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Employee Financial Participation: Spain's Sociedades Laborales

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Employee Financial Participation: Spain's Sociedades Laborales

DIRECTORATE GENERAL FOR INTERNAL POLICIES

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Employee Financial Participation: Spain's *Sociedades Laborales*

COMPILATION OF BRIEFINGS

Abstract

In the current debate about employees' financial participation in their companies, a lot of attention has focussed on the Spanish model of *Sociedades Laborales*. The present compilation, commissioned by Policy Department A for the Committee on Employment and Social Affairs (EMPL), consists of three briefings presenting the legal framework for these companies as well as statistics on their survival rate and job retention, an academic's view of the model, and a practitioner's observations. Past attempts at transposing the model to other countries, and the required conditions, are covered as well.

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1. *SOCIEDADES LABORALES*: FACTS AND FIGURES

by Javier Muñecas

KEY FINDINGS

- **The *Sociedad Laboral* is a Spanish business model characterized by the majority of the company's capital being held by worker partners with an indefinite contract.**
- Initially, in the 80's, its creation was linked to processes of crisis and industrial reconversion. Since the mid 90's, with the incorporation of the figure of the limited *Sociedad Laboral*, it had an important boom in corporate processes. It is a model that generates quality jobs.
- After the approval of the new Law 44/2015, the concept of a worker-owned company is added in the new Law of *Sociedades Laborales*. In this sense, *Sociedad Laboral* is the best example of a worker-owned company because financial participation and the participation in management and control go hand in hand.

1.1. Origin of *Sociedades Laborales*

The origin of *Sociedades Laborales* in Spain dates back to the end of the 70's, as the corporate model has been recognised as such since the mid 80's, and more specifically, since the approval by Spanish Parliament of Law 24/04/1986, which regulated the *Sociedad Laboral* for the first time.

Initially, the figure of the *Sociedad Laboral* was linked to the economic crisis. The end of the 70's bore witness to the worldwide oil crisis, which had a great impact on the Spanish economy, which at the time was coming to the end of the dictatorship of General Franco. That meant that Spanish businesses could not afford the impact and were forced to adapt, leading to a huge social change.

In that context, the first phenomenon was that company owners abandoned their businesses. In view of this situation, workers were faced with the dilemma of losing their jobs or maintaining company property in very unfavourable conditions with heavy financial obligations to public entities, the Treasury and Social Security above all, as well as towards their main suppliers. It so happens that, in some companies, from one day to the next workers found that there was no entrepreneur. We can assert that in the beginning, the creation of *Sociedades Laborales* was produced by the workers as a defence of their jobs and as an answer to the needs of companies faced with a situation of crisis in the reconversion.

The first known reference in the Spanish State to a *Limited Sociedad Laboral* was at the end of 1963, the SALTUV (*Sociedad Anónima Laboral de los Transportes Urbanos de Valencia*), the company that managed urban transport in Valencia. For twenty years, the company, owned by its workers, employed more than 1,500 people, until 1982, due to an agreement with the Council of Valencia, it became a private municipal company.

Those first experiences were led by people who had doubts about the entrepreneur for being just that, and discovered workers' real strength in organised union activity, where they often used the corporate framework for political demands.

The first *Sociedades Laborales* were not the result of a political plan, or from a socio-economic vocation in a social sector, or specific territory. They were a phenomenon far removed from any ideological reference, far from self-management or participative principles, linked to situations of relative desperation from the situation of job loss.

In the companies that created the phenomenon of the *Public Limited Labour Company*, a host of features were produced, some mentioned above, which are important to note:

- They were subject to a deep economic crisis, as a consequence of the deepening oil crisis in 1973, and heightened by the structural weakness of the company.
- The owners, who also generally acted as managers, abandoned their companies.
- In politics, Spain was substituting the structures of the Franco regime with others that made the beginning of a democratic process easier.
- For the government at the time (UCD) the economic plan was reduced to patch-up policies in order to avoid social conflicts.
- Companies' viability was conditioned by the financial constraints and the priority of employment.
- Generally, a lack of business leadership prevailed, which was substituted for by union leadership.

Having reached this point, it is worth noting the important role played by trade union federations at the initial time of the *Sociedades Laborales*. Many people that promoted this business model were linked to the union movement, since they were managers or members of company committees that were experiencing difficulties. Faced with a situation of crisis and uncertainty regarding the employment and the continuation of these companies, they wagered for a position at the head of the movement and assumed a leadership role, reaching the top of the administrative boards in the new companies. In some cases it generated contradictions, due to the duality present in a *Sociedad Laboral*: workers on one hand, and company owners on the other, often with conflicting interests. It is worth noting that unions knew how to assume their responsibility and invigorate the process of corporate transformation.

The first law on *Sociedades Laborales*

For almost a decade, *Sociedades Laborales* were created without legal coverage to support them. Fundamentally, their growth took place in the most industrialised areas of Spain, and thus, they tended to be more affected by the economic crisis. At the beginning of the 80's, companies started to appear under this name in Madrid, Catalonia, the Community of Valencia, and Andalusia.

The first *Sociedades Laborales* generally feature two characteristics; they were composed of a high number of workers and their activity sector was industry. The explanation is found in the dimensioning that companies had before the oil crisis and the dominance in the industrial activity under the service sector.

For instance, the following table samples the number of *Sociedades Laborales* and workers in these companies in the Basque Country, one of the most industrialised regions in Spain, between 1985 and 1986.

Table 1: *Sociedades Laborales* in the Basque Country, 1985/86

Sectors	No. of Companies	No. of Workers
Consumption Goods	12	645
Machine Tools	10	885
Automotive-supply Industry	7	632
Lamination	5	272
Electrical Supplies and Equipment	13	350

Metal Auxiliary Industry	14	621
Screws	4	431
Heaters and Assembly	8	347
Lumber	3	446
Capital Goods	4	307
Foundry	2	1,074
Forge	2	666
Graphic Arts	6	178
Miscellaneous	16	284
TOTAL	106	7,138

Source: Distribution of *Sociedades Laborales* by sector and number of workers 1985-86 – *Economía Social* Magazine No.1

The first legislation on the *Sociedad Laboral* took place in 1986 with the approval by Spanish Parliament of Law 24/04/1986. In the preamble of the Law, they expressed the reasons that lead to the creation of the figure of the *Sociedad Laboral*: *"The difficulties the industrial sector is facing have caused the closure of numerous companies with the consequential loss of employment. Faced with the necessity of giving a positive response to this situation, workers adopt new methods of employment creation through the constitution of Public Limited Labour Companies.*"

The first article establishes what is understood as *Sociedad Laboral*: "*A Public Limited Company in which at least the 51 per cent of shares belong to workers that directly and personally provide remunerated services therein, whose employment relation has an indefinite period and is full-time, may have the character of Public Limited Labour Company in the conditions regulated by this Law.*"

The fifth article establishes the participatory nature of this business model: "*None of the partners may own shares worth more than the 25 per cent of the share capital. Notwithstanding the aforementioned, Public Entities may participate in the capital of the Public Limited Labour Company up to 49 per cent, as may those legal entities in whose capital a majority share or total share belongs to the State, the autonomous communities and the local entities.*"

Driving Elements in the *Sociedad Laboral*

When identifying the elements that contributed to the promotion of *Sociedades Laborales*, three stand out more than others:

1. *The participatory nature of the company*. The Law established that the majority of permanent workers must be company owners. In addition, by setting maximum limits of capital belonging to each worker, it eliminated dominant positions and forced the adoption of consensus agreements in order to make relevant decisions in the company.
2. *Capitalization of unemployment benefits*. The Law on *Sociedades Laborales* allowed workers that were going to be incorporated as partners in a *Sociedad Laboral* to capitalize on the economic rights they were entitled to at one time as unemployment benefit, as long as it was provided to the company's social capital.
3. The *National Job Protection Fund (FNPT).* Initially, the FNPT was a figure designed to facilitate loans to workers who were returning from emigration in Germany, France and other European countries. The UCD government determined that those funds could be derived to the consolidation of emerging *Sociedades Laborales*. One of the objectives of the FNTP was the protection and promotion of employment through the granting of financial aid and/or subsidies to *Sociedades Laborales* and their different kinds of partners (subsidy for reduction of interests for credits towards investments in fixed or working capital, subsidies for technical assistance, and training in

Sociedades Laborales), which answered a single scheme: credits were provided to workers in companies that were constituted as a *Sociedad Laboral* to economically refloat the company facing the passives, financing the output surplus and making productive investments. Therefore, with the financial aid the promoters of the new companies financed the industrial reconversion that culminated in the *Sociedad Laboral* constitution or transformation.

Once the Law on *Sociedades Laborales* was approved, it produced a qualitative leap regarding the number of companies created, going from 1,225 companies in 1985 to 2,595 in 1987, only 12 months after the law was approved. Without the previously adopted measures, it would have been very difficult to register a similar entity.

1.2. Development and present of the *Sociedad Laboral*

For more than 10 years, the *Sociedades Laborales* grew at a fast pace. In most cases, the creation of those companies was linked to the economic and industrial crisis. However, one of the handicaps for the constitution of companies was that, legally, they all answered to the model of public limited company, which forced the initial capital expenditure to an equivalent to €60,000 nowadays, a high number for workers

In order to promote the development of the *Sociedades Laborales*, the representative organisations, headed by CONFESAL, boosted a legislative change, which allowed the creation of a new figure: the Limited Labour Partnership. This new formula, whose initial social capital was the equivalent to €3,000 today, was a fundamental element of the launching of the *Sociedad Laboral*.

