

**SOCIAL
ENTERPRISES
IN THE EU**

**LAW
PROMOTING
STAKEHOLDER
PARTICIPATION
IN SOCIAL
ENTERPRISES**

AIKATERINI ARGYROU

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Social enterprises in the EU: Law promoting stakeholder participation in social enterprises

Sociale ondernemingen in de EU: Wetgeving om stakeholder participatie in sociale ondernemingen te bevorderen

(met een samenvatting in het Nederlands)

Proefschrift

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A mother in ancient Sparta would advise in an uncompromising way her warrior child when departing for the battlefield: «ἢ τὰν ἢ ἐπὶ τᾶς» which can be translated as ‘either return with your shield or return on your shield.’ Only winners returned with their shields back in ancient Sparta when in fact to return home without the shield was a shameful act. The deserters in the battlefield used to drop their shields and run away in shame, whereas only the dead were brought back on their shields. This was my attitude throughout this PhD journey which always reinforced my resilience and commitment to research. My overarching objective and goal was to return home with my shield of knowledge.

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Sincerely,
Aikaterini Argyrou

List of acronyms

Adie	Association pour le droit à l'initiative économique
AoA	Articles of Association
BenCom	Community Benefit Society
BVBA	Besloten Vennootschap met Beperkte Aansprakelijkheid
CECOP	European Confederation of Workers' Cooperatives, Social Cooperatives and Social and Participative Enterprises
CEO	Chief Executive Officer
CIC	Community Interest Company
CIO	Charitable Incorporated Organisation
CNC	Belgian National Cooperative Council
CORE	Cooperative Enterprise in Rational Energy
CVA	Commanditaire Vennootschap op Aandelen
CVBA	Coöperatieve Vennootschap met Beperkte Aansprakelijkheid
CVOA	Coöperatieve Vennootschap met Onbeperkte Aansprakelijkheid
ECNL	European Center for Not-for-Profit Law
EIG	Economic Interest Group
EIF	European Investment Fund
EIK	Greek National Institute for the Deaf
EMES	L'émergence de l'entreprise sociale en Europe
ESE	European Social Enterprise
EU	European Union
EuSEF	European Social Entrepreneurship Funds
FIT	Feed-in-Tariff
GSL	Greek Sign Language
GCV	Gewone Commanditaire Vennootschap
KAE	Koispe Athena-Elpis
KE	Koinsep Ekati
KMY	Koinsep Merimna Ygeias
Koinsep	Κοινωνική Συνεταιριστική Επιχείρηση
Koispe	Κοινωνικός Συνεταιρισμός Περιορισμένης Ευθύνης
KU	Katholieke Universiteit
NGO	Non-Governmental Organisations
NV	Naamloze Vennootschap
OAED	Greek Manpower Employment Organization
OSCR	Scottish Charity Regulator
PLCIC	Public Limited Community Interest Company
plc	public limited liability company
POKOISPE	Pan-Hellenic Federation of Koispes
SBI	Social Business Initiative
SCIO	Scottish Charitable Incorporated Organisation

SoA	Statutes of Association
UK	United Kingdom
VOF	Vennootschap Onder Firma
VSO	Vennootschap met Sociaal Oogmerk
WISE	Work Integration Social Enterprise

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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.¹ 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.

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

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

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).² However, due to the existing variations of social entrepreneurial activity in practice, there is a lack of a uniform understanding of the term ‘social enterprise’ across the EU.³

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

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- 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. Defourny 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) *European Business Law Review*, 639. A. Nicholls, *Social Entrepreneurship: New Models of Sustainable Social Change* (Oxford University Press 2006). J. Defourny 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). Defourny and Nyssens (n 2) 35-37.

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.⁴

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.⁵

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.

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.⁶ 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.⁷ 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

4 Taxi Electric, ‘Home page’ available at: <www.taxielectric.nl/> accessed 15 June 2017.

5 *Café Dobré & Dobré*, ‘Home page’ available at: <www.dobredobre.sk/> accessed 15 June 2017.

6 H. Haugh, ‘A Research Agenda for Social Entrepreneurship’ (2005) 1(1) *Social Enterprises Journal*, 2.

7 Galera and Borzaga (n 2) 212.

organisational characteristics, which are present in either traditional for-profit and/or non-for-profit organisations.⁸ 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.⁹ 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’.¹⁰

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’)¹¹ 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.¹²

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’.¹³

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. Sjöfjell and B. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015) 292.

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

The Commission further encourages the creation of a favourable legislative environment for social enterprises in the EU.¹⁴ The SBI Communication of 2011 addresses the necessity of the EU countries to design appropriate legal forms for social enterprises.¹⁵ Additionally, the Commission indicates that more research must be undertaken on the options to: (i) adopt a European framework 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).¹⁶ 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.¹⁷

To that end, the EU has made progress in contemplating the creation of a favourable and enabling EU legal environment for social enterprises.¹⁸ 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.¹⁹

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.²⁰ In particular, this study recommended the adoption of an EU legal framework for social enterprises in order to enhance the development of social enterprises

[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.

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> 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> accessed 30 April 2017.

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’).²¹ 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.²²

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.²³ The tailor-made laws are either autonomous or contributory by virtue of being attached to existing national company and civil legislation.²⁴

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;²⁵ (ii) to incentivise the social enterprise legal concept’s development

21 *ibid* 33-37.

22 *ibid*.

23 Defourny 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

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

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.²⁸ Sjäffell 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’.²⁹ 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

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- 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.
- 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> accessed 11 July 2017.
- 29 B. Sjäffell, ‘Sustainable Public Procurement as a Driver for Sustainable Companies?’ in B. Sjäffell and A. Wiesbrock (eds), *Sustainable Public Procurement under EU Law: New Perspectives on the State as Stakeholder* (Cambridge University Press 2015) 183. Sjäffell 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. Sjäffell and B. Richardson, ‘The Future of Company Law and Sustainability’ in B. Sjäffell 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> 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> accessed 30 April 2017. Pertinent to the work of Sjäffell 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: 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.

the Commission's 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.³⁰

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.³¹ 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.³²

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.³³ They note that tailor-made legal forms enable social enterprises to achieve their purpose.³⁴ 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.³⁵ For instance, scholarship explains that the grey areas in the applicable legislation that apply to the transactions of social enterprises may generate risks, challenges and barriers for social enterprises.³⁶ Such barriers could result in a deprivation of legal and tax privileges for social enterprises.³⁷ The same problem may contribute to the development of 'hidden social entrepreneurs' who trade legitimate goods and services without fully disclosing their transactions.³⁸

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.

36 T. Kelley, 'Law and Choice of Entity on the Social Enterprise Frontier' (2009) 84(2) *Tulane Law Review*, 337-378. G. Cox, 'Co-operative Social Firms Research Report' (Economic Partnerships Ltd/Social Firms 2005); Alter (n 31) 53; Argyrou et al. (n 35) 493.

37 *ibid.*

38 C.C. Williams and S. Nadin, 'Re-reading Entrepreneurship in the Hidden Economy: Commercial or Social Entrepreneurs?' (2011) 14(4) *International Journal of Entrepreneurship and Small*

In response to the claims concerning these grey legal areas, other scholarship notes that tailor-made legislation for social enterprises could stimulate and legitimise social enterprises.³⁹ Legislation could enhance the legal certainty of transactions for the social entrepreneur.⁴⁰ In this respect, Timmerman et al., amongst others, argue that legal certainty provides the social entrepreneur with vast knowledge concerning ‘rights and obligations’ in governance, expected ‘transaction or incorporation costs’ and the promotion of a strong ‘identity in the market place’.⁴¹ Subsequently, this knowledge offers a significant ‘competitive advantage’ to social enterprises.⁴² Consequently, a closer examination of the tailor-made legal forms for social enterprises and its effect on the social enterprise is important.⁴³ This is important for existing social enterprises and social entrepreneurs, and also for policy-makers and lawmakers. That was duly demonstrated in this Sub-section and in Sub-section 1.2.1 above.

1.2.3. Stakeholder participation in the governance of social enterprises

This doctoral thesis focuses on the examination of the concept of participatory governance of social enterprises, i.e. stakeholder participation in the governance of social enterprises, which employ tailor-made legal forms. This examination of participatory governance is of a great relevance to the development of social enterprises. International scholarship suggests that the engagement and involvement of stakeholders in the governance of social enterprises is a pivotal activity.⁴⁴ The participatory governance is one of the key characteristics of social enterprises discussed extensively in both Chapters 2 and 3.⁴⁵

Business, 441-455.

- 39 Cafaggi and Iamiceli (n 3) 26; Fici (n 2) 648; L. Timmerman, M. De Jongh and A. Schild, ‘The Rise of the Social Enterprise: How Social Enterprises are Changing Company Law Worldwide’ in S. Muller, S. Zouridis, M. Frishman and L. Kistemaker (eds), *The Law of the Future and the Future of the Law* (TorkelOpsahl Academic EPublisher 2011) 305-319; Kelley (n 36). A. Argyrou, P.A. Anthoni and T. Lambooy, ‘Legal Forms for Social Enterprises in the Dutch Legal Framework: An Empirical Analysis of Social Entrepreneurs’ Attitudes on the Needs of Social Enterprises in the Netherlands’ [2017] 12(3) *International and Comparative Corporate Law Journal*, pp. 1-46.
- 40 F.M. Doeringer, ‘Fostering Social Enterprise: A Historical and International Analysis’ [2010] 20(2) *Duke Journal of Comparative and International Law*, 291-330; A. Noya, ‘Policy Brief on Social Entrepreneurship Entrepreneurial Activities in Europe’ (OECD Publishing 2013); Kelley (n 36).
- 41 Timmerman et al. (n 39) 313; Fici (n 2) 648.
- 42 *ibid.*
- 43 A. Ebrahim, J. Battilana and J. Mair, ‘The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations’ (2014) 34(1) *Research in Organizational Behavior*, 96. Ebrahim et al. mention ‘further research is necessary on the conditions under which social entrepreneurs opt for new legal forms, and how the choice of legal form influences their functioning and governance’. See also Cafaggi and Iamiceli (n 3); Fici (n 2).
- 44 Various researchers affiliated to the EMES network defined the social enterprise as an organisation, which involves multiple types of stakeholders in its organisational functioning. See Defourny and Nyssens (n 2) 43-47; Galera and Borzaga (n 2) 214; Borzaga and Defourny (n 33) 18.
- 45 Fici (n 2) 664; Lambooy and Argyrou (n 23) 74.

The participatory governance of social enterprises comprises those processes according to which social enterprises can direct their activities and organise their control structure in a participatory and open way to include stakeholders. Involving stakeholders in the governance of a social enterprise does not only entail the involvement of stakeholders' interests in the decision-making processes. To a great extent stakeholder participation in social enterprises may accommodate the actual participation and representation of stakeholders in the decision-making processes of social enterprises. The underlying hypothesis for such a participation of stakeholders is that they will uphold and safeguard the social purpose all along the entrepreneurial activity of the social enterprises. Accordingly, the participatory governing and decision-making bodies of the social enterprise will become the custodians of the social purpose, while managing the interests of multiple stakeholders.

The participation of stakeholders in corporate governance has a solid theoretical background in stakeholder theory. At the core of stakeholder theory, a proposition is made concerning the significance of embedding stakeholders' interest, i.e. from both internal (e.g. employees, managers, owners) and external stakeholders (e.g. customers, suppliers, special interest groups) into decision-making for any company's survival.⁴⁶ The term 'stakeholder' comprises anyone that could affect or anyone that could be affected by a company's activity to achieve its objectives.⁴⁷ Stakeholder theory presumes that a company needs to take into account the interests of various types of stakeholders beyond the interests of shareholders and founding members. It elaborates on the role of organisations as the bearers of the responsibility to materialise in practice stakeholders' interests. It accordingly entails the existence of an implicit duty for the governing bodies of any company to pay attention to these interests, which are of 'intrinsic value' to the company.⁴⁸ In mainstream corporate governance scholarship, the involvement of stakeholders in formal decision-making processes is conceptualised as 'stakeholder governance'.⁴⁹

In the legal scholarship, the premises of stakeholder theory are translated by the school of Law and Economics as the protection of stakeholders from the 'opportunistic

46 R.E. Freeman and D.L. Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' [1983] 25(3) *California Management Review*, 88-106; T. Donaldson and L.E. Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' [1995] 20(1) *Academy of Management Review*, 65-91; T. Clarke, *Theories of Corporate Governance: The Philosophical Foundations of Corporate Governance* (Routledge 2004); R.E. Freeman, *Strategic Management: A Stakeholder Approach* (Pitman 1984). R. Phillips, E.R. Freeman and A.C. Wicks, 'What Stakeholder Theory is Not' [2003] 13(4) *Business Ethics Quarterly*, 479-502.

47 Freeman and Reed (n 46) 91-92.

48 Freeman and Reed (n 46); Donaldson and Preston (n 46) 67.

49 H. Spitzack and E.G. Hansen, 'Stakeholder Governance – How do Stakeholders Influence Corporate Decision-making?' [2010] 10(4) *Corporate Governance: The International Journal of Business in Society*, 378-391; H. Spitzack, E.G. Hansen and D. Grayson, 'Joint Management-Stakeholder Committees – A New Path to Stakeholder Governance?' [2011] 11(5) *Corporate Governance: The International Journal of Business in Society*, 560-568.

exploitation by the firm and its shareholders, if corporate managers are accountable only to the firm's shareholders'.⁵⁰ A normative stakeholder model of governance dictates ways for involving stakeholders in the corporate governance of an organisation.⁵¹ Firstly, it involves stakeholders through the extent of the (fiduciary) duties of the decision-makers, i.e. the duty of care, i.e. to take care of the interests of stakeholders and of society. Secondly, it may also involve stakeholders through the substitution of directors with stakeholders and/or stakeholder representatives in the decision-making activities of an organisation.⁵² Accordingly, the normative foundation of stakeholder theory legitimises such organisations, which consider the multiple interests of their stakeholders and which aim to produce common good and offer justice to stakeholders, their representatives and finally to the community based on ethical and moral principles.⁵³

In the discussion on social enterprises, the propositions of the stakeholder theory entail an implicit duty for the governing bodies of social enterprises to pay attention to multiple stakeholder interests, which are of intrinsic value to the fulfilment and maintenance of the social purpose of social enterprises and reconcile their different and possibly conflicting interest.⁵⁴ According to stakeholder theory, the decision-making bodies of social enterprises, such as the board of directors or the general meeting, should be devoted to the management of interests raised by various stakeholder groups involved in the affairs of the social enterprises.⁵⁵ Stakeholder theory also requires the governing bodies of social enterprises to accommodate stakeholder groups in the decision-making process. To that end, the decision-makers of social enterprises also become accountable to a large scope of stakeholders.⁵⁶

50 H. Hansmann and R. Kraakman, 'The End of History for Corporate Law' (2001) 89(2) *Georgetown Law Journal*, 447; Freeman and Reed (n 46) 89-90; Timmerman et al. (n 39) 313; B. Kemp, *Aandeelhoudersverantwoordelijkheid: De Positie en Rol van de Aandeelhouder en Aandeelhoudersvergadering* (Deventer: Kluwer Juridische Uitgevers 2015) 84-86; M. Kroeze, L. Timmerman and J.B. Wezeman, *De Kern van het Ondernemingsrecht* (Wolters Kluwer 2017).

51 Hansmann and Kraakman (n 50) 447-448.

52 *ibid.*

53 Donaldson and Preston (n 46); C. Mason, J. Kirkbride and D. Bryde, 'From Stakeholders to Institutions: the Changing Face of Social Enterprise Governance Theory' (2007) 45(2) *Management Decision*, 289.

54 H. Di Domenico, H. Haugh and P. Tracey, 'Social Bricolage: Theorizing Social Value Creation in Social Enterprise' (2010) 34(4) *Entrepreneurship Theory and Practice*, 682; Donaldson and Preston (n 46).

55 Doherty et al. (n 9); C. Mason and B. Doherty, 'A Fair Trade-off? Paradoxes in the Governance of Fair-trade Social Enterprises' (2016) 136(3) *Journal of Business Ethics*, 454. A.C. Pache and F. Santos, 'When Worlds Collide: the Internal Dynamics of Organizational Responses to Conflicting Institutional Demands' [2010] 35(3) *Academy of Management Review*, 455-476. T. Ramus and A. Vaccaro, 'Stakeholders Matter: How Social Enterprises Address Mission Drift' [2014] 143(2) *Journal of Business Ethics*, 307-322. F. Santos, A.C. Pache and C. Birkholz, 'Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises' [2015] 57(3) *California Management Review*, 36-58.

