

If not for profit,  
for what and how?

S O C I A L  
E N T E R P R I S E

# Reform to the Law of Social and Solidarity Economy of Mexico

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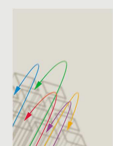
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# INTRODUCTION

Mexico was one of the first countries to attempt the creation of a legal framework for social economy, but after several initiatives to the Law of Social and Solidarity Economy (*Ley de Economía Social y Solidaria*, LESS), it turned out highly limited and just one year later it was reformed with so significant modifications that it leads to question whether it truly presents some progress or is just a change to keep everything the same.

Therefore, the purpose of this article is to analyze the law in force (LESS-13) in order to determine whether:

- It bridges the gaps left by the LESS approved at the end of the previous Legislature (LESS-12)
- It recovers some elements that had been lost in the negotiation process for the approval of LESS-12
- It modifies the course of public policy towards this sector regarding the (in)existent prior to LESS-12
- It opens spaces for the social sector of the economy (*Sector Social de la Economía*, SSE) to influence related public policy.

Section 1 presents some historical elements to explain some of the difficulties LESS had to face during the legislative procedure, as well as its two reforming decrees in 2013; Section 2 analyzes the achievements and retrocession of LESS, and finally, Section 3 is intended as an overall balance.

## 1. A BIT OF HISTORY

The 1983 reform to the Political Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*, Cpeum) added the seventh paragraph of article 25, indicating:

The law will establish the mechanisms that enable organizing and expanding the social sector's economic activity: communal land (*ejidos*), workers' organizations, cooperatives, communities, companies mostly or exclusively owned by workers and, in general, all forms of social organizations for producing, distributing and consuming socially necessary goods and services.<sup>1</sup>

This led to the need of a regulatory law to that paragraph that would also serve as the "framework law" of the economy's social sector<sup>2</sup> (SSE), but nearly 30 years went by since that constitutional reform and nearly 20 since the first bill drafted<sup>3</sup> before reaching its approval.

In the LX Legislature<sup>4</sup> of the Congress of the Union<sup>5</sup> a second initiative with the LESS<sup>6</sup> decree drafted was discussed and agreed upon (Ipdless-07), which received an approving report<sup>7</sup> on the 20th of

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<sup>1</sup> Decree published in the Official Journal of the Federation (*Diario Oficial de la Federación*, DOF) on February 3, 1983.

<sup>2</sup> Contrary to the other two sectors mentioned in the article (the public and the private) that already had their own legal framework.

<sup>3</sup> The first initiative with a draft decree was presented to the LVII Legislature by a Deputy of the National Action Party (*Partido Acción Nacional*, PAN), but was discarded.

<sup>4</sup> Each term is called a Legislature and identified with progressive Roman numerals. It lasts three years, at the end of which the first chamber is renewed in full but senators remain for two legislatures. The LX Legislature held sessions from September 2006 to August 2009.

<sup>5</sup> Is constituted by two chambers: Deputies and Senators. The first are elected per district (defined based on the number of voters) and the second, as representatives of each federative entity (states). Furthermore, 200 deputies and 32 senators are elected under the principle of proportional representation (*plurinominales*).

<sup>6</sup> Was presented by another deputy of PAN, on behalf of the deputies that integrated the Commission for Cooperative Development and Social Economy (*Comisión de Fomento Cooperativo y Economía Social*) of the LX Legislature.

June, 2007 but was later blocked by legislators, members of the Institutional Revolutionary Party (*Partido Revolucionario Institucional, PRI*<sup>8</sup>), thus presenting an additional three initiatives<sup>9</sup> during the LXI Legislature that were merged, on which it was discussed<sup>10</sup> and approved.

At last, LESS was unanimously approved at both chambers in 2011, vetoed by the president of the Republic at the end of that year (without providing clear reasons), submitted to some modifications to enable meeting legal requirements,<sup>11</sup> approved once again by both chambers and eventually published in the *DOF* of May 2012.

So long as it reached its approval (because the LXI Legislature<sup>12</sup> was about to end and its promoters believed it was better to have it pass with deficiencies and later modified), it underwent significant changes that altered the law's original spirit and left a series of legal loopholes and inconsistencies.<sup>13</sup>

The transitory articles of LESS-12 established a six-month period to perform various activities<sup>14</sup> that were not performed within the established timeframe, thus in January 2013 a decree was published, extending these terms until November 2013.

On the other hand, during the second session of the LXII Legislature<sup>15</sup>, it was discussed and approved "in haste"<sup>16</sup>, an initiative that – supposedly – intended to rectify the errors and legal loopholes and of procedural nature of LESS-12, with the purpose of "establishing mechanisms to promote the development, strengthening and visibility of economic activity for the economy's social sector".

