

## Preface

On 9 February 2018, Aikaterini Argyrou was awarded a PhD by the University of Utrecht for her thesis ‘Social enterprises in the EU: Law promoting stakeholder participation in social enterprises’. Supervisors were Professor dr. A.F.M. Dorresteijn (Utrecht University) and Professor dr. T.E. Lambooy (Nyenrode Business University). We present this book in the series of the Institute for Corporate Law with great pleasure.

The dissertation introduces a comparative legal-socio study of three tailor-made legal forms in Greece, Belgium and the United Kingdom that promote social enterprises, and contribute to their legitimisation and recognition. The research is extended to the Netherlands, which at the moment does not provide for a special legal form for social enterprises. In chapter 4, survey-based findings are presented concerning involvement and participation of stakeholders (e.g. employees, customers, shareholders) in Dutch social enterprises.

This article-based dissertation includes a comparison of the tailor-made legal forms that structure a social enterprise in the three selected jurisdictions. The dissertation also examines to what extent participatory governance structures prescribed in tailor-made laws stimulate the participation of stakeholders in decision-making in practice.

Empirical evidence in this study demonstrates that formal legally prescribed participation is not always fully implemented in its practice. Informal, direct but regular processes are more frequently developed in the governance of social enterprises. Subsequently, Argyrou provides important recommendations which address national and EU legislators and policy-makers (chapter 5).

We are convinced that the study by Argyrou is a valuable contribution to the discussion on social enterprises and stakeholder participation in particular.

*Maarten Kroeze*  
*Jan Berend Wezeman*



# Contents

<b>Preface</b>	V
<b>Acknowledgement</b>	VII
<b>List of acronyms</b>	XI
<b>List of tables</b>	XIII
<b>List of figures and charts</b>	XV
<b>Chapter 1.</b> General introduction	1
1.1 Aims of the doctoral thesis	1
1.2 Main concepts	3
1.2.1 The social enterprise concept	3
1.2.2 Tailor-made legal forms for social enterprises	8
1.2.3 Stakeholder participation in the governance of social enterprises	12
1.3 The research question	16
1.4 Methodology and validity issues	16
1.4.1 The employed methodology in this doctoral thesis	16
1.4.1.1 Comparative legal research	16
1.4.1.2 Comparative case study approach	16
1.4.1.3 Selection of cases	17
1.4.1.4 Meta-synthesis	18
1.4.1.5 Survey of stakeholder participation in Dutch social enterprises	19
1.4.2 Methodological considerations and validity issues	20
1.4.2.1 Methodological considerations in relation to the comparative approach	20
1.4.2.2 Methodological considerations in relation to the case studies and the meta-synthesis	22
1.4.2.3 Methodological considerations in relation to the survey	30

## CONTENTS

<b>Chapter 2.</b>	<b>An introduction to tailor-made legislation for social enterprises in the EU: A comparison of legal regimes in Belgium, Greece and the UK</b>	<b>31</b>
2.1	Introduction: Legal frameworks for social enterprises in the EU	32
2.2	Definitions of social enterprises	37
2.3	Methodology: Legal variables pertinent to social enterprises	43
2.3.1	Introduction and reference to previous research	43
2.3.2	The background studies	43
2.3.3	Comparative legal methodology	46
2.3.4	The selection of countries	48
2.3.5	Comparison on the basis of the legal variables	49
2.4	The social purpose in the Belgian, Greek, and UK social enterprise law	49
2.4.1	The Belgian company with a social purpose (VSO)	50
2.4.2	The Greek social cooperative enterprise (Koinsep)	52
2.4.3	The Community Interest Company (CIC) in the UK	54
2.4.4	Intermediate comparative conclusions: the social purpose of social enterprises in the Belgian, Greek and UK social enterprise law	58
2.5	Participatory governance in the Belgian, Greek, and UK social enterprise law	61
2.5.1	The Belgian company with a social purpose (VSO)	62
2.5.2	The Greek social cooperative enterprise (Koinsep)	63
2.5.2.1	General meeting of the members	64
2.5.2.2	Managing committee	65
2.5.3	The Community Interest Company (CIC) in the UK	67
2.5.3.1	The annual general meeting	68
2.5.3.2	Board of directors	69
2.5.4	Intermediate comparative conclusions: the participatory governance of social enterprises in the Belgian, Greek and UK social enterprise law	71
2.6	Accountability and responsibility in the Belgian, Greek, and UK social enterprise law	73
2.6.1	The Belgian company with a social purpose (VSO)	74
2.6.2	The Greek social cooperative enterprise (Koinsep)	75
2.6.3	The Community Interest Company (CIC) in the UK	76
2.6.4	Intermediate comparative conclusions: accountability and responsibility of social enterprises in the Belgian, Greek and UK social enterprise law	78
2.7	Financial structure in the Belgian, Greek, and UK social enterprise law	79
2.7.1	The Belgian company with a social purpose (VSO)	80
2.7.1.1	Profit distribution constraint: the asset-lock scheme	80
2.7.1.2	Asset-lock on winding up	81

