan, like the Strategy in effect, was based on three pillars:

- Developing education⁵¹ and entrepreneurship training through practical models with real entrepreneurs sharing experiences.⁵² In accordance with the National Jobs Plans of Member States, entrepreneurial training would be boosted by means of the European Social Fund, and the use of training possibilities available under the Rural Development Fund (EAFRD) was encouraged.

- Creating a good business environment and establishing models. The Commission proposed many initiatives⁵³ including, most notably, support under the future Programme for the Competitiveness of Enterprises and Small and Medium Enterprises (COSME).⁵⁴ It proposed microfinance programmes to operate under the ESF and the European Regional Development Fund (ERDF). The Commission would continue to develop the Erasmus for Young Entrepreneurs programme to encourage the implementation of exchanges between young entrepreneurs and to facilitate dialogue, to create networks to encourage and support new business ideas, to develop guidelines to facilitate the transfer of business, to establish a public consultation to get information offering a second chance for those who have lost their business, to create a platform to advise women entrepreneurs, and to develop initiatives to attract immigrant entrepreneurs, among others.

⁴⁹Brussels, 9.1.2013 COM(2012) 795 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Entrepreneurship 2020 Action Plan. Reigniting the entrepreneurial spirit in Europe.

⁵⁰Strasbourg, 18.4.2012 com(2012) 173 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Towards a job-rich recovery.

⁵¹Strasbourg, 20.11.2012 COM(2012) 669 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Rethinking Education: Investing in skills for better socio-economic outcomes.

⁵²Brussels, 5.9.2012 COM(2012) 485 final. Proposal for a Council Recommendation on the validation of non-formal and informal learning.

⁵³Brussels, 9.1.2013 COM(2012) 795 final. Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee and the Committee of the Regions. Entrepreneurship 2020 Action Plan. Reigniting the entrepreneurial spirit in Europe.

⁵⁴Brussels, 30.11.2011 COM(2011) 834 final. Research, Innovation and Competitiveness Package. Proposal for a regulation of the European Parliament and of the Council. Establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014-2020).

Although in both the Strategy and the Entrepreneurship 2020 Action Plan, and even in those previously approved, one of the most important drivers in the recovery and job growth is the entrepreneur, in start-ups and SMEs, the main source of new jobs, the reality looks different. From this communication, we can see that from the Charter and from the Lisbon Strategy 2000 that the same matter has been reviewed, but by contrast, this plan confirms that the European environment for entrepreneurs is tough, the proposed measures for SMEs are not balanced, European culture does not recognise or reward these entrepreneurial initiatives, and it seems the principle of “think small first” has not become a point of reference in national policies.

The solution or the new initiatives proposed in this plan, are very attractive and numerous, but again, they must all be included in the national plans that each of the Member States puts in place, taking into account, as has been mentioned several times in this paper, that these plans are non-binding. This means that of all the initiatives, both of the Strategy and the Entrepreneurship 2020 Action Plan, have to be transposed to the national plans, in whole or in part, or in the worst case, not at all.

It should be noted that since the three pillars outlined in this plan, the Commission only “invited” Member States to include these non-binding initiatives in their national plans.

3. THE EVALUATION OF THE ECONOMIC AND SOCIAL COUNCIL (ESC) OF THE DRAFT LAW TO SUPPORT ENTREPRENEURS IN SPAIN.

Recently, on May 28, 2013,⁵⁵ the Economic and Social Council in Spain received a letter from the Ministry of Employment and Social Security, requesting the issuance of an Opinion on the Draft Law on Support for Entrepreneurs. This request was transferred to the Working Committee on the Economy and Taxation.

Initially the results seem positive. While 85% of employees who have lost their jobs come from small and medium-sized enterprises, the number of self-employed workers,

⁵⁵Dictamen sobre el Anteproyecto de Ley de Apoyo a los Emprendedores y su Internacionalización. <http://www.ces.es/documents/10180/631510/Dic062013.pdf?version=1.0&t=1370942697241>

by contrast, increased in 2012. It appears that the explanatory factor is that some unemployed workers have chosen self-employment.

Overall, the first impression we get from reading this opinion is that the ESC is reproaching Spain for failing to meet its duties to date and in the appropriate form. This impression is borne out by ESC's statement that before the start of the crisis it had already proposed initiatives on the support of the business, in other words, in the EES, under the title "Working together for growth and employment" which had already driven SME policy, as in the Strategy for SME policy actions, in 2005, a key moment because the economic situation was favourable for introducing these initiatives, as well as in the report of that year "on the process of business creation and entrepreneurial dynamism".⁵⁶ The ESC at that time insisted on the need to promote entrepreneurship, ease administrative burdens and promote entrepreneurial training in the Spanish educational system. While the ESC welcomes this initiative to facilitate the initiation, development and consolidation of self-employment, it does not forget to emphasize that this has been "long demanded".

