# Transfer of enterprises to worker cooperatives

## A PUBLIC POLICY FOCUS

Second pilot project financed by
the European Commission on the topic
'transfer of enterprises to worker cooperatives'

SAVINGJOBS!

edited by

REVES
Réseau Européen des Villes & Régions de l'Économie Sociale
European Network of Cities & Regions for the Social Economy

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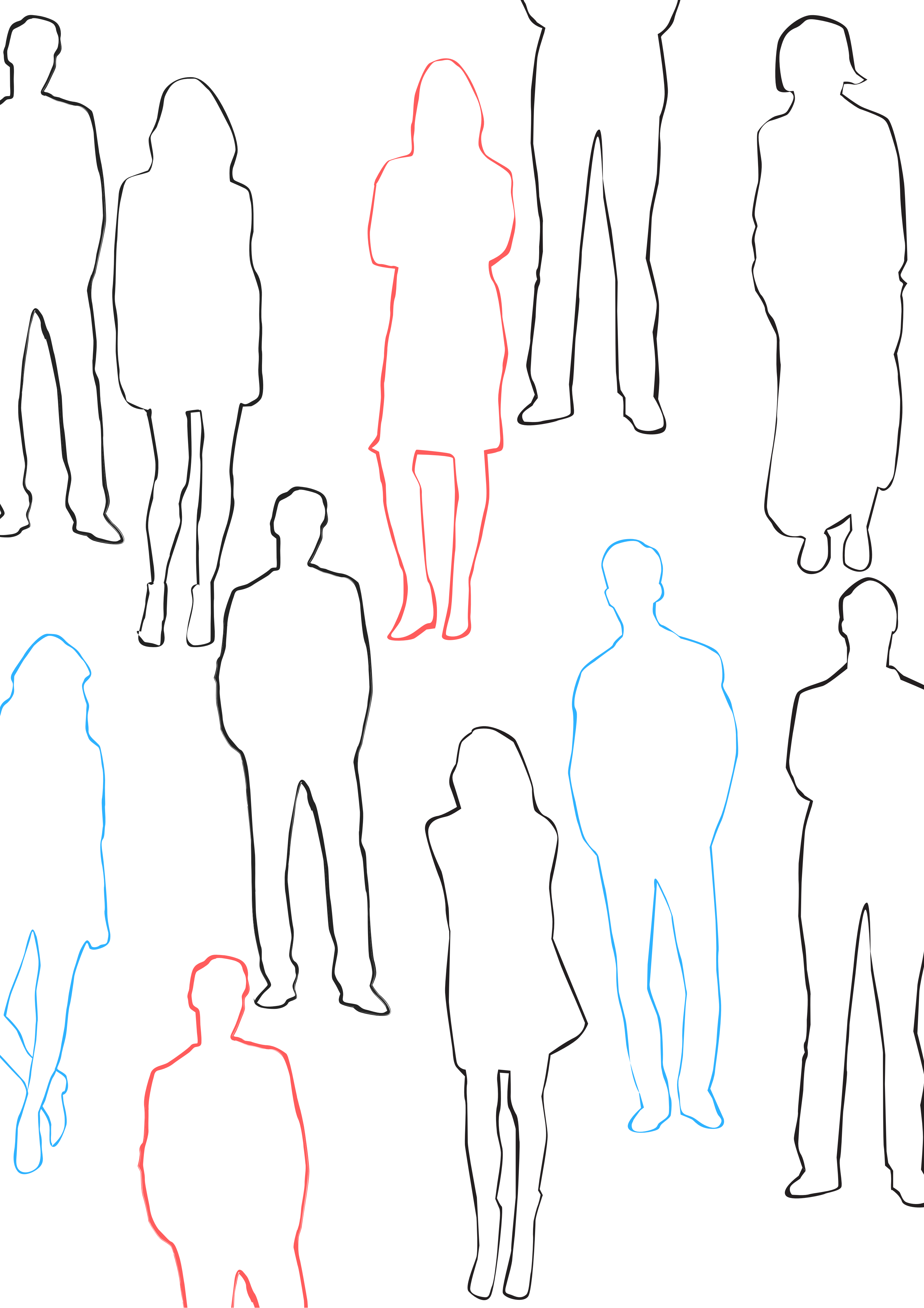

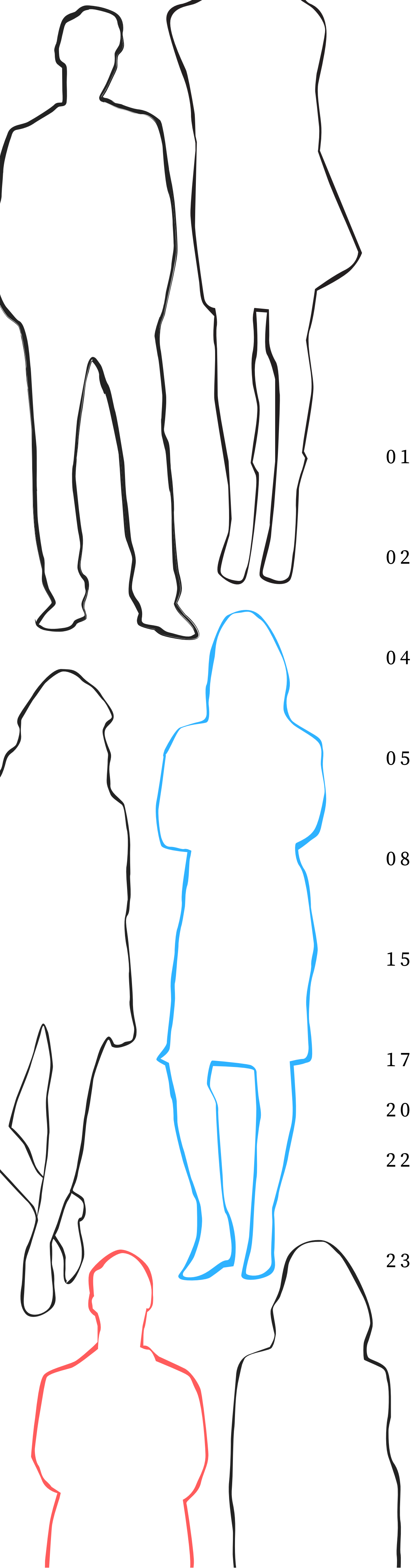

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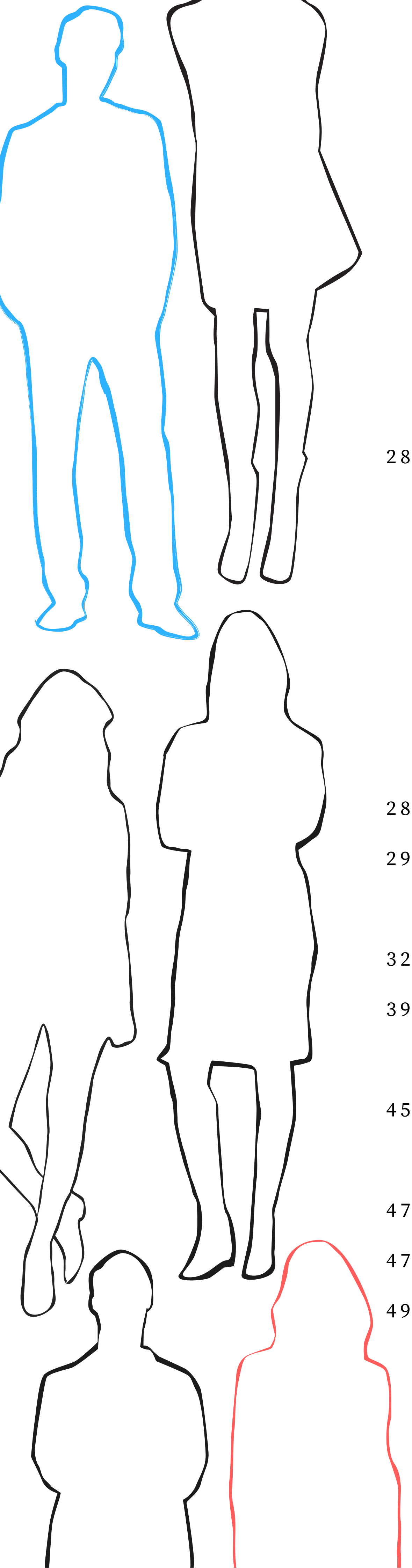

# *Preface*

In a number of European Member States business transfer has reached a prominent place on the policy agenda. An increasing number of businesses have to close down. This is due, on one hand, to economic difficulties linked to changing market realities or mismanagement and the resulting bankruptcy. On the other hand, however, more and more enterprises cease to exist at the moment of retirement of their owners who experience difficulties to find a successor.

In the case of a takeover, different type of ownership models may apply.

The Saving Jobs! project is one of two pilot projects, launched and co-financed by the European Commission, on so-called workers' buy-outs. It aims to analyse and improve the environment for ownership transfer to workers/employees and the transformation of the respective enterprises into worker cooperatives. Main objective of the project was to develop a training module targeting social economy (cooperatives), public authorities, training agencies, business consultants, employees and other players which are or could be in a position to accompany and/or carry out such transfer processes. This task was realized by COCETA (ES), lead partner of the project, due to its longstanding experience in accompanying this type of ownership transfer. The training module was then tested in cooperation with Kooperationen (DK), Cooperatives UK (UK) and NAUWC (PL) – all of them project partners. REVES, the European Network of Cities and Regions for the Social Economy, fed project discussions with the particular point of view of local/regional authorities and contributed to the dissemination of project results at European level.

This publication contains:

- A comparative analysis regarding the context around the transfer of enterprises to worker cooperatives in Denmark, Poland, Spain and the UK, enriched by examples from other EU member states which illustrate at the same time the role public authorities (can) play in this regard.

- A list of useful documents and links (though not exhaustive!).

- Extracts of the "Manual for Company Conversion Trainers. Concepts and methodology for the transfer of companies – in crisis or due to retirement – to the workers under the worker cooperative formula" developed by COCETA.

- A tool to support local players in a first rapid assessment of the situation in terms of probability of success of transfer of enterprises to employees' cooperatives (annexed).

# I. The context for workers' buy-outs in the UK, Spain, Denmark and Poland

*By REVES – based on the contributions received from Cooperatives UK, COCETA, NAUWC, Kooperationen and individual REVES members*

## *Introduction*

All over Europe, transfer of companies (in particular business succession in case of retirement) has become a popular topic on the agenda of politicians, administration, employer organizations etc. However, the option 'transfer to worker cooperatives' still seems to be widely ignored or does not receive much attention.

*The International Cooperative Alliance defines "worker cooperatives" (ICA) as follows:*

"Worker cooperatives are enterprises subject to the same restrictions of competition, management and profitability as other companies.

Their originality lies in the fact that their workers hold the majority of the shares [*in Spanish "capital social"*], at least 51%. In doing so, the workers decide jointly on the major guidelines of their enterprises and appoint their leaders (managers, boards of directors, etc.). They also decide on how to share the profit with a two-fold aim: to give the preference to the workers of the enterprises, in the form of refunds based on the work done and to consolidate the enterprises with a view to handing it over onto the future generations, e.g. by creating reserves to reinforce the long-term sustainability of their enterprises.

In all cooperatives, the internal democratic control is based on the principle of "one person, one vote" whatever the capital share held by the individual members; in the case of worker cooperatives, these members are the workers. Finally, the cooperative spirit promotes its employees information and training, a prerequisite to develop the autonomy, the motivation and responsibility, accountability required in an economic world which has become insecure."[1]

The following short analysis is based on a first synthetic stocktaking exercise (not exhaustive) by project partners regarding the state of the art of cooperative workers' buyouts in Spain, UK, Poland and Denmark which shed some more light on the existing potential/good practices, but also on shortcomings/pitfalls that need to be tackled by different players.

It further includes some additional information on the role of local/regional authorities that should not be under-estimated, as local/regional policy may considerably contribute to shaping the context in which cooperative workers' buyouts *are* or *are less likely* to happen.

[1] World Declaration on Worker Cooperatives approved by the ICA General Assembly in Cartagena, Colombia, on 23 September 2005.

In the UK, approximately 250-300 employee-owned businesses (transfers from private businesses) do exist, as well as around 100 public sector spin-offs. However, not all of these employee-owned businesses can be set equal with real worker cooperatives (in particular when it comes to the participation of workers in the management of the enterprise etc.).

In Spain, in 2015, some 20,384 cooperatives were recorded, of which 17,000 are worker cooperatives. These companies, as a whole, employ approximately 300,000 persons.