## CONTENTS

2.7.2	The Greek social cooperative enterprise (Koinsep)	82
2.7.2.1	Profit distribution constraint: the asset-lock scheme	82
2.7.2.2	Asset-lock on winding up	83
2.7.2.3	Financing of resources	83
2.7.3	The Community Interest Company (CIC) in the UK	84
2.7.3.1	Profit distribution constraint: the asset-lock scheme	84
2.7.3.2	Asset-lock on winding up	86
2.7.3.3	Financing of resources	87
2.7.4	Intermediate comparative conclusions: financial structure of social enterprises in the Belgian, Greek and UK social enterprise law	89
2.8	Conclusions	92
2.8.1	The points of similarity	93
2.8.2	The points of difference	94
<b>Chapter 3.</b>	<b>Case studies concerning the participatory governance of social enterprises in Belgium, Greece, and the UK</b>	97
3.1	Belgium: An empirical investigation of supportive legal frameworks for social enterprises in Belgium: A cross-sectoral comparison of three case studies concerning social enterprises in the social housing, finance and energy sector	97
3.1.1	Introduction	98
3.1.1.1	Governance of social enterprises	98
3.1.1.2	The legal factor of governance in tailor-made legislation for social enterprises	102
3.1.1.3	The necessity for empirical research in the governance of social enterprises	103
3.1.1.4	The Belgian vennootschap met sociaal oogmerk (VSO) legal label	105
3.1.2	Method	107
3.1.2.1	A case study approach	107
3.1.2.2	Respondents	108
3.1.2.3	Procedure and analysis	109
3.1.3	The case study results	113
3.1.3.1	Cooperatives with a social purpose (VSO label) in the renewable energy, financial and housing sector	113
3.1.3.2	Cooperatives with a social purpose in the renewable energy sector – Cooperative Enterprise in Rational Energy (CORE)	114
3.1.3.3	Cooperatives with a social purpose in the financial sector – Microstart	117
3.1.3.4	Cooperatives with a social purpose in the social housing sector – Volkshuisvesting	119

## CONTENTS

3.1.4	Discussion	123
3.1.4.1	Participatory governance	123
3.1.4.2	Employee participation in decision-making processes	125
3.1.4.3	Other types of stakeholder participation in decision-making processes	126
3.1.4.4	Incentives for formal versus informal participation of employees and stakeholders	131
3.1.5	Case study conclusions	135
3.1.5.1	Limitations, practical implications and future research	135
3.2	Greece: Unravelling the participation of stakeholders in the governance models of social enterprises in Greece	136
3.2.1	Introduction	137
3.2.1.1	Participatory governance for social enterprises	137
3.2.1.2	Participatory governance as a legal concept: the conceptual framework	139
3.2.1.3	The concept of stakeholder participation in Greek legislation regarding social enterprises	141
3.2.2	Method	147
3.2.2.1	Case study approach	147
3.2.2.2	Respondents	148
3.2.2.3	Procedure and Analysis	148
3.2.3	The case study results	151
3.2.3.1	Koinsep Merimna Ygeias (KMY)	151
3.2.3.2	Koinsep Ekati (KE)	155
3.2.4	Discussion	157
3.2.4.1	The roles and rights of stakeholders in the governance of social enterprises	157
3.2.4.2	Participatory stakeholder mechanisms	158
3.2.5	Case study conclusions	159
3.2.5.1	Limitations and future research	159
3.2.5.2	Practical implications	160
3.3	Greece: Social enterprises and the integration of persons with mental disabilities in Greece: A case study of Koispe Athena-Elpis	161
3.3.1	Introduction	161
3.3.1.1	Social enterprises of work integration in Greece	161
3.3.1.2	Participatory governance and the Koispe legal form	164
3.3.1.3	Type A members in the governance of the Koispe legal form	167
3.3.2	Method	170
3.3.2.1	Case study approach	170
3.3.2.2	Respondents	171
3.3.2.3	Procedure and analysis	171

## CONTENTS

3.3.3	The case study results	173
3.3.3.1	The participation of Type A members in the functioning and governance of the Koispe Athena-Elpis	173
3.3.3.2	The various roles and rights of the mentally disabled in the functioning and decision-making of the organisation	175
3.3.3.3	Towards a structured process for the participation of the mentally disabled in the Koispe governance structure	180
3.3.4	Discussion	184
3.3.5	Case study conclusions	185
3.3.5.1	Limitations and future research	185
3.3.5.2	Practical implications	186
3.4	UK: Stakeholder participation in social enterprises: two case studies involving community interest companies in Scotland	186
3.4.1	Introduction	187
3.4.1.1	Social enterprises in the UK and the CIC legal form	187
3.4.1.2	The community purpose of the CIC	189
3.4.1.3	The financial structure of the CIC	189
3.4.1.4	The participatory governance of the CIC and accountability	190
3.4.2	Method	198
3.4.2.1	The case study approach	198
3.4.2.2	Respondents	199
3.4.2.3	Procedure and analysis	200
3.4.3	The case study results	202
3.4.3.1	Stakeholders as members and owners of shares in the examined CICs	204
3.4.3.2	Stakeholders as decision-makers in the examined CICs	207
3.4.3.3	Stakeholders as consultants in the examined CICs	210
3.4.3.4	Stakeholders as recipients of information regarding decisions	212
3.4.4	Discussion	214
3.4.5	Case study conclusions	217
3.4.5.1	Limitations and future research	217
3.4.5.2	Practical implications	218
3.5	UK: Participatory governance in community energy schemes in the UK: The case study Stratford Community Energy PLCIC	219
3.5.1	Introduction	219
3.5.1.1	The CIC in community energy schemes	219
3.5.1.2	The CIC and the CIC legal framework	225
3.5.1.3	Community participation in the governance of the CIC and accountability	225
3.5.1.4	The role of stakeholders in the CIC	226