On the 29 of April, 2013, the National Network of Researchers and Educators on Cooperative and Solidarity Economy (*Red Nacional de Investigadores y Educadores en Cooperativismo y Economía Solidaria, Redcoop*) published a letter manifesting its utter rejection of the decree approved by the Chamber of Deputies on the 25 of April, concluding with a call to stop this bill at the Senate<sup>17</sup> and open research and reference works with members of SSE.

[...] we make an attentive and respectful call to Senators of all parliamentary groups to deny their approval of the terms of the bill that to that effect the Presiding Officers of the Chamber of Deputies has sent them for their analysis and ruling, we hold that in order to repair the deficiencies of the current Law, an intense and urgent advisory, participation and research work is required, of the Economy's Social Sector; in order to enable promoting a Law for advancing and not regressing, that truly supports and promotes the solidarity economy in the country – an enquiry the Commission of Cooperative Development and Social Economy (*Comisión de Fomento Cooperativo y Economía Social*) simply chose to ignore. Our

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<sup>7</sup> The initiative was approved on first reading and after some modifications performed at the Commission for Cooperative Development and Social Economy of the Chamber of Deputies, on April 22, 2009; was turned over to the plenary, but its second reading, voting and approval would appertain to the following Legislature.

<sup>8</sup> Right wing party, "the opposition" at the time

<sup>9</sup> One from PRI in 2010 and two in 2011 from deputies of the Party of the Democratic Revolution (*Partido de la Revolución Democrática, PRD*).

<sup>10</sup> From one PRD Senator.

<sup>11</sup> Once the Executive has vetoed a law, the relative majority in voting is not sufficient, and must then be approved by two thirds of each chamber.

<sup>12</sup> Held sessions from September 2009 to August 2012.

<sup>13</sup> The most "severe" is that despite using the term "solidarity" in the law's title, there is no single reference to this in the provisions.

<sup>14</sup> Among them, the summon of the sector's bodies to hold regional assemblies; constituting, establishing and regulating the National Institute of the Social Economy Sector (*Instituto Nacional del Sector de la Economía Social, Inaes*); issuing regulations that would regulate the National Registry of the Organisms of the Economy's Social Sector (*Registro Nacional de los Organismos del Sector Social de la Economía*), etc.

<sup>15</sup> Held sessions from February 1 to April 30, 2013.

<sup>16</sup> Presented in first reading on April 18 and, only seven days later, on April 25, was approved in the Plenary of the Chamber of Deputies.

<sup>17</sup> In order to become a law, once an initiative of decree bill is approved in the Plenary of the Chamber of Deputies, it is turned to Chamber of Senators to also be discussed and approved.

organization is willing to seriously and collectively collaborate with other organizations from the sector and with the responsible legislative Commission on this effort.

If you do so, history shall give you proper recognition; otherwise, you will have written one more page in the unbridled legal involution that has been affecting the cooperative and social economy of our country for over 30 years (Redcoop).

The letter failed to cause the desired effect and the reform (LESS-13) was published in the *DOF* of June 11, 2013; and in the Agreement for the organization and operation of the National Institute of Social Economy on the 22 of July.

## 2. ONE STEP FORWARD... TWO STEPS BACK...

In general, the approval of LESS-12 represented some progress but much of it disappeared in part or in whole on LESS-13:

1. Advancing in the legal recognition of social and solidarity economy, specifying the principles and practices that distinguish it from other sectors (although there is still some confusion on values, principles, purposes and practices).<sup>18</sup>
2. The National Institute of Social and Solidarity Economy (*Instituto Nacional de la Economía Social y Solidaria*, Inaes) emerged, assuming the duties and integrating with financial, material and human resources that had been assigned to the National Fund for the Support of Solidarity Enterprises (*Fondo Nacional de Apoyo para las Empresas de Solidaridad*, Fonaes), but after a year, it seemed to have only changed its name, while the Agreement for organizing and operating Inaes was published on July 22, 2013; with the same structure as Fonaes.
3. The option to form bodies on second to fourth degrees was established, but only as representatives (without contributing to define the sector's policy as *Ipdlless-07* had foreseen). [...] the reforms introduced to articles 31 to 35 cancel the possibility of establishing by force or imperative of Law a single representative body for SSE as a whole, although article 32 leaves the possibility of creating this type of body (Redcoop, numeral 7).
4. Two forms were instituted: the National Congress of the Economy's Social Sector<sup>19</sup> (*Congreso Nacional de los Organismos del Sector Social de la Economía*) (the sector's highest representative agency) and the National Council of the Economy's Social Sector Agencies (*Consejo Nacional de los Organismos del Sector Social de la Economía*) (operative and coordinating body of National Congress that would develop the sector's supporting activities). Both should have been established by the civil society, but would only have an advisory role. Unfortunately, these failed to materialize and all related articles were repealed on LESS-13. The Ministry of the Economy (*Secretaría de Economía*) as a representative of the State is strengthened as governor of Mexico's social economy, while weakening the interlocutory capacities of SSE, by disappearing the Congress and National Council figures. The presence of representatives of SSE at the Advisory Council is ambiguous and imprecise and limited (*sic*) to comments only. Additionally, representatives of SSE before the Advisory Council will no longer be democratically elected by the sector itself, but will now be incorporated as directly invited by the Institute's Director (article 25, fraction III) and alleged "international experts" will be permitted to participate. Thus, reproducing the legal conditions to preserve the subordination and dependence of the civil society to the State (Redcoop, numeral 7).