56 Mason et al. (n 53) 288-289; A. Ebrahim and V.K. Rangan, 'What Impact? A Framework for Measuring the Scale and Scope of Social Performance' [2014] 56(3) *University California Berkeley*,

Contemplating on the theoretical background of stakeholder participation in the governance of social enterprises, the extension of the scholarly discussion onto the context of laws tailor-made for social enterprises is necessary and imperative. Harrow and Phillips⁵⁷ cite the work of Hopt and Von Hippel who emphasise that ‘the national and continental laws’ and the legal scholarship ‘have not kept up with the economic, as well as social importance of the non-profit sector, although incremental reform is advancing in some jurisdictions’.⁵⁸ Harrow and Phillips then refer to the tailor-made legal framework that was introduced for the Community Interest Company (hereafter ‘CIC’) in the UK.⁵⁹ To that end, stakeholder theory may constitute a foundation for the examination of participatory governance of social enterprises established in accordance with tailor-made laws.⁶⁰

The research in relation to stakeholder participation in the governance of social enterprises should keep up with the developments in domestic jurisdictions concerning tailor-made legal forms of social enterprises. Research should also take into consideration the differences that social enterprises possess in the different domestic jurisdictions. However, the extant theoretical and empirical research regarding the governance of social enterprises is already segmented referring to the governance of social enterprises in certain sectors (for-profit and not-for-profit or the work integration sector), certain jurisdictions and in certain legal forms.⁶¹ Scholarship focuses, for example, only on the examination of governance in particular legal forms, e.g. concerning the cooperative legal form or the CIC corporate legal form, or on the examination of sectorial organisational forms of social enterprises, e.g. the work integration social enterprises (hereafter ‘WISE’).⁶² The organisational and legal differences existing between the various types of social enterprise, which themselves stem from different jurisdictions,

118-141. Ebrahim et al. (n 43).

57 J. Harrow and S.D. Phillips, ‘Corporate Governance and Nonprofits: Facing Up to Hybridization and Homogenization’ in M. Wright, D.S. Siegel, K. Keasey and I. Filatotchev (eds), *The Oxford Handbook of Corporate Governance* (Oxford University Press 2013) 621.

58 K.J. Hopt and T. Von Hippel (eds), *Comparative Corporate Governance of Non-Profit Organizations* (Cambridge University Press 2010) 533-534.

59 *ibid.*

60 Harrow and Phillips mention that ‘stakeholder theory’ - in contrast to other types of theories with respect to the corporate governance of organisations - ‘is increasingly used to examine the drawing into the non-profit governance circle’ including also research in hybrid organisations. Harrow and Phillips (n 57) 611.

61 R. Spear, ‘Governance in Democratic Member-Based Organisations’ [2004] 75(1) *Annals of Public and Cooperative Economics*, 33-59; R. Spear and E. Bidet, ‘Social Enterprise for Work Integration in 12 European Countries: A Descriptive Analysis’ [2005] 76(2) *Annals of Public and Cooperative Economics*, 195-231. R. Spear, C. Cornforth and M. Aiken, ‘The Governance Challenges of Social Enterprises: Evidence from a UK Empirical Study’ [2009] 80(2) *Annals of Public and Cooperative Economics*, 247-273; Ebrahim et al. (n 57).

62 S. Campi, J. Defourny and O. Grégoire, ‘Work Integration Social Enterprises: Are they Multiple-goal and Multi-stakeholder Organizations?’ in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006).

make the governance of social enterprises a complicated concept to be seen holistically. No baseline theory has been developed to explain the governance of social enterprises in a more integrated way, i.e. a way which considers social enterprises employing different legal forms, from different jurisdictions and originating from various sectors. That is what Chapter 3 will attempt to achieve.

1.3. The research question

How does the element of participatory governance in tailor-made legal forms for social enterprises in selected domestic European jurisdictions works in practice?

1.4. Methodology and validity issues

1.4.1. The employed methodology in this doctoral thesis

This doctoral thesis examines how the element of participatory governance in tailor-made legal forms for social enterprises provided in selected domestic jurisdictions is implemented in practice.

1.4.1.1. Comparative legal research

Initially, the method employed in Chapter 2 is doctrinal research for developing an understanding of the legal provisions provided for certain legal variables, one of those being the participatory governance of social enterprises. These variables have been extracted from the Commission's definition for the social enterprise mentioned above in Sub-section 1.2.1. In this Chapter 2, a comparative legal approach is used, which identifies the similarities and differences in this specific content of the legal rules regulating the concept of participatory governance amongst others legal variables. The methodology used for the development of Chapter 2 is explained largely in Sub-section 2.3 of Chapter 2.

1.4.1.2. Comparative case study approach

The comparative legal approach is then extended to the empirical examination of the element of participatory governance and its practical implementation by social enterprises in the three selected jurisdictions. Chapter 3 examines how legal provisions influence the governance structures of social enterprises to include stakeholders. This empirical research provides the 'real world sense in which these rules operate'.⁶³ It demonstrates the effects and the effectiveness of the legal provisions on the governance of the examined social enterprises.

63 M.M. Siems, *Comparative Law* (Cambridge University Press 2014) 95.

Consequently, in Chapter 3, nine qualitative case studies are developed, analysed and compared. This comparative, multi-case study approach comprises three case studies in each country, i.e. in Belgium, Greece and in the UK. Each case study was developed in multiple and single case study settings, but following a replication logic in the application of a similar research protocol.⁶⁴

The qualitative case studies examine the implementation of legal rules and provisions concerning stakeholder participation in the governance of the social enterprises. These legal rules provide rights to stakeholders that can be categorised as follows: (i) ownership (of shares) and membership rights; (ii) voting and decision-making rights; (iii) information rights; and/or finally (iv) consultation rights. The extent and manner in which those rules are implemented demonstrate the role of stakeholders and their level of involvement in the decision-making process.

1.4.1.3. Selection of cases

The selection of cases, i.e. social enterprises employing tailor-made legal forms, for the case studies in Chapter 3, is based on a sampling logic that is both purposeful and theoretical. The purposeful selection constitutes an *a priori* strategic selection of certain social enterprises amongst others because they provide rich insights regarding the examined topic of participatory governance, while serving the purpose of the study.⁶⁵ The selected social enterprises employ legal variations of the three tailor-made legal forms for social enterprises. They also constitute variations of social enterprises operating in different sectors.

Accordingly, the three examined social enterprises in Greece employ the legal variations of the Koinsep as dictated in the Greek tailor-made law for social enterprises, i.e. the Koinsep of Integration, the Koinsep of Care, and the Koinsep of Collective and Productive Purpose. The three examined social enterprises in the UK concern the legal variations of the CIC prescribed by the UK Companies (Audit, Investigations and Community Enterprise) Act of 2004 and the CIC Regulations of 2005, such as the CIC limited by guarantee, the CIC limited by shares and the public limited CIC. Finally, the three examined social enterprises in Belgium concern variations of the VSO legal label (applied in addition to the cooperative legal form) that originate from different sectors, e.g. VSOs in the housing sector compared to VSOs in the micro-finance and energy sector.

The theoretical selection logic regards the selection of social enterprises that exhibit rich theoretical insights, i.e. the selection of cases for testing and/or generating theory.⁶⁶ The

64 R.K. Yin, *Case Study Research: Design and Methods* (4th edn, Sage 2009) 53-55.

65 M.Q. Patton, *Qualitative Research and Evaluation Methods: Integrating Theory and Practice* (4th edn, Sage 2015).

66 J. Mason, *Qualitative Researching* (2nd edn, Sage 2002). Mason in p. 124 defines theoretical sampling as 'constructing a sample (sometimes called a study group) which is meaningful theoretically and

nine social enterprises that were selected for the case studies, exhibit rich theoretical insights for testing and/or improving the theory concerning stakeholder participation in social enterprises, but also concerning theoretical variations of the examined phenomenon, e.g. the concept of stakeholder membership in participatory governance.

In addition, the case studies provide in their methodological Sub-sections information concerning the research protocol that was applied for the collection of empirical data from various sources. The replicated research protocol involves: (i) the collection of data from in-depth semi-structured interviews; (ii) the use of observations from visits to the social enterprises; and (iii) the collection of data from various relevant documents and websites. The analysis of the collected data is based on the consistent application of certain qualitative techniques of data analysis developed in the social science discipline. This is explained in detail on a per case study level in the methodological Sub-sections of the case studies.

1.4.1.4. Meta-synthesis

In Sub-section 3.6 of Chapter 3, a meta-synthesis and a cross-case analysis of findings and elements of discussion relating to the qualitative case studies is provided in response to the research question. A meta-synthesis of qualitative studies is used to aggregately analyse and interpret the results from the qualitative case studies.⁶⁷ As such, the meta-synthesis constitutes an in-depth analysis and evaluation of the results derived from the nine qualitative case studies in response to the research question.⁶⁸

Scholarship has developed certain methodological steps and techniques to be used in a meta-synthesis.⁶⁹ The steps include: (i) a cross-case comparison and analysis on a case-specific level; (ii) a synthesis of findings on a cross-case study level; (iii) theory building from the meta-synthesis; and (iv) a discussion, which explains the analyses and discusses the findings.⁷⁰ These methodological steps and techniques, which were applied for the cross-case analysis and meta-synthesis, are explained in detail in Sub-section 3.6.2 of Chapter 3.

Additionally, Chapter 3 also supports its results by the use of what is called ‘a quasi-statistic technique’ in the meta-synthesis in Sub-section 3.6.4 of Chapter 3. These

empirically, because it builds in certain characteristics or criteria which help to develop and test your theory or your argument’.

67 C.H. Major and M. Savin-Baden, *An Introduction to Qualitative Research Synthesis: Managing the Information Explosion in Social Science Research* (Routledge 2010) 10.

68 Major and Savin-Baden (n 67) 10; L. Timulak, ‘Qualitative Meta-analysis’ in U. Flick (ed), *The Sage Handbook of Qualitative Data Analysis* (Sage 2013); B.L. Paterson et al., *Meta-study of Qualitative Health Research: A Practical Guide to Meta-analysis and Meta-synthesis* (Sage 2001). C. Hoon, ‘Meta-Synthesis of Qualitative Case Studies: An Approach to Theory Building’ [2013] 16(4) *Organizational Research Methods*, 522-556.

69 Major and Savin-Baden (n 67).

70 Hoon (n 68) 528-543.

descriptive quasi-statistics can be retrieved from the qualitative data.⁷¹ Becker, the leading proponent of the use of quasi-statistics in qualitative research, explains that various data collected in qualitative research are ‘capable of being transformed into legitimate statistical data’ but they have a form, which cannot ‘meet the assumptions of statistical tests, so that the observer deals with what has been called ‘quasi-statistics’.⁷² The use of quasi-statistics supports the visualisation and assessment of several patterns and leads to basic numerical demonstrations of the results, derived from the qualitative data.⁷³

1.4.1.5. Survey of stakeholder participation in Dutch social enterprises

For illustrative purposes, the research is extended to one country without a tailor-made legal regime for social enterprises, i.e. the Netherlands. Chapter 4 illustrates the results of a survey-based study, i.e. the Nyenrode - PwC Social Enterprise Survey of 2016, which examined stakeholder participation in the governance of Dutch social enterprises. The examined Dutch social enterprises do not employ variations of a tailor-made legal form since this option is not available in the Dutch legal system.

Sub-section 4.3 of Chapter 4 discusses the employed methods used for the design of the relevant part in the Nyenrode - PwC Social Enterprise Survey of 2016. The survey-based findings provide background information concerning stakeholder participation in the governance of social enterprises in the Netherlands, but they do not have the depth of the findings produced by the meta-synthesis of the nine qualitative case studies. As such, they cannot be compared vis-à-vis with the case studies. However, the exploratory findings of the Nyenrode - PwC Social Enterprise Survey of 2016 provide insightful information, which encourages a more in-depth and qualitative study concerning stakeholder participation in the governance of social enterprises in the Netherlands.

1.4.2. Methodological considerations and validity issues

1.4.2.1. Methodological considerations in relation to the comparative approach

Chapter 2 relies on an explanation and a comparison of tailor-made legal forms and participatory governance structures, which is subject to certain methodological limitations explained in the methodological Sub-section 2.3 of Chapter 2. An important methodological consideration in Chapter 2 regards the question if the employed methodology, i.e. the comparative legal method, meets the objectives and the intentions

71 H.S. Becker, *Sociological Work: Method and Substance* (Aldine Pub. Co. 1970) 81; M. Williams and W.P. Vogt, *The SAGE Handbook of Innovation in Social Research Methods* (Sage 2011) 376. J.A. Maxwell, ‘Designing a Qualitative Study’ in L. Bickman and D.J. Rog (eds), *The Sage Handbook of Applied Social Research Methods* (2nd edn, Sage 2009) 245. J.A. Maxwell, *Qualitative Research Design: An Interactive Approach, Applied Social Research Methods Series* (Sage 1996) 95.

72 H.S. Becker, ‘Problems of Inference and Proof in Participant Observation’ (1958) 23(6) *American Sociological Review*, 656; Becker (n 71) 31 and 81; N.K. Denzin and Y.S. Lincoln, *The SAGE Handbook of Qualitative Research* (Sage 2005) 16-17.

73 Maxwell 2009 (n 71) 245.

of the study. For instance, the identification of the best approach in law is not the objective of the comparison of tailor-made legal forms employed in Chapter 2.⁷⁴ Rather, the study in this Chapter aims to introduce, demonstrate and explain the existence of multiple legal possibilities of tailor-made legal forms provided in selected jurisdictions, and to indicate their similarities and differences with respect to certain legal variables, including stakeholder participation in the governance of social enterprises.

In addition, Chapter 2 does not aim to contribute to theoretical debates developed in comparative company law studies, i.e. the convergence versus divergence of company law systems to a most efficient type of company, the legal origins theorem, and the legal transplants debate, for the reason that they have been already developed by scholarship.⁷⁵

In particular, the debate concerning the convergence versus divergence of the company law systems initiated by Hansmann and Kraakman in 2001⁷⁶ occupies comparative company law scholarship. This scholarship disagrees on whether company law rules and systems from different jurisdictions may eventually converge into a most efficient type of company or diverge due to institutional pressures.⁷⁷ With respect to the ‘legal origin theorem’, comparative company law scholarship elaborates on the wider distinction and classification of company law regimes in generic families and origins, such as e.g. common law versus civil law. However, Chapter 2 does not touch upon the correlations between the similarities and differences in the substantive rules of tailor-made legal frameworks for social enterprises and the ‘legal families’ to which they belong. Neither does Chapter 2 aim to discuss the ‘legal origins’ of the examined legal rules tailor-made to social enterprises by producing conclusions with respect to the economic outcomes of their legal content.⁷⁸ Additionally, it is not the objective of Chapter 2 to examine how different rules tailor-made to social enterprises from different legal systems may have

74 M. Van Hoecke, ‘Methodology of Comparative Legal Research’ [2015] *Law and Method*, 1-35. R Michaels, ‘The Functional Method of Comparative Law’ in M. Reimann and R. Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 373.

75 D. Cabrelli and M.M. Siems, ‘A Case-Based Approach to Comparative Company Law’ in M.M. Siems and D. Cabrelli (eds), *Comparative Company Law: A Case - Based Approach* (Hart Publishing 2013) 4-10.

76 Hansmann and Kraakman (n 50) 439.

77 M.M. Siems, ‘Legal Origins: Reconciling Law and Finance and Comparative Law’ [2007] 52(1) *McGill Law Journal*, 55-81; B.S. Markesinis (ed), *The Gradual Convergence: Foreign Ideas, Foreign Influences, and English Law on the Eve of the 21st Century* (Clarendon Press 1994). As Cabrelli and Siems note: ‘[C]onvergence is not limited to growing similarities between the form, source, and style of company laws. Instead, the phenomenon might occur at a number of levels, e.g. convergence in terms of the function of company law rules (i.e. rules designed to the protection of minority shareholders or creditors)’. Cabrelli and Siems (n 75) 4.

78 Siems (n 77); H. Spamann, ‘Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law’ [2009] 6(11) *Brigham Young University Law Review*, 1813-1878; E.L. Glaeser and A. Shleifer, ‘Legal Origins’ [2002] 117(4) *The Quarterly Journal of Economics*, 1193-1229; D.C. Donald, ‘Approaching Comparative Company Law’ [2008-2009] 14(1) *Fordham Journal of Corporate and Financial Law*, 83-178.

been transplanted from one jurisdiction to another. Such a hypothesis has its origins in the ongoing theoretical discourse regarding legal transplants, which poses questions on whether it is feasible for (company law) rules and systems from certain jurisdictions to be used, adopted and transplanted into other jurisdictions.⁷⁹

The contribution to these theoretical debates is not materialised in Chapter 2. Primarily, because this Chapter does not elaborate on rules and concepts stemming from the classical company law tradition concerning mainstream companies. It elaborates on rules and principles identified in social enterprise laws tailor-made for hybrid organisations. Some of these sets of rules have been included in a company act, such as is the case in the UK, where the CIC is regulated in the UK Companies (Audit, Investigations and Community Enterprise) Act of 2004. Other tailor-made laws for legal forms for social enterprises are included in cooperative law, e.g. in Greece, in the Social Entrepreneurship Law of 2011 and in its latest amendment of 2016.