A number of factors promote or hinder worker buy-out and, more specifically, co-operative worker buy-out. The following will be taken into consideration in this analysis:

1. Political willingness to promote (cooperative) worker buy-out
2. Legislative framework
3. Existence of appropriate support schemes (business advice, finance…)
4. Training and education schemes
5. Information and awareness-raising
6. The role of trade unions

## 1. Political willingness to promote employee ownership/cooperative worker buy-out

Many of the following aspects – specific legislation, business support, availability of appropriate financial instruments – are closely linked to the willingness of policy-makers to promote the model through their policies and give it more credibility. Also trade unions (*see point 6*) may play a specific role in creating a favourable (political) environment for the transfer of businesses to workers and, more specifically, worker cooperatives.

*In the UK*, employee ownership *in general* – more than the topic "worker cooperatives" as such - seems to receive slightly more attention in the public.
The Conservative-Liberal Democrat government coalition, which ran from 2010 to 2015, had a Minister with some responsibility for employee ownership (the Conservative government from 2015 did not continue this role).

Following proposals from the Liberal Democrat side of the coalition, with Nick Clegg and others arguing for more of a 'John Lewis style economy', the Coalition as a whole did introduce a series of measures to help employee ownership. Most of these measures were based on the recommendations of Graeme Nuttall, a solicitor with experience in employee ownership, who was appointed government advisor on the subject. All 28 recommendations of the so-called "Nuttall Review" (2012) were accepted. They included, for instance, the introduction of tax incentives to encourage owners to sell to employees, or a service to help people set up employee-owned service mutuals as a way to deliver public services. It was in particular the Finance Act of 2014 which stipulated significant tax reliefs that helped raising the profile of the model "employee ownership" in general.

Employee ownership appeared to drop from the political agenda following the 2015 election. However, in June 2016, new Prime Minister, Theresa May, committed to more mutual models in the economy and initially announced a desire to see employee representation on company boards. This is an idea she appears, however, to have rescinded.

*In Denmark* politicians show an increasing interest and willingness to develop a supportive environment for business takeovers. However, the focus here is mainly on takeovers within families.

In *Poland*, employee ownership and cooperatives in general do not figure at all on the policy agenda (which is partially also due to a wrong perception of cooperatives that are still very much associated to cooperatives such as they existed in communist times). This lack of political willingness to tackle the topic becomes visible also in a specific law, adopted in 1996 and much criticized by the cooperative movement, which makes cooperative worker buy-out explicitly impossible by allowing business transfer to 'traditional' private businesses only. In 2017, new windows and possibilities seem to be opened with the announcement, by the Polish government, to draft and adopt new legislation on business succession.

Among the four countries analysed, *Spain* has probably the most favourable policy environment for cooperatives worker buy-outs that have been, since at least 30 years, an important instrument to ensure the survival of companies and maintenance of jobs. This is due also to a fairly strong and long-lasting cooperative culture and institutionalized dialogue between government, trade unions and social economy platforms at national and regional level.

## 2. Existence of a proper legal framework (at national, regional and local level)

Legislation is obviously a main aspect to be looked at when analyzing the context for cooperative worker buy-outs in different Member States and regions.

Depending on the country, not only national rules, but also sub-national legislation – or the absence of a (*appropriate*) legal framework at national and regional level - may have an impact.

Different types of legislation have to be taken into consideration: legislation on cooperatives, legislation on the transfer of businesses, but also more general company law which might apply to cooperatives even where specific legislation on cooperatives does exist.

### *2.a A legal framework for (worker) cooperatives*

A specific legal framework for co-operatives at national level exists in the UK, Spain and Poland.

In the *UK*, the Cooperative and Community Benefit Societies Act 2014 replaced the former Industrial and Provident Societies Act 1965. It sets out rules and treatment for cooperative societies. Cooperatives may take various organizational/legal forms (more than 5) which can sometimes lead to confusion.[2] Most worker cooperatives use, nevertheless, the company legal form.

*Poland* has a general law on cooperatives as well as a number of specific laws applying to certain types of cooperatives. These specific cooperative laws regulate questions of funding, management, merger and liquidation – for any other question not covered the general law on cooperatives applies. Many perceive this set of legislative acts as fairly complex and also incoherent.

In *Spain*, where cooperatives and the need for their development are already mentioned in the country's constitution (see, for example, article 129.2), a specific national law on cooperatives exists (latest version: Law 27 of 16 July 1999 on cooperatives). Apart from delivering a definition of what a cooperative is, it regulates main elements linked to the constitution of cooperatives, their statute, members, governance, (social) capital, economic activities, merger, transformation, liquidation etc. Besides, 16 out of the 17 Spanish autonomous communities (regions) published their own regional law on cooperatives. Worker cooperatives are regulated mainly by these regional laws. Moreover, specific national laws exist on aspects such as the fiscal regime for cooperatives, accountancy rules etc.

Nevertheless, in countries such as Poland and the UK cooperatives also have to respect a number of provisions laid down in ordinary company law[3], which increases the complexity of rules.

In *Denmark*, the Danish Constitution protects and promotes freedom of association and free creation of not-for-profit associations, including co-operative companies. Cooperatives are governed by the *Consolidate Act on Certain Commercial Undertakings, No 651 of 15.6.2006*. Yet, this piece of legislation provides only the definition of a cooperative as well as provisions linked to dissolution, merger and de-merger. For all other questions not covered, ordinary company law applies. Matters related specifically to the cooperative identity have to be defined in cooperative statutes.

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[2] See, for example, Cooperatives UK – Overview of different type of cooperatives and their statutes: http://www.uk.coop/resources/model-governing-documents.

[3] See, for instance, the Companies Act 2006 in the UK.

The absence of a specific law on cooperatives is not perceived as an obstacle *to the creation of cooperatives as such*. However, according to the Danish cooperative apex organization, Kooperationen, the advantage of such specific legislation in the Danish context could be to raise the visibility of and awareness on the cooperative model, reinforce the identity of cooperative enterprises in general and promote social inclusion and labour market integration in particular.

*Examples from countries outside the project partnership*

*France, Provence-Alpes-Côte-d'Azur region*

*In September 2010, the multinational Unilever decided to close down a tea and herb processing and packaging factory nearby Marseille (FR) in order to relocate activities abroad. This decision was followed by a 3 ½ year fight of the workers for the maintenance of the enterprise and their work places. The workers occupied the enterprise and led a boycott campaign against Unilever. At the same time legal procedures against the multinational were running and workers continued holding meetings among themselves, with policy-makers and other players. Finally, the decision was taken to launch a workers' buyout procedure and to fight also for keeping the Thé Eléphant label, which was considered regional cultural heritage. CGT, a trade union, supported the workers in their initiative. After 3 ½ years of fight and litigation with Unilever, workers were finally able to take over the enterprise which now produces organic tea using products from regional agriculture. This was done with the support of a) the PACA region who financed a feasibility plan and b) of the city of Marseille who bought the land on which the factory is built as well as the machines. Much of the compensation Unilever had to pay to the workers for laying them off was then invested, by the workers (cooperators), in raw material and other equipment needed to continue with the production. In 2014, approximately 60 workers (cooperators) finally created the co-operative "SCOP TI" (Société Coopérative Ouvrière Provençale de Thés et Infusions).*[4]

*The model of cooperative workers' buyout was not discussed right at the beginning of the workers' fight. However, according to many who accompanied the whole process directly, the at the time ongoing preparations of the French law on the social and solidarity economy*[5] *helped convince workers and trade unionists of the model. The law drew the attention of the public on workers' buyouts and increased the credibility of the cooperative model. It contains specific articles on workers' buyouts (articles 18-22).*[6]

## *2.b A legal framework for the transfer of businesses and their transformation into (worker) cooperatives*

Specific legislation for the transfer of enterprises to (worker) cooperatives exists *in Spain*.

[4] www.scop-ti.com
[5] Loi no 2014-856 du 31 juillet 2014 relative à l'économie sociale et solidaire.
[6] Interview with Philippe Chesneau, former vice-president of PACA region, 4 October 2016.

However, the cooperative movement hopes for a further improvement of existing provisions, as not all the aspects of business transfer and transformation into (worker) cooperatives are sufficiently dealt with. It stresses the need for more appropriate provisions in already existing legislation on the ownership transfer to worker (cooperatives), specifically with regard to the rights of workers. Aspects that need to be integrated or further elaborated relate, for instance, to the timely information of workers on the situation of their enterprises, to workers being reimbursed first in case of bankruptcy of their enterprise or to the preferential access of workers in case they decide to take over the enterprise.

Despite tax incentives aimed at promoting employee shareholding and buyouts, the *UK* does not have any specific legal framework to facilitate buyouts. The lack of a legal definition of 'employee-owned business' and 'social enterprise'/'worker cooperative' is considered a main problem in this context, as regulations do not always take appropriately into account the specificities of different types of enterprises (including worker cooperatives). The existence of also very different forms of employee-ownership (direct, indirect, hybrid employee-ownership) in which the employee ownership trust occupies so far an important position contributed to increasing (legal) complexity, but also led to a less deep focus of policies and public attention on worker cooperatives and workers' buy-outs.

Another problem reported from the *UK* with regard to already existing rules applying to the transfer of businesses are differences in treatment depending on whether it is a private company or a public structure which is changing ownership. In the case of public structures transferring to employee ownership, some benefits over private companies transferring to employee ownership do exist. Yet, the previously public structures will now be liable for corporate tax and VAT and their employees will no longer be able to access public pay, benefit and pension provisions that they previously enjoyed when part of the public sector.

On the other hand, in recent years, a number of legal measures have been introduced to facilitate employee-ownership (including workers' buy-outs) in general. An example are amendments of the Companies Act 2006 which aim to facilitate direct share ownership & share buyback to prevent external share sale. Moreover, provisions such as those linked to the SAYE and SIP schemes (*see sub-chapter on financial support*) have been designed to create financial incentives for employees and enterprises.

In *Denmark*, no specific legislation does exist. In the case of a transfer of an enterprise to (worker) cooperatives the former have to follow rules for the dissolution of a company such as they are laid down in ordinary company law. Thereafter the (future) worker cooperative has to go through the ordinary procedure applying to the establishment of new enterprises.
In *Poland*, legislation allows for a transformation of businesses or public entities into 'traditional' private companies only.

*Italy*

*In Italy, important foundations for the promotion of workers' buyouts were laid by the so-called "Marcora law" (Legge 49/1985 which was slightly modified in 2001 by Legge 57/2001). This piece of legislation made the creation of a specific revolving fund (managed by Cooperazione Finanza Industria,*

*a finance cooperative – established to this purpose) and other financial instruments for cooperative workers' buyouts possible.*
*The mechanism functions as follows: Employees willing to take over their enterprise in form of a worker cooperative receive a lump sum payment corresponding to three years of unemployment benefits.*
*Over a period of 5-10 years, the CFI then becomes an investor member of the cooperative and acquires shares having the same value (or the double value) of the investment made by the employees.*
*Apart from financial support, the system also foresees accompaniment of the newly created cooperative through a CFI advisor.*

***Belgium, Brussels-Capital Region***

*In its "Small Business Act 2016-2025", published in June 2016, the Brussels-Capital-Region foresees - under the objectives 1.7 and 1.8 a whole package of measures on ownership transfer of enterprises. On one hand, the aim is to better coordinate already existing measures. On the other hand, new measures and instruments also dealing with employee ownership are introduced. In this context, the Brussels-Capital Region announces the launch of an initiative led by the newly established incubator Coopcity in cooperation with Union des SCOP Wallonie-Bruxelles[7] to analyse the potential of cooperative worker buy-out model in the Brussels-Capital Region (measure 9C).*

## 3. Existence of appropriate (financial) support schemes (finance, advice…)

Political support and a favorable legislative framework for employee ownership and the cooperative model are vital when it comes to paving the way for cooperative workers' buyouts. However, to make such kind of enterprise transfer a success, specific services such as business advice, but also financial support above all in the start-up phase are indispensable.

These services have to be targeted to employees, but also to enterprise owners searching for a solution for their enterprise at the moment of their retirement or in economic difficulties. Experiences, in Italy[8] and other countries, show that owners and managers might become co-operators themselves and therewith support their employees in opening a new and sustainable chapter of history for the enterprise.

### *Public support schemes (advice)*

In *Spain* several public support schemes exist that are specifically aimed at creating and maintaining employment in the field of Social Economy. In this context, some autonomous communities dedicate specific resources to workers' buyouts.

[7] Union des SCOP Wallonie-Bruxelles is a network promoting the participation of workers in enterprises.
[8] Mastrandrea, Angelo: « Cosa succede nelle aziende italiane salvate dagli operai ». www.internazionale.it; 08/10/2016 ; http://www.internazionale.it/reportage/angelo-mastrandrea/2016/10/08/aziende-salvate-operai

*Scottish* and *Welsh governments* fund support and advice services specifically aimed at employee ownership. However, the *UK* government has not provided this type of support and the Public Service Mutuals team has been disbanded.

*In Denmark* no specific public support instruments for cooperative workers' buyouts does exist.