## CONTENTS

3.5.2	Method	228
3.5.2.1	The case study approach: data collection and data analysis	228
3.5.2.2	Limitations in the data collection and data analysis method employed for the development of the Stratford PLCIC case study	229
3.5.3	Case study results	233
3.5.3.1	Introduction to the case study: the Drayton Manor Farm project, Anesco and the Stratford PLCIC	233
3.5.3.2	Stratford's PLCIC community objectives in the Drayton Manor Farm Project	236
3.5.3.3	The participatory governance of Stratford PLCIC	237
3.5.4	Discussion	241
3.5.5	Case study conclusions	243
3.5.5.1	Limitations and future research	244
3.5.5.2	Practical implications	244
3.6	A meta-synthesis and cross-case analysis of case studies regarding the participatory governance of social enterprises in Belgium, Greece, and the UK	245
3.6.1	An overview of the developed cases concerning the participatory governance of social enterprises	245
3.6.2	Methodology	248
3.6.3	Results and discussion	250
3.6.3.1	The roles of stakeholders in the examined cases: A cross-national examination	250
3.6.3.2	The level and scope of involvement of stakeholders	261
3.6.3.3	The lack of effectiveness of legally prescribed (formal) participatory governance to include stakeholders in the decision-making of social enterprises	270
3.6.3.4	The effect of legally prescribed stakeholder participatory governance on the social enterprises and on stakeholders	278
3.6.4	Conclusions	279
<b>Chapter 4.</b>	<b>Participatory governance in Dutch social enterprises: a survey-based approach</b>	<b>281</b>
4.1	Introduction	282
4.2	The Nyenrode – PwC Social Enterprise Survey of 2016	288
4.3	Methodology	289
4.3.1	The development of the survey sample	289
4.3.2	The content of the survey questions	290
4.3.3	The analysis of the collected data	293

## CONTENTS

4.4	Survey results and discussion	294
4.4.1	The extent of input used from different stakeholder groups in the decision-making processes of the Dutch social enterprises	294
4.4.2	The extent of transparency concerning the content and outcome of decisions	299
4.4.3	The extent of formal, direct and regular collected input from stakeholders	301
4.4.3.1	Formal vs. informal	301
4.4.3.2	Ad hoc vs. regular	302
4.4.3.3	Direct vs. indirect	303
4.5	Conclusions	305
<b>Chapter 5.</b>	<b>Summary, conclusions, and recommendations</b>	<b>307</b>
5.1	Summary	307
5.2	General conclusions	307
5.2.1	Similarities in the key characteristic of participatory governance	309
5.2.2	Differences in the key characteristic of participatory governance	309
5.2.3	Stakeholder participation in practice	310
5.2.3.1	The functioning of participatory governance	311
5.2.3.2	The effect and the effectiveness of participatory governance	311
5.2.3.3	Participatory governance in the Netherlands	314
5.3	Recommendations	314
	<b>Abstract</b>	<b>319</b>
	<b>Annex I</b>	<b>321</b>
	<b>Annex II</b>	<b>329</b>
	<b>Bibliography</b>	<b>333</b>



# Chapter 1. General introduction

## 1.1 Aims of the doctoral thesis

This doctoral thesis comprises a socio-legal study, which aims to develop a fundamental understanding of participatory governance structures in tailor-made legal forms for social enterprises in the EU.<sup>1</sup> In the study, a comparison is presented of the manner in which three selected EU jurisdictions, i.e. Greece, Belgium, and the UK, provide tailor-made legal forms for social enterprises, and in particular how such legal forms shape and structure stakeholder participation in the governance of the social enterprises. Subsequently, an assessment is conducted into the question how the legal provisions on stakeholder participation (in the selected legal forms) are implemented in practice by social enterprises.