Furthermore, Chapter 2 examines specific concepts introduced into tailor-made legal frameworks for social enterprises, such as the social purpose, participatory governance, the asset-lock, and the profit distribution constraint. All of these concepts are included in the Commission's definition of social enterprises.

Nonetheless, despite of the limitations accounted for above, the content and the conclusions of Chapter 2 may be used to inspire future research to consider whether these ongoing theoretical debates could find ground in the area of tailor-made legislation for social enterprises. Moreover, the systematic comparison provides EU Member State legislators with a clear overview of the variations and possibilities available for formulating the social enterprise characteristics as required in the Commission's definition provided in the SBI Communication of 2011. Finally, also social enterprises can profit from this analysis and use the findings in their search for an appropriate way to embed stakeholders participation in their governance.

1.4.2.2. Methodological considerations in relation to the case studies and the meta-synthesis

Chapter 3 relies on the development of empirical research using qualitative case studies to examine how the element of participatory governance in tailor-made legal forms for social enterprises in the three selected jurisdictions works in practice. In Chapter 3, a fundamental methodological consideration regards the use of empirical research to examine the influence that tailor-made legal provisions concerning stakeholder participation exert on the governance of the social enterprise when they are

79 A. Watson, *Legal Transplants: An Approach to Comparative Law* (University of Georgia Press 1974); A. Watson, 'From Legal Transplants to Legal Formants' [1995] 43(3) *American Journal of Comparative Law*, 469; P. Legrand, 'The Impossibility of Legal Transplants' [1997] 4(2) *Maastricht Journal of European and Comparative Law*, 111; D. Nelken and J. Feest, *Adapting Legal Cultures* (Hart Publishing 2001).

implemented in practice. The combination of legal research with empirical research is common practice in legal studies. Many scholars agree that empirical legal research has substantially helped the study of the law and subsequently the development of the law.⁸⁰

Another methodological consideration regards the enduring debate concerning the use of ‘qualitative versus quantitative’ methods in empirical research, which has also gained considerable impetus in empirical legal research.⁸¹ For instance, various scholars accept qualitative empirical evidence and its collection methods as a valid means of empirical legal research.⁸² Empirical legal scholars who are proponents of the qualitative research methods advocate that only qualitative research offers policy-makers valuable ‘information about decision-making, experiences and behaviour grounded in the experiences and world-view of those likely to be affected by a policy decision’.⁸³ Others argue that empirical legal research only comprises research that makes use of quantitative data and methods of statistical analysis to identify patterns in judicial decisions.⁸⁴ However, in general, legal scholars are encouraged to employ and develop various empirical methodologies in empirical legal research.⁸⁵

What is more, a very important methodological consideration regards the validity and the reliability of the findings produced by the qualitative case studies. This methodological consideration is important due to: (i) the extant stereotypical perceptions against the use of case study in qualitative research, i.e. its perceived limitations and weaknesses in terms of validity and reliability;⁸⁶ and (ii) the existence of methodological concepts

80 A. Argyrou, ‘Making the Case for Case Studies in Empirical Legal Research’ (2017) 13(3) *Utrecht Law Review*, 95-113. M.M. Siems, ‘The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert’ (2009) 7(1) *Journal of Commonwealth Law and Legal Education*, 5-17; L. Webley, ‘Qualitative Approaches to Empirical Legal Research’ in P. Cane and H. Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010); L. Webley, ‘Stumbling Blocks in Empirical Legal Research: Case Study Research’ (2016) 3(1) *Law and Method*, ISSN 2352-7927; L. Epstein and G. King, ‘The Rules of Inference’ (2002) 69(1) *The University of Chicago Law Review*, 4-6. M. Heise, ‘The Importance of Being Empirical’ (1998-1999) 26(1) *Pepperdine Law Review*, 807-834.

81 Argyrou (n 80).

82 Argyrou (n 80); Heise (n 80) 810.

83 Argyrou (n 80); Smith et al. citing Mollow in M. Smith et al., ‘Bridging the Empirical Gap: New Insights into the Experience of Multiple Legal Problems and Advice Seeking’ (2013) 10(1) *Journal of Empirical Legal Studies*, 149.

84 Argyrou (n 80); Epstein and King (n 80) 2; Heise (n 80) 810; I. Dobinson and F. Johns, ‘Qualitative Legal Research’ in W. Chui and M. McConville (eds), *Research Methods For Law* (Edinburgh University Press 2007) 17.

85 Argyrou (n 80); R.J. Landry, ‘Empirical Scientific Research and Legal Studies Research: A Missing Link’ (2016) 33(1) *Journal of Legal Studies Education*, 170; D.R. Cahoy, ‘Editor’s Corner: Considerations in the Rise of Empirical Legal Scholarship’ (2010) 47(3) *American Business Law Journal*, vi.

86 T.C.M. Hutchinson, *Research and Writing in Law* (Lawbook Co. 2002) 103; B. Flyvbjerg, ‘Case study’, in N.K. Denzin and Y.S. Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage 2011); A.L. George and A. Bennett, *Case studies and theory development in the social sciences* (MIT

developed in qualitative case study research to safeguard the validity, the rigour and the reliability of the case study findings.

One of the most serious and commonly claimed methodological concerns in the use of the qualitative case study method regards the lack of validity and objectivity in the sampling of the cases examined in the case studies.⁸⁷ That is because the various logics applied to case study selection differ from the objective sampling logic applied to other empirical methods, e.g. surveys.⁸⁸ It was earlier mentioned that the sampling (selection) logic that was applied to the selection of the case studies in Chapter 3 was developed on the basis of two concrete selection criteria, i.e. a purposeful and a theoretical sampling. The establishment of both criteria prevented a biased selection of cases, which is based on personal preferences of cases.

Another methodological concern in the development of the case studies regards the manipulation of data during the data collection stage and during their interpretation to such an extent that it reflects the personal bias of those conducting the research.⁸⁹ This is a very serious methodological consideration, which imposes the use of various techniques during the case study development for the mitigation of the infiltration of any bias either in the data collection and/or in the data analysis phase. In the development of the qualitative case studies although many interviews were conducted by me, a group of senior researchers and trained research assistants acted also as alternative and/or assisting data collectors in various occasions, e.g. at the interviews with Microstart, Volkshuisvesting, CORE and Breadshare.⁹⁰ The assistance and alteration of data collectors limited the chances of having collected biased data, which are solely collected by me, i.e. by one single data collector. The same technique was applied in the coding of data where I was assisted by a group of research assistants and senior researchers who contributed as alternative coders.⁹¹ Additionally, for the mitigation of bias in the interview process, a similar basic questionnaire was used for each one of the four

Press 2005). R.K. Yin, *Case Study Research: Design and Methods* (Sage Publication 2003) 10-11; S.B. Merriam, *Qualitative Research: A Guide to Design and Implementation* (Jossey-Bass 2009) 53; Webley 2016 (n 80).

87 Argyrou (n 80); Hutchinson (n 86) 103. Flyvbjerg (n 86); George and Bennett (n 86).

88 Argyrou (n 80); Yin (n 86) 48. Yin notes that the sampling logic of surveys requires: 'an operational enumeration of the entire universe or pool of potential respondents and then a statistical procedure for selecting a specific subset of respondents to be surveyed. The resulting data from the sample that is actually surveyed are assumed to reflect the entire universe or pool, with inferential statistics, used to establish the confidence intervals for which this representation is actually accurate. The entire procedure is commonly used when an investigator wishes to determine the prevalence or frequency of a particular phenomenon'. See also Flyvbjerg (n 86); George and Bennett (n 86).

89 Argyrou (n 80); Hutchinson (n 86) 103. Flyvbjerg (n 86); George and Bennett (n 86); Yin (n 86).

90 The data collection of the case studies involved students from the Legal Research Master programme of Utrecht University and senior researchers from Nyenrode Business University and Edinburgh University.

91 The data analysis of the case studies involved students from the Legal Research Master programme of Utrecht University and senior researchers from Nyenrode Business University.

categories of interview respondents mentioned in the methodological Sub-sections of the case studies (see Annex I). The use of verbatim interview transcripts - instead of keeping interview notes in the data collection phase - also assisted in avoiding the infiltration of any personal bias during the interviews. Other techniques used to mitigate the bias during data collection were the technique of data triangulation and the cross-examination of data from different sources, and the validation of the data based on the received feedback from the interview participants. Those techniques prevented the existence of collected data, which are unreliable, inconsistent and subjective.

Another methodological consideration regards the validity and the value (i.e. usefulness) of the case study findings, which cannot be easily generalised, in particular when those are produced from individual cases.⁹² It was earlier mentioned in Sub-section 1.4.1 that the qualitative case studies are developed in multi-case study or single-case study settings. Each case study seeks the creation of contextual knowledge rather than creating generalisable knowledge. In addition, the case studies acknowledge their case-bound character in the relevant Sub-sections concerning 'Limitation and future research'. In these Sub-sections, it is explained that the case studies' objectives are to test the theory, in order to develop a generalisable theory, although generated from the cumulative examination of the selected variations of social enterprises. Accordingly, the development of the qualitative case studies is a process of accumulating case-specific knowledge from the different case studies that is ultimately aggregated and evaluated in the meta-synthesis.⁹³

In addition, another methodological consideration regards the absence of control over the examined phenomenon - i.e. the implementation of participatory governance - and the absence of control particularly over the responses and behaviour of the interview respondents.⁹⁴ Such a lack of control could have been resulted in the respondents altering their responses and/or their behaviour to the interviews because they know that they are being studied.⁹⁵ Indeed, this important methodological consideration emerged particularly when one interview respondent in *Case Study 8* required removing parts of his response in the interview transcripts with confidential information. However, the risk of losing data, which are perceived as confidential, classified or intimate, was not encountered in any other occasion. Nevertheless, this risk was always part of a trade-off for maintaining the naturalistic character of the case study research when examining the governance structure of social enterprises.⁹⁶ In addition, this important methodological consideration also emerged in *Case Study 9*, which resulted in a limitation to the collection and analysis of interview data, i.e. the conduct of interviews

92 Argyrou (n 80); Hutchinson (n 86); Flyvbjerg (n 86); George and Bennett (n 86); R.E. Stake, 'Qualitative Case Studies', in N.K. Denzin and Y.S. Lincoln (eds), *The Sage Handbook of Qualitative Research* (Sage 2005).

93 Argyrou (n 80); Flyvbjerg (n 86) 305; Webley 2016 (n 80).

94 Argyrou (n 80); Webley 2016 (n 80) 4-5.

95 Argyrou (n 80); Hutchinson (n 86) 103.

96 Argyrou (n 80); Webley 2010 (n 80) 927-929; J.W. Creswell, *Research Design, Qualitative, Quantitative and Mixed Methods Approaches* (Sage 2003) 8.

with respondents from various organisational layers of the examined social enterprise. In *Case Study 9*, the young maturity of the selected social enterprise and the absence of its organisational structure allowed only a partial operationalisation of the protocol applied and replicated in the other 8 case studies. This inconsistency is discussed in detail in Sub-section 3.5.2.2 of Chapter 3. Accordingly, *Case Study 9* was only partially considered in the meta-synthesis of the case study results as it is explained in the methodological Sub-section 3.6.2 of the meta-synthesis in Chapter 3.

Furthermore, the extant methodological concepts developed in qualitative case study research to safeguard the validity of findings are also considered in the development of the qualitative case studies, i.e. construct validity, internal validity, external validity and the parameter of reliability.⁹⁷

Construct validity refers to safeguarding the process of operationalisation, i.e. identifying the proper operational measures for the examined concept.⁹⁸ The methodological concept of construct validity aims to determine whether the case study contains any fallacies and whether it is developed in a way, which is free from bias by:⁹⁹ (i) using multiple sources of evidence, which are crosschecked and cross-matched (i.e. the method of triangulation); (ii) establishing a chain of evidence in the presentation of the collected data, which anyone can trace; and by (iii) allowing key interviewees to review and provide feedback regarding the collected data.¹⁰⁰

Internal validity regards the justification of the causal relationships in the provided inferences, which require the reconsideration of the analytical tools used by demonstrating the causal relationships between evidence and theory.¹⁰¹ Internal validity differs from external validity. External validity examines whether the results of a case study can be generalised and replicated, i.e. if the study will produce the same results should other scholars replicate it.¹⁰² To safeguard external validity in case study research various scholars suggest the ‘members’ checking’ technique mentioned above, during which interviewees can review the credibility of the collected data and their interpretations in the case study concerned, as well as the reliability and the replicability of the method

97 Argyrou (n 80); Yin (n 64) 40-45.

98 *ibid.*

99 *ibid.*

100 Argyrou (n 80). Yin (n 64) 41-42. Maxwell also enumerates a list of techniques that allow the researcher to identify personal bias, such as, amongst others: (i) the intensive, repeated and long-term engagement of the researcher with the study’s participants; (ii) the acquisition of rich data as opposed to poor data, i.e. in detail data that provide for a clear and full picture of the phenomenon under examination, including verbatim transcripts of the interviews, descriptive note taking and in detail description of concrete events; (iii) the respondents’ validation or else the members’ checking. This technique requires the solicitation of feedback from the persons under examination regarding the collection and analysis of data; (iv) triangulation; (v) quasi-statistics; and (vi) comparison. Maxwell 2009 (n 71) 243-245.

101 Argyrou (n 80); Yin (n 64) 42-43.

102 *ibid.*

used.¹⁰³ A trail technique can be also applied according to which the research process and the outcome must be accessible, transparent, written down and catalogued.¹⁰⁴

Acknowledging these methodological concepts of validity the methodological Sub-sections of the case studies demonstrate the use of multiple sources in the collection of data for the development of the case studies. Although as explained above, in one case study, i.e. *Case Study 9*, the collection of data was limited to collecting documents about the social enterprise rather than conducting interviews. The use of multiple sources is also demonstrated in the case studies' data analysis Sub-sections named as 'The case study results' by reference to the different sources used for the development of the case study analysis. Accordingly, the chain of evidence is maintained across the developed case studies. However, as explained above, in one case study, i.e. *Case Study 8*, part of confidential data had to be removed, but this did not affect the outcome of the research.

I am also aware that the feedback and validation of the interview respondents could not be possibly demonstrated in the developed case studies. In that respect, references to follow-up interviews are provided in the case studies, whereas Figure 1.1 demonstrates a validated interview report by one interview respondent. In addition, Table 1.1 summarises all the measures used in the case studies to maintain the validity, credibility and reliability of the empirical research. The used measures are also explained in the methodological Sub-sections of the case studies.

Moreover, I bear in mind the sensitivity of collecting and analysing interview data and the ethical standards developed in qualitative research with respect to:¹⁰⁵

- (i) the maintenance of anonymity of the interview participants. Accordingly, the names of the interview participants in the case studies are coded and no reference is made to them;
- (ii) the collection of a free and informed consent from the interview participants. Accordingly, the free and informed consent of each interview participant was duly retrieved regarding: (a) the nature of the case studies; (b) the interview participants' potential role in the case studies; (c) the objectives of the case study research; and (d) the use of the case study results in articles and publications provided in this doctoral thesis;
- (iii) the confidentiality of the information provided by the interview participants. Accordingly, all interview participants were asked to indicate and remove parts that should remain confidential in all the stages of collecting and analysing the interview data.

¹⁰³ Argyrou (n 80); J.W. Creswell and D.L. Miller, 'Determining Validity in Qualitative Inquiry' (2000) 39(3) *Theory into Practice*, 127-128.

¹⁰⁴ *ibid.*

¹⁰⁵ Mason (n 66) 79-82, 101, 201-203.