The ESC makes many criticisms of this Draft Law:

- First, it criticizes the purpose of the regulation, as the definition of entrepreneur is confusing and the Draft Law does not even understand the concept of 'entrepreneur' that has been reiterated for over 15 years; in this way it criticises the scope of application.
- Second, it criticises the lack of structure, the mixing of initiatives aimed at the beginning of business activity with those that facilitate business generally, which are already operating (Art. 1 object).⁵⁷
- A third criticism is that cooperatives and employee-owned companies have not been included. According to the ESC, the law should apply to any business activities carried out by entrepreneurs regardless of the business formula used.

⁵⁶Informe 05/2005, sobre el proceso de creación de empresa y dinamismo empresarial, de 21 de septiembre.

⁵⁷This Act is intended to support the entrepreneur and entrepreneurship, to promote their development, growth and internationalisation and to promote entrepreneurial culture and an environment conducive to economic activity, both at start-up and its later development, growth and internationalisation.

- Fourth, it states that the law overlaps with other standards, becoming “complex and heterogeneous”, since according to the ESC, it has not taken into account legal changes, including those affecting those of organic character and affecting changes in other legislation.⁵⁸ In addition, there is no connection between the regulation of regional and local level and state level.

For example, regarding the modification of the Law on Prevention of Occupational Risks, this is not the legal framework; there is an explicit policy framework for Occupational Safety and Health, or the inclusion of immigration policy issues covered by its own rules.⁵⁹

- Fifth, it believes that entrepreneurship in rural areas should be encouraged.
- Sixth, it does not understand why the provisions it contains,⁶⁰ like the article itself, are not located in the corresponding chapter.

For example, the provision “Integration of One-stop Shops in the Entrepreneur Service Centres” can be located perfectly in Chapter IV “Beginning entrepreneurial activity”.

- Seventh, the Draft Law invites the creation of a “formula”, once again avoiding a regulatory character, to involve the social partners in the field of entrepreneurship.
- Finally, it criticises the new concept of a “mini-company” as legally indeterminate⁶¹.

One of the criticisms made by the ESC, in summary, is that many of the statements are proposed as objectives, without creating legal rights or obligations. Both the Council, regarding the implementation of strategies, and now the ESC in the same way, have continued to avoid introducing employment legislation that would be binding on Member States, as this paper has been stating from the beginning. It just invites them to implement measures in their political programmes.

⁵⁸Trade, tax, administrative and immigration.

⁵⁹Ley Orgánica 2/2009, de 11 de diciembre, de reforma de la Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, cuyo Anteproyecto fue objeto de Dictamen del CES (1/2009)

⁶⁰“Las disposiciones adicionales primera, segunda, tercera, novena y décima deberían enmarcarse en los capítulos correspondientes”.

⁶¹(2003/361/CE) Recomendación de la Comisión de 6 de mayo de 2003 sobre la definición de microempresas, pequeñas y medianas empresas.

In view of all criticisms made by the ESC, it might be thought that Spain did not take into account the large package of measures published in the entrepreneurship plan of Europe 2020, which invited Member States to ensure, encourage, promote, evaluate and adopt all necessary measures “to revive the entrepreneurial spirit”.

In particular, one point that should be highlighted and criticised even more “strongly” than the ESC has, is that the Draft Law considers the safety and health of workers to be an administrative burden by introducing in Chapter I of the Act an amendment to the Health and Safety at Work Act, in which the employer assumes the prevention of occupational risks, provided they have fewer than 25 employees (prior to this Act it was 10); in addition, they are not required to hire a prevention service themselves or externally⁶².

In short, one might ask, what has this Draft Law been based on, given that it does not seem to follow any of the guidelines and initiatives that Spain has been invited to implement? Is the truth that it is a case of “a lot of paper but no results”? Based on what has been discussed in this paper, we could respond affirmatively.

Despite all criticisms from the ESC on June 10, 2013, the Council of Ministers, on July 1, 2013,⁶³ approved the referral to Parliament of the Law on Support for Entrepreneurship and Internalization, and on July 3,⁶⁴ the Bureau of the Chamber gave its approval for the emergency procedure.

It is difficult to understand an endorsement of this magnitude.

⁶²Se modifica el artículo 30.5, de la Ley 31/1995, de 8 de noviembre, que queda redactado del siguiente modo: «En las empresas de hasta diez trabajadores, el empresario podrá asumir personalmente las funciones señaladas en el apartado 1, siempre que desarrolle de forma habitual su actividad en el centro de trabajo y tenga la capacidad necesaria, en función de los riesgos a que estén expuestos los trabajadores y la peligrosidad de las actividades, con el alcance que se determine en las disposiciones a que se refiere el artículo 6.1.e) de esta Ley. La misma posibilidad se reconoce al empresario que, cumpliendo tales requisitos, ocupe hasta 25 trabajadores, siempre y cuando la empresa disponga de un único centro de trabajo.»

⁶³<http://www.ipyme.org/es-es/ley-emprendedores/Paginas/ley-emprendedores.aspx>

⁶⁴Boletín Oficial de las Cortes Generales. Congreso de los Diputados