Partners *in Denmark, Poland, Spain and the UK* also observe another obstacle for the provision of appropriate public (and private) advice schemes: Many lawyers, accountants or business advisors have little specialized knowledge and expertise regarding employee ownership. In a number of cases where enterprises/groups of employees were finally directed towards traditional business advice schemes they were given even inappropriate and incorrect advice.

*In the UK*, Cooperative Development Scotland - a team within Scottish Enterprise, the Economic Development Agency of the Scottish Government - has run an engagement programme for lawyers, accountants and bankers with a view to increasing levels of knowledge about how employee ownership works. This has involved specific training sessions, client events, and liaising with interested bodies such as the Law Society of Scotland and the Institute of Chartered Accountants of Scotland. The team has also produced a number of guides and marketing collateral to support activities and funded some research studies. Moreover, the Employee Ownership Association is driving a bid to include more awareness of employee ownership within the professional advisors community. The aim is to have at least one accountant in every practice to be expert in the models and processes of employee ownership.

Finally, in *Spain* and the *UK*, regional differences regarding support schemes (advice, training, finance…) have to be taken into account. National "one-stop-shops" for workers' buyouts do not exist in any of these countries.

## *Private support schemes (advice)*

In all four partner countries advice services on *cooperative* workers' buy-out seem to be provided in the first place (in Poland exclusively) by main platforms and service providers belonging to the cooperative sector.

The *Spanish cooperative platform COCETA*, for instance, ensures concrete advice and accompanies workers' buyouts through its experts (business advisors, accountants, lawyers…) in all its regional branches. In this context it also facilitates access to other resources such as public support, financing, etc.

"The Hive business support programme", a specific programme run by Cooperatives *UK,* a trade association for the co-operative movement, offers similar services. Co-operatives UK can also offer funded support to companies. It has issued several publications on employee ownership. Also the national Employee Ownership Association supports (cooperative) worker buy-outs through specialised consultants. The economic development agencies in Wales and Scotland have dedicated teams who support enterprises considering employee ownership, and are able to offer funding support for the transition.

*Kooperationen, the main cooperative apex organization in Denmark*, does not have a *specific* programme, but can provide legal support and guidance as well as contacts to other relevant organisations and potential partners.

*NAUWC in Poland* has the capacity to advice groups of workers/employees wishing to take over their enterprise (an example is a feasibility study and counseling for the employees of a public hospital). Moreover, each year, cooperative auditing unions in organize a set of specialized training courses dedicated to management and supervisory boards of cooperatives. However, as explained beforehand, the political situation and legislative framework in Poland do not allow for cooperative worker buy-outs so far.

*France, PACA region*

*The PROGRESS programme [9](2007-2012) of the PACA region included an article on solidarity-based take-over/transfer of enterprises which made social and solidarity economy eligible for a specific regional instrument supporting change of ownership (this instrument is part of the Regional Scheme for Economic Development). Support measures mentioned (some of them already existing, others to be established) included loans[10], awareness-raising of owners of enterprises and of employees on different models for a transfer of ownership, counseling and training of owners (cedants) and employees wishing to take over the enterprise, support in the framework of a "test phase" of the entrepreneurial activity and a fair of opportunities aiming to bring together owners and possible successors.*

*Italy, Province of Messina*

*In the city of Messina (IT) 15 workers managed to take over a beer brewery (once ownership of Heineken) that had been closed by its private owner suspected having stopped beer production due to real estate speculations. The example of the worker cooperative "Birrificio Messina"[11] shows the fundamental role that also civil society organizations such as Community Foundations can play in such a context. In the case of the Birrificio Messina, workers could benefit from a close mentoring by different members of the Community Foundation Messina[12] that shared their expertise in terms of*

[9] Plan régional de développement de l'ESS (Regional Plan for the Development of the Social and Solidarity Economy.

[10] Prêt régional à la transmission-reprise d'entreprise (PRTE)

[11] http://www.fdcmessina.org/index.php/pag-sezione/birrificio-messina/

[12] The Fondazione di Comunità di Messina (Community Foundation of Messina) was established in 2009 by a number of different local actors, among them co-operatives, associations and other forms of social economy, ethical finance and banking structures, the local employers' confederation representing traditional non-social small and medium enterprises, representatives of the academic world and single citizens. The objective of the foundation, as its name already tells, is to promote the development of the local community in the city of Messina through the realization and support of diverse, but related projects. Through the different types of structures and persons involved (managers of enterprises, economists and bankers, social workers, psychologists, researchers), the Community Foundation disposes not only of an important own fund, but also of a precious pool of diverse competences based on which the projects are developed and/or can rely.

*business planning, accountancy, management, fund-raising and fiscal matters etc. Moreover, the foundation provided key support in mobilizing investors and future clients through a public campaign (targeting also Italian citizens on other continents such as America or Australia).*

*In this context, however, members of the Community Foundation Messina also stress the importance of the Province of Messina (Prefettura) in helping to bring different institutional players and supporters together. (Also the region supported the initiative – e.g. by putting two buildings at the disposal of the cooperative.)* [13]

## *Financial support*

Another main condition for successful (cooperative) workers' buyouts is obviously the capacity of workers/employees to cover the transition costs and raise enough capital to re-launch the activities of the enterprise (sometimes also by adapting activities to another type of demand and/or a new vision of the enterprise). In some countries these costs also include financial investments that become necessary due to specific capital requirements such as the obligation to create a reserve (this is, however, not the case in Denmark and Poland).

Tax reliefs from which cooperative workers' buyouts may benefit exist in the UK and Denmark – in some cases they were established for small and medium enterprises and start-ups more in general, in others they apply specifically to worker buy-outs. To give just two examples from the UK: In the context of a *Save As You Earn (SAYE) Option Plan* an enterprise might offer its employees [condition: *all* employees] the option to acquire shares at a certain (preferential) price. The employee, in turn, does not buy the shares immediately, but commits to save a certain amount of money over a given period after which he/she acquires the shares. Any gains the employee might have after this period (as the price of the shares might have increased, but the employee buys them at the price agreed initially with the enterprise) won't be taxed. A *Share Incentive Plan (SIP)*, in turn, makes it possible for employees to immediately purchase capital of their enterprise with full income tax relief as long as they invest their gross pay ('pre-tax pay') for this.[14]

Favourable rules regarding taxation alone, however, cannot prevent and counteract a general problem of lack of resources and, in particular, of patient capital.

*In general, workers' buy-outs in the UK, Spain and Denmark have access to broader support schemes for SMEs/start-ups (not specifically addressing cooperatives).*

Some countries/regions established *specific* programmes allowing worker buy-outs for example to have access to *public loans* or other financial instruments.
*In Denmark* and *Poland* no specific programmes and instruments for workers' buyouts exist.

Public authorities in different European countries might support workers' buyouts materially by putting at their disposal land, buildings and production material (including machines).

[13] Interview with Elio Azzolina, financial manager of the Community Foundation Messina, 10 October 2016.
[14] https://www.gov.uk/tax-employee-share-schemes/overview

In the social private sector, it is often the cooperative movement itself which mobilizes funding among its own members and dedicates (parts of) funds specifically to promote the establishment of new cooperative start-ups or cooperative workers' buyout. This is the case, for instance, in some Spanish autonomous communities. *In Denmark* and the *UK* such funds do not exist so far. In the UK, Co-operative Community Finance, a private financial intermediary, invests in many types of cooperatives, including worker cooperatives (however, sums available are low, relative to the usual funding requested). It was originally set up as the Common Ownership Fund. While some cooperatives have invested in it, it is mostly fed by individual investors and not a mechanism for pooling the capital of co-ops.

In a number of countries, ethical and alternative finance providers may also be able to provide loans, guarantees or even equity.

Some specialist lenders are beginning to appear in the UK. An example is Capital 4 Colleagues - an arm of ethical investor Castlefield that lends to employee-owned firms.

Rather rare are private funds established by companies that do not belong to the cooperative/social economy sector. However, some of them do exist, often in the framework of CSR initiatives. An example is the Baxi Endowment Fund[15] in the UK.

***Belgium, Wallonia region***

*The Wallonia region in Belgium established a specific financial support instrument for cooperatives that becomes relevant also in the framework of transfers of enterprises: The "Brasero" programme allows cooperatives with at least 10 cooperators to receive by SOWECSOM[16] – an investment society focusing on cooperatives and the social economy in general - 1 EUR for each EUR invested by the cooperators. SOWECSOM becomes thus an investor member of the cooperative for 5 to maximum 10 years (afterwards, the society will exit from the cooperative's share capital; employees have 5 years to acquire at least half of the capital invested by SOWECSOM).*
*In view of an increasing support, by the regional government, of worker cooperatives which are considered one of the options to counteract looming transmission problems of at least 1/3 of Wallonian enterprises in the upcoming years, the regional government adopted, in July 2016, a decree which increases the financial support available for worker cooperatives in the framework of Brasero (initially 60 000- 200 000 EUR) – be it in the case of a workers' buyout or in the case of new projects establishing working cooperatives. Worker cooperatives will therewith be able to benefit from an investment of up to 400 000 EUR (compared to 200 000 max for other types of cooperatives). Moreover, the decree foresees agreements between the region and micro-credit providers on the basis of which worker cooperators will be able to apply for microcredit (max. 25 000 EUR) in case they are not able to completely finance their share (as the objective is then to invest the borrowed money in the*

[15] Baxi Partnership Ltd, formed in 2001 out of the proceeds of the sale of the Baxi Heating Company, established a fund to support companies moving to employee ownership and has since supported more than 50 organisations in their move to employee ownership.
[16] SOWECSOM: Société Wallonne d'Economie Sociale Marchande was established in 1995 by the Regional Investment Company of Wallonia in cooperation with the Wallonia region and trade unions. http://www.sowecsom.org/a-propos.htm

*joint enterprise, this microcredit – if delivered to several co-operators - finally becomes a kind of "collective microcredit"). It also includes a guarantee mechanism in case co-operators are not able to pay their credit back*[17]*.*

***Belgium, Brussels-Capital Region***

*In its fiscal reform of October 2015 the Brussels-Capital region included a number of measures that do also or specifically benefit enterprises in a situation of ownership transfer and therewith cooperative buyouts. Modifications regarding succession and gift taxes are one example among several.*

***Italy***

*An interesting private instrument able to financially support a number of cooperative start-ups, cooperatives in difficulties and cooperative workers' buyouts are funds such as the COOP fund, managed by LEGACOOP (one of the three Italian federations of cooperatives). These funds were established on the basis of national law 59/92 which introduced new provisions regarding cooperatives. The latter obliges cooperatives to transfer 3 % of their total annual turnover to funds established by representatives platforms to the support of cooperatives.*

***Italy***

*Italian legislation (D. L. n. 145/2013, converted into L. n. 9/2014) allows (former) employees of an enterprise explicitly to invest (a part of) their income support (mobility allowances) in a workers' buy-out. It is even possible to ask for an anticipation and therewith one-off payment of these benefits provided workers/employees are willing to form a cooperative.*

[17] Communiqués de presse relatifs au Gouvernement wallon du 14 juillet 2016 : « La Wallonie encourage les coopératives de travailleurs » : http://gouvernement.wallonie.be/communiqu-s-de-presse-relatifs-au-gouvernement-wallon-du-14-juillet-2016

*Italy, Marche Region*

*The ESF Regional Operational Programme of the Marche Region (IT) foresees under Axis 1, Investment Priority 8.5/Action 8.5.d specific financial support for workers' buyouts of companies that find themselves in crisis. Eligible are "new enterprises constituted through acquisition of an enterprise (or a branch of an enterprise) in crisis through employees or former employees that may restructure, simply take-over or transform the enterprise". To be eligible, (former) employees have to form a cooperative and acquire the entire property of the enterprise or a branch.*[18]
*Also other Italian regions such as Sardegna earmark ESF budget in the programming period 2014-2020 specifically for workers' buyouts.*[19]

*Italy, Campania Region*

*The Italian Campania Region, with Regional Decree n. 353 of 6 July 2016, adopted the establishment of a revolving fund designed specifically to promote enterprise creation and self-employment of employees that work for enterprises facing difficulties. Workers' buyouts and the resulting worker cooperatives are central targets. The fund, which will provide soft loans, will be established under the ESF Regional Operational Programme 2014-2020 (axis 1, action 8.6).*[20]

*Italy, Piemonte Region*

*With the Regional Decree n. 17 – 1183 of 16.03.2015 the Piemonte Region (Italy) adopted new provisions for the implementation of the Marcora Law (revolving funds for the promotion of cooperatives). They establish criteria for the use of Foncooper Piemonte (revolving fund) that gives cooperatives access to soft loans enabling them to invest in buildings, land, material or immaterial assets such as brevets, licences or labels. Cooperatives established as a result of workers' buyouts figure among the main targets of the fund. The latter is coupled with a larger awareness-raising and support programme which the region carries out in cooperation with the regional cooperative movement in order to inform employees on their rights and opportunities.*[21]

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[18] Regione Marche/Giunta Regionale: Decreto del Dirigente della P.F. Formazione e Lavoro e Coordinamento Presidi Territoriali di Formazione e Lavoro N.288/SIM del 02/08/2016; Oggetto: POR Marche FSE 2014/2020, Asse 1 P.inv. 8.1 RA 8.5 e P.inv. 8.5 RA 8.6 Avviso pubblico per la concessione di incentivi per il sostegno alla CREAZIONE D'IMPRESA.

