



**THE PORTUGUESE LAW ON SOCIAL
ECONOMY (LBES)
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LBES OBJECTIVES

- The institutional and legal recognition of the social economy sector is laid down fundamentally through:
 - the delimitation of the subjective nature of its actors and principles that guide them;
 - the identification of the modes through which the social economy is organised and represented;
 - the definition of the guidelines of the policies of promotion of the social economy;
 - the identification of channels through which the institutions of the social economy and the public authorities communicate.

THE LEGAL VISIBILITY OF THE SOCIAL ECONOMY SECTOR DERIVING FROM THE CRP

- Because the constitutional text recognises the social economy, the issue of its invisibility loses relevance.
- This sector is the object of autonomous provision in the *Constitution of the Portuguese Republic* (CRP), even if the designation used is “social and cooperative sector”.
- The LBES could not ignore that the CRP provides for this sector in the constitutional text and refers to it in various rules:
 - the first reference appears in art. 1.º, named “Object”, when it is postulated: “The present law establishes, based on what is laid down in the Constitution regarding the social and cooperative sector, the foundations of the legal regime of the social economy [...]”.

THE DEFINITION OF THE CONCEPT OF SOCIAL ECONOMY

THE DEFINITION OF SOCIAL ECONOMY

- Under the No. 1 of art. 2 LBSE:
 - “Social Economy are all social and economic activities, freely carried out by the entities mentioned in art. 4 (...)”; and
 - those entities “aim at pursuing the general interests of society, directly and through pursuing the interests of their members, users and beneficiaries, whenever socially relevant”.
- Two defining criteria emerge from this definition:
 - the activity carried out (social-economic activity);
 - the object pursued (pursuit of a general interest).

THE DEFINITION OF THE CONCEPT OF SOCIAL ECONOMY

OPEN LIST OF THE ENTITIES OF THE SOCIAL ECONOMY

- Art. 4 LBES: “the entities that integrate the Social Economy, as long as they are registered in the country, include:
 - a) cooperatives;
 - b) mutual societies;
 - c) *misericórdias* (religious social solidarity associations);
 - d) foundations;
 - e) private institutions of social solidarity not included in the aforementioned ones;
 - f) non-profit associations operating in the areas of culture, leisure, sports, and local development;
 - g) entities of the community and worker collective sub-sectors;
 - h) other entities with legal personality and complying with the guiding principles of the social economy, as established in art. 5 LBES — these entities must be included in the social economy database».

THE DEFINITION OF THE CONCEPT OF SOCIAL ECONOMY

OPEN LIST OF THE ENTITIES OF THE SOCIAL ECONOMY

- Criteria of subjective definition: legal forms and legal status.
- The LBES highlights the special status of the misericórdias and the entities included in the community and worker collective sub-sectors, exactly because the CPR integrated them in the social and cooperative sector.
- The wording of paragraph h) of LBES poses a problem, when it makes it possible for «other entities with legal personality, which respect the guiding principles of the social economy» to integrate the sector of social economy.

THE DEFINITION OF THE CONCEPT OF SOCIAL ECONOMY

GUIDING PRINCIPLES OF THE SOCIAL ECONOMY

- Art. 5 LBES: «the entities of the social economy are autonomous and operate within the scope of their activities in accordance with the following guiding principles:
 - a) the primacy of the individual and of the social objects;
 - b) free and voluntary membership;
 - c) democratic control of the bodies by members;
 - d) convergence of the interests of members, users or beneficiaries with the general interest;
 - e) respect for the values of solidarity, equality, non-discrimination, social cohesion, justice, equity, transparency, shared social and individual responsibility and subsidiarity;
 - f) management that is autonomous and independent from public authorities and any other entities not integrated in the social economy;
 - g) the allocation of surpluses to the pursuit of the social objects of the social economy in accordance with the general interest, without prejudice to any specificity of surpluses distribution within any social economy entity established in the Constitution»