Parallel to this regulatory development, the representative groups of the *Sociedades Laborales* worked to equip the *Sociedad Laboral* with an ideological and philosophical model. In this regard, the *Agrupación de Sociedades Laborales de Euskadi*, ASLE, held a congress in 1992 where they adopted the Decalogue on which the model for a *Sociedad Laboral* is based. The Decalogue was adopted by CONFESAL and all its territorial organizations. It presents the following constituent parts of the philosophy of a *Sociedad Laboral*:

1. Company owned by workers
2. Assumes the role of company partner
3. Practices of self-management and democratic functioning
4. Labour organisation at the service of man and society; respect for human dignity and development
5. Fair remuneration policy
6. Establishment of the solidarity principal, with the collective and with the company
7. Shares as an element that provides the participation, removed from speculative principles and strengthening the boosting of new partners
8. Towards benefit, prioritising the company's consolidation in perfectly proper working conditions
9. Promotion of educating and training partners
10. Voluntary and committed partnership with other companies through representative organisations

Law 4/1997, of 24 March, on *Sociedades Laborales*

This law was another major milestone in the history of *Sociedades Laborales* and represented the beginning of a new era for this type of company. The new law was approved by Spanish Parliament on 24 March 1997 and one of its main features was the extension to *Sociedad Laboral* of the figure of Limited Liability Company. This limited responsibility model had

suffered significantly due to the enactment of the "Law 19/1989 of 25 July on the partial reform and adaptation of the commercial legislation to the Directives of the European Economic Community in terms of Companies", in the framework of the Spanish legal alignment on European regulation.

The new law maintained the essence of the *Sociedad Laboral*, putting the following aspects into practice:

1. Majority of the social capital in hands of company workers with an indefinite contract
2. Maintenance of the existence of two types of stocks (although changing the terminology) whether the owners are workers or not
3. Establishment of maximum limits of share holding for each partner in order to avoid dominant positions
4. Establishment of limits in the recruitment of permanent non-partner workers
5. Preference of permanent non-partner workers in the acquisition of labour class shares
6. Specific system for tax allowances

Even though the main issues do not suffer any variation, they do change the way of facing each of them:

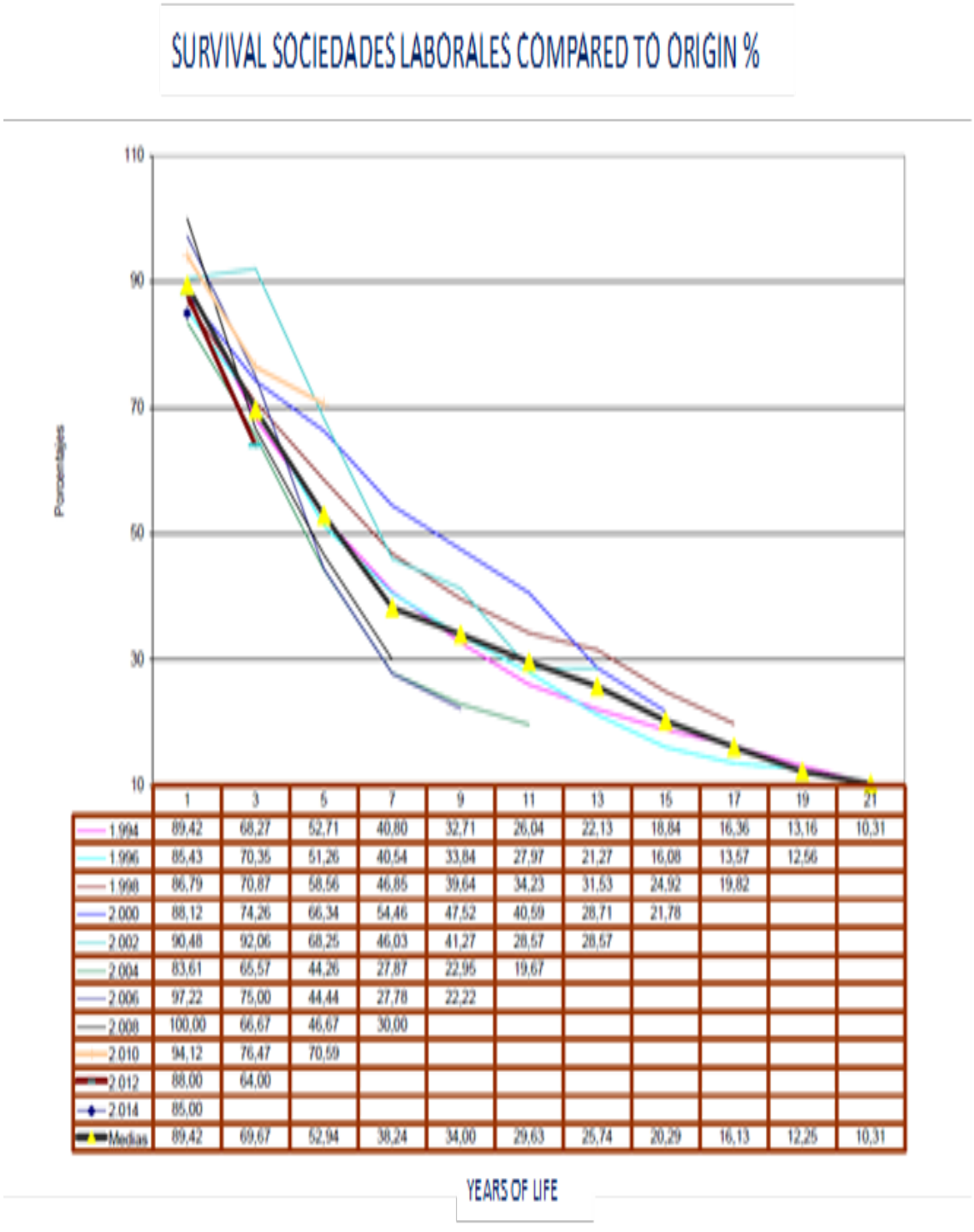
- Regarding the majority of capital in hands of workers with an indefinite contract, two differences were established: it went from 51 % in the first law to "majority" in the actual Law and it was accepted that the partner worker can be part-time, while in the first law they were required to be full-time.
- Regarding the maximum limit of share holding in hands of each partner, it went from 25 % to a third, so the minimum number of partners went from four in the first law to three in the 1997 Act.
- Regarding the limits on contracting permanent non-partner workers, the 1997 Act used the criterion of number of hours per annum worked, faced with the criterion of percentage above the number of partners used in the first law. That loosened the requirement to allow a higher number of indefinite worker contracts using the part-time contract formula.

With the new law of 1997, the development of the *Sociedad Laboral* experienced an exponential growth. It maintained the possibility of capitalizing unemployment by the workers who joined as partners in the *Sociedad Laboral*, and the creation of companies went from being linked to processes of crisis and industrial reconversion to a valid option of new entrepreneurial process.

Perhaps that was a noteworthy element. We went from companies with dragging difficulties from their inception, to companies that were created voluntarily under the Social Economy model, where the element of participation of the people, both in capital as well as in management and control was the key element. That lead us to affirm that the *Sociedad Laboral* was the maximum model of participative company, given that workers retain ownership and, at the same time, they directly take part in the management and control through the Board of Directors and the General Assembly of Shareholders.

From a viewpoint of efficacy of the *Sociedad Laboral* model, the following figure shows the survival rate of companies that adopted the Public Labour Limited Company formula: Currently more than one in ten 10 of the companies constituted 21 years ago still exist, while the average shows a survival rate close to 70 % three years after the formation of the company.

Table 2: Survival rates of *Sociedades Laborales* over time



	1	3	5	7	9	11	13	15	17	19	21
1.994	89,42	68,27	52,71	40,80	32,71	26,04	22,13	18,84	16,36	13,16	10,31
1.996	85,43	70,35	51,26	40,54	33,84	27,97	21,27	16,08	13,67	12,66	
1.998	86,79	70,87	58,56	46,85	39,64	34,23	31,53	24,92	19,82		
2.000	88,12	74,26	66,34	54,46	47,52	40,59	28,71	21,78			
2.002	90,48	92,06	68,25	46,03	41,27	28,57	28,57				
2.004	83,61	65,57	44,26	27,87	22,95	19,67					
2.006	97,22	75,00	44,44	27,78	22,22						
2.008	100,00	66,67	46,67	30,00							
2.010	94,12	76,47	70,59								
2.012	88,00	64,00									
2.014	85,00										
Medias	89,42	69,67	52,94	38,24	34,00	29,63	25,74	20,29	16,13	12,25	10,31

Source: Ministry of Employment and Social Security

The following chart shows the survival rate compared with the traditional models of companies in the Spanish State*:

Table 3: Comparative survival rates of Spanish companies

COMPARATIVE SURVIVAL OF COMPANIES %

	SOCIEDADES LABORALES	TRADITIONAL COMPANIES*	SELF-EMPLOYED
1 year	90	90	70
3 years	70	79	60
5 years	53	58	48
* More of ten workers			

***Source:** Based on data from the Ministry of Employment and BBVA Foundation

1.3. The 2008 economic crisis

Sociedades Laborales do not live in a different world, removed from the socio-economic reality that surrounds them. In this sense, the 2008 global economic crisis had a direct impact in the development of this business model.

As a result of the crisis, the number of *Sociedades Laborales* decreased progressively, as well as the number of workers. It also appears that even though many companies have disappeared from the registry of *Sociedades Laborales,* this does not mean that they have ceased their activity. They have turned into a Public Limited Company or Limited Partnership, because they did not meet the requirements of the Law of *Sociedades Laborales*.