GTS Solutions is a CIC established in Edinburgh in 2012 and a social enterprise which provides security services and security training to young adults. The services are offered to other companies, not-for-profit organisations and social enterprises throughout the UK. Services provided by GTS Solutions are among others: static security services, hospitality security, parking spaces, close protection services, crowd management and strategic planning services to mention but a few. GTS Solutions also provides vocational training regarding security services to: (i) its employees; (ii) the clients' employees by providing training to improve their skill-set, at no extra cost; (iii) young unemployed or disadvantaged persons who struggle to enter the labour market. The training provided by GTS Solutions aims to assist the unemployed, the disadvantaged and the under-privileged in building a career in the private security industry. To date, the company has offered ~~sixty-three~~ ^{63 per annum} free vocational training courses to disadvantaged persons who otherwise could not afford to acquire any qualification. The social objective to which the company aspires is the assistance of disadvantaged and unemployed adults and young persons to find employment in the security industry. GTS Solutions qualifies young adults and youth by delivering ^{AT} ~~basic~~ ^{LEVEL} training in the service industry. Those trainees are later employed either by GTS Solutions or promoted for employment to the company's strategic partners ~~who belong to other industries such as~~ ^{TO OTHER} the hospitality industry, ~~music industry, sports industry etc.~~ ^{INDUSTRY AND} For instance, GTS Solutions has partnered with the non-profit institution, the Prince's Trust. ^{TO PROVIDE} ~~Accordingly,~~ GTS Solutions provides employability programmes and certificates of work readiness in the security industry to disadvantaged young ~~boys~~ ^{PEOPLE} from the Prince's Trust. The company has also strategically partnered with ^{PEOPLE} potential employers enabling the company to access potential job offers for disadvantaged young ~~boys~~ ^{PEOPLE} in the security industry. GTS Solutions uses market returns and the profits generated by its commercial activities in the security industry to sustain the pursuit of the social objective, i.e. help people in and out of the security industry to gain qualifications ~~that they would never otherwise have achieved.~~ ^{AT} Through training ~~at~~ a higher level of qualification in comparison to that which employees from the security sector commonly possess, the employment rate of the trainees of GTS Solutions has increased.

Figure 1.1: An example of a validated interview report.

Table 1.1: The validity and credibility of the case studies

Verification	Measures
Validity	<p>Establishment of a clear chain of evidence from the research question to conclusions; sufficient cross-references to the multiple data sources and the collected evidence</p> <p>Triangulation of data from different sources: data from: (i) interview respondents from different organisational layers; (ii) relevant documents; and (iii) observations at location</p> <p>Respondents' validation of: (i) the interview verbatim transcriptions; (ii) the interview reports; and (iii) the case analysis</p> <p>Cross-case synthesis and use of quasi-statistics</p> <p>Saturation in coding; coding of rich and thick data; the verbatim transcriptions were coded to an extent that they could not be coded any more</p> <p>Use of a second (external) interviewer; use of alternative data collectors; use of alternative coders; use of similar questionnaires</p>
Reliability-Replication Transparency	<p>Careful documentation; maintenance of interview transcriptions, interview reports, data collection progress tables, validation tables, respondents' tables, initial data analysis tables, coding tables, coding templates, use of dropbox case study database to maintain the documents</p> <p>Replication of the same case study research protocol</p>

1.4.2.3. Methodological considerations in relation to the survey

Finally, Chapter 4 relies on the presentation of survey-based findings used for illustrative purposes. Regardless of its exploratory nature, the Nyenrode - PwC Social Enterprise Survey of 2016 regards the methodological issue of bias. Although the collection of rich information was the first priority of the Nyenrode - PwC Social Enterprise Survey of 2016, it did not include information that was coloured with the pre-existing thoughts and notion of the researchers involved in the development of the study, including also me. Sub-section 4.3 of Chapter 4 explains how the development of the related survey part concerning stakeholder participation in the Dutch social enterprises dealt with unintended bias that could have been developed in the survey's sample and in the respondents' responses to the survey questions.

Chapter 2

An introduction to tailor-made legislation for social enterprises in the EU: A comparison of legal regimes in Belgium, Greece and the UK*

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Abstract

Various countries in the EU have introduced tailor-made legal forms for social enterprise in their national legal systems. Social enterprises are organisations which exhibit characteristics different from those applicable to mainstream companies. Their main objective is to have a social impact rather than to make a profit. They involve various types of stakeholders in their decision-making activities and they communicate their activities in social reports. This article introduces tailor-made legal forms for social enterprises in three selected national legal systems, i.e. in Belgium, Greece and the UK. It contrasts their similarities and differences based on certain legal variables, i.e. social purpose, participatory governance, accountability-responsibility and financial structure. The legal variables are extracted from the Commission's definition of the social enterprise in the Social Business Initiative Communication of 2011.

Keywords

Social Enterprises, Tailor-made Legislation, Social Purpose, Participatory Governance, Accountability, Financial Structure, Community Interest Company, Company with a Social Purpose, Social Cooperative Enterprise

2.1. Introduction: Legal frameworks for social enterprises in the EU

During the past 20 years, new entrepreneurial forms referred to as social enterprises, have developed in various countries of the European Union (EU).¹ Social enterprises are business organisations that engage in (for-profit) economic activities, i.e. commercial and entrepreneurial activities, and that also seek to fulfil societal (social and environmental) objectives of a non-profitable character.² They pursue commercial activities, such as the sale of goods and the supply of services to the market, which aim to benefit the community and to serve the general interests of society. Given their hybrid character, social enterprises combine for-profit activities with not-for-profit objectives that are either directed at markets and/or are destined to serve society.³ Whether they are market-oriented and/or societal, the activities of social enterprises aim to provide for innovative and entrepreneurial solutions to tackle economic, social and environmental problems.⁴ Moreover, their hybridity enables social enterprises to develop financing schemes by combining market and non-market resources and by generating profits and revenues for example. Those resources are combined with donations, grants and subsidies and they are reinvested into a social purpose. Social enterprises are business organisations inspired by motives and values, which are not driven solely by the generation of profit or profit-maximisation. Rather social enterprises aspire to principles, such as solidarity, democracy, equality, the primacy of society over capital, inclusion, transparency and societal (social and environmental) responsibility.⁵

- 1 J. Defourny 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*, 33-38; 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; J. Defourny, 'From Third Sector to Social Enterprises' in C. Borzaga and J. Defourny (eds), *The Emergence of Social Enterprise* (Routledge 2001); J. Defourny and M. Nyssens, 'The EMES Approach of Social Enterprise in a Comparative Perspective' (2012) EMES Working Paper No. 12/03, 3-4 available at: <<http://emes.net/publications/working-papers/the-emes-approach-of-social-enterprise-in-a-comparative-perspective/>> accessed 24 September 2017.
- 2 H. Haugh, 'A research agenda for social entrepreneurship' (2005) 1(1) *Social Enterprises Journal*, 2-3; G. Galera and C. Borzaga, 'Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation' (2009) 5(3) *Social Entrepreneurship Journal*, 212; Defourny (n 1) 15; C. Liao, 'Limits to Corporate Reform and Alternative Legal Structures' in B. Sjäffell and B. Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (Cambridge University Press 2015) 275; A. Fici, 'Recognition and Legal Forms of Social Enterprise in Europe: A Critical Analysis from a Comparative Law Perspective' [2016] 27(5) *European Business Law Review*, 639-640.
- 3 Galera and Borzaga (n 2) 211; J. Austin, H. Stevenson and J. Wei-Skillern, 'Social and Commercial Entrepreneurship: Same, Different, or Both?' (2006) 30(1) *Entrepreneurship Theory and Practice*, 2-3; J.G. Dees, 'The meaning of "Social Entrepreneurship"' (Kauffman Foundation and Stanford University 1998) 1.
- 4 Galera and Borzaga (n 2) 212 and 215.
- 5 Defourny and Nyssens (n 1) 33-38.

In the EU, social enterprises adopt a variety of legal forms to be found in the civil and company laws of national legislation, such as the association, the foundation, the limited liability company, the cooperative, the partnership and the mutual society.⁶ The legal forms generally enable a social enterprise to assume a legal personality and carry out entrepreneurial and commercial activities with a social goal.⁷ In the 1990s, social entrepreneurs had the tendency of making use of legislation that was designed specifically for associations and cooperatives. In France and Belgium, for example, social entrepreneurs predominantly adopted the legal form of the association.⁸ However, in Italy and Finland, the applicable national legal framework did not enable associations to undertake commercial activities. Hence, social entrepreneurs would commonly use the legal form of the cooperative to conduct business activities.⁹ However, in practice, social entrepreneurs have experienced challenges in selecting the most appropriate legal form amongst the many available.¹⁰

Consequently, various EU countries have started to introduce legislation for social enterprises in their national jurisdictions by means of tailor-made legal forms. This type of legislation is demonstrably better adapted to the entrepreneurial activities and the social objectives of social enterprises.¹¹ A key example is the Italian tailor-made legal form for social enterprises named the ‘social cooperative’ that was introduced in 1991. The social cooperative model was eventually replicated and adopted by various other EU countries, such as Portugal, Spain, France and Greece.¹²

The development of tailor-made legal forms for social enterprises in the national legal systems of EU countries was also supported by the introduction of additional conducive secondary legislation and policy frameworks for these enterprises. Regulatory and policy frameworks supported social enterprises in participating in public procurement or in

6 *ibid* 33, 36-37; Galera and Borzaga (n 2) 218-219; European Commission, ‘A Map of Social Enterprises and their Eco-systems in Europe (Synthesis Report)’ (European Union 2015) 42, 51 and 55 available at: <<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149>> accessed 24 September 2017.

7 Defourny (n 1) 17; Galera and Borzaga (n 2) 218.

8 Galera and Borzaga (n 2) 218-219; Defourny (n 1) 5-6; Defourny and Nyssens (n 1) 32-53; Defourny and Nyssens, 2012 (n 1) 9-10; 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); Kerlin (n 1) 247.

9 Galera and Borzaga (n 2) 218-219; Defourny and Nyssens (n 1) 34-37.

10 R. Spear, C. Cornforth and M. Aiken, ‘The Governance Challenges of Social Enterprises: Evidence from a UK Empirical Study’ (2009) 80(2) *Annals of Public and Cooperative Economics*, 261-262; Defourny (n 1) 14.

11 D. Brakman Reiser, ‘Theorizing Forms for Social Enterprise’ [2013] 62(4) *Emory Law Journal*, 681-740; Defourny (n 1) 14; Galera and Borzaga (n 2) 219; Defourny and Nyssens (n 1) 44; Liao (n 2) 275; Fici (n 2) 647.

12 *ibid*. See also R.T. Esposito, ‘The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation’ (2013) 4(2) *William and Mary Business Law Review*, 672-673. See Synthesis Report (n 6) 52.

applying a special tax regime.¹³ A prime example is the United Kingdom (hereafter 'UK') that introduced a tailor-made corporate form for social enterprises known as the Community Interest Company (hereafter 'CIC').¹⁴ For the development of CICs, the UK's national legislation lays down a comprehensive regulatory and policy framework. Various other countries have advanced legal frameworks and public policies for companies with a social purpose. In 2005, Belgium introduced a legal label (also known as a transversal legal status for social enterprises) that all business organisations can adopt.¹⁵

13 Galera and Borzaga (n 2) 218-219; Haugh (n 2) 2-3; Synthesis Report (n 6) 49-50, 97.

14 The UK was still a member of the EU when this article was developed and drafted. See Part 2 of the Companies (Audit, Investigations and Community Enterprise) Act of 2004 (c. 27) BS; Community Interest Company Regulations 2005 (SI 2005/1788). In the UK and Scotland there is a growing number of legal forms which are tailor-made to social enterprises. Other legal forms for social enterprises carrying out business activity particularly in the UK and in Scotland are the Community Benefit Society (BenCom) introduced by s. 2(1)(b) of the Cooperative and Community Benefit Societies Act 2014 and the Scottish Charitable Incorporated Organisation (hereafter 'SCIO'), introduced by s. 47 of the Charities and Trustee Investment (Scotland) Act 2005 and the Scottish Charitable Incorporated Organisations Regulations 2011 (SSI 2011/44). BenComs are business organisations that are not companies but registered societies. They conduct business activities only for the benefit of society by operating in a democratic way following the principles of open and voluntary membership, while also applying the principle of 'one member, one vote' in decision-making. BenComs are also bound to a statutory asset-lock, which prohibits the distribution of profits, dividends or other surpluses to the members of the society and which is rather reinvested in the primary function of the business or in other activities that may benefit the community. BenComs also enjoy a charitable status. SCIOs are corporate legal forms that are incorporated and operated in Scotland. Under Scottish law, a SCIO is a corporate legal entity with the same status and eligibility to transact and to be protected as a natural person, i.e. an individual. A SCIO entity must be registered with the Scottish Charity Regulator known as OSCR and its existence is dependent on the charitable status provided by OSCR. It means that once the charitable status is withdrawn a SCIO ceases to exist. Additionally, SCIOs are required to produce a constitution and establish a principal office in Scotland with two or more members who may overlap with the charity's trustees subject to the content of its constitution. Additional information is available on the website of OSCR, SCIOs: 'A Guide on the Scottish Charitable Incorporated Organisation for Charities and their Advisers' available at: <www.oscr.org.uk/media/1038/cscios_a_guide.pdf> accessed 24 September 2017. Other than the legal forms of BenCom and SCIO, available in Scotland and the UK is the B-Corp certification, provided by the non-profit organisation, i.e. the 'B-Lab'. Organisations that hold a B-Corp certificate are subject to self-regulatory requirements. According to these requirements, B-Corps are bound to meet standards of social and environmental performance, accountability, and transparency subject to the scrutiny of the B-Lab organisation: See B-Lab, 'Steps to becoming a certified UK B-Corp' available at: <<http://bcorporation.uk/b-corps-in-the-uk/>> accessed 24 September 2017. See also regarding the introduction of the legal form of the Charitable Incorporated Organisations (hereafter 'CIO') in the broader area of the UK in H. Picarda, 'Harmonising Non-profit Law in the European Union: an English Perspective and Digest' in K.J. Hopt and T. Von Hippel (eds), *Comparative Corporate Governance of Non-Profit Organizations* (Cambridge University Press 2010) 185-186.

15 Belgian Companies Code of 1999, arts. 661-669, Boek X, Hoofdstuk I, Wetboek Van Vennootschappen van 7 mei 1999 (BS 06.08.1999).

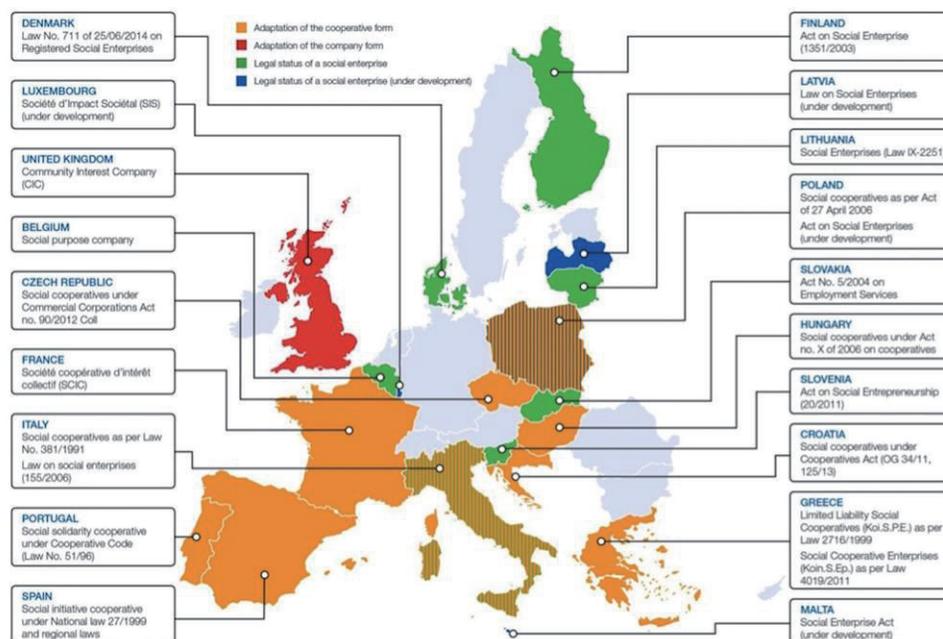


Figure 2.1: A map of special legal frameworks for social enterprises in the EU.

In 2015, the European Commission (hereafter ‘Commission’) completed a broad-based study mapping out social enterprises and their ecosystems in the 28 Member States and in Switzerland. The study identified amongst others: (i) the legal frameworks that are designed exclusively for social enterprises as opposed to legislation regarding mainstream enterprises; (ii) the corporate law aspects most commonly used by social enterprises; and (iii) the legal labels and certification systems designed for social enterprises (see Figure 2.1).¹⁶

The study concluded that tailor-made legislation has been introduced in the majority of EU countries (19 out of 28, including Italy, Greece, Belgium, Portugal, the UK, and France).¹⁷ Such legislation comprises various types of tailor-made legal forms for social enterprises. We identified three prevalent sub-groups and corresponding legal forms for social enterprises. They include:

16 The overarching objective of the study was to examine defining characteristics across social enterprises in the EU that demonstrate how social enterprises are distinguished from mainstream enterprises, traditional non-profit organisations and social economy entities. See the Synthesis Report (n 6) 9, 4 and 52 including the country reports of 29 countries. Figure 2.1 is retrieved from the Synthesis Report. It illustrates the different legal regimes applicable to social enterprises in the different countries in the EU.