[19] Regione Autonoma della Sardegna: Delibera N. 52/28 del 28.10.2015.

[20] Regione Campania: Delibera della Giunta Regionale n. 353 del 06/07/2016.

[21] Regione Piemonte: Delibera della Giunta Regionale n. 17 – 1183 del 16.03.2015

*France*

*The French law on the social and solidarity economy includes, in its articles 27 and 28, specific provisions for a Société Coopérative Ouvrière de Production (worker-owned cooperatives) that has been created as a results of a workers' buyout. Workers are given several years to take control over the company by buying capital initially provided by investor members ("Scop d'amorçage").*
*Interestingly, in article 22, the same law also stipulates possible financial sanctions for enterprise owners (in form of a reimbursement of financial or material support by public authorities) in case the latter decide to close down the enterprise without making any effort to find a successor – a financial disincentive thus.*

*France, Rhône-Alpes region*

*Together with the Regional Union of Workers' Cooperatives (URSCOP) the Rhône-Alpes region has put in place Transméa, a specific investment fund for the transfer of companies to their workers/employees. Beyond financial support, workers also receive specific advice during the whole transfer phase. The investment fund is supported also by other players from the social economy and alternative finance sector such as MACIF, Crédit Cooperative or NEF.*

## 4. Existence of appropriate training/education schemes

Training is still an often underestimated aspect when it comes to (cooperative) workers' buyouts. Yet, appropriate knowledge and competences of employees are a fundamental pre-condition for the success of the transfer and of the cooperative.

Employees have to be able – inter alia - to manage their enterprise, to be prepared to deal with the specific features regarding cooperative governance, or to know how to best integrate the social and often general-interest-related vision of their cooperative in activities on an open market. Many of the conventional business advice and entrepreneurial training programmes – be they public or private - are not adapted to the specific case of (worker) cooperatives/cooperative workers' buyout in general. Moreover, there is nowadays a clear tendency to focus on the single entrepreneur.

Enterprise owners often lack the capacity to appropriately prepare the transfer of their enterprise or, in some cases, to play themselves an active role in the framework of a cooperative workers' buyout (e.g. by becoming themselves one of the co-operators).

On the other hand, observations by Saving Jobs! project partners highlight the lack of appropriately trained lawyers, accountants, business advisors and other experts needed to provide technical support to employees involved in a cooperative worker buy-out. Topics such as "cooperatives" and "cooperative workers' buyout" thus need to be (better) integrated in existing education and training modules (be it economics in general, business studies/business administration, etc.). At the same time, specialized programmes could be (further) developed by public and private training institutions to serve employees, but also technicians that might accompany cooperative workers' buyouts in the future. *In Poland*, the Cooperative Platform NAUWC offers such courses for specialists accompanying cooperatives/cooperative start-ups in general.

In *Spain*, the *UK*, *Poland* and *Denmark* most training courses for employees are organized and provided by the cooperative movement, cooperative development agencies, local development agencies and social economy platforms.

The *Spanish platform of cooperatives COCETA* and its members, for instance, organize and coordinate specific training on cooperatives and cooperative workers' buy-outs more specifically.

*Cooperatives UK* offer a 7-day training course for groups of employees in the framework of the "The Hive business support programme", operated in partnership with the Cooperative Bank. The Hive offers support for anyone wanting to explore cooperative models. It includes a specific offer on cooperative workers' buy-outs. This is a one day development workshop with a specialist adviser which should involve an explanation of the models available and a detailed "walk through" of the process. If an employee buyout is what the organisation wants to pursue, The Hive offers a further seven days of support, including a feasibility study followed by 6 days of implementation support. The Hive also offers membership of Co-operatives UK to provide additional support. Co-operatives UK has a huge amount of governance advice and resources. Many of these are available for free and there are additional services for members, including specialised Human Resources (HR) support. Co-operatives UK is a market leader in the UK in this respect as few other organisations have a focus on maintaining governance which actually empowers member-owners and makes a business accountable to them.

Other training providers are Scottish Enterprise and the Wales Co-operative Centre.
Employee-ownership is a key strand of the Social Business Wales project. This is a project funded by the Welsh Government and the European Union, delivered by the Wales Co-operative Centre. Social Business Wales supports the growth of social businesses across Wales through the delivery of tailored business support. The project works to raise awareness of sustainable succession routes and to deliver transaction support to organisations going through the process. The team consists of 13 business advisers, 3 of whom are employee ownership specialists. Social Business Wales covers social enterprises, co-operatives, community co-operatives, mutual spinouts, coop consortia and employee ownership. The service is fully funded; there is no cost to companies who use the service. The transition process is managed from beginning to end: from initial discussion with owner to working with the buyout team to drafting legal documentation.[22] Social Business Wales also offers post completion support, mentoring and training.
A few private consulting companies such as Ownership Associates UK also provide training courses to employees.

Some *UK* universities such as Sheffield University or University of Oxford (Centre for Mutual and Employee-Owned Business/Kellog College) offer specific courses on cooperatives/social enterprise and/or employee ownership. Edinburgh University recently launched an online course in employee ownership[23]. These courses all offer certificates, although these certificates are not recognised as part of the national qualifications framework (i.e. they are not equivalent to undergraduate or post graduate qualifications).

[22] The company is required to pay for their own legal advisers to examine the documents and to produce legally binding documentation such as the Share Purchase Agreement.
[23] https://www.edx.org/course/economic-democracy-cooperative-edinburghx-coopsx

A private consultancy, Ownership Associates UK, offers a training course designed for employees within employee owned firms.
The Employee Ownership Association is currently exploring a wider offering of employee ownership training.

Overall, however, the UK is considered, by organisations such as Cooperatives UK, as being not well provided for in terms of training and education in employee ownership.

## 5. Information and awareness-raising

Information and awareness-raising outside the already mentioned training schemes are crucial elements not only for the promotion of (a higher number of) cooperative workers' buyouts, but also when it comes to ensuring the success of this specific model of employee ownership.

We have to distinguish here between different types of information – one as important as the other:

- information of employees and employers finding themselves confronted with a possible closing down of their enterprise;

- information targeting employees in general - aiming to raise their awareness on the existence of the model and their rights, even if they are not (yet) faced with the closure of their enterprise and any concrete project of employee ownership;

- information targeting employers/owners of enterprises, even if they are not (yet) faced with a succession problem or economic difficulties;

- information and awareness-raising of a wider public with the objective to foster community support for possible workers' buyouts on a specific territory and, more in general, to change the understanding and culture of entrepreneurship.

A main reason for the complete closing-down of enterprises or failure of workers' buyouts is related to the fact that workers are often informed on the situation of their enterprise at a very late stage. This gives them and the (former) owner first of all not enough time to prepare a proper take-over of the enterprise. Moreover, information frequently happens at a time when a part of the workforce might already have been laid off or be gone, indispensable capital-intensive fixed assets such as machines might have been sold, etc.

In other cases, cooperative workers' buyout has been considered only at a late stage – and sometimes too late – because the model as such was rather unknown to the (former) owner and the employees.

Finally, employees might also tend to choose the option 'workers' buyout' with less hesitation if they have been confronted with already existing successful examples of employee ownership.[24]

[24] Interview of 10 October 2016 with Didier Goetghebuer, Secretary General of the Union des SCOP Bruxelles-Wallonie: "What is needed at least as much as finance are the successful examples!"

*An Italian study found that "Workers are more likely to launch a workers' buyout in situations where other enterprises belonging to the same geographic zone, the same trade union or the same cooperative federation already did it and tend to come together in the framework of informal groups of workers' buyouts. In Italy, such groups of workers' buy-outs can be found, for example, in the provinces of Ancona, Firenze, Modena, Reggio Emilia, Rome and Perugia…".*[25]

Many of those that have been or still are involved in workers' buyout processes or in general in different kind of movements for employee participation also call for a more general mobilization of society in order to:

a) Raise the awareness of the public on workers' buyouts as one of the possible solutions in case of succession problems or economic difficulties of an enterprise;

b) Promote a new concept and culture of participation of employees in enterprises (not only linked to worker cooperatives);

c) Stimulate reflection among existing cooperative enterprises that might, however, not identify (anymore) as a cooperative, with a view to make them become aware *of* and communicate their values and principles;

d) Mobilize local communities in the event of workers' buyouts on their territory.

Cooperatives UK consider the recognition of an annual Employee Ownership Day as the most effective channel for awareness-raising *in the UK*. Organised by the Employee Ownership Association and its members the day is used to leverage any PR opportunities to raise knowledge of the model 'employee ownership' in general. The publication of an annual "Top 50" list of the largest employee owned firms has also been successful in attracting media attention.

Worth mentioning are also the initiatives taken by Cooperative Development Scotland. Its Employee Ownership activities are focused on awareness-raising and providing support to business owners who are looking to adopt an employee-owned model. Cooperative Development Scotland runs a number of events which are aimed at encouraging business owners to consider employee ownership as a succession option. The team actively engages with a number of parties including media, business groups, advisers and academics with a view to raising the profile of employee ownership.

Also the Social Business Wales project, run by Wales Cooperative Centre, includes awareness-raising activities that are intended to encourage companies to think about employee ownership as a succession solution. The team promotes the benefits of employee ownership by use of media publicity, webinars, advertorial in business publications, business networking and speaking with business organisations.

[25] Vieta, Marcelo and Depedri, Sara : « Le imprese recuperate in Italia », 2015, p. 12.

*Italy, Province of Messina*

*In the case of the aforementioned "Birrificio Messina" worker cooperative[26] in Messina (IT) (see chapter 3), the public campaign "La città che amo sceglie la propria birra" led by the Community Foundation Messina was a key factor for the mobilization of different kind of players and additional fundraising. A main success of the campaign was the acquisition of future customers of the brewery and orders of a total volume of 500 000 hectoliter of beer. Orders came from the region, but also from former inhabitants of the region living in Australia and South America.*

*Belgium, Brussels-Capital and Wallonia region*

*L' Union des SCOP Wallonie-Bruxelles brings together a number of enterprises and social economy federations that have the joint objective to promote the participation of workers/employees in the governance and management of enterprises (including worker cooperatives). The network carries out a number of awareness-raising activities, among them festivals, conferences and seminars targeting employers/employees and the general public. Cooperative workers' buyout figures among the topics dealt with. Seminars are organized often also in cooperation with or with the contribution of the regional authorities. The Brussels-Capital region announced for 2017 an analysis of the potential of cooperative workers' buyouts that will be carried out in cooperation with L'Union des SCOP Wallonie-Bruxelles and Coopcity.*

*France*

*The French Law on the Social and Solidarity Economy contains, in its articles 18-22, a) clear provisions concerning the obligation to inform employees of enterprises with less than 250 employees on a regular basis on employee ownership of enterprises – including information on legal provisions, opportunities, difficulties and support instruments available and b) provisions for the amendment of the French Labour Code which stipulate the obligation of enterprise owners planning a transfer/sale of the enterprise to inform employees within a specific delay on their intention and on the possibility to present an offer.*

[26] http://www.fdcmessina.org/index.php/pag-sezione/birrificio-messina/

## 6. Trade unions

Trade unions can play a central role when it comes to spreading information and knowledge on the (cooperative) workers' buyout model among employees and accompanying the latter in the process as such.

*In the case of SCOP-TI in Marseille the trade union CGT finally contributed to a significant extent to develop the idea of the future worker cooperative – trade unionists find themselves among the co-founders of the cooperative.*[27]

*When starting reflections on possibilities to take over their brewery, members of the Birrificio Messina were already aware of the option "worker cooperative" through their (former) membership in CGIL – a trade union with close links to LEGACOOP, one of the main national federations of cooperatives.*[28]

However, alliances between the cooperative movement/social economy and trade unions around the topic "workers' buyout" still seem to be the exception. Most often, trade unions appear not to be that much interested or willing to contribute through information, training and accompaniment of employees and more general public education activities to a stronger awareness of the option 'employee ownership' and to capacity-building among employees wishing to take-over their enterprise.

Even though, *in Spain*, trade unions and social economy organizations have rather good relations (due also to a strong institutional cooperation for example in the framework of the Economic and Social Council), cooperation in the framework of workers' buyouts is rather rare or focused on very specific aspects. The fact that trade unions do not consider cooperators as workers/employees anymore and therefore not as their 'clientele' is perceived as one main reason for a lack of deeper cooperation on the topic in *Spain*, but also in *Denmark* and the *UK*.