The lack of economic incentives that support the creation of this business model has also contributed to the decrease in the number of *Sociedades Laborales*. The Spanish Government has promoted the figure of the independent entrepreneur, or freelance worker, providing different mechanisms of financial assistance, though this is a type of collective where turnover is very high. According to sources from the Spanish Ministry of Employment at the end of March 2016, the number of this group reached 1,961,282 people, of which more than 1,500,000 had no salary, and 1.429.874 worked in the service sector. That means that in the last two years, there has been a loss of close to two million employees in this business model, although it should be noted that the flat rate Social Security tax was among the elements that favoured this push.

Below we show the current situation of *Sociedades Laborales* in Spain:

Table 4: Current data on *Sociedades Laborales*

COMPANIES	QUARTER 1/16	% Variation from previous quarter	% Variation from previous year
TOTAL	10,209	-1 %	**-5 %**
Sociedades Anónimas Laborales (Public Limited Labour Companies)	1,102	-2.2 %	**-8.2 %**
Sociedades Limitadas Laborales (Limited Labour Partnerships)	9,107	-0.9 %	-4.7 %
WORKERS	**QUARTER 1/16**	**% Variation from previous quarter**	**% Variation from previous year**
TOTAL	65,953	2.3 %	**0.9 %**
Sociedades Anónimas Laborales (Public Limited Labour Companies)	15,419	1.5 %	**1.5 %**
Sociedades Limitadas Laborales (Limited Labour Partnerships)	50,534	2.5 %	0.7 %
WORKERS BY ACTIVITY SECTOR	**QUARTER 1/16**	**% Variation from previous quarter**	**% Variation from previous year**
TOTAL	65,953	2.3 %	**0.9 %**
Agriculture	1,340	22.5 %	-10.4 %
Industry	17,005	1.5 %	1.6 %
Construction	7,958	6.7 %	-1.3 %
Services	39,650	1.2 %	1.4 %

Source: Ministry of Employment and Social Security 03/31/2016

As can be seen, even though the number of *Sociedades Laborales* has decreased, the creation of employment during the first quarter of the year has increased, which shows that this business model is an effective tool for the creation of employment opportunities. The average number of workers per *Sociedad Laboral* is 6.4 % against the 4.9 % average in the rest of Spanish companies. 70 % of employment in *Sociedades Laborales* corresponds to indefinite contracts. Below, we show a distribution of workers in *Sociedades Laborales* by gender, age, level of labour qualification and type of employment relationship.

Table 5: Breakdown of *Sociedades Laborales* workforce by gender, age and sector

COMPANIES	MEN	WOMEN	TOTAL
Public Limited Labour Company	68.3 %	31.7 %	100 %
Limited Labour Partnership	62.7 %	37.3 %	100 %
AGE	**<40**	**>40**	**TOTAL**
Public Limited Labour Company	35.7 %	64.3 %	100 %
Limited Labour Partnership	48.7 %	51.3 %	100 %
QUALIFICATION LEVEL	**QUALIFIED**	**NON QUALIFIED**	**TOTAL**
Public Limited Labour Company	86.8 %	13.2 %	100 %
Limited Labour Partnership	82.4 %	17. 6%	100 %
WORK RELATIONSHIP	**PERMANENT**	**TEMPORARY**	**TOTAL**
Public Limited Labour Company	71.8 %	28.2 %	100 %
Limited Labour Partnership	63.8 %	36.2 %	100 %

Source: Based on statistical data from the Ministry of Employment and Social Security. Social Economy Database 03/31/2016

1.4. The *Sociedad Laboral*, paramount example of employee-owned company

The Law on *Sociedades Laborales* of 1997 provided a significant legislative value to the figure of the Limited Labour Partnership. However, it did not succeed in solving many of the problems that *Sociedades Laborales* had to face.

The law of 1997 was very unsatisfactory in many other aspects that would have been convenient to improve. The introduction of efficient mechanisms to encourage the incorporation of working people to the capital of the companies, the regime of transmission and share prices, the special reserve, the non-partner worker contracting limits, and above all, the fiscal benefits regime of the law of 1997 were aspects that were far from being regulated giving an appropriate response to the real needs of *Sociedades Laborales*. In this regard, the law of 1997 was a lost opportunity.

After several years of negotiations, with both the government of the PSOE and the PP, CONFESAL succeed in establishing the basis for modifying the law. The new law on *Sociedades Laborales*, Law of *Sociedades Laborales Participadas* 44/2015, of 24 October, stipulates in its preamble the fundamental reasons that have led to this legislative change:

- Update and adapt the legal regime of *Sociedades Laborales* to the new economic situation and multiple legal changes that have taken place during the previous law.

- Improve legislation to promote workers' participation in companies facilitating their access to the status of partners.
- Increase the utility of *Sociedades Laborales* and their preference for entrepreneurs to give them a corporate legal form for their business project.
- Consolidate stability and non-circumstantial nature of *Sociedades Laborales*, providing more objective elements against the misuse of this business model.
- Streamline the creation of this type of business, simplifying and reducing administrative procedures.

The following are the main changes introduced by the law:

- The possibility of creating *Sociedades Laborales* with only two partners, not three as in the previous law, always provided that both of them are employees.
- The expansion of contracting limits for permanent non-partner workers.
- The simplification and improvement of the transfer process of stocks and shares to encourage the acquisition of the partner status by workers.
- The chance to regulate the stock and share transfer price in the social statutes.
- A more developed regulation of the board of directors, incorporating good governing principles typical of the Social Economy, and recognizing the specific nature of the *Sociedad Laboral.*
- Expand where the special reserve can be allocated, because in addition to offsetting losses, it could be applied to the acquisition of treasury stock by the company with the goal of facilitating the subsequent sale by workers. All this ties in with one of the law's main objectives, which is the joint of mechanisms in order to ensure workers' access to partner status.

Though it could also be said that the new law considers the *Sociedades Laborales*' proposals in a sufficiently reasonable manner, there is an aspect that has been dealt with in an unsatisfactory way: the tax system. At this point the new law has not brought any kind of improvement or change.

Noteworthy is that the high consideration given to the *Sociedad Laboral* by the legislator, as stated in the law's memorandum, has merited such a meagre system of tax benefits. There is no doubt that it was not the right time, but it is clear that the tax benefits are not at the level of contribution *Sociedades Laborales* have been providing to economic developments and to the creation of quality jobs in Spain for years.

A very important innovation of the new law is that it regulates the worker-owned company, including it in the framework of the Law on *Sociedades Laborales*, which comes to taking on the example of this business model as good practice of participation for employees in the company.

In chapter three of Law 44/2015, Article 18 establishes the principles and basis for participation. While promoting the commitment of public powers with the constitution and development of worker-owned companies, they underline that *"Workers' participation in the outcomes and in the decision-making of companies contributes to an increase in worker autonomy in the workplace, and promotes collaboration in the future strategy of the company".*

Furthermore, Article 19 defines the concept of a worker-owned company:

1. *Public Limited Companies or Limited Liability Companies would be considered as worker-owned companies that do not meet the requirements established in Chapter I, but they promote access to the status of worker partners, as well as the different forms of participation, particularly through legal representation of the workers, fulfilling any of the following requirements:*

a) *They have workers who participate in the capital and/or the results from operations.*

b) *They have workers who participate in the voting rights and/or decision-making in the company.*

c) *They adopt a strategy to promote the incorporation of workers as partners.*

d) *They promote the principles established in the previous article.*

2. *Their action must by diligent, loyal, responsible, and transparent, and they must encourage the creation of stable and quality employment, the inclusion of workers as partners, equal opportunities between men and women, and the conciliation of personal, familiar and work life.*

3. *Furthermore, they will adopt policies and strategies of social responsibility, promoting good governance practices, ethical behaviour, and transparency.*

In light of what is presented in this report, the following conclusions can be drawn:

- The *Sociedad Laboral* is a business model that promotes the worker participation at its highest level by bringing together participation in ownership with participation in management and control.
- It is a model that generates wealth and quality employment wherever the activity is carried out.
- It has demonstrated itself as a business model that is both valid in times of crisis, ensuring employment and company feasibility, as well as in times of economic growth as a collective learning model.

2. *SOCIEDADES LABORALES*: AN ACADEMIC'S VIEW

by Isabel-Gemma Fajardo García

KEY FINDINGS

- *Sociedades Laborales* were born in the 1960s as an instrument of the government's job creation policy, since when they have been governed by specific Acts: *Sociedades Anónimas Laborales* Law 15/1986 and *Sociedades Laborales* Laws 4/1997 and 44/2015.
- *Sociedad Laboral* is an administrative classification that can be awarded to a public or private limited-liability company that so requests and that satisfies certain requirements: A) The majority of the share capital must be owned by workers who provide remunerated services in the company, personally and directly, by virtue of an open-ended employment relationship. B) None of the partners may hold shares that represent more than one-third of the share capital, with certain exceptions. C) The number of hours per year worked by employees with open-ended contracts who are not partners must not be greater than 49% of the total hours per year worked in the *Sociedad Laboral* by all its worker partners.
- Over the years, *Sociedades Laborales* have provided an instrument for unemployed workers to create new companies and for worker buyouts to salvage companies in difficulties.
- The advantage of a *Sociedad Laboral* compared to a worker-controlled company that is not a *Sociedad Laboral* is that its particular legal status favours the employees' keeping control of the company over time and all of them sharing in its control. Compared to a cooperative, its worker partners have dual legal status (partners and employees), benefit from all the wealth they create with their capital and their work, and if they need external funding have the means to make the investment attractive. However, both are companies which are democratically controlled by their workers, are deeply rooted in their geographical area and show an effective combination of profitable companies and quality jobs.