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<sup>18</sup> As the pre-eminence of human beings and their work on capital; the democratic, participatory, self-managing and entrepreneurial administration; work for the mutual and the community's benefit; the destination of the surplus from rendering services of social nature, to the growth of its reserves and funds, and to reimburse to its associates part of these in proportion to the use of services or the participation in the work of the sector's organisms.

<sup>19</sup> Would be formed by two congresspersons, each of the sector's organisms, in second, third and fourth degrees, found within the national Registry and 100 congresspersons elected at regional assemblies, summoned and developed by Inaes, based on the various geo-economic regions it must establish, as well as the respective organisms of integration having registered.

5. The National Registry of Organizations of the Social Sector of the Economy (*Registro Nacional de los Organismos del Sector Social de la Economía*) was created as the public instrument responsible for systematizing the information and registering the sector's organizations to which those who wish to claim the benefits and prerogatives of the programs referred by LESS-12 must subscribe. Inaes will annually publish a compendium of basic information on the sector's registered organizations, as well as their capacity and services covered. It never achieved to operate and all related articles were repealed in LESS-13, thus:
 

[...] it obstructs the creation of an institutional support framework for the takeoff and consolidation of SSE. From now on, the recognition and classification of SSE organizations will be entirely dependant on the catalogue that the Institute creates thereon.

The arguments of financial economy referred to in the statement of reasons for justifying the non-establishment of the national Registry show the true lack of interest of the country's political class in favor of a an important and sustained investment of resources, aimed at mobilizing the latent social energy found in the urban neighborhoods and rural communities in the country, which the social and solidarity economy could achieve (Redcoop, numeral 10).
6. It specified the obligation to assess compliance of public policies to promote and support the sector's agencies every three years (including results, management and service indicators to gauge their coverage and impact), but it would be the responsibility of the National Social Development Policy Assessment Council (*Consejo Nacional de Evaluación de la Política de Desarrollo Social, Coneval*) while Inaes was responsible according to Ipdless-07 and would be performed by independent bodies (civil society organizations or public or private universities, appointed by open public tender).
 

[...] it becomes insubstantial to have the results delivered to the Advisory Council (article 55) given they have no binding effects for the directors of Inaes and the Council is limited to comments only (Redcoop, numeral 7).

In contrast, there were practically no positive changes with the approval of LESS-13. Redcoop warned:

The only positive aspects we came to perceive were regarding the proposed addition to article 15 to prevent the budget allocated to the promotion of SSE from suffering reductions; the provisions of article 46 in the sense of the Ministry implementing the Program for the Promotion of Social Economy, as well as regional and special programs and eliminating the supervision and sanction functions the Institute used to have, as it was wrong for it to act as judge and jury (Redcoop, numeral 2).

From these, the addition to article 15 in order to prevent the budget allocated to the promotion of SSE from suffering reductions was not included in LESS-13 and the Program to Promote Social Economy was already considered in LESS-12, thus having left only the precision that regional and special programs will also exist, but this can be considered as more of an enunciation aspect.

Furthermore, it is important to highlight some aspects that were proposed during the initial discussions of Ipdless-07 (and incorporated into the expectations of relevant agents) that were ultimately not included in LESS-12 and were not recovered upon the approval of LESS-13:

1. Losing the comprehensive view of public policy for SSE implied by the attributions of Inaes (article 12 of Ipdless-07 facing 14 of LESS-12).
2. The purpose of LESS-12 was to establish mechanisms that would enable organizing and expanding the economic activity of SSE, and, although it did not explicitly indicate its "promotion of development, strengthening and visibility" of this as LESS-13 does, it did specify "the State's responsibility to promote and drive".
3. Diminishing the significance of Inaes, as well as its attributions and allocated budget.
4. Substituting the Fund for the Promotion of Social and Solidarity Economy (proposed by Ipdless-07), for a simple Promotion Program, with resources dependant on the annual allocation of the Expenditure Budget of the Federation. This, in turn, prevents it from acting as

a one-stop shop for concentrating and promoting several of the sector's projects (as was the original intent of Ipdless-07).