Moreover, *in the UK*, but also *in Denmark*, worker buyouts are sometimes also criticized, by trade unions, either as a type of exploitation of workers with the state and the private sector refusing to assume their responsibility or as "privatisation through the back door" if it is the transfer of a public enterprise to its employees.
*In the UK*, the cooperative movement and trade unions worked together on agreement regarding workers' buy-outs in the case of public services and the creation of so-called *public service mutuals*. The agreement sets out which process should be followed for spin-outs, with a focus on staff and union involvement.

[27] Interview with Philippe Chesneau, former vice-president of the PACA region, 4 October 2016.
[28] Interview with Elio Azzolina, financial manager of the Community Foundation Messina, 10 October 2016.

Other unions in the UK - such as the Musicians Union, the National Union of Journalists and the Broadcasting, Entertainment, Cinematograph and Theatre Union - are particularly supportive of co-ops as a way for their members, mostly freelance workers, to create more stability and certainty. The Musicians Union, in cooperation with Cooperatives UK, created a guide that provides its members advice on how to set up a co-op.

According to a number of social economy organizations, but also policy-makers, trade unions could help significantly to raise - at an early stage - the awareness of employees and the public on workers' buyout, but also on other forms of participative governance within enterprises[29].

Next to the trade unions one should not forget, however, also the importance of involvement of organizations such as chambers of commerce when it comes to making *enterprise owners* aware of employee-ownership options.

[29] Interview with Philippe Chesneau, former vice-president of the PACA region, 4 October 2016.

## *Conclusions*

A number of factors determine whether or not a workers' buyout can/will take place and whether or not it will be successful.

The existence of a specific and clear legal framework as well as financial support mechanisms at national level are certainly two of them and fundamental.

However, much can also be done at sub-national level – in cities and regions – to stimulate and facilitate worker buyouts where they seem appropriate. For this potential to be fully tapped, however, many cities and regions would need to adapt and improve information schemes, business advice services as well as training mechanisms targeting employees, employers and technicians supporting workers' buy-outs. A review and better coordination of existing local/regional policies and instruments providing financial support (guarantees, loans, start-up grants etc.) to SMEs and (worker) cooperatives might be useful. Finally, one should not forget the capacity local and regional authorities have to bring together different kind of actors, stimulate dialogue and support, wherever needed, the coordination of different players. This might also include the stimulation of exchange and cooperation between workers' buyouts as such. Such exchange is vital with regard to another factor of success not to be underestimated: personal attitude and willingness of workers/employees to engage in such an undertaking and trust in such a collective endeavour.

Cities and regions should have a genuine interest in (better) supporting worker cooperatives as one option for business transfer. Finally, transfer to worker cooperatives does not only mean maintaining *employment*, but also knowledge, capacities and values within a territory.

# II. Useful documents and links (not exhaustive!)

*Sources/relevant (legislative) documents listed by the project partners*

## *Legislation/Public initiatives*

Belgium:

- Bruxelles-Capitale : Small Business Act – Bruxelles, Région entrepreneuriale, Plan PME de la région de Bruxelles-Capitale 2016-2025

- Communiqués de presse relatifs au Gouvernement wallon du 14 juillet 2016 : « La Wallonie encourage les coopératives de travailleurs » : http://gouvernement.wallonie.be/communiqu-s-de-presse-relatifs-au-gouvernement-wallon-du-14-juillet-2016

Denmark:

- LKB 546 of 20 June 1996

- LBK nr 869 af 08/07/2015

- LBK nr. 559 af 19. maj 2010 (Consolidate Act on Certain Commercial Undertakings)

France:

- Loi no 2014-856 du 31 juillet 2014 relative à l'économie sociale et solidaire.

- Région Provence-Alpes-Côte d'Azur : Plan régional de développement de l'ESS (Regional Plan for the Development of the Social and Solidarity Economy.

Italy :

- *Legge 49/1985 "*Provvedimenti per il credito alla cooperazione e misure urgenti a salvaguardia dei livelli di occupazione"

- *Decreto-Legge 145/2013 "Interventi urgenti di avvio del piano "Destinazione Italia", per il contenimento delle tariffe elettriche e del gas, per la riduzione dei premi RC-auto, per l'internazionalizzazione, lo sviluppo e la digitalizzazione delle imprese, nonché misure per la realizzazione di opere pubbliche ed EXPO 2015."*

- *Legge 9/2014 "Conversione in legge, con modificazioni, del decreto-legge 23 dicembre 2013, n. 145, recante interventi urgenti di avvio del piano «Destinazione Italia», per il contenimento delle tariffe elettriche e del gas, per la riduzione dei premi RC-auto, per l'internazionalizzazione, lo sviluppo e la digitalizzazione delle imprese, nonché misure per la realizzazione di opere pubbliche ed EXPO 2015."*

- Regione Piemonte: Delibera della Giunta Regionale n. 17 – 1183 del 16.03.2015

- Regione Autonoma della Sardegna: Delibera N. 52/28 del 28.10.2015

- Regione Marche/Giunta Regionale :
  Decreto del Dirigente della P.F. Formazione e Lavoro e Coordinamento Presidi Territoriali di Formazione e Lavoro N.288/SIM del 02/08/2016
  Oggetto: POR Marche FSE 2014/2020, Asse 1 P.inv. 8.1 RA 8.5 e P.inv. 8.5 RA 8.6 Avviso pubblico per la concessione di incentivi per il sostegno alla CREAZIONE D'IMPRESA.

- Regione Campania: Delibera della Giunta Regionale n. 353 del 06/07/2016

Spain:

- Constitución Española

- Ley 20/1990, de 19 de diciembre, sobre Régimen Fiscal de las Cooperativas

- Real Decreto 1784/1996

- Ley 27/1999, de cooperativas

- Reglamento del registro de Sociedades Cooperativas (R.D. 136/2002 de 1 de febrero)

- Orden ECO/3614/2003, de 16 de diciembre, por la que se aprueban las normas sobre los aspectos contables de las Sociedades Cooperativas. (BOE 27-12-2003)

- Ley 3/2009, de 3 de abril, sobre modificaciones estructurales de las sociedades mercantiles

- Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital

UK :

- Taxation of Chargeable Gains Act 1992

- Financial Services and Markets Act 2000

- Companies Act 2006

- The Companies Act 2006 (Amendment of Part 18) Regulations 2013 (with effect from 30 April 2013), Statutory Instrument Explanatory Memorandum

- Co-operative and Community Benefit Societies Act 2014

- The Companies Act 2006 (Amendment of Part 18) Regulations 2015 and draft explanatory note (12 January 2015) and final The Companies Act 2006 (Amendment of Part 18) Regulations 2015 (2 March 2015)

## *Other documents/publications*

- World Declaration on Worker Cooperatives approved by the ICA General Assembly in Cartagena, Colombia, on 23 September 2005.
- All Party Parliamentary Group on Employee Ownership (2008) Share Value: How employee ownership is changing the face of business, Employee Ownership Association.

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- Postlethwaite & Co.: Guide to SAYE Options. London UK 2015.

- Postlethwaite & Co.: Guide to the Share Incentive Plan. London UK 2015.

- Postlethwaite&Co.: Guide to Becoming an Employee owned company. London UK 2015.

- Postlethwaite&Co.: Guide to Employee Shareholder Status. London UK 2015.

- Postlethwaite & Co.: Guide to Structuring Employee Ownership. London UK 2014.

- Silcox, S., Making Employee Ownership Work: A Benchmark Guide, Employee Ownership Association.

- The Musicians Union, with the support of Cooperatives UK: Altogether Now. A guide to forming music teacher co-operatives. London UK 2015.

- Vieta, Marcelo and Depedri, Sara: « Le imprese recuperate in Italia », 2015.

- Yeoman, R.: Governance and Voice: how mutuals and employee-owned businesses create stability, resilience and legitimacy. In: Making it Mutual. ResPublica Essay Collection. 2013.

*Websites*

- http://www.sowecsom.org/a-propos.htm

- http://www.fdcmessina.org/index.php/pag-sezione/birrificio-messina/

- www.scop-ti.com

- http://www.les-scop.be/

- Website of "TransfertoCOOPS" (second pilot project financed by the European Commission on the topic 'transfer of enterprises to worker cooperatives'): http://www.transfertocoops.eu/

## III. Extracts from the “Manual for Company Conversion Trainers. Concepts and methodology for the transfer of companies – in crisis or due to retirement – to the workers under the worker cooperative formula” (author: COCETA).

### 1. Company transfer: Reasons and Types

*“By 'company transfer', we mean the transfer of its ownership to any person, persons or company, in such a way that its continuity and business activity are ensured. This may take place within the family, by means of internal sales (to managers or employees who are not part of the family) or by means of sales to people outside the company or to existing companies, which includes mergers and absorptions.”*

We will now describe the causes which, in our opinion, give rise to a change in the ownership of companies:

*A) Internal to the pre-existing company as a (collective) entrepreneurship response to a severe commercial or financial crisis:*

- Business Failure

*B) External to the pre-existing company*

*a.* Company Succession - *the retirement of the partners and/or non-continuity of ownership within the family*
*b.* Business Strategies - *conflicts of interest in family businesses and spin-offs from larger companies*
*c.* Political Reasons - *the processes of privatisation of public entities*

### *Business Failure*

In those cases in which the business failure is due to the fact that the owners/managers were unable to maintain the company's position in the market due to loss of competitiveness, the transformation of the company is accepted as a lesser evil in order to maintain jobs and continue the activity. In the majority of cases, the companies undergoing transformation were going through situations which seemed to lead irremediably to the disappearance of the company, whose workers would then become unemployed.

*Company Succession*

In these cases, the transformation process is considered as a response to a succession problem - without there necessarily being reasons of business failure - due to the upcoming retirement of the owner of the company and the lack of heirs able or willing to continue the business project. There are many cooperatives which came into being precisely for this reason.

*Business Strategies*

The management opts for a restructuring of its production centres following a very clearly-defined strategic plan, which is translated into a progressive divestment from some workplaces in favour of others considered more advantageous due to the growing phenomenon of business decentralisation as a result of the unstoppable process of globalisation of the economy."

## 2. Preparation of the company transfer process - Diagnosis

"All transformation processes require an initial phase of diagnosis of the situation, in which the aspects that will determine the entire process must be analysed."

"One of the main aspects to be taken into account in all transformation processes is the reasons behind the desire for conversion, because, to a certain extent, they determine the process and the procedures to be followed in each case."

"Thus, in the initial phase of the process, a series of doubts will inevitably arise, which must be resolved and/or channelled in order to find an adequate response over the course of the process. Some of the questions which usually arise are the following:

- Is the Company to be sold to the workers in a good economic-financial situation?
- What resources do the workers have to contribute and what risks to they have to take on?
- Is the new workers' project viable looking to the future?
- What happens if some workers want to buy and others do not?
- Do the workers have company management experience?
- What rights and obligations do future members have?

This diagnosis will make it possible to resolve or channel the initial doubts and begin one or other type of procedure depending on the initial situation: transformation with continuity of ownership, transformation with change of ownership, liquidation and creation of a new entity…

The main aspects that must be analysed in the diagnosis phase are the following:

- the reasons which gave rise to the desire for transformation/transfer (described in the previous chapter)
- the initial legal situation
- the economic viability of the continuity of the activity. Analysis of the initial economic situation
- predisposition of the workers
- assets of the entity."

## *2.1 Initial legal situation*

"In all cases presented in this manual, the new legal form of the company transformation or transfer process is that of a cooperative. However, the original form may be one of many: self-employment, private company, public company, non-profit association, etc. Thus, the proceedings related to the transformation are different depending on the initial legal form and therefore they must be adjusted to each case.

Another legal aspect to be considered is whether the initial company is in bankruptcy proceedings (related to the situation of economic-financial viability). In this case, the transformation acquires considerable complexity, deriving from the legal aspects incorporated by Bankruptcy Law, especially in relation to the priority of payments to creditors, where the possibility of the workers taking over the company is not a priority and is not legally regulated, and everything depends on other creditors who have greater privileges."

## *2.2 Economic-financial situation of the enterprise*

"With regard to the economic-financial situation of the business, two cases have to be differentiated:

b.1) Transformation process for reasons other than the economic-financial viability. This situation usually arises in some cases of succession (when there is no family member who wishes to continue the business) or due to conviction of the owners in relation to the cooperative model.