2.1. The shaping of *Sociedades Laborales*, from their origins to their regulation by law (1964-1986)

Sociedades Laborales were born in the 1960s as an instrument of the government's job creation policy. In those years, a series of measures to support job creation were introduced, financed through the National Labour Protection Fund (*Fondo Nacional de Protección del Trabajo* – FNPT). They included assistance for forming cooperatives and for becoming a member of a cooperative, in the form of loans to unemployed workers, under highly favourable conditions, to provide the share capital for the cooperative. These measures, introduced by Law 45/1960, were applied through yearly investment plans.

The 1964 FNPT investment plan added a new line of investment: loans for workers who wished to set up a "company with an associative regime". It aimed to address a new situation by enabling the workforce of a company in difficulties to buy it out and save their jobs. The beneficiaries were no longer necessarily unemployed and any kind of associative legal form could be adopted (MONTOLÍO, 1986)

This new line of support sprang from the experience of the failing *Compañía de Transportes y Ferrocarriles de Valencia* (CTFV) and its workforce's creation of the *Sociedad Anónima*

Laboral de los Transportes Urbanos de Valencia (SALTUV). CTFV held the urban transport contract for the city of Valencia, was in difficulties and was about to close. With loans from the FNPT, in 1963 the CTFV workforce set up SALTUV, the first *Sociedad Laboral* in history. However, this company was born in very exceptional circumstances and although the same model was repeated in other cases (*Sociedad Anónima Laboral Mallorquina de Autobuses* – SALMA and *Sociedad Anónima Laboral Canaria de Autobuses* – SALCA) it was not the typical sociedad laboral model that developed later and passed into law (LEJARRIAGA y MARTÍN, 2013).

The SALTUV case was exceptional because trades unions, the town council and the central government were all involved and worked together to create it. A law was passed to award the contract directly to the *Sociedad Laboral* and the FNPT funding was assigned 50/50 to a foundation (*Fundación Laboral de los Transportes Urbanos de Valencia* – FULTUV) and to the SALTUV employees. The coordination between SALTUV and FULTUV allowed them to operate in a similar way to a cooperative. The foundation represented the shared assets, issued shares to the workers so they could become partners and bought back their shares when they ceased to be partners. This format allowed all the workers to be partners and gave them all equal voting rights.

The legal form chosen in 1963 was a public limited-liability company (*sociedad anónima* or SA) rather than a cooperative, the type of company that was benefiting from FNPT aid at the time. There were various reasons: a public limited company was the legal form of the previous company (CTFV) and was also the most widespread and best-known form of company; it made it possible to have non-worker partners; and the applicable cooperatives law, passed in 1942, was considered unsuitable for the business needs of the time; but the main reason for the choice was so that the workforce could maintain their employment status and their association with the trade unions (VICENT, 1971). In Spanish law, co-operative members are not employees and labour law does not apply to them except by express reference in the cooperative legislation (article 80.1 of the Cooperative Law 27/1999).

The 1979 FNPT investment plan called these companies *Sociedades Laborales* and required, among other conditions for receiving its aid, that:

a) at least 50% of the capital must be owned by the employees;

b) no partner may own over 25% of the capital;

c) the capital must be represented by registered shares; and

d) the shares owned by employees may only be transferred to other employees of the same company.

The last yearly investment plan was that of 1986, the year in which the first *Sociedad Laboral* law was adopted. It required worker ownership of a minimum of 51% of the capital and allowed certain non-worker partners (public bodies or legal persons with a majority of public ownership) to own over 25% but not more than 49% of the capital.

In those years, thanks to government loans through the FNPT, *Sociedades Laborales* enabled employees to save companies in difficulties by acquiring their ownership and unemployed workers to join together to start a new business activity in common using any legal form, normally that of a public limited-liability company. This twin economic function is currently reflected in the two ways to found a *Sociedad Laboral*, as described below in II.2.

This period demonstrates the government's desire to create a company model that could operate like a workers cooperative without necessarily adopting this legal form and could be

eligible for the same employment promotion aid as a cooperative, and even for the same tax treatment. The second final provision of the Cooperatives Act of 1974 stated that *Sociedades Laborales* composed exclusively of workers who were beneficiaries of FNPT loans would enjoy the same tax benefits as fiscally protected cooperatives.

2.2. The evolving profile of *Sociedades Laborales* in Spanish law (1986-2015)

The first law to recognise and regulate *Sociedades Laborales* was the Labour Public Limited-Liability Company Act (*Ley de Sociedades Anónimas Laborales*, Law 15/1986 of 25 April 1986). This law was essential for the consolidation and legal security of this model of enterprise. It should be borne in mind that these companies were obliged to include rules in their articles that were sometimes not too compatible with their legal status as capital-based companies (SAENZ Gª, 1987 and BATLLE, 1996).

The adoption of this Act also responded to a mandate in article 129.2 of the Spanish Constitution of 1978, whereby the authorities must efficaciously promote the different types of participation in enterprises and must establish the means to facilitate the workers' access to ownership of the means of production (CALVO ORTEGA, 2013).

The 1986 Act was replaced by the Labour Companies Act (*Ley de Sociedades Laborales,* Law 4/1997 of 24 March 1997), and subsequently by the Labour and Worker Participation Companies Act (*Ley de Sociedades Laborales y Participadas,* Law 44/2015 of 14 October 2015). All these laws possess shared features as regards their aim, structure and content.

As we have seen, *Sociedades Laborales* arose as a way to pursue certain general interest objectives: creating self-employment and enabling the workers of companies in difficulties to salvage them. The rules that shaped the *Sociedad Laboral* aimed, on the one hand, to regulate the support mechanisms and, on the other, to check that the requirements were met through the articles of association of the company and that they continued to be met on an ongoing basis.

The post-1986 legislation regarding *Sociedades Laborales* has inherited the aim and content of the previous rules (as contained in the Ministerial Orders to implement the FNPT) and regulates not only the formation and operation of *Sociedades Laborales* but also their promotion. Additionally, the three laws share certain characteristics that warrant mention.

Firstly, the legislators opted to model *Sociedades Laborales* on capital-based companies, firstly on public limited-liability companies (*sociedades anónimas*) and subsequently also on private limited-liability companies (*sociedades de responsabilidad limitada*). When Spain joined the European Union in 1986 and transposed the EU rules on companies, one of the consequences was that the minimum capital to set up a public limited-liability company became far higher than that required to found a private limited-liability company. Together with an improvement in the legal arrangements for the latter, this favoured private limited companies' becoming the most common legal form in Spain. As a result, the law was amended so that *Sociedades Laborales* could also be formed as private limited liability companies (Law 4/1997).

Capital-based companies offer certain advantages over cooperatives that were taken into account. One is that they are the best-known and most usual legal forms and therefore also those that are most often recommended by advisers. Also, because they are the usual type, most companies in difficulties are capital-based and it is easier to effect a company's succession through employees buying its shares than by converting it to a different form (not legally permitted at the time) or selling it to a new enterprise set up by its workforce. Capital-based companies also offer greater advantages than cooperatives if they need to obtain

capital. Moreover, it must also be borne in mind that the worker partners' relationship with the *Sociedad Laboral* is based on a work contract and is subject to labour law, unlike the "societal" relationship between worker members and their cooperative. As a result of this employment relationship, the worker partner of a limited-liability company enjoys greater social protection than the worker member of a cooperative.

Secondly, the legislation governing *Sociedades Laborales* does not provide a complete legal framework for these companies but limits itself to regulating certain aspects, referring all other matters to the law governing public and private limited-liability companies (the Capital-Based Companies Act, *Ley de Sociedades de Capital*, Law 1/2010 of 2 July 2010).

Lastly, it should be added that the law governing *Sociedades Laborales* envisages rules of different types, private and public (administrative, civil, mercantile, labour and fiscal). It aims to provide a compilation of the special rules that apply to these companies because of their "labour" nature (MERCADER y PORTELLANO, 1997).

Leaving aside the particularities of the laws on *Sociedades Laborales* and focusing on them as a company organisation model, their main features concern their concept, the way they are formed, their qualification for "labour company" status, particular features of their share capital, and their advantages.

2.2.1. Concept and legal form of the *sociedad laboral*

The legislation on *Sociedades Laborales* does not define what they are but confines itself to stating that a public or private limited-liability company (*sociedad anónima* – SA or *sociedad de responsabilidad limitada* – SRL) that meets certain requirements and so requests may be classed as a labour company (*Sociedad Laboral*). The requirements are (Law 14/2015, art. 1):

A) The majority of the share capital must be owned by workers who provide remunerated services in the company, personally and directly, by virtue of an open-ended employment relationship. This requirement has remained practically identical over time, with the exception of Law 15/1986, which also required the employment to be full-time.

B) None of the partners may hold shares that represent more than one-third of the share capital, with certain exceptions. This requirement has only been subject to slight modifications. In Law 15/1986 the maximum shareholding a partner was allowed was 25%. The exceptions have also varied. Initially limited to public bodies and companies in majority public ownership, they have since been extended to non-profit institutions (Law 4/1997) and, more recently, to social economy enterprises (Law 14/2015). Any of these may hold shares that represent more than one-third but no more than 49% of the share capital. Another exception added in 2015 is that when the company only has two partners, an exceptional situation which must not last for more than 36 months, the capital may be divided 50/50 between them.

C) The number of hours per year worked by employees with open-ended contracts who are not partners must not be greater than 49% of the total hours per year worked in the *Sociedad Laboral* by all its worker partners. This requirement, which has also always been present in the laws, has evolved in various ways. One is that the criterion used to limit the presence of non-partner employees has changed from the number of employees to the number of hours per year they work. Another is that the maximum percentage allowed has risen from 15% of the hours per year worked by the worker partners (25% if the company had fewer than 25 worker partners) to the current 49%. Lastly, Law 4/1997 excluded the hours per year worked

by employees with a mental disability of 33% or higher from the calculation and Law 14/2015 has extended this to employees with the same percentage of any kind of disability. The concrete expression of this requirement of the law has always been preceded by controversy over whether limitations should also be placed on the number of non-partner employees with temporary contracts, particularly since this type of contract has become widespread in Spain.