5. LESS-12 reduced the citizen advocacy by eliminating the Inaes Board of Directors and established instead an Advisory Council that could only comment but make no decisions whatsoever (with voice but without vote). Also, it would have the participation of six counselors elected with an honorary capacity by National Congress and ten counselors appointed by the Secretary of Economy (instead of the six provided by Ipdless-07). Meanwhile, LESS-13 assigns that same counseling role but counselors will be invited by Inaes and could be representatives from the fields of academic, scientific, professional, business, Legislative Power or international bodies related to the matter and not only the sector's organisms.
6. The Secretary of Economy was assigned more attributions and makes all the important decisions while SSE lost its strength and interlocutory capacity.
7. Eliminating the possibility of establishing the Conciliation and Arbitration Commission (foreseen in Ipdless-07) that had the goal to "promote and procure the reconciliation of interests within and between sector entities as the preferred route for the settlement of conflicts, acting as an arbitrator in cases where the parties so agree".
8. Not establishing specific legal forms for organizations of the social and solidarity economy, leaving only those considered by Cpeum for the economy's social sector (communal lands, communities, workers' organizations, cooperative societies, enterprises mostly or exclusively owned by workers and, in general, all forms of social organization for producing, distributing and consuming socially necessary goods and services).

### 3. BY WAY OF CONCLUSION

Ipdless-07 seemed to have foreseen all elements for integrating actions, scattered (even contradictory) until then, and formulate its own public policy, but many of them were eliminated or self-excluded by their promoters in order to facilitate its acceptance among the various intervening forces (within political parties, civil society organizations and facing the public federal Administration). As stated by Mario Monroy, Vice President of the Mexican Business Council of the Solidarity Economy (*Consejo Mexicano de Empresas de la Economía Solidaria*): "Due to the diversity of the intervening forces and interests to defend, various claims had to yield (sic) in order to move forward".<sup>20</sup>

Notwithstanding having achieved its unanimous approval on several occasions, there are several criticisms to LESS (12 and 13). One of them is that it seems to not distinguish the profound differences existing among the various legal and associative forms, as well as economic, from the social organization forms for producing, distributing, consuming and offering goods and services. A public policy to promote SSE and achieve long-lasting effects and impacts among the low-income population must treat the unequal unequally and this concerns the sector's organizations as well as the population they assist.

The instances LESS-12 proposed to create (National Institute, National Congress and Advisory Council) failed to fully develop. Inaes operated in 2013 but only with a change in name, with the same operation regulations and supports. Some leader-writers believed LESS-12 would lead to leave without any financial support the beneficiaries Fonaes used to assist (informal groups, single mothers and people with disabilities seeking to become self-employed) and would only support companies that were already constituted or cooperatives. They said that was intended as an incentive to formalize organizations, strengthen the economy and provide stability for self-employed workers, but could also become a screen of the political corporate spirit (i.e., those who would be forced to belong to a business society or political organization disguised as a cooperative). According to some analysts, that meant going back to believing citizens may create individual companies as minors and assuming they are forced to go collectively, at best, or rather adhere to a corporate organization.

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<sup>20</sup> Mario Monroy, "Viacrucis en el proceso de armar una ley que fomenta la economía solidaria en México". *Mercado Justo*, Digital Journal of Latin America, year 3, núm. 7, October, 2008.

On the contrary, Redcoop believes it is risky to assist people:

By not demanding the adoption of a legal figure as a requirement to access the benefits included in LESS, condemning SSE to permanent informality and marginalization without a single incentive to overcome such a state of matters. As is known, individuals are more easily manipulated and controlled with material concessions. Therefore, the neoliberal model in fashion rejects collective identities and hates all forms of social organization (Redcoop, numeral 6).

Instead of advancing, LESS-13 seems to have reduced even further the capacity to define a public policy for SSE and the latter's possibility to influence the former. Many important articles that were requiring substantial improvements were not modified, legal loopholes were not solved and there is no real progress on the situation of the sector's bodies or on the population it benefits.

Redcoop rates the Law as "a regression by reinforcing control mechanisms of paternalistic, clientele and welfare nature" since despite the purpose of LESS-13 (promote, encourage and strengthen SSE) "social Economy does not advance towards self-management, not even co-management with the State, but is kept as a passive and receptive entity for government support, as a chronic dependant" (Redcoop, numeral 7).