Given this situation, the main element to be considered is the conviction of the workers and future members of the cooperative. Thus, the economic-financial situation becomes a fundamental element in the discussions around the transformation, and the leading argument to convince the future members of the financial contribution they will have to make.

b.2) Transformation process due to difficulties in the economic-financial viability. In this situation, in addition to analysing information about the situation of the pre-existing company and the valuation of the company, in order to begin the transformation, it will be necessary to draw up a business viability plan, covering a period of 3 to 5 years, which could reverse the current situation. This situation normally coincides with a process of socialisation of the ownership and the viability plan will be the main argument to convince the future members of the cooperative to make the necessary capital contributions. Unlike the previous case, the future members do not have any other option than trust the future planning of the activity rather than the current economic-financial situation.

Given this situation, the viability plan will also serve to verify whether the sale price corresponds to a reasonable situation which does not endanger the viability of the project."

### *2.2.1 Analysis of the initial economic situation*

"It is necessary to define the process of transfer/socialisation of the ownership and its assets, taking into account the following four aspects:

1. Information about the condition of the pre-existing company. This information will incorporate:

- An analysis of the evolution of the company's Balance Sheet and Profit and Loss Account in recent years in order to verify its economic-financial situation.
- Calculation of its main ratios and profitability, with an analysis of their evolution over time.
- Based on this information, the economic-financial situation of the company can be determined.

2. Valuation of the company

Alongside the report on the company's situation, a valuation of the company must also be carried out, including Goodwill. This aspect will be decisive when drawing up the Viability Plan of the future cooperative (see 2.2.2).

3. Expectations of returns by the current owner

The valuation described in the previous point will serve as a comparison with the requested sale price and as a starting point for negotiation of that value.

4. Commitments between the owner and the future members

A key aspect of the negotiation will be the price (related to the valuation of the company and the viability plan), but there will also be many other aspects to be taken into account: operating licence, contingencies, possible legal alternatives for the purchase, different purchase scenarios, subrogation of workers, payment conditions, possible leases, future investments. It will be necessary to properly analyse each one of these situations and specify them in the sale and purchase contract, so the diagnosis phase must also take this information into account."

### *2.2.2 The economic viability of the continuity of operation*

"In order to draw up the viability plan, historic data about the business must be compiled and 3- to 5-year estimates made of expenses, income and investments.
The general structure of the Viability Study could be as follows:

- 3-year forecast of sales and revenue.
- Analysis of the staff structure and its cost, related to the needs of the activity.
- Economic viability:
  - ✓ Objectives.
  - ✓ Programmes: purchases, sales, personnel, investments and amortisations, and other costs.
  - ✓ Foreseeable profit and loss account.

- Financial viability:
  - ✓ Analysis of financial needs.
  - ✓ Analysis of financial resources.
  - ✓ Comparison of resources and needs.
- Final summary.

As was already noted, another aspect to be considered, related to difficulties in the economic-financial viability, is the possibility that it is in insolvency proceedings. In this case, the viability plan will consider not only economic criteria, but it will also depend on the legal viability deriving from the negotiation process in the insolvency proceedings, which involves different parties: the insolvency administrator and creditors with greater preference than the workers."

### *2.3 Situation of the workers*

"In all transformation processes, the situation of all the workers must be analysed, in relation to their predisposition towards participating in a business transformation or transfer process. Thus, it must be determined how many workers have a favourable initial position towards participation in the transformation, as well as the degree of information and knowledge in this regard. This initial analysis will make it possible to develop a viability plan to reflect the reality of the workers who would participate in the process and, at the same time, it will enable work to be done in order to inform the workers, in order to increase the potential base of future members if this is considered necessary."

### *2.4 Existence of associated assets*

"The assets associated with the entity is an element that will be incorporated into the documents on the economic situation and the viability plan, but it is also an aspect to be considered in an initial reflection: if there are no relevant assets associated with the entity, a viable option is the liquidation of the original company and the creation of a new company in the form of a cooperative which will continue the business.

If the assets associated with the original entity are large, the transfer of these to the new company involves costs which normally impede this alternative."

## 3. The transfer process

"When transferring a company to the workers, there are two main alternatives:

1. Transfer to a new entity created by the workers of all the rights and assets related to the business activity or some of its production units, for their operation (through the transfer, sale or lease of the company, global transfer of assets and liabilities, including the spin-off or separation of the company), i.e. a company succession from the objective point of view (indirect transfer or transfer through the creation of a new company);

2. Or transfer the commercial company which operates the company to the employees, through the acquisition of the majority of the shares or stakes (direct transfer or transfer through control of the company), which can later, or at the same time, be transformed into another corporate form which is better suited to the new situation.

In both these cases, cooperative companies are a valid formula to continue operation of the company by the workers."

### *3.1 Key factors in a process of transformation of a company into a cooperative*

"Before analysing the key factors in a conversion or transformation process, there are some initial premises which are vital in determining whether or not to continue with the process:

- There is a product or service which can be placed in the market.
- There is a market which is willing to pay for it.

If these questions of commercial viability are not resolved, it is not worth continuing with the process.

Once the above has been satisfactorily resolved, the success or failure of this type of process depends on different variables and their evolution in the process. The table below outlines the positive and negative aspects of each variable:

| | POSITIVE FACTORS | NEGATIVE FACTORS |
|---|---|---|
| **Ability to adjust** | • Internal and salary adjustment, if necessary, without negatively affecting motivation<br>• Quantitative adjustment compared to the initial number of people on the project | • Resistance on the part of the workers to the adjustments in conditions or in the number of people, if they are necessary |
| **Obtainment of resources** | • Lump-sum unemployment payments<br>• Public grants<br>• Adequate external funding<br>• Initial human capitalisation with management abilities | • Difficulties in securing financial resources in the market.<br>• Human decapitalisation of the project. The 'best ones' are leaving. |
| **Integration and strategic change** | • Success in strategic change and in the associated operational and management processes which are necessary to continue with a project or make it viable | • Aversion to change.<br>• Management simply continues its old ways.<br>• The changes made do not prove to be the right ones<br>• Lack of resources to leverage the new business model |
| | POSITIVE FACTORS | NEGATIVE FACTORS |
| **Cooperative spirit** | • Development of mechanisms for the participation of workers on the new project. | • The initial cooperative spirit may fade with the passing of time if it is not kept alive, for which ongoing social training is necessary |

| | | |
|---|---|---|
| Internal leadership | • Strong initial leadership which identifies with the company<br>• Organisation which promotes participatory leadership.<br>• Successful renewal of leadership when necessary | • Lack of internal leadership<br>• Strong, personality-driven internal leadership |
| Role of collective entrepreneur | • Separation of roles of worker, entrepreneur and management<br>• Ongoing training and training of new members in the participation mechanisms.<br>• Balance of roles<br>• Respect of the rules of the model | • Not everyone is clear about the new roles.<br>• Imbalance by default (lack of participation as a business-owner)<br>• Imbalance due to excess (questioning the hierarchy and constant decision by consensus) |
| Management of people joining and leaving the project | • Anticipation of the financial implications of entries/exits<br>• Participation as an element which facilitates its open nature<br>• Clear, shared rules focussing on contribution to the project in new incorporations | • Processes which are not clear or not shared in new incorporations.<br>• Criteria which are not related to the ability to contribute to the project in new incorporations. |
| Intercooperation | • Participate in associations social economy entities<br>• Cooperate with other organisations and agencies | • Establishment of a cooperative which is not at all *fluid.* |

"In Spain, over the years, we have analysed many cases of company transformations and we have observed that there are factors (...) which are necessary, while we have classified others as desirable.

## Factors necessary for success:

### a) External consultancy

From the business point of view, we consider it necessary during the process of transformation of the conventional company into a worker-owned company to have a team of consultants who are experts in the different skills required in the transformation processes, i.e. studies of economic-financial viability, tax treatment, legal considerations and analysis of human resources.

### b) A clear objective: self-management

It is necessary to have a clear understanding of the objective of the transformation, which is to maintain jobs, and not accept transformations which seek the financing of the same structure under a new name.

In this case, it is necessary to draw up a new operating model suited to the new company created by the transformation, in accordance with its organisational characteristics, the environment in which it operates, the objectives the company aims to achieve and the people who comprise it. In other words, an entrepreneurial spirit is required, not one of continuity, adequately modifying the productive and management structures. For this, a great deal of training is necessary.

### c) Team work

In all legal transformations, the workers are in the eye of the storm. Uncertainty, suspicion, mistrust and fear of the unknown are all abound.
Dispelling the uncertainties is therefore an absolutely necessary condition. For this, before, during and after the change process, fluid information channels must be implemented, so that the workers fully take on board the risks and the commitments (especially the financial one).
The human team that takes on the challenge of the transformation of the company must be cohesive and must maintain fluid information channels with the other, external agents who actively participate in the transformation process (federations of cooperatives, trade unions, local development agencies, team of experts, university, etc.).
Likewise, the cohesion of the group and the feeling of ownership among the workers must be based on responsibility and mutual commitment. Not generating a true feeling of ownership among the workers will almost certainly lead to failure.
The lack of a spirit of cooperation must be overcome through specific training.

### d) Funding

It is necessary to achieve adequate initial funding to enable the start-up and take-off of the new company (acquisition of the asset elements, incorporation costs, etc.).
In this regard, we observe that the insufficient contribution of capital by the members causes a certain mistrust in the business project among the external agents (banks, suppliers, clients and institutions), which seriously impedes the transformation process.

## Factors which favour success:

### a) Product or service introduced into the market

The companies with the greatest likelihood of success are those which, despite the financial difficulties caused by the transformation, have a product which is well situated in the market and a good brand image, which is an element that favours success, as is the possibility of having appropriate management teams to properly structure the new company.

## b) Business continuity

During the transformation period, the company must try to maintain its activity so as not to externalise the conflict which would result in a disastrous image and the suspicion that it might not keep its commitments with clients and suppliers. Talking to clients and suppliers is essential.
The transformation period must be as short as possible, though without skipping any stages - it is necessary to go through all the steps in order to ensure success. For this reason, it is important to take action as soon as workers have information on the crisis situation and the possible closure of the company.

## c) Support of the Local Development Agencies (*and similar institutions*)

Local Development Agencies (*and similar institutions*) can play a very important role. They can provide very valuable cooperation in the consultancy phase, in the search for the most adequate formulas for each case, involving the local or regional authorities, facilitating information and training, permitting access to experience, provided they have real knowledge of these issues.

## d) Support of the trade unions

Likewise, the positive involvement of the trade unions, both during and after the conversion (especially at local level), as well as the relevant consultancy, have, in some cases, provided a vitally important service. Without their involvement, the negotiations would have been sterile.

## e) Support of the state administrations

The support of the government agencies, which can facilitate access to funding, is a key factor which favours the achievement of success.

Measures such as the capitalisation of unemployment benefit in a one-off payment, i.e. a lump sum, has proven to be very valid, as it favours success by permitting an initial funding to the workers for the purchase of the company's assets in the transformation phase. However, the administrative bureaucracy involved in securing it must be made as easy as possible.
Financial subsidies from the administration for investment in fixed assets, even if they are somewhat delayed, help to reduce the financial costs which the incipient company must bear. The administrative bureaucracy involved in the management of grants and subsidies must also be simplified as much as possible.

## f) Firm support of clients and other creditors

In some cases, the firm support of clients has favoured the transformation, injecting an important dose of security into the process, which is translated into lower working capital needs.
In Spain, in some cases, the creditors, especially agencies such as Social Security and the Tax Agency, have facilitated the transformation process by granting the deferral of social security payments, the acquisition of the machinery necessary in Social Security auctions, and the writing-off of debts with the Tax Authority.

The credit entities have also favoured the transfer thanks to their positive engagement, offering funding when the company undergoing transformation needs it most.

In the same way, the owners of the company can also offer their support to the transformation process, by granting payment facilities to the workers for the acquisition of the fixed assets.

Finally, local administrations can provide valuable collaboration by applying pressure at the political level and implementing mechanisms to reduce the start-up costs in their respective areas.

## *3.2 The process of transformation/conversion of a company into a cooperative: proposed methodology*

"In the processes of transformation of commercial companies into cooperatives, first of all the aforementioned diagnosis of the situation prior to that process must be carried out. Moreover, a strategic plan needs to be drawn up, which must include an analysis of clients, suppliers, the market environment and the sources of funding. Finally, a business plan is necessary which defines the objectives and orientation with regard to commercial strategies, the market, the products and services offered and the technical and economic viability of the project. For this it is advisable to hire professional management, executives with suitable managerial profiles, and experts in business management.

Access to public and private entities and associations must be used, where appropriate and where they exist. They can offer direct support and specialise in providing (technical) assistance with regard to job creation and self-employment subsidies to social economy companies, rebates in Social Security payments, lump-sum unemployment payments, etc.

The transformation process requires three types of resources: the people, the material resources, and the sources of funding. Their analysis and mobilisation must be undertaken rapidly, with the support and consultancy of territorial organisations, the public authorities and financial entities, so that the project can move forward, and to assuage the fears of the workers, who are risking everything - unemployment benefit, the provisions of the guarantee fund instruments linked to salaries (if existent), and their savings.