Although *Sociedades Laborales* have always used the typical forms of a capital-based company (SA and SRL), they are recognised as being capital-based companies in form but not in spirit. The legal regime for *Sociedades Laborales* highlights that their objective is to favour workers becoming partners and to maintain the labour nature of the company, rather than mercantile profit in the sense of the motive being to make profits for distribution amongst the partners. The aim of the *Sociedad Laboral* partners is to guarantee their jobs and improve their conditions rather than to distribute dividends. The partners of a *Sociedad Laboral* see themselves more as workers than as investors, and this is reflected in the way the company operates (LÓPEZ MORA, 1987 y CANO, 2002a). On the one hand, the company tries to remunerate its partners appropriately for their work and usually reinvests its profits. On the other hand, the worker partners subscribe capital to the extent to which it is needed, so the partners' contributions to capital tend to be similar to each other and, as a result, there are no great differences in the number of votes each of them holds. These characteristics allow *Sociedades Laborales* to be classified as social economy institutions in Spanish law (art. 5 of the Social Economy Act, Law 5/2011 of 29 March 2011).

2.2.2. Ways to form a *Sociedad Laboral*

The law provides for two ways to set up a *Sociedad Laboral*: by converting an existing SA or SRL or by unemployed workers' creating a new company. In the first case, company employees with open-ended contracts must hold the majority of the capital and must also have resolved at a general meeting to request that the company be classed as a *Sociedad Laboral* and to amend the articles to the extent necessary to obtain this classification. The existing company could have been controlled by its workforce from the start or they could have acquired its control by buying the necessary shares. This formula makes it possible to set up a *Sociedad Laboral* based on a company in which employees merely held shares. In the second case, workers (normally unemployed) go to the notary and form the *Sociedad Laboral* directly, presenting the appropriate articles of association for this purpose.

In both cases, founding a *Sociedad Laboral* requires the memorandum to be witnessed and recorded by a notary, classification as a *Sociedad Laboral* to be requested and obtained and the company to be entered into the Administrative Register of *Sociedades Laborales* as well as the Company Register. The purpose of the Company Register is to register mercantile companies. Capital-based companies register with the Registry of Companies and cooperatives with the Registry of Cooperatives. Entry in the Company Register completes the legal incorporation of the *Sociedad Laboral* and gives it legal personality (GÓMEZ PORRUA, 1997; VALPUESTA y BARBERENA, 1998, and SÁENZ Gª y otros, 2000).

2.2.3. Qualification and disqualification as a *Sociedad Laboral*

To qualify for *Sociedad Laboral* status a company must meet certain requirements at the time it is formed and throughout its existence, as not meeting them gives grounds for disqualification. Disqualification entails the loss of *Sociedad Laboral* status but not that of public or private limited-liability company. Cancellation of the entry in the Administrative Register of *Sociedades Laborales* is noted in the Company Register but the latter registration

remains in force unless and until the company is dissolved and liquidated or is converted into a different legal form (i.e. a cooperative).

The requirements to qualify for and maintain the status of a *Sociedad Laboral* are different. To qualify initially, it is enough to prove compliance with the requirements concerning ownership of the capital (requirements A and B in II.1 above). Once in operation, the company must also meet two other requirements: the number of non-partner employees with open-ended contracts may not exceed certain limits (requirement C above) and, in addition to other reserves required by the law or the articles of association, a special reserve must be created in accordance with the *Sociedades Laborales* Act.

This special reserve must be endowed with 10% of the profit after tax (*beneficio líquido*) of each financial year until it reaches at least a sum greater than double the share capital, and may only be used to offset losses when no other reserves are available or for the company to buy its own shares. This reserve was initially intended (Law 15/1986) to serve a double purpose: to strengthen the company's solvency and to assist partners in joining and leaving. To make the latter possible, the law declared this Special Reserve Fund non-distributable except when liquidating the company and provided that in the event of disagreement over the price of shares to be sold to employees, their purchase value should be 75% of their true value. In this way, the Fund fulfils a similar function to that initially performed by the labour foundations (*fundaciones laborales*) which held 50% of the capital of the first *Sociedades Anónimas Laborales*. These measures also draw *Sociedades Laborales* closer to cooperatives. Currently (Cooperatives Act of 1974), a cooperative's mandatory social funds are non-distributable and the value at which membership of a cooperative is acquired is the nominal value of the member's contribution to capital.

As time passed, there was criticism of the fact that partners of a *Sociedad Laboral* were unable to take possession of the full value of their shares in its capital and Law 4/1997 abolished both these measures. The Special Reserve Fund ceased to be non-distributable and transfers of shares, unless otherwise agreed, must be effected at reasonable value (value established by an independent external auditor). Law 14/2015 has introduced two new provisions that appear to be wise: one is that endowment of the Special Reserve is no longer obligatory once this fund is double the share capital and the other, as we have seen, is that it can be used for other purposes apart from offsetting annual losses.

Disqualification as a *Sociedad Laboral* arises as a result of exceeding the limits on capital and work (requisites A, B and C above) or not endowing, endowing insufficiently or misusing the Special Reserve.

The administrative competence to classify a company as a *Sociedad Laboral*, register it, monitor the requirements and, where applicable, disqualify it and cancel its registration lies with the ministry responsible for labour matters or with the relevant authorities in each autonomous region. The current regulations governing the Administrative Register of *Sociedades Laborales* and the process of qualification, monitoring and disqualification were approved by Royal Decree 2114/1998 of 2 October 1998.

2.2.4. Particular features of the share capital of *Sociedades Laborales*

Share capital plays an essential part in qualifying for *Sociedad Laboral* status and in the way it works. Firstly, to prove that the company is jointly controlled by its workers, the latter have to own the majority of the capital and none of them may own more than a certain percentage. Secondly, to regulate the entry and exit of partners, there are rules that limit or require transfer of shares in the public (SA) or private (SRL) limited liability company.

Thirdly, the procedure for capital increases is regulated to ensure a balanced composition of the capital or to favour increasing the proportion of capital in the hands of company employees.

Sociedades Laborales must obey certain limits concerning the ownership of their capital, which is therefore required to be represented by registered shares. All the shares must have the same 'economic rights' and give the right to vote. One problem with the current law is that it does not require all the shares to have the same voting rights, a flaw that makes it possible to upset the equation, since holding the majority of the capital does not entail having the majority of the votes and therefore the control of the company. Although the voting rights were proportional to the shareholding under Law 25/1986, this has changed since the legislation has allowed multiple voting rights in both public and private limited-liability companies and hence, through subsidiarity, in *Sociedades Laborales*.

Additionally, from the start the law on *Sociedades Laborales* made it possible for there to be partners who were not company employees with an open-ended contract (worker partners). In these cases, a distinction must be made between the shares of the labour class of partners (owned by worker partners) and those of the general class of partners (all others). The articles of association must reflect the composition of the capital, stating which shares belong in each category or class. This requirement (unnecessary in our opinion) obliges the company to amend its articles whenever the composition of the shares varies. The annual report of the *Sociedad Laboral* must also mention any variations in the composition of the capital that have taken place during the financial year.

The status of partner is acquired and lost through transferring shares, or through share subscription in the case of capital increases. There may also be an obligatory transfer of shares if employee status is lost, or redemption of shares if partners leave or are excluded. Shares may be transferred freely provided the acquirers are company employees with open-ended contracts, whether or not they are already partners. In all other cases the transfer is subject to the restrictions provided in law to favour the workers' access to partnership and to maintain or increase the capital in the hands of the worker partners. For this purpose, the company may even acquire its own shares under certain conditions.

Without entering into the details of the legal system regulating the transfer of shares in *Sociedades Laborales,* it should be mentioned that although initially (Law 15/1986) only the labour class of shares was subject to restrictions on their transfer, in time both classes of shares came to be subject to similar restrictions. The law establishes a restrictive transfer system when a partner wishes to transfer shares in the company to a person who does not have an open-ended contract with the company: a preferential right to acquisition by non-partner employees with open-ended contracts, followed by partner workers, other partners and the company. Regarding the purchase price of these shares in the event of disagreement, as mentioned above this has risen from 75% of their real value to 100% of their reasonable value (Law 4/1997) or the value calculated by applying criteria set out in the articles of association (Law 14/2015), which could favour a more affordable price for new partners.

In the case of cessation of the employment relationship, worker partners must offer their shares to other workers in the same order of preference as above. If nobody exercises the right to preferential acquisition these partners may retain their shares, but in the general class.

In the case of capital increases, in order to safeguard the interests of all the partners of the *Sociedad Laboral*, preferential rights are allotted proportionately to each category (labour class and general class) and unless otherwise resolved by the general meeting, unsubscribed

shares are offered to employees with open-ended contracts, starting with those who are not already partners.

Lastly, it is also possible for the *Sociedad Laboral* to acquire its own shares for the purpose of offering them to its employees at another time. This possibility has always existed in the law governing *Sociedades Laborales* but was not included in the regulations, so when the system for public or private limited-liability companies was applied to them by extension, the chances of a SRL owning shares of its own were very limited. Law 14/2015 has added a common regulation for all *Sociedades Laborales* which recognises the wider options for these companies, which may hold these shares indefinitely up to a limit of 20% of their capital. It also allows the possibility, for all types of *Sociedad Laboral*, of advancing money, giving credit or loans, providing guarantees or facilitating financial assistance for the purchase of the company's shares by employees with open-ended contracts who are not partners.