Likewise, Redcoop believes the reform introduced to article 3<sup>21</sup> is insufficient even as a precise, complete and comprehensive definition of social economy; it does not indicate regarding the non-profit nature of its integrating organisms – which constitutes their essence and crucial distinguishing trait – and without considering the solidarity economy practices, thus making LESS-13 a legal order limited to regulating social economy and "its name fits too big".

In the doctrinal it produces a significant regression by establishing as merely declaratory the ascribing of purposes, values, principles and practices of the social and solidarity economy (article 7). Furthermore, it does not make the corresponding and indispensable adjustment to articles 8, 9 and 10, as confusion persists regarding values, principles, purposes, practices, etc. (Redcoop, numeral 5).

Making use of the attribution granted by article 13 of LESS-13, the Secretary of Economy issued the Agreement for organizing and operating Inaes, and – as was to be expected – made use of the power to legislate on the subject which, in addition to the provisions of article 24 of the Law itself, adds two functions:

- Issue opinions and formulate proposals on the other programs and projects of public support to promote, encourage and develop the Sector, and
- Issue opinions and suggestions to implement, conduct, guide, monitor and evaluate the Institute's actions.

Seven general coordinators will operate in Inaes,<sup>22</sup> four of them substantive (of Operation<sup>23</sup>; of Business Promotion and Development<sup>24</sup>; of Popular Finance<sup>25</sup>, and of Productive Impulse of Women

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<sup>21</sup> Defines the function of this sector "[...] as a socioeconomic system created by social property organisms, based on relationships of solidarity, cooperation and reciprocity, privileging work and human beings, formed and managed in an associative manner, to satisfy the needs of its members and the communities where they develop [...]".

<sup>22</sup> The same that had existed in the Fonaes as general directorates. "Agreement that regulates the internal organization and operation of the General Coordination of the National Support Program for Solidarity Companies" ("*Acuerdo que regula la organización y funcionamiento interno de la Coordinación General del Programa Nacional de Apoyo para las Empresas de Solidaridad*"), DOF, October 20, 2009, [http://www.economia.gob.mx/files/marco\\_normativo/A554.pdf](http://www.economia.gob.mx/files/marco_normativo/A554.pdf). Each of them will issue the procedures, guidelines and criteria that guide and regulate the operation of instruments and types of support indicated in each case.

<sup>23</sup> Instruments that strengthen the businesses established by the union members of the sector's bodies and are managed by them; as well as those intended to guide the development and consolidation of social organizations that promote the



and Vulnerable Groups<sup>26</sup>), corresponding, in addition to the powers indicated in article 16, to formulate, execute and monitor the instruments and types of supports foreseen in the Rules of Operation.

Outstanding among the loopholes unresolved by LESS-13 is the creation of efficient mechanisms for defining a public policy that:

- Includes a clear conceptual definition of what should be understood by social and solidarity economy.
- Incorporate and legitimize solidarity economy practices.
- Set a proper tax regime for cooperatives in accordance to their social nature.
- Promotes a true, self-managing and democratic participation of social economy organizations.
- Recognizes and strengthens a new social actor, with strength, with a real interlocutory capacity and influencing the definition of public policies and capable of participating in its later execution, evaluation and improvement.
- Establishes a democratic and transparent relationship between the civil society – and particularly social economy organizations – and the State itself.
- Reduces governmental power facing social economy.
- Avoids the possibility of reissuing a modern version of State corporatism – even more likely with the PRI return to power.

Therefore, LESS-13 does not rectify the deficiencies of LESS-12 nor recover any of the elements it had lost during its approval process. Actually, it does not represent a public policy towards the economy's social sector and does not open any space to influence its related public policy.

In sum, LESS-13 continues to lack a long-term course and horizon. In the short-term, Inaes has so far only represented a change in name the legal framework of SSE tends more towards legal involution than to its strengthening.

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creation and strengthening of the sector's bodies, supervising their compliance, and establishing goals and indicators regarding those instruments and types of support.

<sup>24</sup> Instruments related to developing, opening and expanding businesses and strengthening those that have already been established by the sector's bodies, considering the criteria for gender equality and for the assistance of vulnerable groups.

<sup>25</sup> Instruments for the promotion and consolidation of savings and credit activities performed by the sector's organisms, considering the criteria for gender equality and assistance to vulnerable groups.

<sup>26</sup> Instruments related to developing, opening and expanding businesses and strengthening those already established by the sector organisms formed by women, disabled persons or other vulnerable groups.

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