Some of the key questions which usually arise in this type of process are:

- Is the company which is to be sold to the workers in a good economic-financial situation?
- What resources do the workers have to contribute and what risks do they have to take on?
- Is the new workers' project viable in the long-term?
- What will happen if some workers want to buy and others do not?
- Do the workers have experience in company management?
- What rights and obligations do the future members have?
- Can someone mentor the workers in these processes?
- Is there any public support for these processes?

The work methodology which is outlined below aims to answer the questions which arise in a sequential process in which each part is tackled once the previous one has been completed and which can be halted at any time if the group of workers so decide or due to external factors. The proposed methodology for a transformation process would be:

- ✓ Phase 1

  **Economic/financial analysis of the company, main competency and sector. Valuation of the Company and/or 3-5 year Economic/Financial Viability Study.**

As already mentioned in chapter 2, in this phase, an analysis is conducted of the evolution of the Company's Balance Sheets and Profit and Loss Accounts of recent years in order to verify its economic-financial situation. Its main financial and profitability ratios are calculated and their evolution over time is analysed.
The aim of this phase is to analyse whether the economic-financial situation of the Company is good and whether or not it is worth considering its purchase by the workers.

Whenever possible, it is advisable to carry out an analysis of the direct competitors and the data of comparable companies in the sector.

Subsequently, a valuation of the company is carried out, which will also include goodwill if appropriate. This valuation serves to compare the requested sale price and as an argument to negotiate that value.

In addition, the possible existence of other formulas for the sale-purchase is analysed, the amounts corresponding to each person, and the funding and support that could be secured.

At the same time as the valuation, it is advisable for the members of the future project to share the business model and to be clear about aspects related to its viability.

The workers must be provided with a viability plan which shows the foreseeable development of the future company over the next 3-5 years and which serves as guidance for management.

By analysing the activity envisaged in the viability plan and the assets, rights and obligations of the company, we can check whether the sale price corresponds to a reasonable situation which does not put the viability of the project at risk.

In order to draw up the viability plan, historic data of the business are gathered, and, jointly with the workers, 3- or 5-year estimates of the expenses, income, investments, etc., are made.

In this way, the new company will have a management plan which can be monitored in order to constantly evaluate the progress of the business and a 3-to-5-year financial and economic scenario. The study sets out the capitalisation needs and it is necessary information for the workers, who must feel they are joining a viable business.

### ✓ Phase 2

**Consultancy for the formalisation of the sale and purchase, transfer and/or transformation agreement.**

Once the valuation and the viability plan give a reasonable indication of the price of the company, the entities which will accompany the workers in the process will also supervise the negotiation with the owners and will offer consultancy on the sale and purchase contract.

There are aspects which it is necessary to consider: operating licence, contingencies, possible legal alternatives for the purchase, different purchase scenarios, the subrogation of staff, payment conditions, possible leases, future investments, funding, etc.

It is necessary to properly analyse each one of these situations and to specify them in the sale and purchase contract.

In addition, in this phase, work will be done on:

- Legal consequences arising from the choice of the legal form of the company (Workers' Cooperative)

- Analysis of the social security regime to which the new workers/partners must belong.

- Social and business training on the chosen legal form (rights and obligations of the members, the figure of the worker/member, functioning of the decision-making bodies, etc.).

- ✓ Phase 3

  **Consultancy in the start-up of the new company and/or the legal form.**

Once the purchase price and the conditions of the sale and purchase contract have been agreed, it is time to legally define the new project.

The content of this phase is the following:

1.- Initial analysis: how to undertake the transformation from the current company.

2.- Study and execution of the start-up alternatives:

* Sale and purchase of shares or stakes and subsequent transformation into a Cooperative Company.

* The company remains as a holding company with the assets, and leases them out to a new cooperative company composed of the workers.

3.- Mercantile and labour formalities of the chosen alternative.

- ✓ Phase 4

  **Possible support to the management in the consolidation of the new business reality.**

Once the new legal structure has been created, it is necessary to perform a number of actions aimed at consolidating the business:

- Definition of organisational structure and functions.
- Decision of the management team of the new project.
- Guidance on the commercial work which new people must take on. This means preparing the commercial plan for the new people who will take charge of this work.

- ✓ Phase 5

  **Management of the official subsidies for these processes.**

Management of the available grants for the new project: job creation, investment, social security rebates, etc.

## 4. Specifications depending on the type of transfer

### *4.1 Business succession, continuing as a worker cooperative*

"It is necessary to distinguish the case of succession from other business transfer formulas, such as that of transformation due to an economic crisis. In this section, we shall refer to the transfer of a company due to other reasons not related to the economy, but rather succession deriving from personal reasons of the business-owner. Specifically, we can distinguish two cases:

#### a) Succession mortis causa

The death of the owner can give rise to the disappearance of the company if there are no heirs or they do not wish to continue the company. The death of the owner may have two consequences:

**1. The Winding-up of the company** and therefore the termination of all the company's internal and external relations. It will mean the end of the relations of a mercantile nature with clients and suppliers of services or products, as well as the labour relations with the workers.

By way of example, in Spain, in the case of an individual business-owner, the worker will have the right to receive a sum equivalent to one month's salary. In the case of a commercial company, the termination of the legal personality must take place and the workers must be laid off by means of the so-called objective dismissal with compensation of 20 days' salary with a maximum of 12 monthly payments.

**2. Continuation of the business activity**, by means of the implementation of one of the systems of company succession.

### b) Succession inter vivos

Irrespective of the legal business on which the company succession is based, one must be aware that there are a number of obligations which must be fulfilled in all cases.

Depending on legislation in the respective country, regardless of whether the *transferor* or the *transferee* is a natural person or a legal entity, once the transfer has been completed, transferor and transferee might be jointly and severally liable for several years to respect those labour obligations which existed prior to the transfer. However, differences might exist between, for example, obligations concerning Social Security and those concerning salaries (in Spain, the latter have to be guaranteed for one year only).

Much the same might occur with the obligations to the Tax Authority. That process may delay the succession.

In this regard, any conflicts which may arise between the former owner and the current one(s), deriving from the joint obligations, are the competency of the Civil Jurisdiction.

Within the range of possibilities offered to us, our study focuses on the cases of abandonment of the company by the individual owner. Abandonment is understood in the sense of the cessation of activity, normally due to retirement, and either because the owner does not have heirs or because they are not willing to continue the activity.

The first difficulty we encounter is the lack of knowledge, both by the owner (or their family members where appropriate) and the workers, of the procedures to continue the company's activity, once the event causing that cessation occurs (that is, retirement).

If we consult the studies carried out by FAECTA[30] in recent years, we can conclude that some of the factors which influence the resistance of business-owners to facilitating the succession are:

**1. Lack of information about the process[31].** On numerous occasions, it has been seen that the succession in the company does not take place simply because the business-owner has dedicated their

[30] Qualitative Study OF TECHNICAL CONSULTANCY TO WORKERS AND OWNERS OF COMPANIES WITHOUT GENERATIONAL SUCCESSION IN THE SPHERE OF THE TAKEOVER OF COMPANIES BY THE WORKERS THROUGH THE COOPERATIVE FORMULA. 2016. Published by FAECTA, funded by the Social Economy Department of the Regional Government of Andalusia. https://www.faecta.coop/fileadmin/documentos/PDF_FAECTA/Informe_estudio_cualitativo_recuperacion_empresas_final.pdf

time to working, considering retirement as the end of their activity. The workers never even consider the possibility of taking over; they simply await the closure of the company in order to look for another job.

**2. Resistance to giving up power and to changes**. The changes that are taking place in business management, and more so in recent years, frequently mean that the business-owner, who has absolute power, is reluctant to hand over control to younger people who could make changes in the management which are not in accordance with the way things have always been done in the company.

In these cases, it is necessary to make them understand that, if the company does not adapt to the new reality of the economic environment, it is likely that, within a very short time, it will no longer be profitable and it will therefore be forced to close down.

**3. Organisational climate**. Before starting the succession process, it is necessary to identify the factors which could affect good development of the organisational climate once the succession has been carried out.

In the case of company succession by means of the creation of a cooperative, given the peculiarities of this company model, in which inter-personal relations may even be more important than professional ones, it is even more necessary to analyse in greater detail the prevailing climate in the company.

**4. Fear of failure.** Uncertainty may be generated, in both the transferor and the transferees, of not being ready to begin the activity, not only as workers but also as owners, with the responsibility in decision-making that that represents, and with regard to the need to make certain financial contributions in order to continue the project.

## The Company succession plan

The time necessary to set in motion a company succession process depends on multiple factors, such as the volume of business, the activity carried out, the existence of real estate assets related to the activity, the number of people involved (workers) and their attitude towards the changes, etc. Therefore, the sooner the process can begin, the sooner it will be possible to determine the deficiencies and therefore to correct them.

For this, a Company Succession Plan can be established. A Succession Plan must separate the functions of owner, manager and administrator, which the business-owner usually exercises simultaneously, assigning the management and administration functions of the base company, separate from the rest of the personal assets.

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[31] FAECTA aims to provide generic information on the succession processes (publication of videos and manuals), and also to engage with specific cases of future closure in order to give advice about the possibility of continuation of the business, for which it has specialised personnel who are in constant contact with management professionals who could know situations which are suitable for study (Town Councils and Provincial Councils; Local Development Agents; Regional Government of Andalusia, with the Andalusian Entrepreneurship Centres-CADES; Professional Associations; labour and legal consultancies, etc.).

*Succession Plan Proposal*

- ✓ **Phase 1**

  **Establishment of Objectives.**

- Development, in writing, of the buyers' vision of the company, their goals and objectives, compared to the vision of the previous owner up to that time.
- Determination of the people who will form part of the new company, given that not all the workers will be in agreement with the future plans that are approved.
- Consider the need to incorporate personnel from outside the current structure or to train some of those involved in the change process.

- ✓ **Phase 2**

  **Decision-making.**

- Once the possible participants in the succession process have been determined, as well as which workers are willing to continue, establish a decision-making process in agreement with the transferring business-owner.
- Establish a method for the resolution of disputes among the buyers and between them and the seller.
- Even before the cooperative company has been created, it is important to establish its bases, drawing up internal management and coordination regulations in which each member takes on his/her role in the process.

- ✓ **Phase 3**

  **Valuation of the Company and Future Business Plan.**

- The aim is to arrive at a valuation of the company which is as fair as possible. For this purpose, the following factors may be considered: whether there are real estate assets related to the business and their situation; machinery and its condition; the location of the business (locality, physical location, accesses, etc.); its market (competitors, client loyalty, etc.); stock of products; personnel costs (both member-workers and new hirings must be envisaged); the brand, etc.[32]
- Analyse the tax implications of the transfer of business, transfer of properties, etc.
- Analyse the implications for those workers who do not become members of the new entity which is created.

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[32] (5) Of the many different company valuation models, we propose, by way of example, that drawn up by the City Council of Vitoria-Gasteiz, included in the publication entitled "Guidebook for the Transfer of Companies and Businesses", pages 27 and following.

http://www.vitoria-gasteiz.org/wb021/http/contenidosEstaticos/adjuntos/es/62/27/6227.pdf

- Draw up a preliminary sale and purchase agreement which is fair for both parties.
- Determine whether the previous owner will have any kind of association with the company.

✓ Phase 4

Transition plan.

Consider the options: direct purchase, gift/legacy, or a combination of these.

If you are going to buy the company, consider funding options, including financing by an external party or self-financing by the former owners based on deferred payments.

Establish a schedule for the implementation of the succession plan."

## *4.2 The transformation of the company in crisis into a worker cooperative*

"The recovery processes after an internal crisis may suffer temporary discontinuities, because sometimes access to the ownership rights is gained only after complex bankruptcy procedures, clashes, lockouts, abandonment by the owners or occupations of companies.

A precarious initial situation and a complex Gordian Knot of responsibilities makes it very difficult to take over the company. A professional analysis is essential in order to determine, ex-ante, whether the takeover appears viable. If, finally, the takeover process takes place and the new company is capable of operating in the market, the organisation will evolve towards different models.

A company taken over by its workers is any new enterprise which arose from a crisis of a capitalist company by means of which all or part of the staff seeks to maintain their jobs by taking charge of the production and administration of the company.