2.2.5. Advantages for *Sociedades Laborales*

We have seen how *Sociedades Laborales* arose through aid to create employment, but in 1986 the FNPT ceased to exist. From that moment, the legislation on *Sociedades Laborales* included a series of tax advantages as a means to promote them, principally a 99% rebate on the TPAJD tax (levied on company formation and capital increases, on giving loans and on acquiring assets from the company from which the majority of the worker partners came) and freedom of amortisation, during the first five years, for the assets related to its activity. The TPAJD rebate still exists but freedom of amortisation disappeared with Law 14/2015, foreseeably in view of the promise of a thoroughgoing reform of the tax system for *sociedades laborales*, as insistently demanded by their federations (BARBERENA, 1992 and ALGUACIL, 2007).

Apart from the *Sociedades Laborales* Act, other measures to foster these companies may also be found, such as lump-sum payment of unemployment benefit, social security relief for taking on workers and worker partners, or subsidies to foster employment in *Sociedades Laborales* and improve their competitiveness (LÓPEZ GANDÍA, 1999; GARCÍA NINET, 2014 and CALVO VERGEZ, 2016). The first two are provided for in the Social Economy Act, Law 5/2011 of 29 March 2011 (articles 9 and 10 following its reform by Law 35/2015) and the latter in Order TAS/3501/2005 of 7 November 2005 establishing the regulatory basis for granting subsidies to foster employment and improve competitiveness in cooperatives and *Sociedades Laborales.*

The lump-sum unemployment payment consists in payment of the total unemployment benefit to which the unemployed person is entitled as a result of the social security contributions made while he or she was in work. This right has been recognised since 1985 (RD 1044/85 of 19 June) for unemployed persons who wish to become partners or members of a *Sociedad Laboral* or a cooperative. It can be received as a single payment to be used entirely on the contribution required to become a partner or member, or as a regular sum to pay the social security contributions.

2.3. The influence of *Sociedades Laborales* in other countries: The cases of Argentina and Costa Rica

The Spanish *Sociedad Laboral* model has been copied in Costa Rica and Argentina.

In Costa Rica, the *Sociedades Anónimas Laborales* Act (Law 7407 of 3 May 1994) and its regulations (adopted by Decree 24202-MTSS of 22 December 1994) provide ample regulation of this form of company. This law was modelled on the Spanish law of 1986 but its purpose

was different. In Costa Rica, *Sociedades Anónimas Laborales* were used in the 1990s to externalise the work of civil servants and public employees. In compensation, the state gave *Sociedades Laborales* formed by its ex-employees the benefits of priority and preference in public contracts for auxiliary or support activities that were not consubstantial with the public service or the institution's inherent activity. This priority, which was intended to strengthen the new companies, was granted for a period of five years and could be extended by another five. As the Constitutional Court ruled in judgement number 5840 of 2002, these advantages (preference and priority) were intended by the legislators to stimulate the business organisation of public servants in order to promote their withdrawal from the functions of the state and thereby reduce public expenditure. Of the 280 *Sociedades Laborales* founded at that time, 126 are still in existence (BRIONES y LI, 2013).

In Argentina, *Sociedades Laborales* have fared differently. Initially, in 1995, influenced by Spain's Law 15/1986, the intention was to regulate a "workers public limited liability company" (sociedad anónima de trabajadores – SAT) but finally the bill was not enacted. Later, Decree 1406/2001 on *Sociedades Laborales* achieved approval. However, it required pursuant regulations to make it operative, which never took place, not even the registry of *Sociedades Laborales* was set up, and no *Sociedad Laboral* was formed. Recently, chapter II "Cooperatives and Recovered Companies" of a Federal Bill on cooperatives and mutual societies presented on 4 May 2015 returned to the *Sociedad Laboral* as an appropriate form that the workers affected could use for their companies' recovery (CRACOGNA, 1992 y 1998).

2.4. Factors for the success of *Sociedades Laborales* in Spain

A capital-based company (SA or SRL) can have its capital spread among employees of the company, in which case it will be they who manage and control it. The advantage of the *Sociedad Laboral* is that its particular legal status favours the employees' keeping control of the company over time and all of them sharing in its control. *Sociedades Laborales* favour shared, even democratic, management of the company. However, a *Sociedad Laboral* is not a cooperative: its worker partners have dual legal status (partners and employees), benefit from all the wealth they create with their capital and their work, and if they need external funding have the means to make the investment attractive. If the company has both worker partners and investor partners, both can enjoy balanced participation in the company's management bodies and in its earnings (CELAYA, 1989; LEJARRIAGA, 1995, and LLOBREGAT, 1996).

Experience has shown that a company controlled by its workforce is managed differently, as it aims to maintain employment and improve working conditions as well as generating profits that will ensure its solvency. *Sociedades Laborales* are deeply rooted in their geographical area and show an effective combination of profitable companies and quality jobs. Nevertheless, despite the constitutional mandate ordering the authorities to facilitate the access of workers to ownership of the means of production, *Sociedades Laborales* have never been especially promoted in Spain, unlike cooperatives. Indeed, some of the advantages that they have had at some point have been weakened over time, either because they have disappeared (FNPT loans) or because they have been extended across the board (lump-sum payment of unemployment benefit).

However, *Sociedades Laborales* remain a good instrument for collective entrepreneurship and facilitating company succession. In a digitalised economy, since a *Sociedad Laboral* is controlled by its own employees (workers and/or professionals) it can gear its management better towards permanent innovation and training, which are key factors for growth in this environment. Also, as we have seen, these companies possess qualities that allow them to

benefit from investments applied to research and development. In a *Sociedad Laboral* the key figures are the employees, who engage in a collective enterprise and benefit directly from their economic and social activity.

3. *SOCIEDADES LABORALES*: A PRACTITIONER'S VIEW

By Javier San José

KEY FINDINGS

- **In the *Sociedades Laborales*, the key question is the full assumption by partners of their dual role as company owners and employee workers.** This is essential to replacing the traditional culture based on confrontation between capital and labour with a culture based on collaboration, commitment, and the implication of all workers in the business project.
- **Training partner workers** in the model of the *Sociedad Laboral*, in its values and philosophical principals and **management style adapted** to that model are essential elements for its consolidation and development.
- **Partner and non-partner workers coexist in *Sociedades Laborales.*** It is essential to regulate the relationships between both collectives well and to appropriately manage output processes and incorporation into worker capital.

3.1. Introduction

The *Sociedad Laboral* is a corporate model with its own law that has evolved a lot over time. If it only responded to one type of company during the first decade and a half of its existence – from restructuring, with a medium or large staff – that is not the case today. The reality today is that the *Sociedades Laborales* model is applied to two very different business realities:

- On one hand, there are medium or large *Sociedades Laborales* (11-50 partner workers) or large (more than 51 partner workers). This type of *Sociedades Laborales* is the result of restructuring projects of companies in crisis, as a formula maintaining activity and jobs. They are usually industrial or auxiliary industry companies.
- On the other hand, there are the micro and even nano companies, businesses that are very small in size (from 2 partner workers up to 10), which are usually newly minted projects promoted by unemployed people who want to exploit their professional experience in the activity sector they have worked in. They are small-scale collective, self-employed projects, especially in the services sector.

Despite having the same law in common, both realities have rather different advantages, disadvantages and needs. To correctly approach the practical reality of *Sociedades Laborales*, it is important to be aware of the existence of this relative duality. Notwithstanding, all *Sociedades Laborales*, regardless of their origin and size, share the same law, an ideological and philosophical body (principles and values), which makes them a differentiated type of business model. This model has been created thanks to the work developed over many years by the associative entities of *Sociedades Laborales.*

Let's see what aspects characterise the *Sociedad Laboral* and make this a differentiated type of business model:

- **Most of the company's social capital must be in the hands of the people that work in the company with an indefinite employment relationship,** meaning stable, which means that the decision-making ability is in the hands of the workers themselves.
- **At the same time, most of the workers with an indefinite employment relationship must be partner workers**, though not all of them have to be.

- **Therefore, most of the company's stable workers play a dual role: they are partners on one hand, and thus company owners, and at the same time employees.** So, two separate legal areas affect partner workers in a *Sociedad Laboral*: corporate law in their capacity as partners, and labour law in their capacity as employees. This dual condition of partner worker is the keystone on which the practical reality of the *Sociedad Laboral* rests.
- **Workers with an indefinite labour relationship who are not partners have the expectation that they can become partners,** because the law favours this possibility.

The aforementioned characteristics make up a business model with a special personality that takes effect in different areas of business development.

3.2. Practical analysis of the internal operation of a *Sociedad Laboral*

The double role that most partners have in a *Sociedad Laboral* (employees, while being partner owners) absolutely affects all the key dimensions of the company, such as:

- Ownership and management of the employee-owned company, aspects linked to its culture, philosophy and values
- Labour relationships, the role of the union

3.2.1. Ownership and management in an employee-owned company

The Sociedad Laboral is a capital, limited, or limited liability company. It has its own law, the "*Law 44/2015 of 14 October on Sociedades Laborales and Partnerships*", even though the first specific law dates to 1986. Currently, the majority of *Sociedades Laborales* take on the formula of a limited partnership. As a capital company, the training of social will is done with an arrangement of capital criteria. The decision-making bodies are the General Meeting of partners and the board.

Now let's see how these corporate bodies work in practice in this business model.

The Role of the General Meeting in the *Sociedad Laboral*

The vote of each partner in the supreme organ of corporate decision, the General Meeting is proportional to the capital that they hold, so each partner may have a different capacity of decision. The two classes of partner who may be in employee-owned company, partner workers and "general class" partners, who contribute capital but are not workers, have the same economic and political rights. The usual situation is that the entirety of capital or a very high percentage thereof, belongs to partner workers. In this case, the profile of the general class partners is usually people related to the partner workers by kinship or friendship, private investors, public entities, mainly municipalities (in specific sectors, cleaning, social services, etc.), venture capital companies and suppliers or strategic allies.