17 Synthesis Report (n 6) 51-52; Fici (n 2) 641.

(i) the *legal label form/legal status* for social enterprises.¹⁸ An indicative example is the social purpose label (i.e. *Vennootschap met Sociaal Oogmerk* - the Company with a Social Purpose in Belgium; here termed the 'VSO'). According to the Commission, similar approaches have been introduced in Denmark, Italy, Finland, Slovenia and Lithuania, for example (see Figure 2.1). The legal label transcends existing legal forms for companies as it can be adopted by various types of organisations if they satisfy a minimum threshold of legal requirements prescribed by their Articles of Association (hereafter 'AoA') (see Sub-section 2.4).

(ii) the *cooperative legal form* for social enterprises,¹⁹ which is a cooperative with a social purpose in countries with a cooperative legal tradition (mostly in Southern - European countries, such as Greece, Italy, Spain, France, and Portugal). An indicative example is the *Κοινωνική Συνεταιριστική Επιχείρηση*, i.e. the Greek term for the Social Cooperative Enterprise in Greece (here termed the 'Koinsep'); and

(iii) the *company legal form* for social enterprises,²⁰ which is a private or public limited liability company (hereafter 'plc') in the UK, i.e. the Community Interest Company (CIC).

2.2. Definitions of social enterprises

The social enterprise concept has attracted the interest of many academic scholars from a range of disciplines and backgrounds. Their scholarly discussions focus on the pursuit of a common definition for social enterprises that covers the miscellaneous characteristics of social enterprises identified in various EU countries. Scholarly attempts to clarify the social enterprise concept are varied. Some researchers provide narrow definitions and others offer definitions outlined in broader terms.

According to the narrow definition, introduced primarily by academics from the discipline of Economics, a social enterprise is a not-for-profit organisation with an 'earned income business or strategy' undertaken 'to generate revenue in support of its charitable mission'.²¹ The narrow definition can be contrasted with the broader definitions of the social enterprise concept. According to these definitions, social enterprises engage in a range of economic activities that can be positioned in various economic sectors, i.e. the for-profit sector, the non-profit sector, or an intersection of

18 *ibid* at 57-58.

19 *ibid* at 55-56.

20 *ibid* at 56-57.

21 Defourny and Nyssens (n 1) 40; Kerlin (n 1) 248-249; G.A. Lasprogata and M.N. Cotton, 'Contemplating Enterprise the Business and Legal Challenges of Social Entrepreneurship' (2003) 41(1) *American Business Law Journal*, 68-70; D. Roberts and C. Woods, 'Changing the World on a Shoestring: the Concept of Social Entrepreneurship' (2005) 7(1) *University of Auckland Business Review*, 45-51; Austin et al. (n 3) 2.

both, generating a ‘third sector’.²² Nobel Peace Prize winner, Muhammad Yunus, was a pioneer in social entrepreneurship activities in Bangladesh. He provides a conceptual definition of the social enterprise as ‘a company that is cause-driven rather than profit-driven, with the potential to act as a change agent for the world’.²³ In the discipline of Organisational Studies, Kerlin notes that social enterprises are organisations which:

Fall along a continuum from profit-oriented businesses engaged in socially beneficial activities (corporate philanthropies or corporate social responsibility) to dual-purpose businesses that mediate profit goals with social objectives (hybrids) to not-for-profit organizations engaged in mission-supporting commercial activity (social purpose organizations).²⁴

Haugh defines a social enterprise as an independent and autonomous organisation with social and economic objectives, which aims to fulfil a social purpose. Such an organisation aims to achieve financial sustainability through trading in order to generate profit, to hire employees and involve volunteers all while seeking social objectives.²⁵ Haugh also notes, ‘social enterprises adopt differing legal formats and abide by different legal frameworks and fiscal responsibilities and duties in different countries’.²⁶

In Europe, research on the definition of social enterprises and its theoretical underpinnings has been carried out by the research network named *L'émergence de l'entreprise sociale en Europe* (i.e. the emergence of social enterprises in Europe, hereafter ‘EMES’).²⁷ The EMES research network developed a definition for social enterprises that was ultimately adopted by the international research community. The EMES definition is based on three groups of uniform criteria that characterise the ideal social enterprise.

22 The third sector commonly encompasses organisations with mixed and hybrid, for-profit and not-for-profit characteristics. Galera and Borzaga (n 2) 211-215; Defourny and Nyssens (n 1) 34-35; J. Defourny and M. Nyssens, ‘Defining Social Enterprise’ in M. Nyssens (ed), *Social enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006) 5-6; A. Nicholls, *Social Entrepreneurship: New Models of Sustainable Social Change* (Oxford University Press 2006) 11-15; Galera and Borzaga (n 2) 212.

23 B. Huybrechts and A. Nicholls, ‘Social Entrepreneurship: Definitions, Drivers and Challenges’ in C.K. Volkmann, K.O. Tokarski and K. Ernst (eds), *Social Entrepreneurship and Social Business* (Springer 2012) 22 and 37. T. Lambooy, A. Argyrou and R. Hordijk, ‘Social Entrepreneurship as a New Economic Structure that Supports Sustainable Development: Does the Law Provide for a Special Legal Structure to Support Innovative and Sustainable Non-Profit Entrepreneurial Activities? (A Comparative Legal Study)’ (2013) University of Oslo Research Paper No. 2013-30 available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2346684> accessed 24 September 2017.

24 Kerlin (n 1) 248.

25 Haugh (n 2) 2-3.

26 *ibid.*

27 EMES is a research network that specialises in theoretical and empirical research regarding social entrepreneurship and the social economy. See EMES International Research Network, ‘What We Do’ available at: <www.emes.net/what-we-do/?no_cache=1> accessed 24 September 2017.

The criteria were introduced to offer the international academic community a common ground for addressing and researching the activities of social enterprises. The first set of criteria defines the economic and entrepreneurial dimensions of social enterprises. The second set defines the societal dimensions of social enterprises, while the third set defines the participatory governance of social enterprises.²⁸

The introduction of tailor-made legislation for social enterprises into the national legal orders of many EU countries and the emergence of a limited body of legal literature and academic research regarding social enterprises has contributed substantially to the clarification of the social enterprise concept.²⁹ A number of comparative legal and non-legal studies have explained the differences and similarities in the governance schemes and normative frameworks in various countries.³⁰ In addition to country-specific studies, some comparative evaluations of the various legal frameworks have been carried out.³¹

- 28 The criteria relating to the economic and entrepreneurial dimensions are: (a) a continuous activity producing goods and/or selling services; (b) a significant level of economic risk; and (c) a minimum amount of paid work. The criteria concerning the societal dimensions of social enterprises are: (a) an explicit aim to benefit the community; (b) an initiative launched by a group of citizens or civil society organisations; and (c) a limited profit distribution. The criteria regarding the participatory governance of social enterprises are: (a) a high degree of autonomy; (b) decision-making power not based on capital ownership; and (c) a participatory nature, which involves various parties affected by the activity; see Defourny and Nyssens (n 1) 12-15; Fici (n 2).
- 29 Galera and Borzaga (n 2) 210; Synthesis Report (n 6) iv. Alongside these studies, another body of literature has developed and includes critical studies regarding the social enterprises concept, its political standing, its normative market logic and the value that research regarding social enterprises could bring into the international scholarship, i.e. P. Dey and C. Steyaert 'Social Entrepreneurship: Critique and the Radical Enactment of the Social' (2012) 8(2) *Social Enterprise Journal*, 90-107; M. Bull 'Challenging Tensions: Critical, Theoretical and Empirical Perspectives on Social Enterprise' (2008) 14(5) *International Journal of Entrepreneurial Behaviour and Research*, 268-275; A.M. Peredo and M. MckLean, 'Social Entrepreneurship: A Critical Review of the Concept' (2006) 41(1) *Journal of World Business*, 56-65. See also Fici (n 2).
- 30 T. Lambooy and A. Argyrou, 'Improving the Legal Environment for Social Entrepreneurship in Europe' (2014) 11(2) *European Company Law*, 71; see 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 24 September 2017; see S. Campi, J. Defourny and O. Grégoire, 'Work integration social enterprises: Are they multiple-goal and multi-stakeholder organisations?' in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006); CECOP, 'Comparative Table of Existing Legislation in Europe', document elaborated within the framework of the CECOP European Seminar: 'Social enterprises and worker cooperatives: comparing models of corporate governance and social inclusion' (CEPOP European Seminar, Manchester, 9 November 2006, Manchester) available at: <www.cecop.coop/IMG/pdf/cooperative-and-social-enterprises_e-pub-2-2.pdf> accessed 30 April 2017; B. Roelants, 'Cooperatives and Social Enterprises: Governance and Normative Frameworks' (CECOP Publications 2009); Esposito (n 12) 671-679; D. Golubović, 'Legal Framework for Social Economy and Social Enterprises: A Comparative Report' (ECNL 2012) 293-309 available at: <<http://evpa.eu.com/wp-content/uploads/2013/02/ECNL-on-socent-in-Europe.pdf>> accessed 24 September 2017.
- 31 Cafaggi and Iamiceli (n 8). T. Lambooy, 'Rapport Commissie Wijffels over Rechtsvorm

The existing comparisons indicate that there is no consistent use and understanding of the term ‘social enterprise’ in the domestic legal frameworks of countries in the EU.³² In certain groups of EU countries with tailor-made legislation for social enterprises, there are several indicative examples of how the law treats this concept in disparate ways. For example, in Italy and Belgium, the law describes social enterprises as entities with a socially driven purpose.³³ Meanwhile, in Finland, Lithuania, Poland, and Sweden, the legislation views social enterprises as work integration social enterprises (hereafter ‘WISE’) that are designed to alleviate unemployment or to accommodate the integration of the disabled into the labour market.³⁴ The approach of viewing social enterprises merely as a type of WISE is in contrast with another broader approach adopted in the UK. In the UK, a social enterprise is defined in the government’s policy documents as ‘a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners’.³⁵

In its 2011 communication on the ‘Social Business Initiative’ (hereafter ‘the SBI Communication of 2011’), the Commission introduced a uniform definition for social enterprises. The definition demonstrates how social enterprises can be distinguished from mainstream enterprises by way of certain elements.³⁶ According to this definition, a social enterprise: (i) is an operator of the social economy; (ii) has as its main objective to have a social impact rather than to make a profit; (iii) operates by providing goods and services for the market in an entrepreneurial and innovative fashion; (iv) uses its profits primarily to achieve a social mission; (v) is managed in an open and responsible manner; and (vi) involves employees, consumers and stakeholders affected by its commercial activities.

Maatschappelijke Onderneming: Rapport van de Projectgroep Rechtsvorm Maatschappelijke Onderneming (Commissie Wijffels), aangeboden door de Tweede Kamer door de minister van Justitie op 18 september 2006’ (2006) 17(1) Ondernemingsrecht, 623-625; A. Coates, ‘Juridische Aspecten Eigen aan de Onderneming in de Sociale Economie Onderzoeksdeel III: Rechtsvergelijking van de sociale economie onderneming in Europa’, WSE Report 9-2011 (Steunpunt Werk en Sociale Economie 2011) available at: <www.steunpuntwerk.be/node/2292> accessed 24 September 2017.

32 According to the Commission, twenty EU countries have developed a national definition for social enterprises. See Synthesis Report (n 6) vi. See also Cafaggi and Iamiceli (n 8) 30.

33 Cafaggi and Iamiceli (n 8) 42; Galera and Borzaga (n 2) 221; Defourny and Nyssens (n 1) 37.

34 Cafaggi and Iamiceli (n 8) 50; Synthesis Report (n 6) vii.

35 Department of Trade and Industry in the UK, ‘Social Enterprises: A Strategy for Success’ (2002) 13 available at: <<http://webarchive.nationalarchives.gov.uk/20040117014152/http://www.dti.gov.uk/socialenterprise/strategy.htm>> accessed 30 April 2017; Defourny and Nyssens (n 1) 37; Cafaggi and Iamiceli (n 8) 42.

36 The operational definition states, ‘[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, involves employees, consumers and stakeholders affected by its commercial activities.’ 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.

To make the above definition more tangible, the Commission provided various examples of activities and services that can be considered when attempting to qualify an entity as a social enterprise. In the words of the Commission, entities qualifying as social enterprises include:

- (A) businesses providing social services and/or goods and services to vulnerable persons (access to housing, health care, assistance for elderly or disabled persons, inclusion of vulnerable groups, child care, access to employment and training, dependency management, etc.); and/or (B) businesses with a method of production of goods or services with a social objective (social and professional integration via access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation) but whose activity may be outside the realm of the provision of social goods or services.³⁷

Additionally, the Commission's definition was included in the European Regulation No. 346/2013 (hereafter 'EuSEF Regulation') on European Social Entrepreneurship Funds, in which the generic term 'social undertaking' was introduced for social enterprises.³⁸ The EuSEF Regulation was adopted to support the financing of social enterprises in the EU by establishing uniform rules in relation to the 'European Social Entrepreneurship Funds' (hereafter 'EuSEF'), the new label given to investment funds of a social character. By means of this new EuSEF label, investors in the EU could identify those investment funds that focus on investing in social business activities in the EU. Indeed, Recital 12 in the EuSEF Regulation refers to a 'social undertaking', which is defined as 'an operator in the social economy, the main objective of which is to have a social impact rather than to make a profit for its owners or shareholders'.³⁹ The EuSEF definition builds on the Commission's definition for social enterprises, and on EU case law concerning the concept of an 'undertaking'.⁴⁰ According to the definition provided by the Commission and case law respectively, a social undertaking operates by providing goods and services for the market and by reinvesting its surplus into the promotion of social objectives. It is managed in an inclusive 'accountable and transparent manner,

³⁷ In the SBI Communication of 2011, the Commission uses the term 'social enterprise' to cover the following types of business: (a) those for which the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation; (b) those where the profits are mainly reinvested with a view to achieving the social objective; and (c) those where the method of organisation or ownership system reflects the social purpose, using democratic or participatory principles or focusing on social justice. Categories (A) and (B) cited in the main text relate to all the types of businesses under (a), (b), (c) mentioned in this note. SBI Communication of 2011 (n 36) 2-4.

³⁸ Council Regulation (EU) 346/2013 of 17 April 2013 on European Social Entrepreneurship Funds [2013] OJ L115/18 [EuSEF Regulation], recital para. 12.

³⁹ *ibid* recital para. 12.

⁴⁰ Cafaggi and Iamiceli (n 8) 30.

in particular, by involving employees, consumers and stakeholders that are affected by its commercial activities'.⁴¹ The above characteristics are repeated in the main body of the EuSEF Regulation, in Article 3(d)(i)-(iv), which defines an eligible 'qualifying portfolio undertaking' able to receive funding from accredited EuSEF.⁴² Since it is not the objective of the EuSEF Regulation to regulate social enterprises, the definition of a social undertaking is not included in the body of the EuSEF Regulation.⁴³ In terms of setting up investment funds, this definition is binding and directly enforceable by the EU Member States. It means that Member States are bound to enforce the uniform criteria applicable to qualifying portfolio undertakings in their national systems. For other purposes, however, EU Member States still enjoy the capacity to regulate the social enterprise concept differently and by means of other definitions that may be better suited to their national systems and jurisdiction.

2.3. Methodology: Legal variables pertinent to social enterprises

2.3.1. Introduction and reference to previous research

This article first offers a comprehensive introduction to and a comparison of three national legal frameworks in three selected legal systems, i.e. the legal systems of Belgium, Greece and the UK, and the corresponding legal forms employed in those jurisdictions, i.e. the VSO, the Koinsep and the CIC, all of which are tailor-made to social enterprises. Subsequently, we will analyse the rules present in the three selected legal systems in order to compare the legal frameworks regarding the concept of social enterprise. We will also attempt to identify similarities and differences in the content of the legal rules. The legal analysis will be systemised on the basis of the research scope of legal variables extracted from the Commission's definition of social enterprises.

2.3.2. The background studies

We started our research activities by conducting a preliminary and exploratory study in which we investigated tailor-made legal frameworks for social enterprises in an

41 EuSEF Regulation, recital para. 12.

42 *ibid* art. 3(d)(i)-(iv).