The obstacles faced in these types of processes are mainly:

- The agents (owners, workers, judges, administrators, etc.) are often not familiar with the possibility of transforming the company and the associated processes.
- Excessive optimism in the prior viability evaluations.
- Frequently, the inability to save all the jobs, which generates tensions until the initial group of cooperative members is configured. The existence and selection of the right people.
- Insufficient subsequent strategic adaptation.
- What is acquired is often lacking in resources: human, financial, material, commercial, etc.
- Workers who are unable to take on board their role as collective entrepreneurs.
- The role of the unions, which, in some cases, are suspicious of this kind of process, though there are exceptions.
- Current legislation (specifically bankruptcy law) which does not facilitate this type of process with sufficient speed and flexibility.
- The assumption of debts in the new project, especially social security debts.
- Sometimes, the lack of management skills of the workers who remain in the company.
- The impossibility of obtaining lump-sum unemployment payments in the business transformation processes.
- Difficulty by the workers to secure the resources necessary to pay for the owners' shares or stakes.

- Difficulty in recovering the market. An alliance of some kind is necessary.
- A long, complicated process, especially if there are bankruptcy proceedings.

Each case is different and has to be analysed in a personalised manner, considering its specific characteristics. The successful cases show us some key elements/conditions to be taken into account:

- The willingness of the workers to analyse the viability of the transformed or converted company.
- Positive viability.
- The importance of creating a feeling of inclusion, of trust and cooperation among the people who take over the company.
- The leadership of an initial promotion team with team-building and management skills.
- The appropriate redesign of the portfolio of products and access to new markets.
- The existence of a sufficiently large initial group of workers, with the skills and motivation necessary to carry out the transformation/conversion process.
- The appropriate redesign of the production and management processes on a cooperative basis.
- The support of the Authorities to the conversion or transformation process, or the support of social economy entities which can provide training, consultancy, funding, legal assistance, support in negotiations and other services during the different takeover phases.
- The promotion team's ability to adjust in terms of salaries, working hours, etc.
- The role of the social economy entities in informing about these types of processes and in providing consultancy to groups of workers.
- The obtainment of additional resources: grants, lump-sum unemployment payments. The willingness of the workers to make the necessary contributions.
- The obtainment of external resources if necessary. Arrangements with financial entities and mutual guarantee societies if necessary.
- The existence of tax measures which are favourable to workers who take over their companies.
- The development of an internal cooperative bond. Ongoing training in the model aimed at workers.
- The development of a correct process for the entry/exit of members.
- The positive role of the works council, the majority trade union, or relevant workers' groups.
- The capacity to find an industrial partner, if necessary.
- In the case of bankruptcy proceedings: Mortgage creditors expressly accept the offer of the production unit and that it is acquired in the bankruptcy proceedings.
- The main objective of the processes of transformation or conversion of companies into cooperatives is and must be the maintenance of employment by the promoters, seeking necessary alliances with the Authorities.
- Intensive training to all key players (in particular the – future – worker-owners) must be given in the transformation or conversion process, which generates logical doubts or uncertainties.”

## 5. Final considerations

“The processes of transformation or conversion into cooperatives have a series of advantages, including the following:

> 1) For the owner, the transfer of the company to the workers is a guarantee for the viability of the economic activity and employment, more so if the owner was the founder of the activity, which adds a considerable emotional element.
>
> 2) The transition may be gradual and gentle, with less negative consequences. In this regard, the company may preserve its history and identity.
>
> 3) The employees are familiar with the company. They know it better than any external investor, and they also have the motivation of preserving their jobs.
>
> 4) Communication with the banks, suppliers and clients is not interrupted.
>
> 5) Development and growth are not delocalised, they remain in the area and contribute to its economic and industrial stability.”

Another motivation to better consider the cooperative model in discussions around enterprise transfer are the results of studies around the development of cooperatives during the crisis:

“The explanations of the greater resilience of the cooperative model during the recent crisis are due mainly:

1. to the governance model, based on the democratic control of the organisation and management by its members (2$^{nd}$ Cooperative Principle ICA) which means there are fewer divergences between the interests of directors and managers and those of members.
2. to their particular economic functioning regime, in which the members participate directly in the development of the corporate purpose through cooperative activity (3$^{rd}$ Cooperative Principle ICA).
3. to the obligation to provide reserve funds of a non-distributable nature, with part of the company's surpluses, which, despite being an obligation which is often criticised by the sector due to its excessive amount compared to the provision of reserves in capitalist companies, has proven to be a very useful financial stability mechanism to offset losses in times of recession such as the one we have recently experienced.
4. to the great ability of cooperatives to adapt to crisis environments, due to their flexibility to adjust the conditions of the cooperative activity to the circumstances of the market (for example, by reducing the salaries of the workers-members, the price of the cooperative activity or the work schedule).

In Spain, specifically during the recent crisis, cooperatives were less sensitive to job losses than capital companies, because, on the one hand, they destroyed employment to a lesser extent than the Spanish economy as a whole, as they laid off fewer workers and had lower shutdown and insolvency rates, and, on the other hand, due to their self-employment capacity and the 'safe haven' effect, incorporating unemployed people and individuals from other types of companies through the creation of new cooperatives.”

However, transfer of enterprises to worker cooperatives should not be considered a panacea and per se a guarantee for success.

“Worker takeover processes do not have black-or-white outcomes; rather their greater or lesser success can be interpreted within a continuous range of possibilities, of which the four mentioned hereafter are illustrative examples:

A) First of all, the worker-owned company can survive as a business managed collectively by its workers;

B) Secondly, internally, it can undergo a process of demutualisation towards a capitalist company if the cooperative principles degenerate while the initial members gain control over the course of time;

C) Thirdly, the company may be acquired by a third party which maintains the business, i.e. the entity is transformed externally into a capitalist company;

D) Finally, the company may be closed down and liquidated if, after a certain time, it is not capable of competing in the market.”

*Annex*

## "Saving Jobs!", a fast-assessment tool

The present annex aims to support local players in a first rapid assessment of the situation in terms of probability of success of transfer of enterprises to employees' cooperatives. At the same time, it wishes to help identifying shortcomings that might need to be addressed.

Without being exhaustive, the following set of questions should provide local authorities, supporting organisations as well as entrepreneurs and employees with a first impression regarding the feasibility of an employees' buy out, or transfer of enterprise to employees.

However, it does not substitute the Guide elaborated by COCETA in the framework of the "Saving jobs!" project, on which the questions are largely based, but rather provides a rapid gateway to it.

### 1. Assessment of the local context

A favourable context is considered an important condition for successful transfer of enterprises to employees' cooperatives. This includes different elements, some of which can be assessed in a (relatively) easy way, such as, for instance, the existence of a positive legal framework. Some others, referring in general to the local cultural sphere, may be more difficult to define.

The following questions try to help the user gathering some indicators to assess the local situation from different perspectives, keeping, however, a focus on the legal framework.

| *Question* | *YES* | *NO* |
|---|---|---|
| 1.1 Does a framework legislation/regulation on (worker) cooperatives exist? | | |
| • At the national level | | |
| • At the regional level | | |
| • At the local level | | |
| 1.2 Does a framework legislation on transfer to employees under cooperative form exist? | | |
| • As a stand-alone piece of law | | |
| • Embedded in a general law on cooperatives/social economy | | |
| • Embedded in a general law on transfer of enterprises | | |
| 1.3 Does a specific policy for transfer to employees under the cooperative form exist? | | |
| • At the national level | | |

| | | |
|---|---|---|
| • At the regional level | | |
| • At the local level | | |
| 1.4 Does a financial scheme to support transfer to employees under cooperative form exist? | | |
| • Public, at the national level | | |
| • Public, at the regional level | | |
| • Public, at the local level | | |
| • Private, at the national level | | |
| • Private, at the regional level | | |
| • Private, at the local level | | |
| 1.5 Do training programmes to support transfer to employees exist? | | |
| • Public national programmes<br>• Private national programmes | | |
| • Public regional programmes<br>• Private regional programmes | | |
| • Public local programmes<br>• Private local programmes | | |
| • Devoted only to employees | | |
| • Devoted to employees and employers | | |
| • Devoted to (financial, juridical etc.) experts accompanying transfer processes specifically to worker cooperatives | | |
| 1.6 Are support structures for transfer to employees active on the territory? | | |
| • Embedded in agencies for support to entrepreneurship (in general) | | |
| • As stand-alone support agencies for cooperatives | | |
| • Public | | |
| • Private | | |
| 1.7 Is awareness on transfer to employees mainstreamed? | | |
| • Through national campaigns | | |
| • Through local campaigns | | |
| • The concept is embedded in local entrepreneurial culture | | |
| 1.8 Is the cooperative enterprise model known and widespread on the territory? | | |
| • It is well known and widespread | | |
| • It is known but not very widespread | | |
| • It is hardly known | | |
| 1.9 Are there examples of transfer to employees' cooperatives that could be showcased? | | |
| • From the same territory | | |
| • From neighbour territories | | |
| 1.10 What is the general perception of workers' cooperatives on your territory? | | |
| • Rather positive | | |
| • Neither positive nor negative | | |

| | | |
|---|---|---|
| • Rather negative | | |

The results of this first questionnaire should help to have a glimpse of the context for transfer of enterprises to employees' cooperatives and to assess whether or not additional actions (or time) are needed.

If the results show a majority of positive answers, or if they highlight deficiencies that can be easily dealt with, there is room enough for starting a process of transfer of specific enterprises to employee's cooperatives. The next questionnaire aims to help assessing such a process, or to plan it.

## 2. Transfer to employees' cooperatives: The process

The following questionnaire aims to provide a shortcut[33] to assess the steps to take in order to foster a successful transfer of an enterprise to an employees' cooperative.

| *Question* | *Yes* | *No* | *Not relevant* |
|---|---|---|---|
| 1. Was the reason for transfer of an enterprise to an employees' cooperative more deeply analysed before starting the process? | | | |
| • Business failure | | | |
| • Company succession | | | |
| • Business strategy | | | |
| 2. Was a diagnosis for the company transfer process realised? | | | |
| • Was the economic-financial situation of the company prior to transfer assessed? | | | |
| ✓ Does it include an analysis of the evolution of the company's balance sheet and profit and loss account in recent years in order to verify its economic-financial situation? | | | |
| ✓ Does it include a calculation of its main ratios and profitability, with an analysis of their evolution over time? | | | |
| ✓ Does it include an estimation of the total value of the company? | | | |
| ✓ Does it include an estimation of the expected return for the former owner of the company? | | | |

[33] A detailed description of the actions is included in the "saving jobs!" guidelines

| | | | |
|---|---|---|---|
| • Do the workers have to contribute and have they to take on risks? | | | |
| • Is the new workers' project viable in future? | | | |
| ✓ Was a 3-year forecast of sales and revenue carried out? | | | |
| ✓ Was an analysis of the staff structure and its cost carried out? | | | |
| ✓ Was a break-even analysis carried out? | | | |
| ✓ Was an analysis of financial needs carried out? | | | |
| • Do all the employees want to participate in the take-over? | | | |
| ✓ Were all the employees informed on the possibility of transfer to coop? | | | |
| ✓ Are all the participating employees committed to the same degree? | | | |
| ✓ Are the employees willing to participate in the take-over in sufficient number for starting a new cooperative business? | | | |
| • Do the workers have company management experience? | | | |
| • Are employees aware of future rights and obligations? | | | |
| • Are employees ready to participate in the capitalisation of the cooperative? | | | |
| 3. Were the legal form of the enterprise before transfer and the impact it could have on the transformation process analysed? | | | |
| • Private limited company | | | |
| • Public limited company | | | |
| • Non-profit making enterprise | | | |
| • ……. | | | |
| 4. Are there assets associated with the original company? | | | |
| • The assets associated with the original company justify an acquisition through transfer of majority of shares. | | | |
| • The assets associated with the original company justify a liquidation of the company and transfer of activities to a brand new company created by the employees. | | | |

Once the preliminary situation is assessed, the transfer process can start. In order to succeed, a number of key elements should be taken into consideration. The absence of one or more of them, whilst not necessarily hindering the accomplishment of the final objective, may require further actions. The following questionnaire points out some of these key elements.

| *Question* | *Yes* | *No* | *Not relevant* |
|---|---|---|---|
| 1. Was the objective of self-managing the transferred company well established? | | | |
| 2. Does a practice of team-working among the new co-operators already exist? | | | |
| 3. Does the new cooperative have easy access to sufficient funding? | | | |
| • ... from resources provided by employees (e.g. possibility to use unemployment allocations) | | | |
| • ...from public programmes | | | |
| • ...from banks/financial companies | | | |
| 4. Does the existing production have a market? | | | |
| 5. Is it possible to keep business continuity? | | | |
| 6. Can the new company count with support by local trade unions? | | | |
| 7. Can the new company count with support by old client/creditors? | | | |
| 8. Can the new company count with experienced external consultancy/development agencies? | | | |

Once the responses to these questions show a generally positive assessment, as specified earlier, it is possible to enter in the active phase of setting up an employees' cooperative as described in the "Saving Jobs!"guide edited by COCETA. This implies generating a cooperative business plan, a cooperative organisational chart, a description of the value chain the cooperative wishes to generate … in order to finally start an economic activity rooted in social and civic engagement such as it is realised by cooperatives!

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