This doctoral thesis is divided into a legal research part and an empirical research part. The legal research examines and compares the legal provisions of three selected tailor-made legal forms. This research aims in the first place to provide a systematic exposition and an explanation of the legal rules, provisions and principles provided for social enterprises in the three selected tailor-made legal forms. The three examined legal forms are: (i) the *Vennootschap met Sociaal Oogmerk* (the Belgian term for the Company with a Social Purpose – hereafter the ‘VSO’) in Belgium; (ii) the *Κοινωνική Συνεταιριστική Επιχείρηση* (the Greek term for the Social Cooperative Enterprise – hereafter the ‘Koinsep’) in Greece; and (iii) the Company Interest Company (hereafter the ‘CIC’) in the UK. The selection of these three legal forms is explained in the methodology part which is contained in Sub-section 2.3 of Chapter 2. In the second place, a legal comparison is undertaken to demonstrate the similarities and differences of the selected tailor-made legal forms in relation to certain legal variables. These legal variables are: (i) the social purpose of the social enterprise; (ii) the participatory governance structure, i.e. stakeholder participation in the governance structure; (iii) the accountability and responsibility of the social enterprise to its stakeholders; and finally (iv) the financial structure of the social enterprise. The selection of these legal variables is also explained in Chapter 2.

---

1. This doctoral thesis elaborates on the outcome of research activities carried out until 30 April 2017.

## CHAPTER 1

This doctoral thesis further exhibits, mainly in Chapter 3, the empirical research concerning the effect and the effectiveness of the tailor-made legal provisions concerning stakeholder participation on the governance of social enterprises. In this empirical part, it is examined how the legal provisions concerning stakeholder participation in the governance of social enterprises are implemented in practice. Accordingly, this part aims to demonstrate the regulatory complexities in the implementation of the selected tailor-made laws in relation to the area of participatory governance of social enterprises. More specifically, the research illustrates: (i) the functioning of governance in social enterprises that employ the examined tailor-made legal forms; (ii) the effect that the practical implementation of participatory governance provisions may exert on these social enterprises; and (iii) the effectiveness of the legal provisions concerning stakeholder participation in the governance of these social enterprises, i.e. to what extent stakeholders are included in the examined social enterprises' decision-making processes.

To that end, the empirical research comprises in total nine qualitative case studies. In each of the three selected jurisdictions, i.e. in Belgium, Greece and in the UK, three case studies were performed to assess social enterprises established in accordance with the tailor-made laws of that jurisdiction. Subsequently, a cross-case analysis and a meta-synthesis of the results derived from the case studies elaborate on and discuss the aggregate results from the case studies.

The examination of stakeholder participation in the governance of social enterprises is extended for illustrative purposes to one selected jurisdiction that does *not* provide a tailor-made legal framework to social enterprises, namely the Netherlands. In Chapter 4, survey-based findings are presented concerning stakeholder participation in Dutch social enterprises.

In addition, I must also explain that this doctoral thesis is article-based. The Chapters comprise some unpublished articles and some peer-reviewed articles that are published or accepted for publication in academic journals or books. The published articles, particularly those included in Chapter 3, have been edited and modified to a limited degree, i.e. only in order to be presented in this doctoral thesis in such a manner that they can contribute to the comparison of all case studies in the meta-synthesis in Sub-section 3.6. The editing entailed: (i) the removal of an introductory part of a published case study if this could be considered repetitive in view of the other case studies exhibited in Sub-section 3.1; (ii) the arrangement of citations to footnotes in the case studies and the application of similar styling rules; (iii) the insertion of comparable tables containing the research results in the case studies presented in Sub-sections 3.1 and 3.2; (iv) a slight modification of the original titles of particular sections in Sub-sections 3.1 and 3.2 in pursuance of creating a similar structure in all case studies;

and (v) the correction of identified typographical errors and misprints. The publication details of each of the articles are duly provided in the corresponding Sub-sections.

Concisely, Chapter 1 introduces the objectives, the research question to which this doctoral thesis attempts to respond, and the methods that are employed in response to the research question. It also illustrates the main concepts discussed, i.e. the social enterprise concept, the concept of tailor-made legal forms for social enterprises, and the concept of stakeholder participation in the governance of social enterprises. Chapter 2 comprises an introduction to, and a comparison of, tailor-made legal forms and participatory governance structures for social enterprises in three selected jurisdictions, i.e. in Belgium, Greece, and in the UK. Subsequently, Chapter 3 examines how tailor-made national legal provisions concerning stakeholder participation are implemented in practice by social enterprises employing the selected legal forms in the three selected countries. The examination is accomplished by a comparison and a meta-synthesis of findings derived from nine qualitative case studies. For illustrative purposes, Chapter 4 extends the discussion concerning participatory governance structures for social enterprises in one exemplary jurisdiction without tailor-made legislation for social enterprises, i.e. the Netherlands. This Chapter illustrates and discusses survey data collected from Dutch social enterprises regarding the participation and involvement of stakeholders in the governance of Dutch social enterprises. Finally, I present my conclusions and recommendations in Chapter 5.