43 The EuSEF Regulation's objective is to establish uniform (legal) criteria that distinguish social undertakings as qualifying portfolio undertakings from other businesses in order to stimulate investment. It aims to enhance the growth of social enterprises and to remove any regulatory barriers that may exist in various national legislations concerning the financing of social enterprises. The EuSEF Regulation specifically states that: '[t]his Regulation reduces regulatory complexity and the managers' costs of compliance with often divergent national rules governing such funds'. EuSEF Regulation, recital paras. 3-5. See also European Commission, 'Commission Staff Working Paper, Impact Assessment Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on European Social Entrepreneurship Funds [Impact Assessment on the EuSEF Regulation]' COM (2011) 862 final and SEC (2011) 1513 final 19.

international context; this was done for the UK, Belgium, Greece, South Africa, Canada and the Netherlands.⁴⁴ In the preliminary study, we examined whether the special characteristics of tailor-made legal forms identified in the various jurisdictions align with the concept of sustainable development as outlined in a set of norms in the civil society document entitled ‘The Earth Charter of 2000’.⁴⁵

In Sub-section 2.1, the emerging development of policy and legislation tailor-made to social enterprises was noted at both the EU and national level. Acknowledging the Commission’s objective to improve the legislative environment applicable to social enterprises within the EU, and aiming to foster the development of a more comprehensive approach in policy and legislation regarding social enterprises, in a following study we extracted key legal variables from the Commission’s definition of social enterprises. The exploration of these factors comprised an inquiry on whether and to what extent, these legal variables feature within three selected tailor-made legal frameworks for social enterprises. This was done for Belgium, Greece and the UK.⁴⁶ Meanwhile, the objective of this article is to furnish a doctrinal analysis of the legal provisions included in three national tailor-made legal forms for social enterprises in order to: (i) discover the way in which the legal variables discussed within the scope of our research are embedded in such provisions; (ii) systematically analyse the findings in a comparative way to the extent that similarities and differences are discernible; and (iii) to emphasise similarities and differences in the examined rules and help further the development of a more sophisticated and harmonised idea of a tailor-made legal framework for social enterprises in the EU. This comparison examines legal areas and corresponding types of social enterprise, which include:

(i) provisions in the Belgian Companies Code of 1999 regarding companies with a social purpose;⁴⁷ the legal label/legal status type of social enterprises.

⁴⁴ Lambooy et al. (n 23).

⁴⁵ The special characteristics of tailor-made legal forms for social enterprises were determined based on the SBI definition for social enterprises. SBI Communication of 2011 (n 36) 2-3. The Earth Charter is a multi-stakeholder declaration, which comprises an ethical framework of norms and principles for sustainable development. Further details on the Earth Charter are available at: <<http://earthcharter.org/discover/>> accessed 24 September 2017.

⁴⁶ Lambooy and Argyrou (n 30) 71-76. The necessity for the development of a more comprehensive approach in policy and legislation is featured in Cafaggi and Iamiceli (n 8) 71 and in Esposito (n 12) 679. See also 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> accessed 30 April 2017.

⁴⁷ Belgian Companies Code of 1999, arts. 661-669, Boek X, Hoofdstuk I, Wetboek Van Vennootschappen van 7 mei 1999 (BS 06.08.1999). In citing D. D’Hulstère and J.-P. Pollénus, F. Fecher-Bourgeois and W. Ben Sedrine-Lejeune note that the VSO legislation aimed to introduce a corporate legal form which is ‘a middle path between the status of commercial company (including that of the cooperative society) that supposes a profit motive, and the status of non-profit-making institution which [is] not allowed to pursue a commercial activity’. See D. D’Hulstère and J.-P. Pollénus, *La Société à Finalité Sociale en Questions et Réponses* (Edipro 2008) 26 quoted in CIRIEC,

(ii) provisions in the Law on the Social Economy and Social Entrepreneurship 2011 (Social Entrepreneurship Law of 2011) and in the latest amendment of 2016 in Greece as well as in the complementary Law concerning Civil Cooperatives 1986; the cooperative type of social enterprises⁴⁸ and

(iii) provisions in the Companies (Audit, Investigations and Community Enterprise) Act of 2004 (the '2004 Act') and in the Community Interest Company (CIC) Regulations of 2005 in the UK;⁴⁹ the company type of social enterprises.

We will indicate the similarities and differences in the content of the legal rules at a national level. However, it is not the purpose of this article to discuss the correlations between the similarities and differences in the substantive rules of tailor-made legal frameworks for social enterprises and the 'legal families' to which they belong, i.e. common law versus civil law. Neither do we aim to discuss the 'legal origins' of the examined rules by producing conclusions with respect to the economic effectiveness of their legal content and/or implementation.⁵⁰ Such an attempt would require not

'Measuring the Economic Value of Cooperatives, Mutual Societies and Companies with social purposes in Belgium: A Satellite Account approach' (2013) CIRIEC N° 2013/11 at 12.

48 Law 4019/2011 on the Social Economy and Social Entrepreneurship 2011 (Social Entrepreneurship Law of 2011), Official Government Gazette No. 216/30.09.2011 and its amendment in Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions, Official Government Gazette A' 205/31.10.2016 and Law 1667/1986 concerning Civil Cooperatives 1986, Official Government Gazette No. 196/08.12.1986. The Social Entrepreneurship Law of 2011 was introduced into the Greek Parliament as a tailor-made legal framework to promote new policies regarding opportunities for employment and sustainable growth through social entrepreneurial activities. Permanent Commission of Social Affairs of the Greek Parliament: Discussion of the draft Social Entrepreneurship Law of 2011 (23 August 2011) available at: <www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#480f211f-6b17-41b4-b6b7-28840447511b> accessed 24 September 2017. The Social Entrepreneurship Law of 2011 belongs to a body of legislation, i.e. Greek Cooperative Law comprising also legislation concerning civil cooperatives and agricultural cooperative organisations.

49 In 2002, the UK Government initiated a dialogue regarding the development of a favourable legislative environment for social enterprises. Subsequently, the UK Department of Trade and Industry published a strategy document, which suggested: (i) the creation of an enabling (legislative) framework for social enterprises in the UK and (ii) the improvement of the quality of business of social enterprises through training, the improvement of business networks, and management skills. See H. Haugh and A.M. Peredo 'Chapter 1 Critical Narratives of the Origins of the Community Interest Company' in R. Hull, J. Gibbon, O. Branzei and H. Haugh (eds), *The Third Sector* (Dialogues in Critical Management Studies, Volume 1, Emerald Group Publishing Limited 2011); A. Nicholls, 'Institutionalizing Social Entrepreneurship in Regulatory Space: Reporting and Disclosure by Community Interest Companies' (2010) 35(4) *Accounting, Organizations and Society*, 396; *Social Enterprises: A Strategy for Success 2002* (n 35). See Part 2 of the Companies (Audit, Investigations and Community Enterprise) 2004 Act and the Community Interest Company Regulations 2005 (SI 2005/1788).

50 M.M. Siems, 'Legal Origins: Reconciling Law & Finance and Comparative Law' (2007) 52(1) *McGill Law Journal*, 55-81; H. Spamann, 'Contemporary Legal Transplants: Legal Families and the Diffusion of (Corporate) Law' (2009) 6(11) *Brigham Young University Law Review*, 1813-1878; E.L. Glaeser and A. Shleifer, 'Legal Origins' (2002) 117(4) *The Quarterly Journal of*

only a perilous categorisation of the legal rules into ‘legal families’ and/or ‘legal origins’, but it would also require a meaningful understanding of the legal traditions and legal cultures that surpass the content of statutory provisions.⁵¹ Therefore, the comparison will be limited to the following main objectives:

- (i) to unravel the different understandings of the legal concept of social enterprise in various national tailor-made legal frameworks and to identify fundamental similarities and differences in its function;
- (ii) to acknowledge the very existence of tailor-made legislation for social enterprises, something which has so far been neglected by legal theorists and scholars; and
- (iii) to incentivise the formation of future in-depth comparative studies that will provide an extensive explanation of the similarities and differences in the function of this legal concept on the basis of their legal traditions, legal cultures and legal origins.

2.3.3. Comparative legal methodology

In the study that follows, we will elaborate on the research question asking how certain legal systems in the EU have regulated key elements of the ‘social enterprise’ concept. Indeed, in Sub-section 2.1, it was explained that the new social enterprise concept has emerged in different and various legal systems. However, it was also mentioned that the ‘social enterprise’ different legal systems have adopted different rules and measures. Thus, in principle, we seek to identify the legal provisions in the national legal systems (company and civil law) which regulate the social enterprise concept. We, subsequently, seek to provide an objective presentation of the ways in which tailor-made legislation regarding social enterprises in different legal systems address key elements of the social enterprise concept. However, it is not our objective to describe merely the relevant legislation by setting out the relevant provisions side by side. On the contrary, we aim to introduce similarities and differences in the specific content of the legal rules regulating the concept of social enterprise as well as to identify the problems that the different laws solve either differently or similarly. Elaborating upon the theoretical underpinnings of the comparative legal method, Cabrelli and Siems criticise the necessity for the application of the functional approach in comparative analysis. The functional approach, according to these two scholars, dictates that the comparatist ‘should not start with a particular legal topic’, i.e. legal rule, concept or institution which might differ substantially in various jurisdictions, but instead that he/she should start ‘with a functional question’ that allows the examination of: (i) ‘solutions’ provided by legal rules to specific factual situations; (ii) the reasons why they were produced; and (iii)

Economics, 1193-1229; D.C. Donald, ‘Approaching Comparative Company Law’ (2008-2009) 14(1) *Fordham J Corp & Fin L*, 83-178.
51 Siems (n 50) 67; Donald (n 50) 92.

what success they had.⁵² Whilst Cabrelli and Siems challenge the fundamental notion of functionalism, suggesting that the law serves various functions that might be similar or different in various jurisdictions,⁵³ in order to avoid comparing seemingly different notions, we acknowledge the fundamental function of company law as a tertium comparationis. This is to enable enterprises and entrepreneurs to transact easily, with clarity and certainty and with legal forms which are regulated in accordance with certain key characteristics, such as legal personality, company purpose, limited liability, decision-making process, delegated management, financial structure, and accountability to stakeholders, to mention but a few.⁵⁴ In this article, we aim to pinpoint and analyse similarities and differences in tailor-made legal provisions that cater for the legal key characteristics of social enterprises. We also discuss the elementary legal rules, which are necessary to support the legal forms and regulate such key characteristics.⁵⁵ Even

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- 52 D. Cabrelli and M.M. Siems, 'A Case-Based Approach to Comparative Company Law' in M.M. Siems and D. Cabrelli (eds), *Comparative Company Law: A Case-Based Approach* (Hart Publishing 2013) 16. M. Oderkerk, 'The Importance of Context: Selecting Legal Systems in Comparative Legal Research' [2001] 48(3) *Netherlands International Law Review*, 293-318; M. Van Hoecke, 'Methodology of Comparative Legal Research' [2015] *Law and Method*, 1-35. R. Michaels, 'The Functional Method of Comparative Law' in M. Reimann and R. Zimmermann (eds), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006) 342.
- 53 Cabrelli and Siems note that '[a] strict version of functionalism has to assume that there is a clear sequential order: a social problem arises courts or legislators respond to it, which in turn has the effect of solving the problem. Yet such a view fails to consider the possibility that legal rules often arise in a complex process of historical path-dependencies, cultural preconditions and legal transplants, and that the legal rules also shape the problems of society. It is also not at all untypical that law operates to serve more than explicit function alone'. Cabrelli and Siems (n 52) 18.
- 54 R.R. Kraakman, P. Davies, H. Hansmann, G. Hertig, K.J. Hopt, H. Kanda, and E.B. Rock (eds), *The Anatomy of Corporate Law: A Comparative and Functional Approach* (2nd edn, Oxford University Press 2009) 2; Donald (n 50); H. Hansmann and R. Kraakman, 'The End of History for Corporate Law' [2001] 89(2) *Georgetown Law Journal*, 439-468.
- 55 In the Greek legal system, the civil cooperative is considered an idiosyncratic legal entity with legal personality and special characteristics. Areios Pagos, i.e. the Supreme Court of Greece, has accepted that civil cooperatives are special associations of persons who cooperate for the promotion of their economic and professional interests. Consequently, social cooperatives (i.e. Koinsep) are special associations of persons who cooperate primarily for achieving social objectives and subsequently for achieving economic objectives. Whether civil or social, cooperatives are legal entities of private law. They are treated as associations of persons, which differ from the two basic types of associations of persons stipulated in the Greek Civil Code of 1940, i.e. the partnership (also known as a 'personal company' in arts. 741-784 of the Greek Civil Code 1940; see also arts. 20-22 of the Greek Commercial Law 1835) and the union (arts. 78-107 of the Greek Civil Code 1940). A cooperative differs from a partnership in the sense that the partnership entails a strong personal relationship between the partners. This is reflected in the limited number of partners and in the right of entrance and exit from the partnership, which is not provided without the explicit consent of the partners. By contrast, in the case of the Greek cooperative, anyone can join as a member, and there is not necessarily any personal nexus and/or close bond between the members. Additionally, the Greek cooperative, and most importantly the Greek social cooperative, i.e. the Koinsep, is not a common 'trading capital company' in the Greek legal system that is subject to the national Company Law - nor a 'commercial company' stricto sensu - due to its objectives, which are not solely economic and for-profit but contain rather a mix of economic, social and cultural elements. Chrysogonos, a

though the key characteristics of the legal forms for social enterprises may be related to other areas of law, in this article we will not focus on any considerations that arise from other areas of law, such as insolvency law and/or tax law.⁵⁶

2.3.4. The selection of countries

The application of the comparative legal method requires the examination of every EU legal system, which has regulated the social enterprise concept.⁵⁷ Accordingly, it entails a comparison of legal rules in 19 of the 28 EU countries, as 19 countries have introduced tailor-made legislation for social enterprises into their national legal systems, or are developing new legislation on this topic. Obviously, due to constraints and limitations, primarily in terms of space and subsequently in terms of personal linguistic competence, it was impossible for us to cover all of the laws of these 19 jurisdictions. Consequently, the research in this article is channelled in such a way that only pre-selected legal systems are evaluated, namely the Belgian, the Greek and the UK jurisdictions, each one being a representative of the three prevalent sub-groups and corresponding legal forms for social enterprises referred to above in Sub-section 2.1.

Additionally, an important criterion that we considered in terms of the selection and eligibility of the legal systems to be compared is whether the concept of social enterprises has reached a certain level of maturity in the legal system, i.e. introduced in a special law.⁵⁸ Hence, jurisdictions, which are in the process of developing new legislation and legal forms for social enterprises were not selected for the comparative examination, as

notable Greek scholar argues that the cooperative belongs to a unique sphere. Cooperatives cannot be characterised entirely as for-profit entities even if they exercise entrepreneurial or commercial activities. In particular, the Koinsep is generally treated as a *sui generis* entity but it has commercial capacity by operation of law (art. 2 in the Social Entrepreneurship Law of 2011). As a legal entity with legal personality and a commercial capacity, the Koinsep is subject to the provisions of Commercial Law in respect of issues, which are not regulated by the civil cooperative legislation as well as to provisions that can be found in the Greek Civil Code of 1940 regarding legal persons (arts. 61-77). Additionally, the Koinsep is subject to stipulated rules regarding the partnership and the union included in the Greek Civil Code of 1940 as well as to provisions regarding capital companies if there are legal gaps in the cooperative legislation. The application of company law provisions and rules to issues regarding cooperatives is only allowed on the basis of similarity and analogy and only if the rules do not conflict with the system of the Cooperatives Law or the nature of the cooperative (Areios Pagos Decision No. 684/2006; Greek Court of Audit, 6th Division, Decision No. 3/2014, para. IV; 2/2014, para. IV (2); and 557/2014, para. VI (B)). KX Chrysogonos, *Civil and Social Rights* (Law Library Publications, 2006); See also S.A. Kintis, *Law of Cooperatives: Introduction - General Part* (Sakkoulas Publishing, 2004).

56 Nonetheless, we will address these considerations arbitrarily if supportive to clarify the elements of analysis. Donald (n 50) 120.

57 Oderkerk reviews the work done by major legal comparatists such as Zweigert and Kotz, Sacoo and Constantinesco to name but a few, thereby developing and suggesting a systemic method that is applicable to comparative law studies. See Oderkerk (n 52) 293 and 295-296.

58 *ibid* at 297.

was the case for Latvia, Luxembourg, Malta and Poland (see Figure 2.1). Finally, the decisive criterion for the selection of the legal systems was our personal competences. In particular, the choice of legal systems to be compared was shaped by our legal and linguistic knowledge and experience.⁵⁹ Our linguistic knowledge is limited to English, Greek and Dutch/Flemish law and our legal knowledge and experience is mainly limited to Dutch law and Greek law. This means that we were able to appraise the legal provisions and literature regarding the legal systems of Belgium, Greece and the UK, effectively and with confidence.

2.3.5. Comparison on the basis of the legal variables

The examination, analysis and comparison of the three different legal regimes will be conducted on the basis of four key characteristics of the tailor-made legal forms for social enterprises, duly referred to as 'legal variables'. These key characteristics were retrieved from the European definition for social enterprises, namely: (i) the social purpose; (ii) the participatory governance; (iii) the accountability/responsibility; and finally (iv) the financial structure (see Sub-section 2.2). The legal variables are explained in greater detail in the sub-sections that follow. Additionally, we elaborate upon the national provisions pertinent to the four legal variables by means of doctrinal analysis. Initially, the findings from the doctrinal analysis will reveal the content of the legal rules regulating each of the four legal variables. We then compare the findings regarding the substance of these rules to chart the state of development of social enterprises in each national legal context.