A practice worthy of mention is that, despite the general principle that the right to vote is proportional to the capital that each partner holds, in many *Sociedades Laborales,* especially when there are no "general class" partners, the board naturally accepts the vote of all persons at the General Meeting as equal, regardless of differences in capital that may exist, unless the differences are significant.

This practice is relatively common, although it is far from being a majority. It occurs in *Sociedades Laborales* of all sizes, although it is more common in those with a larger number of partners, in which the capital is widely distributed and there are not often great differences the number of shares or stocks held by each partner.

This practice is difficult to understand from lack of knowledge about how many existing *Sociedades* Laborales are created and put into operation. In many cases, *Sociedades Laborales* have been created, providing for people who promote them, labour rights of economic content generated by their own contributions, like the single payment of unemployment benefits or the Wage Guarantee Fund benefit.

- The **single unemployment payment** consists of a single charge (and therefore, paid in advance) of all the unemployment benefits that correspond with an unemployed person, as long as the amount is allocated toward the acquisition of social capital in an *Sociedad Laboral* in which they participate or the recipient is incorporated as a partner worker.
- For its part, the **Wage Guarantee Fund** is the governing agency in charge of paying workers wages and benefits that the companies they work for have not been able to provide due to a situation of insolvency or bankruptcy. In many cases, these benefits are also provided by the people who decided to establish a *Sociedad laboral.*

The fact that a substantial part of the economic resources that are used to create a *Sociedad Laboral* are rights of the workers themselves favours that such projects are based on criteria of equality and solidarity among all participants on the idea that "all people hold all their rights", regardless of economic quantification in which those rights are translated. However, it should be clear that this is a criterion of cultural or philosophical character of a certain type of *Sociedad Laboral* and therefore should not be taken as a general criterion.

As indicated above, the General Meeting is the highest decision-making body and works as in any corporation with the difference just described, i.e., the right to vote is based on the percentage of capital that the partner holds.

However, to better understand what the real role that the General Meeting of partners plays in an *Sociedad Laboral,* we must first distinguish what kind of company we are talking about.

In small and very small *Sociedades Laborales* (2-10 partner workers), there is a high closeness among all partner workers in decision making and easy and permanent access to information on the status of the company. In these small businesses everyday coexistence of workers partners in development of the activity favours the generation of meeting places to discuss and decide. They are companies in which the ability to respond to any situation requiring a decision is very agile because partner workers can meet with all speed and frequency necessary, without major formalities.

This kind of *Sociedad Laboral* is thus characterised by the closeness of the partner workers in decision making and their easy and permanent access to information on the status of the company.

Therefore, in these companies the General Meeting, in its consideration as a formal act, is not necessarily the most important forum for the exercise of effective participation of partner workers in company management, since there are other more practical, simple, and agile channels to exercise this participation. To put it more simply, the practice in these companies is to hold multiple meetings throughout the year in which the partners share all company information and make not only operational, but also strategic decisions.

In other *Sociedades Laborales,* things are different. The closeness to decision making can be lost if employee partner participation is limited to the role which in that sense is played by formal decision-making bodies and administration, i.e., the General Meeting and Board of Directors. While it is true that the General Meeting is the highest body shaping social will, its rigidity detracts potential as a channel for real participation of company employees. In larger employee-owned companies, the General Meeting is obviously the time when partner workers and non-employees can fully exercise their rights in full as partners, more so in the case of members of the "general class" (non-employees) who do not take part in the daily life of the

company. In this regard, it is noteworthy that the participation of general class partners in decision making and information is generally well structured.

However, without downplaying the General Meeting, we must note that in the *Sociedad Laboral*, this social body is an essential tool, but not enough to ensure real and effective participation of partner workers. Therefore, in working society it puts a special emphasis on supplementary channels for participation to strictly formal (General Meeting, Board of Directors) participation, such as information systems, powerful communication, work groups, and programming meetings, which promote workers' involvement and commitment in various business fields. In this regard, it is worth noting that the associative entities of *Sociedades Laborales* are developing a very important technical support role for the implementation of these practices in companies.

The Board of an Employee-owned Company

The *Sociedad Laboral* is a model in which by law, employees (with indefinite work contracts) must have a majority of the capital, and therefore, decision-making capacity. Consequently, workers who opt to create a *Sociedad Laboral* should be aware of what this entails in terms of accountability, which is primarily expressed in the exercise of corporate management positions.

As in any other capital company, the administration in a *Sociedad Laboral* can be entrusted to a single administrator, several administrators who act in solidarity or jointly, or a board of directors. The choice of type of board and the people on it corresponds to the General Meeting.

Again, the size of the *Sociedad Laboral* determines the choice of management system.

In connection to this, there are also differences between large-, medium, and small-sized *Sociedades Laborales*. In small companies (2-6 partner workers), it is normal for the board to be one person (single administrator) or two (acting in solidarity or jointly). In these companies, the assumption of these roles, and thus the responsibilities they entail, is done naturally. It is understood that this is inherent to the decision to carry out a business project.

However, as the number of partner workers increases, this aspect changes.

Except in small-sized *Sociedades Laborales,* the usual management body is the **Board of Directors**, which is almost always composed of partner workers. The choice of the partners to form the Board of Directors is the responsibility of the General Meeting.

In *Sociedades Laborales* of a certain size, the business project is collective and egalitarian. In this type of *Sociedades Laborales*, sometimes partner workers may have less favourable attitudes towards the assumption of the responsibilities of being a member of the Board of Directors, but these attitudes are a minority thanks to more effective training that encourages the participation of partner workers in the Board of Directors.

Training for Partner Workers

In order for a *Sociedad Laboral* to be a viable business model on a long-term track, it is essential for individuals who belong to the company to overcome the cultural constraints derived from the traditional concept of the company (capital-labour opposition). Therefore, training is an essential tool.

This is specific training on the model of the *Sociedad Laboral*, its philosophy and values, which should help make the most of the competitive advantages of an *Sociedad Laboral:* closeness among the working partners in decision making, their commitment and involvement with the smooth operation of the company and the flexibility (mainly labour) that entails.

We speak of two types of training:

- Training directed at all partner workers on the *Sociedad Laboral* model and the benefits of participation, while serves to establish trust in the model in people who are not usually accustomed to a participatory company model.
- Specific and more in-depth training for partner workers elected to the Board of Directors, which adds training on legal, economic, fiscal, and labour issues to the training model and generally provides enough of an understanding on corporate management to act diligently and responsibly.

In this sense, we must re-emphasize the work the cooperative associations in *Sociedades Laborales* are developing, established in the different Spanish autonomous communities in teaching *Sociedades Laborales* about this type of training.

In short, we must emphasize the importance of adopting measures to promote the interests of partner workers within the setting of the *Sociedad Laboral* to participate effectively in the management of the company. This requires overcoming some cultural obstacles (not being used to participation and accountability) that can lead to behaviours like inhibition or passiveness faced with responsibilities that workers must take on and accept in this business model. The role of training is critical in this regard. But the management model adopted in the *Sociedad Laboral* is also very important.

3.2.2. The management model in a *Sociedad Laboral*

In *Sociedades Laborales* (except the small-size), it is normal for the Board of Directors to delegate powers to one person (the CEO or manager) who performs the functions of executive management. The Board of Directors must control and monitor the work that the manager carries out and the company's economic performance.

The profile of the executive management in *Sociedades Laborales* is varied. In the micro or nano *Sociedades Laborales,* it is usually one of the partner workers that has some experience in business management who is responsible for the company's executive management. It is often shared management, in which this "partner worker-manager", due to the reduced size of the group that makes up the company, exercises shared leadership with other people. In this kind of company, it is of the utmost importance to have good support and external advice (legal, employment, tax) that cover the possible shortcomings of the partner who assumes management. Here again, we must note the role the cooperative associations are carrying out in employee-owned companies, supporting companies with their professional services.

In all other *Sociedades Laborales*, executive management is usually entrusted to an expert in management and business management, which is incorporated in the *Sociedad Laboral* through a special senior management employment contract and usually is not a partner.

In either case, an essential condition is that there be mutual trust and a collaborative relationship between the Executive Management and the Board of Directors to prevent the occurrence of interference and malfunctions.

Conditions for Good Management and Direction of an Employee-owned Company

Mutual trust is essential for good management in a *Sociedad Laboral*. However, there are more conditions:

- In the *Sociedad Laboral*, members of the Board of Directors are the very partner workers in the company. Sometimes these people lack an understanding of management and business administration and have the cultural weight of a traditional business model on their shoulders. The correct assumption by partner workers in their role as administrators, to which contributes very effectively the training explained above, is another necessary condition for the smooth operation of a *Sociedad Laboral.*

- Executive management or administration plays a key role in achieving economic and social objectives of the *Sociedad Laboral,* so you have to see which executive management model is most appropriate for this company model. Management style, therefore, is the other key factor.

  It is essential that management style is adapted to the characteristics of the *Sociedad Laboral* as a company based on the participation of the workers. Therefore, not just any management style works.

  Therefore, in selecting the person who will handle the *Sociedad Laboral's* executive management, it is crucial to consider not only criteria of vocational training but, above all, commitment to the model of the *Sociedad Laboral,* which has its own demands that differ from the traditional company.

But what are the specific issues that the person in charge of executive management of a *Sociedad Laboral* should know and handle accordingly?