## 1.2 Main concepts

### 1.2.1 *The social enterprise concept*

This doctoral thesis focuses on the examination of the social enterprise concept. A comprehensive explanation of the concept of social enterprises is provided in Sub-section 2.1.2 of Chapter 2. The term social enterprise is particularly used to describe organisations, which are socially conscious and demonstrate more responsible and more inclusive entrepreneurial practices, and that seek to contribute to sustainable development in the face of contemporary societal (social and environmental challenges).<sup>2</sup> However, due to the existing variations of

---

2. G. Galera and C. Borzaga, 'Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation' (2009) 5(3) *Social Entrepreneurship Journal*, 215-218. J. Defourmy and M. Nyssens, 'Conceptions of Social Enterprise and Social Entrepreneurship in Europe and the United States: Convergences and Divergences' [2010] 1(1) *Journal of Social Entrepreneurship*, 32-53. A. Fici, 'Recognition and Legal Forms of Social Enterprise in Europe: A Critical Analysis from a Comparative Law Perspective' (2016) 27(5)

## CHAPTER 1

social entrepreneurial activity in practice, there is a lack of a uniform understanding of the term ‘social enterprise’ across the EU.<sup>3</sup>

To make the discussion more concrete of what may constitute a social enterprise, and how this term is differently perceived across the EU, the following examples are provided.

In the Netherlands, for instance, an example of a social enterprise is Taxi Electric, a Dutch limited liability company, which serves paying clients, including many tourists who wish to be transported into and in the city of Amsterdam. The company serves a social purpose, which is manifold, namely: (i) to avoid causing exhaust fumes with black carbon and other chemicals that damage the health of the Amsterdam citizens (in contrast to other taxis which continue to drive on diesel); (ii) to avoid polluting the environment in general, and in particular to reduce carbon-dioxide emissions; and (iii) to employ middle-aged individuals over 55 years old who struggle to find employment or who are long-term unemployed.<sup>4</sup>

For the people of Slovakia, Café Dobré & Dobré is considered a social enterprise. Café Dobré & Dobré is a cafeteria initiated by a Slovak civic association, which employs solely the homeless and those living on the streets.<sup>5</sup>

Whereas in Greece an example of a social enterprise is the social cooperative Koinsep Ekati (see also Sub-section 3.2 of Chapter 3), which caters for stray animals and abandoned pets in Athens, which could not be afforded anymore by their masters.

The qualitative case studies provided in Chapter 3 demonstrate various other examples of social enterprises.

---

European Business Law Review, 639. A. Nicholls, *Social Entrepreneurship: New Models of Sustainable Social Change* (Oxford University Press 2006). J. Defouny and M. Nyssens, ‘Defining Social Enterprise’ in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006).

3. J.A. Kerlin, ‘Social Enterprise in the United States and Europe: Understanding and Learning from the Differences’ (2006) 17(3) *Voluntas: International Journal of Voluntary and Nonprofit Organisations*, 247. F. Cafaggi and P. Iamiceli, ‘New Frontiers in the Legal Structure and Legislation of Social Enterprises in Europe: A Comparative Analysis’ in A. Noya (ed), *The Changing Boundaries of Social Enterprises* (OECD Publishing 2009). Defouny and Nyssens (n 2) 35-37.
4. Taxi Electric, ‘Home page’ available at: <[www.taxielectric.nl/](http://www.taxielectric.nl/)> accessed 15 June 2017.
5. Café Dobré & Dobré, ‘Home page’ available at: <[www.dobredobre.sk/](http://www.dobredobre.sk/)> accessed 15 June 2017.

A distinctive feature of the examples provided above, is the simultaneous pursuit of non-profit societal (social and environmental) objectives and the pursuit of entrepreneurial activities. A social enterprise by definition has a societal and an economic/commercial/entrepreneurial purpose.<sup>6</sup> The term social enterprise as reflected in the examples above suggests that the social enterprise is an enterprise with a ‘problem solving nature’ concerning societal issues.<sup>7</sup> The foregoing social enterprises pursue the fulfilment of their social mission in response to societal (social and environmental) challenges, such as how to maintain clean air in the city and avoid environmental degradation, how to address poverty and social exclusion, and how to take care of stray animals in the city, and all in an entrepreneurial manner. In general, social enterprises aspire to contribute to the improvement of society, the preservation of natural capital, the independent role of media in democracies, and the protection of human rights.

However, the term social enterprise has been contemplated and debated by various scholars who have developed definitions and typologies for social enterprises. The scholarly debate concerning the social enterprise concept and definition is illustrated in Sub-section 2.1.2 of Chapter 2. It is demonstrated here that scholars from different disciplines and backgrounds may define the social enterprise in various ways, also in relation to their disciplines’ focus and nationalities.

Indeed, international scholarship has agreed that the term social enterprise applies to a broad range of diverse organisations, which do not share one, but rather various organisational and legal characteristics. In particular, the term social enterprise, as it is used in scholarship, refers to a type of hybrid organisations that combine legal and organisational characteristics, which are present in either traditional for-profit and/or non-for-profit organisations.<sup>8</sup> The hybridity of social enterprises is defined by Doherty et al. as organisations that span institutional boundaries, which, consequently, ‘do not fit neatly into the conventional categories of private, public or non-profit organizations’ but rather combine elements from all these types of organisations.<sup>9</sup> Liao also notes that the social enterprise combines ‘both for-profit and non-profit legal characteristics in its design to enable the dual pursuit of economic and social interests’.<sup>10</sup>

- 
6. H. Haugh, ‘A Research Agenda for Social Entrepreneurship’ (2005) 1(1) *Social Enterprises Journal*, 2.
  7. Galera and Borzaga (n 2) 212.
  8. Haugh (n 6) 2.
  9. B. Doherty, H. Haugh and F. Lyon, ‘Social Enterprises as Hybrid Organizations: A Review and Research Agenda’ [2014] 16(4) *International Journal of Management Reviews*, 417-418.
  10. C. Liao, ‘Limits to Corporate Reform and Alternative Legal Structures’ in B. Sjøfjell and B. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015) 292.