2.4. The social purpose in the Belgian, Greek, and UK social enterprise law

This Sub-section 2.4 examines the place of the social purpose variable in each of the three selected tailor-made legal frameworks for social enterprises. The Commission's definition emphasised that one distinguishing criterion for social enterprises is that they pursue a social purpose in order to generate social impact rather than profit for their owners and the shareholders (see Sub-section 2.2). Below, we will examine whether social enterprises that use each of the three tailor-made legal forms, i.e. the VSO, the Koinsep and the CIC, are required to pursue objectives, which are either social and of a not-for-profit nature and/or commercial and of a for-profit nature. For instance, the law may require that a social enterprise have explicit objectives that seek to benefit the community and/or society. Furthermore, a social enterprise may often have a hybrid character, i.e. a commercial and entrepreneurial nature combined with a social character. It is then important to examine whether the law contains specific requirements in view of the social character of the enterprise's entrepreneurial activities in order to realise the social objectives. As such, it is important to examine the legal obligations regarding the

59 *ibid* at 305-307, regarding the selection of jurisdictions on the basis of the researchers' legal and linguistic knowledge and experience.

social purpose of the legal form and the means by which such purpose is implemented in the constitutional documents of the legal form, such as the AoA, memoranda or Statutes of Association (hereafter ‘SoA’) for example.

2.4.1. The Belgian company with a social purpose (VSO)

As of 1 July 1996, all Belgian business organisations and corporate legal forms with a legal personality listed in Article 2(2) of the Belgian Companies Code of 1999 qualify for the status of a ‘company with a social purpose’, i.e. the VSO status.⁶⁰ The VSO status is a legal label that all business organisations with a legal personality and corporate legal form in Belgium are eligible to acquire, if they pursue objectives, which do not aspire to any direct or indirect enrichment and/or financial benefit for the company’s partners (including shareholders and members).⁶¹ Acquiring the VSO status is subject to fulfilling certain cumulative legal requirements contained in Article 661 of the Belgian Companies Code of 1999. Those legal requirements must be inserted into the AoA of the social enterprise legal form.⁶² From the list of business organisations and corporate legal forms with a legal personality in the Belgian legal system, EU legal forms are excluded. They are not eligible to acquire the VSO status pursuant to Article 661.⁶³ Additionally, Article 667 requires scrutiny of the proper implementation of the requirements included in Article 661. Following the filing of a claim by either a VSO

60 These are the partnership (*Vennootschap Onder Firma*, hereafter the ‘VOF’), the limited partnership (*Gewone Commanditaire Vennootschap*, hereafter the ‘GCV’), the private limited liability company (*Besloten Vennootschap met Beperkte Aansprakelijkheid*, hereafter the ‘BVBA’), the limited liability cooperative (*Coöperatieve Vennootschap met Beperkte Aansprakelijkheid*, hereafter the ‘CVBA’), the unlimited liability cooperative (*Coöperatieve Vennootschap met Onbeperkte Aansprakelijkheid*, hereafter the ‘CVOA’), the public limited liability company (*Naamloze vennootschap*, hereafter the ‘NV’), the partnership limited by shares (*Commanditaire Vennootschap op Aandelen*, hereafter the ‘CVA’) and the economic interest groups (hereafter the ‘EIG’). See Belgian Companies Code of 1999, arts. 2(2) and 661. See also the elaborations in A. Argyrou, T. Lambooy, R. Blomme, H. Kievit, G. Kruseman and D.H. Siccama, ‘An empirical investigation of supportive legal frameworks for social enterprises in Belgium: A cross-sectoral comparison of case studies for social enterprises from the social housing, finance and energy sector perspective’ in V. Mauerhofer (ed), *Legal Aspects of Sustainable Development: horizontal and sectorial policy issues* (Springer 2016) 151-185.

61 Art. 1 of the Belgian Companies Code of 1999 distinguishes companies with a social purpose by clarifying that: ‘[I]n de gevallen bepaald in dit wetboek kan de vennootschapsakte bepalen dat de vennootschap niet is opgericht met het oogmerk aan de vennoten een rechtstreeks of onrechtstreeks vermogensvoordeel te bezorgen.’ [Unofficial authors’ translation: ‘[i]n the cases provided for in this Code, the agreement may provide that the company is not established with a view to provide a direct or indirect financial benefit to the partners’]. The legislation mentions the term ‘vennoten’. However, considering that the VSO label can be legally adopted by corporate legal entities that have a share capital as well as by legal entities that have no share capital, and by cooperative (n 60) terms such as partners, shareholders and members cannot be used interchangeably. This is why we will refer to these as ‘owners of shares and members’ in this article.

62 Belgian Companies Code of 1999, art. 2(2) and art. 661.

63 *ibid.* Art. 661 excludes the European Company and the European Cooperative Society from acquiring a social purpose.

owner and member, the public prosecutor, or an interested third party (stakeholder), such scrutiny of a VSO organisation will be undertaken by the Belgian courts. In such a case, the claim will allege that the AoA of a VSO breach the legal requirements stipulated in Article 661 of the Belgian Companies Code of 1999 if the mandatory statutory provisions are not included in the AoA, or if they are included that they are violated in practice by the VSO.⁶⁴

According to Article 661, the pursuit of social objectives (which do not result in the direct or indirect enrichment and/or financial benefit of the owners of shares and members) is an essential requirement for the preservation of the VSO status. Article 661 prohibits the owners of shares and members of any VSO from adopting objectives in its AoA that may result in their enrichment by means of any financial advantage and/or economic benefit.⁶⁵

What constitutes a social purpose is not defined *per se* in the Belgian Companies Code of 1999. Article 661 only outlines the purposes that do *not qualify* as a social purpose. The terms of Article 661(2) then require VSO owners of shares and members to define, in their AoA the social purpose they are pursuing in advance, together with the means and the activities that will be attempted to pursue the social purpose.⁶⁶ Belgian legal scholars argue that the Belgian legislator formulated this provision in a negative manner to facilitate founders of a VSO, i.e. the founding owners of shares and members to include a variety of commercial activities without excluding *ex ante* activities.⁶⁷ The preparatory background documents of the Belgian Senate indicate that the purpose should be ‘extrovert or altruistic’ and that it should be undertaken in pursuit of a social activity in order to be viewed as a social purpose.⁶⁸ A report issued by the European Confederation of Workers’ Cooperatives, Social Cooperatives and Social and Participative Enterprises (hereafter ‘CECOP’) also notes that the social purpose ‘results from constitutive elements foreseen by the legislation and which must appear

64 If the claim is upheld by the Belgian court following the proviso of art. 667, a VSO may be dissolved and deprived of its legal personality referred to in law as ‘ontbinding’ by a court’s decision. See Belgian Companies Code of 1999, art. 667. In that case, the VSO is unlawfully holding itself out as a VSO.

65 Art. 661(1) stipulates that VSO organisations should mention explicitly in their AoA that either the members seek: (i) no pecuniary benefit; or they seek (ii) pecuniary benefits to a limited extent only, i.e. subject to a regulatory cap applicable to VSO organisations; see Sub-section 2.7; Belgian Companies Code of 1999.

66 *ibid* art. 661(1) and (2).

67 A. Coates and W. Van Opstal, ‘The Joys and Burdens of Multiple Legal Frameworks for Social Entrepreneurship: Lessons from the Belgian Case’ (EMES Conference Papers Series 2009) 37 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1432427> accessed 24 September 2017; L. Stolle, ‘De Vennootschap met Sociaal Oogmerk: Juridisch en Fiscaal Statuut, Modellen, Statuten en Wettteksten’ (Ced. Samsom 1996) 49; D. Coeckelbergh, ‘Ondernemen met de Vennootschap met Sociaal Oogmerk’ (Mys & Breesch 2001).

68 Parliamentary documents of the Belgian Senate, 1086, No. 2 (1993-1994) (8 March 1995) 300 <www.senate.be/lexdocs/S0543/S05430131.pdf> accessed 20 June 2017.

in the statutes'.⁶⁹ However, it is implicit that even though the Belgian Companies Code of 1999 prohibits the pursuit of any objectives and relevant activities that may result in the acquisition of any pecuniary benefits for its owners of shares and members, it does not prohibit the pursuit of social objectives. Such objectives can be fulfilled by means of commercial and/or profit-making activities as long as the profits are not distributed to the owners of shares and members of the VSO, or if they are distributed, provided this is done to a limited extent only.⁷⁰

2.4.2. The Greek social cooperative enterprise (*Koinsep*)

The social purpose of the Greek *Koinsep* is stipulated in the Social Entrepreneurship Law of 2011 (and in its latest amendment of 2016) and as such, it should be included in the SoA of the *Koinsep* legal form. Article 2(2)(α)-(γ) of the Social Entrepreneurship Law of 2011 introduces three variations of the *Koinsep*, which are rooted in the diversity of their social purposes:

- (i) the *Koinsep of Integration* in Article 2(2)(α), which is allowed to pursue social objectives designed to integrate individuals;⁷¹
- (ii) the *Koinsep of Care*, in Article 2(2)(β), which is allowed to pursue social objectives and which aims to produce and provide goods and services related to social care;⁷² and
- (iii) the *Koinsep of Collective and Productive Purpose*, in Article 2(2)(γ), which is allowed to pursue social objectives of a collective and productive nature.⁷³

⁶⁹ CECOP (n 30) 6.

⁷⁰ Belgian Companies Code of 1999, art. 661(2); see the significant research conducted by Coates and Van Opstal in A. Coates and W. Van Opstal, 'Embracing Social Economy Plurality with Multiple Legal Frameworks: An Evaluation of the Belgian Case' (2nd International CIRIEC Conference on Social Economy, 2009) 37; see also A. Coates and W. Van Opstal, 'An Analysis of the Design of Legal Frameworks for Social Enterprises' in F. Degavre et al. (eds), *Transformations et Innovations Économiques et Sociales en Europe: Quelles Sorties de Crise? Regards Interdisciplinaire* (XXXes Journées de l'Association d'Economie Sociale 2010) 55-76.

⁷¹ See arts. 1(3) and 2(2)(α) of the Greek Social Entrepreneurship Law of 2011 and arts. 14(1) and (2)(α) in Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions. In that legal framework 'Integration' is defined as the process of social inclusion for individuals who belong to what is called 'vulnerable groups' and other 'special groups' through their promotion in employment and through their participation in labour opportunities. Accordingly, any *Koinsep* of Integration is required to apply a minimum employment quota and employ individuals who belong to such groups.

⁷² 'Social care' is defined as healthcare and welfare activities, for the benefit of specific beneficiaries such as the elderly, infants, children, the disabled and the chronically ill. See *ibid* arts. 1(5) and 2(2)(β) of the Greek Social Entrepreneurship Law of 2011.

⁷³ The collective purpose falls within the scope of a social purpose, which is stipulated by definition to all *Koinsep* in art. 2(1) of the Social Entrepreneurship Law of 2011. The collective purpose is further defined as an objective, which aims to promote collective needs and/or protect common goods through the development of economic and social initiatives of a local, regional or general

Article 2(3) stipulates that registration is a mandatory requirement for a Koinsep before it commences any of its activities. In the absence of registration, the legal personality of a Koinsep is not deemed obtained. The competent authority for the registration of Koinsep is the Registry of Social Economy and Social Entrepreneurship (hereafter the 'Registry'), which is a public institution, authorised to register, control, coordinate and supervise all Koinseps in Greece.⁷⁴ Registration results in the fundamental scrutiny of a Koinsep's SoA on the basis of *general* and *special* criteria regarding the legality and completeness of its constitutional documents.⁷⁵

2.4.3. The Community Interest Company (CIC) in the UK

The Companies Act 2004 (hereafter the '2004 Act') introduced the Community Interest Company (CIC), which is a tailor-made legal form for social enterprises in the UK.⁷⁶ The

character. Such initiatives are: (i) the promotion of local and collective interests; (ii) the development of employment; (iii) the enhancement of social cohesion; and (iv) the empowerment of local or regional development. These activities may also include, among others, the production of goods and the provision of services, which meet the needs of society in terms of culture, the environment, ecology, education, social benefit services, the promotion of local products, and the maintenance of traditional activities related to arts and crafts. See *ibid*, arts. 1(2) and 2(2)(γ) of the Social Entrepreneurship Law of 2011. However, in the latest amendment of the Social Entrepreneurship Law of 2011, the category Koinsep of Care and the category Koinsep of Collective and Productive Purpose are grouped into one broader Koinsep category, i.e. the Koinsep of Collective and Social Benefit see art. 14(2)(β) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions. The wider purpose of the new broader Koinsep category - according to art. 2(2) of Law 4430/2016 - is the pursuit of: (i) a 'collective benefit', which is defined as the service of the members' needs through the establishment of equal relations of production, the creation of stable and decent jobs, the reconciliation of personal, family and professional life; and (ii) a 'social benefit', which is defined as serving social needs of a local or broader character by means of social innovation through 'sustainable development' or 'social services of general interest' or 'social integration activities'.

74 *ibid*, arts. 2(3) and 11 of the Social Entrepreneurship Law of 2011 and in art. 4 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

75 Ministerial Decision concerning the Registry of Social Economy, No. 2.2250/4.105, Official Government Gazette 221/09.02.2012. Therefore, registration scrutinises whether the Koinsep's SoA contain general mandatory elements stipulated in the applicable legislation to the Koinsep and a social purpose as is explicitly prescribed in the legislation. The general criteria are included in arts. 3-6 of the foregoing Ministerial Decision, namely: (a) it must have at least five members; for the Koinsep of Integration seven members are required; (b) it must not have legal persons as members exceeding one-third of the total number of members; (c) it must not have members which are municipal authorities; (d) it must not have members who are legal persons and public law entities that may belong to municipal authorities (an exception is provided for the Koinsep of Integration); (e) it must only have members holding at least one cooperative share; (f) it must provide only one vote to the members regardless of the number of shares that they hold; (g) it must have a managing committee whose members are also members of the cooperative; (h) it must not distribute profits to its members; an exception is provided for members who are also employees; and (i) it must allow 35% of its profits to be distributed to its employees.

76 See Part 2 of the 2004 Act (c.27); F.B. Palmer, *Palmer's Company Law* (Vol. 1, Sweet and Maxwell,

CIC is not a new legal form in its entirety. It constitutes a legal form that is tailored to the limited liability company: the standard incarnation of the corporate body designed for commercial purposes that is regulated by the company law provisions contained in the Companies Act of 2006 (hereafter '2006 Act'). The CIC and its special characteristics are superimposed upon the limited liability company form in terms of the 2004 Act and the CIC Regulations of 2005. These both constitute the basic legislation regulating CICs.⁷⁷ As such, the CIC is a special kind of company with limited liability that can be incorporated afresh. Alternatively, a private company or a public limited company (hereafter 'plc') can be converted to a CIC. It must be registered with the Registrar of Companies at the Companies House in Cardiff or Edinburgh, either as a CIC limited by shares or by guarantee.⁷⁸ A CIC limited by guarantee is a not-for-profit company without share capital that has members rather than shareholders. However, its members enjoy the limited liability prescribed in the CIC's AoA to the extent of the amount that the members (guarantors) agree to contribute in the event that the CIC ends.⁷⁹

All CICs must adhere to the rights and obligations provided by UK Company Law and the principles of common law that are applicable to limited liability companies in the UK.⁸⁰ The 2004 Act introduces a very basic legal framework for CICs that is complemented by the 2006 Act, and the CIC Regulations of 2005.⁸¹ The social purpose of the CIC is not explicitly prescribed in the CIC legislation. Instead, a CIC is required to set out the community benefit objectives in its memorandum and/or AoA. The CIC constitutional documents are subject to a legislatively prescribed test known as the 'community interest test' (hereafter 'the CIC test').⁸² The CIC test is an obligation that