- First of all, one must understand that those who form the Board of Directors are employees with no business vocation. Even though training helps to overcome the limitations imposed by this fact, the executive director needs to be rather didactic, making an effort to be clear and understandable, being aware of the difficulties that the worker-manager sometimes has to better understand their role.
- Assume and deepen the democratic character of this business model. In the *Sociedad Laboral*, one has to keep in mind that the property is usually divided among a large group of people working in the company, and thus present in the company's day-to-day activity. Therefore, the information and communication demands are much greater than those in a company that is not employee-owned. Therefore, the appropriate channel must be used for this increased demand, based on maximum transparency in the business management, not only to the board of directors, but rather with the entire community of partner workers.
- Be aware that they manage a social company. This means putting the emphasis on people. In an employee-owned company, employment and its quality is usually prioritized over other considerations.
- As a social economy company, have a clear vocation for the promotion of corporate social responsibility. Because of its intrinsic characteristics (worker participation in ownership and management, democratic management, and priority of the individual over capital) the *Sociedad Laboral* is an optimal model for developing best practices of corporate social responsibility.

3.3. Labour issues: The coexistence of partner workers and non-partner workers

A specific feature of the *Sociedad Laboral* that requires adequate treatment is that people who are not partners have a chance of working in the company. The law on *Sociedades Laborales* permits the presence of a certain number of non-partner workers in the *Sociedad Laboral* with indefinite contracts. The coexistence of partner and non-partner workers is normal in an employee-owned company.

Labour Regulations of Partner Workers

Both partner and non-partner workers have full legal consideration as employees. In this sense, from the point of view of labour law, there is no difference between one group and another. Therefore, the labour relations in the *Sociedad Laboral* apply for all workers by labour regulations standards and working conditions are set by these regulations and by the collective agreement that is applicable.

Treatment of Non-partner Workers from the Corporate Perspective: Special Consideration for their Incorporation into the Social Capital

By law, permanent workers who are not partners have a reasonable expectation of reaching the status of partner. As one of its basic objectives, the law on *Sociedades Laborales* favours specifically non-partner workers with permanent contracts to be able to purchase stocks or shares.

Sociedades Laborales must correctly structure the incorporation of non-partner workers into the capital and the separation of the company's partner workers who terminate their working relationship. It is appropriate that the coming and going of partner workers responds to plan or management designed by the board of directors with the support of executive management and taken on by the entire workforce of partner workers.

The reality is that in the *Sociedad Laboral*, even though the law allows an indefinite non-partner worker to acquire stocks or shares without contest or consent from the company, this never happens. The incorporation of new partner workers is never handled outside the criteria established by the employee-owned company.

Typically, the company acts as the managing body and intermediary of the processes of incorporation into the capital of non-partner workers and the outflow of workers who terminate their working relationship.

This is regulated in many *Sociedades Laborales* through written protocols (called "partnership agreement"), which provide additional criteria to the strictly legal, accepted through consensus by all partner workers and adapted to the reality of each company, on the following issues:

- How, when, and under what conditions permanent workers who are not partners acquire capital (transfer price, payment formulas, possibility that the company financially assists the buyer, etc.).
- How workers who terminate their employment relationship leave the social capital (payments they receive, who buys them, the company or another workers, etc.). At this point, it is important to emphasize the importance having effective procedures to encourage workers to stop being partners when they stop being workers. The law regulates this in inadequate and unrealistic way and this explains the need for these protocols.

These are protocols that reinforce the role of the company as an entity that manages the process, which is key to the employee-owned company, and to the entry and outflow of workers' capital. The fundamental idea is that it is advised that *Sociedades Laborales* should have a clear and consensual system for the orderly treatment of incorporation and outflow of permanent workers, because it is a key aspect for the renewal of templates of employee-owned companies.

These written protocols also tend to include the establishment of consensus criteria for the treatment of *Sociedad Laboral* profits. Normally in this regard, the policy of most *Sociedades Laborales* is the reinvestment of most of the profit in the company (through provision of voluntary reserves), while always trying to reconcile this with a reasonable dividend distribution to partner workers, since this is a clear incentive for participation.

We must emphasize the work that associative entities in *Sociedades Laborales* have developed to help their associated companies to incorporate these protocols, which began as good practice in the Basque Country and then spread to other areas in Spain.

Treatment of Non-partner Workers from a Labour Perspective

In an employee-owned company, there can be up to three types of workers: partner workers, non-partner workers with permanent contracts, and temporary workers (they are never partners).

Establishing a proper relationship between these three groups is very important in order to maintain social peace that characterizes employee-owned companies.

The fundamental basis on which this appropriate relationship is founded is avoiding any discriminatory treatment of partner workers towards other non-partner workers (permanent or temporary), or in other words, that any difference in employment that can be established between the partner workers and other workers strictly meets labour standards.

One of the basic aspects to consider when setting up a *Sociedad Laboral* is to have clear differentiation between worker and partner. If this is not clear, you run the risk of establishing unjustified essential aspects of the employment benefits (salary, working hours, functions) between partners and non-partners due to a misconception of the role and rights of each of these groups.

Therefore, the basic idea is to be clear at all times that regarding their status as employees, partner workers and non-partner workers are exactly the same, with equal rights and duties. Setting employment privileges for worker partners for the sake of being such is not advisable and harmful.

The Role of Legal Representation for Workers and Unions in the *Sociedad Laboral*

In small-size employee-owned companies, there is no legal representation for workers, even though this is normal in small businesses in Spain, regardless of their legal form.

With this exception, in industrial societies there are usually representative bodies for workers (staff delegates or company committees), even when almost the entire workforce is made up of partner workers. This is usually to respond to the fact that medium- and large-size *Sociedades Laborales* are usually the result of restructuring processes of companies in crisis. In these processes, it is customary for leadership to correspond to union representatives from the previous company. In these circumstances, it is explained that a union presence still exists in employee-owned companies.

In these *Sociedades Laborales* where the staff is mostly made up of partner workers, the role of company committees or staff representatives is to provide a complementary view of the Board of Directors, also made up of workers, for whom the two planes of the company, corporate and labour, are addressed and balanced, and thus, the company is more cohesive.

Moreover, in *Sociedades Laborales* where there are a significant number of non-partner workers (permanent or temporary), bodies representing workers still have a more important role for the following reasons:

- <u>These bodies represent all workers, partners and non-partners.</u> As a result, it is not surprising that within the body representing workers (for example, the company committee) partner and non-partners share space. This mixture is an element that decisively contributes to the cohesion of the workforce and better development of labour relations.
- <u>The actions of the bodies representing workers are usually very different in a *Sociedad Laboral* from what they are in a traditional company.</u> The near disappearance of company property-labour conflict in this model implies that standards of behaviour and objectives of trade union bodies are different. Thanks to the coexistence of partner and non-partner workers within the body representing workers, and the philosophy of this business model, the culture of company-worker confrontation is

substituted for a culture of collaboration and sharing goals, where more emphasis is placed on meeting points than on differences and the predisposition to avoid conflict is highest.

3.4. Conclusions and outlook

- The role of business associations is very important for *Sociedades Laborales,* since associative entities of this type of company develop a decisive role for consolidation of this business model with the services they offer (training, counselling, management support, etc.).
- Encouraging the option that all people who work in a *Sociedad Laboral* can become partners is one of the great philosophical principles of the model. Even though the *Sociedades Laborales* themselves steer a lot of effort to this end, you need a higher level of commitment of public policies with this objective, with effective support measures, particularly fiscal in nature.
- The size of *Sociedades Laborales* is progressively smaller (micro and nano companies). These companies have specific needs (support for their implementation, supporting the professionalization of management, appropriate funding instruments, increased need for external advice and technical assistance) that require concerted action between associative structures and public administrations.
- The employee-based company, as social economy enterprise and through their own specific features, is a model with clear orientation towards corporate social responsibility.
- The *Sociedad Laboral* today is the model that represents the highest level of participation of the workers in the capital that exists in all European corporate legislation. It is an established model, with more than 40 years of history, applied to companies of all sizes and sectors.
- The *Sociedad Laboral* is model which, due to its essential rooting in the territory, can play a noteworthy role against corporate relocation.
- A transferable model for other European countries.

  The model of *Sociedad Laboral* is exclusively Spanish, but none of its features or requirements prevents it from being transferred to other European countries to facilitate socio-economic objectives linked to the creation of employment and promotion of sustainable economic activities, such as the following:

  - As a model for implementing collective self-employment projects.
  - As a solution for family companies who may question their continuity because of generational transfer.
  - As a formula for restructuring of companies facing difficulties because of crisis.
  - As the corporate model that is especially suited to encourage full participation, that is to say, in all dimensions of participation (in capital, in benefits, and in management) of company workers.

  This transfer of the model needs certain conditions that encourage it.

  Some of these conditions already exist, such as the European institutional environment favouring the promotion of worker participation in companies: "Council Recommendation of 27 July 1992 on the promotion of worker participation in the results and benefits of the company", "Opinion of the European Economic and Social Committee of 21 October 2010 on the issue of financial participation of workers in

Europe", and favourable positions towards participation shown by the European Trade Union Confederation.

However, other conditions have to be created. To do so, it would be advisable to adopt measures, such as the following:

- Legislating a formula for the majority share of workers in the capital of companies at the European level as a framework from which member states can develop their own legislation. One could speak of the creation of a "European *Sociedad Laboral*" through a European Directive.
- The diffusion of the *Sociedad Laboral* model at the European level as an integral model for a profit-sharing company majority-owned by workers, with the exhibition of good practices.
- The establishment of tax measures that encourage capital acquisition by workers based on progressive criteria: the higher the workers' participation in capital, the higher the level of tax benefits, reserving the most favourable taxation for cases where workers acquire the majority of the company's capital.

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Compiled by Isabel-Gemma Fajardo García

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