## CHAPTER 1

The different legal and organisational characteristics of social enterprises across the EU and the different understandings of the social enterprise concept in the EU countries have made the development of a uniform definition for the social enterprise almost unattainable.

Nonetheless, the European Commission (hereafter ‘Commission’) in its 2011 communication on the ‘Social Business Initiative’ (hereafter ‘the SBI Communication of 2011’)<sup>11</sup> introduced an operational definition for the social enterprise with an aspiration to be uniformly applied by all countries across the EU. The Commission’s definition is elaborated in detail in Sub-section 2.1.4 of Chapter 2 and it states that a social enterprise is:

[an] operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involve[s] employees, consumers and stakeholders affected by its commercial activities.<sup>12</sup>

With this, the Commission aspired to provide more uniformity in the understanding of the social enterprise concept and to open the discussion for the creation of a favourable environment (both economic and legislative) for social enterprises in the EU. The Commission’s definition was subsequently included in the Council Regulation (EU) 346/2013 of 17 April 2013 on European Social Entrepreneurship Funds (see Sub-section 2.2 of Chapter 2) concerning the ‘social undertaking’.<sup>13</sup>

The Commission further encourages the creation of a favourable legislative environment for social enterprises in the EU.<sup>14</sup> The SBI Communication of 2011 addresses the necessity of the EU countries to design appropriate legal forms for social enterprises.<sup>15</sup> Additionally, the Commission indicates that more research must be undertaken on the options to: (i) adopt a European framework

---

11. European Commission, ‘Social Business Initiative: Creating a Favourable Climate for Social Enterprises, Key Stakeholders in the Social Economy and Innovation (SBI Communication of 2011)’ COM (2011) 682 final, 2-3.

12. *ibid* 2.

13. Council Regulation (EU) 346/2013 of 17 April 2013 on European Social Entrepreneurship Funds [2013] OJ L115/18 (EuSEF Regulation). See also concerning the ‘social undertaking’ in A. Argyrou, ‘Providing Social Enterprises with Better Access to Public Procurement: The Development of Supportive Legal Frameworks’ (2017) 12(3) *European Procurement & Public Private Partnership Law Review*, 311-313.

14. SBI Communication of 2011 (n 11) 9.

15. *ibid* 9-10.

for social enterprises (i.e. to create a special European legal framework applicable to all social enterprises in the EU) and/or (ii) to introduce EU legislation establishing a ‘label’ that can be utilised by any social enterprise regardless of the type of legal form used (i.e. all Member States then have to incorporate this label in their national company acts).<sup>16</sup> The Commission considers the improvement of the legislative environment for social enterprises within the EU to be important, particularly in view of its considerations concerning regulatory and legislative differences in the legislation of EU countries that hinder the development of social enterprises.<sup>17</sup>

To that end, the EU has made progress in contemplating the creation of a favourable and enabling EU legal environment for social enterprises.<sup>18</sup> In particular, it is exploring the possibility of introducing a common legal framework on social enterprises in the EU, to be based on harmonised national laws pertaining to social enterprises that will be applicable to all social enterprises in the EU.<sup>19</sup>

Alongside these efforts, in 2017, a study conducted on behalf of the European Parliament’s Committee on Legal Affairs, i.e. the study for a European statute for social and solidarity-based enterprise, provided positive recommendations in a report, concerning the harmonisation of national social enterprise laws through an EU Directive.<sup>20</sup> In particular, this study recommended the adoption of an EU legal framework for social enterprises in order to enhance the development of social enterprises in the EU. According to this study, the EU legal framework should introduce a tailor-made legal form for social enterprises, in the form of ‘a legal qualification (or status), that of the “European Social Enterprise” (hereafter ‘ESE’).<sup>21</sup> Amongst the legal characteristics with which all ESEs should comply is the involvement of ‘various stakeholders in the management’ and ‘specific governance requirements’ of the social enterprise.<sup>22</sup>

---

16. *ibid* 12.

17. *ibid* 6.

18. Legislative initiatives on the EU level regard: (i) the simplification of the European cooperative regulation; (ii) the adaptation of the proposal for a regulation on the statute for a European foundation; (iii) a comparative study on the situation of mutual societies and their cross-border activities was carried out; (iv) the mapping of the social enterprises’ existing legal forms and business models including the economic weight and the realisation of tax regimes for social enterprises; and (v) the identification of best practices in an EU level. SBI Communication of 2011 (n 11) 10. For the EU actions in this respect, see also European Commission, ‘Social Enterprises’ available at: <[http://ec.europa.eu/growth/sectors/social-economy/enterprises\\_en](http://ec.europa.eu/growth/sectors/social-economy/enterprises_en)> accessed 30 March 2017.