THE DEFINITION OF THE CONCEPT OF SOCIAL ECONOMY

GUIDING PRINCIPLES OF THE SOCIAL ECONOMY

- The above guiding principles are influenced by the cooperative principles and values that, together with the concept of cooperative, make up the so-called “Cooperative Identity”.
- It is also relevant to stress the importance the LBES places on the autonomy of these entities and on their autonomous management.
- The “principle of democratic control by the members” does not apply to foundations”.
- “Surpluses” or “results”? [al. g)].
- The entities mentioned in par. a) to g) of art. 4 LBES should be considered entities of the social economy *ope legis*, since the legislation does not explicitly impose the observance of the guiding principles, thus implying that such observance is the result of the nature and legal regimes of those entities.

FORMS OF ORGANISATION, REPRESENTATION AND INTERACTION OF THE SOCIAL ECONOMY WITH ITS MEMBERS, WITH THE COMMUNITY AND WITH THE STATE

- Art. 6 LBES: creation and maintenance of a satellite account for the social economy, developed within the national statistical system (n.º 2).
- Art. 7 LBES: the right of social economy entities:
 - to «freely organise themselves and create associations, unions, federations or confederations to represent them and to defend their interests”; and
 - to be “represented in the Economic and Social Council and in other bodies with competences in the definition of public policies and strategies of development for the social economy”.
- Art. 8 LBES: in the pursuit of their social object - necessarily oriented towards members, users or beneficiaries - these entities shall ensure the adequate levels of quality and security, and shall act with transparency.

THE ISSUE OF THE «PROMOTION OF THE SOCIAL ECONOMY»

- Art. 10 LBES lays down the public authorities' obligation to «promote the social economy».
- The «general interest» becomes, in this way, the justification for the adoption of measures to promote the social economy.
- Public authorities shall, in addition:
 - «promote the principles and values of the social economy»
 - «promote the creation of mechanisms to strengthen the economic and financial self-sustainability of the entities of the Social Economy, in compliance with the stipulated in art. 85.º of the Constitution of the Portuguese Republic»;
 - “support to the creation of new social economy entities and to the diversity of social economy initiatives, by triggering innovative responses to the challenges faced by local, regional, national or any other communities, and by removing the obstacles to the formation and development of economic activities of the social economy entities”;
 - “promotion of research and innovation in the social economy, of training of the social economy entities, as well as to facilitate the access of these entities to technological innovation and organisational management practices and processes”;
 - “to deepen the dialogue between the public authorities and the representatives of the social economy, at national and European level and, thus, promote mutual knowledge and dissemination of good practices”.

THE ISSUE OF THE «PROMOTION OF THE SOCIAL ECONOMY»: TAXATION

- Art. 11 LBES provides these entities with «favourable treatment in terms of taxation, that the law defines taking into consideration the entities' nature and foundation».
- Two aspects stand out from this rule:
 - the commitment expressed in the law to provide the social economy entities with a differentiated tax system that favours them (positive discrimination) when compared with the private entities operating in the market.
 - secondly, and because of the diversified nature of the entities of the social economy, the above mentioned tax system differentiates the social economy entities themselves.

A DIFFICULT QUESTION: ARE SOCIAL ECONOMY ENTITIES SUBJECT TO COMPETITION RULES?

- Art. 12 LBES: social economy entities are subject to “community and national rules that apply to the general interests social services, within the scope of their activities, without prejudice to the constitutional principle of protection of the social and cooperative sector”.
- Art. 2 of the Law on the Defence of Competition [Law n.º 18/2012, of 8 May], establishes that all economic activity carried out by the public, private, or cooperative sectors, either permanently or occasionally, is subject to the competition legal regime.
 - Integration in the social economy sector does not mean that an entity is not subject to national and community rules on competition.
 - The spirit of the law is to allow that these social economy entities, as well as general interest social services are not subject to national and community rules on competition, whenever that prevents them from pursuing their objective: the pursuit of the general interest.