19. Fici (n 2) 643.

20. A. Fici, ‘A European Statute for Social and Solidarity-Based Enterprise’ (Policy Department for Citizens’ Rights and Constitutional Affairs, 15 February 2017) available at: <[www.europarl.europa.eu/supporting-analyses](http://www.europarl.europa.eu/supporting-analyses)> accessed 30 April 2017.

21. *ibid* 33-37.

22. *ibid*.

## CHAPTER 1

The foregoing developments are important for the social enterprise activity in the EU. The socio-legal study in this doctoral thesis concerning stakeholder participation in the governance of social enterprises can be regarded as a necessary contribution to the development of law in this area.

### 1.2.2 *Tailor-made legal forms for social enterprises*

Apparently, one of the Commission aims is to introduce a tailor-made legal form for social enterprises in the EU. But it is not barren ground the Commission is entering. Several EU countries have already developed legal frameworks and/or legal forms for social enterprises. Such a development is also promoted by several scholars. National legal frameworks and legal forms tailor-made to social enterprises have been developed in several EU jurisdictions to accommodate the hybrid nature of social enterprises, such as their social purpose and commercial activity.<sup>23</sup> The tailor-made laws are either autonomous or contributory by virtue of being attached to existing national company and civil legislation.<sup>24</sup>

The purpose of regulating the concept of social enterprises in national tailor-made legislation has been expressed by Cafaggi and Iamiceli. They have noted that the laws pertaining to social enterprises – in particular based on company and/or civil law – can be used to serve several functions for the benefit of social enterprises and accordingly for the benefit of society. Such functions are: (i) to legitimise and recognise a ‘social phenomenon’ that can be enlarged to a significant ‘legal concept’, such as the social enterprise concept;<sup>25</sup> (ii) to

---

23. Defourmy and Nyssens (n 2) 33, 36-37; Galera and Borzaga (n 2) 218-219; T. Lambooy and A. Argyrou, ‘Improving the Legal Environment for Social Entrepreneurship in Europe’ [2014] 11(2) *European Company Law*, 71-76; European Commission, ‘A Map of Social Enterprises and their Ecosystems in Europe: Synthesis Report’ (European Union, 2015) 52 available at: <<http://ec.europa.eu>> accessed 15 June 2017; Cafaggi and Iamiceli (n 3) 27.

24. Lambooy and Argyrou (n 23) 71-76.

25. This is what Fici (n 2) characterises as the vital role of organisational law. According to Fici, ‘organizational law plays a vital and irreplaceable role in defining the specific identity of the organizations, which is defined (first of all) by their particular goals. Therefore, the primary, essential and irreplaceable role of social enterprise law is (and should be) to establish a precise identity of social enterprises and to preserve their essential features (...) operating with an identity distinct from those of other organizations and appearing different under a legal designation that conveys objectives and modes of action that meets the interests of social enterprises’ founders and members and is, consequently, a precondition for the existence and development of this particular type of business organization’. See Fici (n 2) 648. See also H. Hansmann and R. Kraakman, ‘The Essential Role of Organizational Law’ [2017] 110(3) *Yale Law Journal*, 387.

incentivise the social enterprise legal concept's development among other legal concepts (for instance, in several areas of law, such as in company law);<sup>26</sup> and (iii) to promote the effectiveness of the given social enterprise concept, by providing legal rules, which shape its legal form and organisational functioning.<sup>27</sup>

Legal scholarship has also discussed the important role that company law, and particularly tailor-made social enterprise law, can play in pursuit of sustainability. Lambooy stresses that the tailor-made legal forms for social enterprises can provide a pathway for mainstreaming sustainability among regular companies.<sup>28</sup> Sjøfjell affirms Lambooy and states that 'company law [has] a crucial role to play in the transformation towards sustainability because it provides the legal framework for the internal workings of the company, including its decision-making'.<sup>29</sup> Accordingly, Chapter 2 provides a comprehensive understanding of the provisions contained in tailor-made laws that adhere to certain legal characteristics for the social enterprise mentioned above in the Commission's

---

26. Cafaggi and Iamiceli (n 3) 26.

27. *ibid.*

28. T. Lambooy, 'Leadership, Entrepreneurship and Stewardship in Corporate Law' (Inaugural Lecture of Prof. Tineke Lambooy, Nyenrode Business University, 21 September 2016) 43 available at: <[www.nyenrode.nl/FacultyResearch/research/Documents/Inaugurallectures/Tineke\\_Lambooy\\_Inaugural\\_Lecture.pdf](http://www.nyenrode.nl/FacultyResearch/research/Documents/Inaugurallectures/Tineke_Lambooy_Inaugural_Lecture.pdf)> accessed 11 July 2017.

29. B. Sjøfjell, 'Sustainable Public Procurement as a Driver for Sustainable Companies?' in B. Sjøfjell and A. Wiesbrock (eds), *Sustainable Public Procurement under EU Law: New Perspectives on the State as Stakeholder* (Cambridge University Press 2015) 183. Sjøfjell also mentions the important role that other legal areas could play, such as public procurement law, competition law and state aid law. She argues that these legal areas could enable a shift 'from non-sustainable to sustainable industries' using the example of public procurement law and its significant importance – together with company law – in shifting businesses into the paradigm of sustainability. See also B. Sjøfjell and B. Richardson, 'The Future of Company Law and Sustainability' in B. Sjøfjell and B. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015) 388. The same point is made by other scholars, by the European Commission and the European Parliament. See T. Lambooy, *Corporate Social Responsibility: Legal and Semi-legal Frameworks Supporting CSR* (Kluwer, 2010) 97-99; Fici (n 20) 7; Galera and Borzaga (n 2) 218-219; Haugh (n 6) 2-3; European Parliament, 'Report on Social Entrepreneurship and Social Innovation in Combating Unemployment (2014/2236 (INI))' (Committee on Employment and Social Affairs, 30 July 2015) available at: <[www.europarl.europa.eu](http://www.europarl.europa.eu)> accessed 30 April 2017. SBI Communication of 2011 (n 11); European Commission, 'Social Entrepreneurs: Have Your Say!' (16th May 2014) available at: <[http://ec.europa.eu/internal\\_market/conferences/2014/0116-social-entrepreneurs/index\\_en.htm](http://ec.europa.eu/internal_market/conferences/2014/0116-social-entrepreneurs/index_en.htm)> accessed 30 April 2017. Pertinent to the work of Sjøfjell and Lambooy is other research concerning the relationship between the social enterprise and other areas of law particularly that of public procurement law, state aid and tax law: see Argyrou (n 13). D. Golubović and M. Galetin, 'The European Union Rules Governing State Aid and their Impact on National Regimes Governing Social Enterprises' [2012] 6(2) *Poslovna Ekonomija*, 183-200; G. Antonucci, 'Social Enterprises in Italy: Coproducers or State Aid Claimants' [2015] 11(8) *European Scientific Journal*, 242-262; A. Szymaniska and M. Jegers, 'State Aid to Social Enterprises:

## CHAPTER 1

definition. These are: (i) the maintenance of a social purpose; (ii) a participatory system of governance which is open and inclusive to the participation of stakeholders and third parties; (iii) high standards of accountability and responsibility towards the stakeholders based on fiduciary duties and social reporting; and finally (iv) profit distribution constraints and the application of asset-lock schemes.<sup>30</sup>

However, there is scholarship in other disciplines, which has placed the discussion regarding the legal characteristics of social enterprises in an arbitrary sphere that is not related to the definitive elements of social enterprises. As such, it is claimed that the legal characteristics of social enterprises do not relate directly to the elements that influence the development of a social enterprise's performance.<sup>31</sup> Alter for instance, argues that the legal status of a social enterprise is the manifestation of its regulatory environment, which could be either conducive or less enabling on a per-country basis.<sup>32</sup>

Nonetheless, other scholars, such as Borzaga and Defourny, demonstrate the existence of a relationship between the emergence of social enterprises and their legal characteristics in the legal systems of various countries in the EU.<sup>33</sup> They note that tailor-made legal forms enable social enterprises to achieve their purpose.<sup>34</sup> Scholarship also notes that the very existence of legislation and legal forms on this topic has contributed to the shaping of the concept of social enterprises and to providing clarity in the entrepreneurial transactions of social entrepreneurs accordingly.<sup>35</sup> For instance, scholarship explains that the grey areas in the applicable legislation that apply to the transactions of social enterprises may

---

the Polish Case' [2015] 14(4) European State Aid Law Quarterly, 479-491; A.M. Mystica, 'A Comparative Look at International Approaches to Social Enterprise: Public Policy, Investment Structure, and Tax Incentives' [2016] 7(2) William and Mary Policy Review, 1-34; Fici (n 2) 645.

30. Lambooy and Argyrou (n 23) 71-73; Cafaggi and Iamiceli (n 3) 27-28.

31. K. Alter, *Social Enterprise Typology* (Virtue Ventures LLC 2007) 53.

32. *ibid.*

33. C. Borzaga and J. Defourny, *The Emergence of Social Enterprise* (Routledge 2001).

34. Defourny and Nyssens (n 2) 44; Galera and Borzaga (n 2) 218-223.

35. C. Travaglini, F. Bandini and K. Mancinone, 'An Analysis of Social Enterprises Governance Models Through a Comparative Study of the Legislation of Eleven Countries' (EMES International Conference on Social Enterprise, Trento, 1 July 2009) available at: <<http://ssrn.com/abstract=1479653>> accessed 30 March 2017. Cafaggi and Iamiceli (n 3) 26; Galera and Borzaga (n 2) 210; Defourny and Nyssens (n 2); B. Roelants, 'Cooperatives and Social Enterprises: Governance and Normative Frameworks' (CECOP Publications, 2009). A. Argyrou, T. Lambooy, R.J. Blomme, and H. Kievit, 'An Understanding How Social Enterprises can Benefit from Supportive Legal Frameworks: A Case Study Report on Social Entrepreneurial Models in Greece' (2016) 16(4) International Journal of Business and Globalisation, 493.