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- 1st edn, 2015) paras. 1.225 and 2.239.
- 77 Community Interest Company Regulations 2005 (SI 2005/1788) and amendments: Community Interest Company (Amendment) Regulations 2009/1942, Community Interest Company (Amendments) Regulations 2012 (SI 2012/2335); Community Interest Company (Amendment) Regulations 2014 (SI 2014/2483); Explanatory Notes to the Companies (Audit, Investigations and Community Enterprise) Act of 2004, para. 191; Community Interest Companies final Regulatory Impact Assessment, para. 2.5 included in the CIC Regulations Explanatory Memorandum 2005 available at: <www.legislation.gov.uk/uksi/2005/1788/memorandum/contents> accessed 24 September 2017; J. Dine and M. Koutsias, *Company Law* (7th edn, Palgrave Macmillan 2009) 15.
- 78 The conversion of an existing company to a CIC requires the amendment of the company's memorandum and AoA by special resolution to comply with the requirements of the 2004 Act and the CIC Regulations of 2005. It requires the change of the company's name by inserting the suffix 'CIC' and the subsequent approval of the Regulator. See S. McLaughlin, *Unlocking Company Law* (2nd edn, Routledge, 2013) 50; Palmer (n 76) paras. 2.034-2.035, 2.240.
- 79 B. Hannigan, *Company Law* (Oxford University Press 2012) 13.
- 80 CIC Regulations Explanatory Memorandum 2005, para. 2.7; Explanatory Notes to the 2004 Act, para. 190.
- 81 See A. Dunn and C.A. Riley, 'Supporting the Not-for-Profit Sector: the Government's Review of Charitable and Social Enterprise' (2004) 67(4) *Modern Law Review*, 651; N. Bourne, *Bourne on Company Law* (6th edn, Routledge 2013) 8; McLaughlin (n 78) 50.
- 82 See 2004 Act, s. 35(1)-(5); CIC Regulations of 2005, regs. 7-8; Bourne (n 81) 8; Explanatory Notes to the 2004 Act, paras. 223-228; Palmer (n 76) paras. 1.225, 2.036-2.038, 2.240. Concerning the memorandum and AoA of any CIC limited by guarantee without a share capital, reg. 7 of the

the 2004 Act imposes upon every CIC. The CIC Regulator (hereafter 'the Regulator') is the competent authority to adjudicate whether a limited liability company has met the CIC test based on the submitted documents.⁸³ First, it is essential that the Regulator examines the community interest objectives in the CIC's constitutional documents.⁸⁴ Secondly, the Regulator then has to establish whether the objectives of the CIC will serve the purpose of benefiting the community instead of serving the interests of other beneficiaries.⁸⁵ The decisive standard for the Regulator is whether a reasonable person would consider the activities carried out by the CIC - undertaken - with the view of fulfilling the company's objectives to be for the benefit of the community. Therefore, the CIC test demands that a CIC explains in its constitutional documents the scope of its objectives, the nature of its activities, the community that it aims to serve, and the way in which its objectives will be pursued. An example of how this may be achieved is provided by the Regulatory Guidance, whereby a CIC may explain that it provides 'day care and transport facilities for the elderly and physically disadvantaged in North Essex'.⁸⁶

Every aspect of the CIC's operations and activities is subject to the CIC test. By applying this test, the Regulator has the power to inspect, supervise and control the eligibility of all social enterprises to be formed as a CIC or companies that are to be converted into a CIC.⁸⁷

CIC Regulations of 2005 stipulates mandatory provisions in Schedule 1 to the 2005 Regulations (SI 2005/1788). According to them all CICs must include these mandatory provisions in their constitutional documents, whereas CICs limited by shares (or by guarantee) with a share capital must include provisions prescribed by Schedules 2 or 3 (reg. 8). Palmer (n 76) para. 2.039; Liao (n 2) 293-294.

83 The Regulator is a semi-public institution which cooperates with the UK Department for Business, Innovation and Skills; CIC Regulations of 2005, reg. 15(4); Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 4 - Creating a Community Interest Company (CIC)' (April 2013) 17-19.

84 The CIC's memorandum and AoA constitute the main source of the rights of shareholders and directors and they should be properly performed to fulfil both the community objectives and special legal requirements imposed on CICs by the CIC Regulations of 2005. See P. Davies, *Introduction to Company Law* (2nd edn, Oxford University Press 2010) 108-110.

85 Regulatory provisions set out the steps that a CIC and the Regulator should undertake pursuant to the CIC test. CIC Regulations of 2005, regs. 3-6. Explanatory Notes to the 2004 Act, para. 223; Palmer (n 76) para. 2.037; Office of the Regulator of Community Interest Companies, 'Introduction and guidance notes: Chapter 5 - Constitutional Documents' (November 2012) 5-6; CIC Regulator Office, 'Chapter 4' (n 83) 17-19.

86 Community objectives may be restricted or unrestricted. Restricted objectives are those objectives that clearly define: (i) the activities of the CIC; (ii) the community that will benefit; and (iii) the way in which they will be beneficial. Unrestricted objectives are less descriptive objectives of a broader and more general character and quality. The Regulator acknowledges both objectives as objectives eligible to pass the CIC test; See CIC Regulator Office, 'Chapter 5' (n 85) 5-6.

87 The 2004 Act, ss. 35, 38(3) and (4)(b); Explanatory Notes to the 2004 Act, paras. 223-228 and 234; Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 2 - Preliminary Considerations' (November 2012) 7; CIC Regulator Office, 'Chapter 5'

Specific regulatory provisions refer to the activities that a reasonable person would consider benefitting the community. However, a detailed or specific list of eligible CIC activities that a reasonable person would view as activities carried out for the benefit of the community is not supplied. Instead, the CIC Regulations of 2005 provide a list of activities that cannot be considered eligible community-based activities, namely political activities.⁸⁸ In particular, according to the Regulatory Guidance, political activities are excluded from the scope of activities that a CIC could undertake. The political activities may put the Regulator in the unenviable position of having to consider and select whether a particular political activity is beneficial for the community.⁸⁹ However, the CIC Regulations of 2005 do provide for an exception in the case of political activities, which are ‘incidental’ to activities that a reasonable person would consider to be carried on for the benefit of the community. However, this must not ‘compromise the non-political character’ of the CIC.⁹⁰

It is critical for the CIC test, and thus for the decision of the Regulator that a definition within the CIC Regulations of 2005 is provided for the term ‘community’. The term ‘community’ has been defined in both the Regulation 5(a) and (b) of the CIC Regulations of 2005 and in Sub-section 35(5) of the 2004 Act. According to Regulation 5 of the CIC Regulations of 2005, ‘community’ could be understood as the entirety of the population or as a part of the community, i.e. a group of individuals who share common identifiable characteristics.⁹¹ The term ‘community’ could also imply a section of a larger or smaller geographic community, for example a city, country, municipality, or province.⁹² The Regulatory Guidance provided by the Regulator explains that the

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- (n 85) 5-6; CIC Regulator Office, ‘Chapter 4’ (n 83) 17-19.
- 88 The 2004 Act, s. 35(6); CIC Regulations of 2005, regs. 3-6; CIC Regulations of 2005, Explanatory Memorandum, para. 2.2. The 2004 Act and the CIC Regulations of 2005 explicitly exclude political parties, companies controlled by political parties, pressure groups and political campaigning organisations from eligibility to become a CIC.
- 89 CIC Regulator Office, ‘Chapter 2’ (n 87) 12.
- 90 Such activities are beneficial primarily to the community but they may contain an incidental political aspect, such as proposing a petition pertaining to a specific bill that somehow has a connection to the primary community interest purpose. CIC Regulator Office, ‘Chapter 2’ (n 87) 12; Palmer (n 76) para. 2.037.
- 91 The 2004 Act, s. 35(5) states: ‘Community’ includes a section of the community (whether in the UK or anywhere else); and regulations may make provision about what does, does not or may constitute a section of the community’. Additionally, reg. 5 of the CIC Regulations of 2005 stipulates that: ‘any group of individuals may constitute a section of the community if - (a) they share a readily identifiable characteristic; and (b) other members of the community of which that group forms part do not share that characteristic’. This group could be any group of individuals who share common characteristics. The common characteristic that the individuals might share in the group must distinguish them from the other members of the community and must satisfy the CIC standard according to which a reasonable person could consider that they constitute a section or a part of the community. For instance, a ‘community’ as a group of individuals with identifiable characteristics could be the elderly, unemployed youth, or those who suffer a particular disease. CIC Regulator Office, ‘Chapter 2’ (n 87) 6.
- 92 Explanatory Notes to the 2004 Act, paras. 190 and 224; CIC Regulator Office, ‘Chapter 2’ (n 87) 6.

notion of community may also include a group who is, or will be, the beneficiary of any surplus or profits generated by the trading activities of the CIC. This will be the case even where those trading activities do not benefit such a group directly.⁹³

2.4.4. Intermediate comparative conclusions: the social purpose of social enterprises in the Belgian, Greek and UK social enterprise law

To *conclude* and *compare*, the examined tailor-made legal forms for social enterprises exhibit a great deal of variety in the prescribed and permitted content of the purpose of the legislated forms (Table 2.1). The purpose is determined mainly by non-financial and non-economic elements (Table 2.1). However, the commercial (entrepreneurial) element of the purpose of social enterprises, reflected in the production of goods and/or the provision of services to the market, was similarly encountered in the content of the social purpose in all of the examined legal frameworks. Furthermore, in the examined laws that establish the tailor-made legal forms for social enterprises the legal provisions governing the social purpose do not stimulate or prohibit profit-making activities or the generation of profit (Table 2.1). Only a limited reference is made to the potential for profit as an element of the social purpose in the Belgian legal framework where the notion of not-for-profit was a determinant of the social purpose.

The content of the ‘social purpose’ can be conceptualised in terms of three dimensions, namely: (i) a social dimension; (ii) a collective dimension; or (iii) a community-based dimension (Table 2.1). However, it is only in an implicit manner that these dimensions insinuate any primacy for the generation of social impact rather than making a profit, as the Commission’s definition for social enterprises requires. The concept of a tangible and measureable social impact adopted in the objectives of social enterprises as introduced by the SBI Communication of 2011, remains an area that needs to be addressed by national legislation. By way of explanation, the *social* dimension of the content of the purpose was identified in both the Belgian and Greek legal frameworks. However, the meaning of the term ‘social’ in the two legal frameworks differs (Table 2.1). In Article 661 of the Belgian Companies Code of 1999, the term ‘social’ in the social purpose is not defined. However, the purpose in the legislation refers to the notion of ‘profit’, i.e. a social purpose should result in a ‘not-for-profit’ activity. As such, a social purpose - in Article 661 - has, primarily, a not-for-profit meaning. However, it may have the connotation of a broader meaning, in the sense of the conferral of no economic benefits in favour of owners of shares and members, or at the very most, the assignment of only a number of such entitlements to them.

The position differs in the Greek legal provisions. Here, the social purpose does not refer to the notion of profit. Nonetheless, it entails a narrow scope of activities to promote public policies regarding social issues, such as unemployment, work integration, social

93 CIC Regulator Office, ‘Chapter 2’ (n 87) 7.

Table 2.1: Social purpose in Belgian, Greek and UK social enterprise law

	Belgium	Greece	UK
Content of purpose	Social and commercial	Social and collective and commercial	Community-based and commercial
Correlation with the notion of 'profit'	Not-for-profit or for-profit to a limited extent only	Not correlated with the notion of profit	Not correlated with the notion of profit
Scope of the purpose	Broad: any activity that does not result in the direct or indirect enrichment and/or financial benefit of the owners of shares and of members	Narrow: activities to promote public policies regarding social issues and activities to promote collective needs and protect collective/ common goods	Broad: any activity that a reasonable person would consider to benefit the community as defined in the CIC legislation
Those addressed by the purpose	The owners of shares and the members of the organisation and their objectives; the objectives should not result in their direct or indirect enrichment and/or financial benefit	Society as an entirety or society as a group of people	Community as an entirety or community as a group of people or community as a geographically defined area
Legal nature	Legal requirement	Legal requirement	Legal requirement
Legislative approach	Laissez-faire approach for founders, owners of shares and members to define the social purpose (the social purpose is not explicitly defined in legislation)	Strict approach: the social purpose is explicitly stated in legislation for the different types of Koinsep with specific various objectives	Regulated CIC test: the community purpose is subject to the CIC test undertaken by the Regulator
Social purpose	Belgian courts scrutiny (<i>ex post facto</i>)	Registry scrutiny (<i>ex ante</i> and <i>ab initio</i>)	Regulator scrutiny (<i>ex ante</i> and <i>ab initio</i>)

care or the promotion of social cohesion for example (Table 2.1). The above-mentioned difference is also clearly reflected in the principal addressees of the purpose. For example, the social purpose in the Belgian legal framework addresses the owners of shares and members in order to define what 'social' entails. However, in the Greek legal framework the social purpose is directly defined to address society, either as an entire entity or as specific groups of individuals, such as the elderly and the disabled who belong to defined and distinct societal groups, i.e. vulnerable groups of the population.

Society as an entirety, i.e. ‘collectivity’ is mainly addressed in the context of the objectives, which belong to the *collective* dimension. A collective purpose has been placed under the umbrella term ‘social purpose’ in the Greek legal provisions. It is also a concept that was identified in the Greek legal provisions but also in the UK legal provisions related to the idea of community broadly understood as a collective notion. A collective purpose of a social enterprise in the Social Entrepreneurship Law of 2011 has a universal character, which allows for activities that promote the fundamental needs of collectivity-universality (perceived as the totality of life), i.e. the preservation of humanity, the alleviation of poverty, the promotion of culture, the protection of the environment and the protection of collective and common goods that are shared and beneficial to all people, such as water. The collective character of the Koinsep purpose, however, is more narrowly defined later in Law 4430/2016, which amends the Social Entrepreneurship Law of 2011. There the collective character of the Koinsep regards mainly the collective interests of the Koinsep members. Distinguishable from the social and collective dimension is the community-based dimension narrowly understood in the content of the purpose prescribed by the UK legal framework. Similar to the Greek legal framework is the UK legal framework, which prescribes that the content of the community objective is not correlated with the notion of profit. On the contrary, it is defined as containing any activity that a reasonable person would consider benefitting the community, either as: (i) an entirety; (ii) a group of people with common and identifiable characteristics; or as (iii) a geographically defined area.

The social, collective or community dimensions of the ‘social purpose’ in the three selected legal regimes constitute a legal requirement for the corresponding legal forms. However, the manner in which the purpose of the social enterprise is legislated in these three legal regimes differs. There are three different legal approaches governing how the relevant legislation expresses the purpose of social enterprises.⁹⁴ The Greek legislation prioritises the social and collective objectives in the legal provisions regulating the three different legal types of Koinsep. As such, it is essential for the social objectives prescribed in the legislation to be embodied in the SoA of every different type of Koinsep, in order for an organisation to acquire separate legal personality. The legality and completeness of the social purpose is subject to the scrutiny of the Registry prior to registration. The Greek provisions can be contrasted with the UK legal framework, where the community objectives included in the CIC’s constitutional documents are subject to the Regulator’s scrutiny under the CIC test. If the applicant organisation is deemed to have met the CIC test, it will then be incorporated as a CIC with legal personality. Meanwhile, the framework for the VSO differs from the CIC and the Koinsep. Unlike Greece and the UK, where the social purpose of a social enterprises is

94 Similar conclusions have been drawn in a broader comparative study, conducted by Cafaggi and Iamiceli who concluded that the meaning of a social finality (purpose) is: (i) defined by law; (ii) delegated to a public regulator different that the legislation; and (iii) delegated to private parties by reference to the articles of the bylaws of private organisations which operate as social enterprises. See Cafaggi and Iamiceli (n 8) 58. See also Fici (n 2) 653.

scrutinised and can be denied by an applicant body in furtherance of providing legal personality *ex ante* and *ab initio*, in Belgium, a legal entity can be deprived of such legal personality by the Belgian courts *ex post facto*.

Accordingly, the social purpose of the VSO is neither explicitly defined in legislation nor subject to any external test. Instead, a *laissez-faire* approach is adopted, to the extent that it is devolved to the owners of shares and members of the social enterprise to define and describe the content and the scope of the social objective in the AoA as a not-for-profit entity, or a for-profit body to a limited extent only, as the case may be. The social objectives are subsequently subject to the scrutiny of the Belgian courts on an *ex post facto* basis.

2.5. Participatory governance in the Belgian, Greek, and UK social enterprise law

This Sub-section 2.5 examines the legal variable of participatory governance in the three selected tailor-made legal frameworks for social enterprises. Participatory governance concerns the structure of ownership and control, such as the role of various stakeholders in the selected legal forms in respect of their decision-making processes. As international scholarship on the subject indicates, it is common for social enterprises to have a structure that avails multi-stakeholder ownership. This means that ownership of shares and membership in a social enterprise may comprise various types of stakeholders, which can then participate in the decision-making bodies of the social enterprise. Examples are employees, customers, volunteers and/or public authorities.⁹⁵ Cafaggi and Iamiceli note that ‘the social enterprise is often defined as a multi-stakeholder entity, which suggests that different interests should be given a voice and legal protection within its governance structure’.⁹⁶ Galera and Borzaga also point to ‘the assignment of ownership rights and control power to stakeholders other than investors coupled with an open and participatory governance model’.⁹⁷ Therefore, this legal variable also concerns the power of various types of stakeholders in the decision-making of the social enterprise as exercised in the form of ownership rights, for instance shares, voting rights and/or supervision and consultancy rights. Indeed, the Commission’s definition of social enterprises highlights the fact that a characteristic of a social enterprise is that decision-making power is not *per se* based on capital ownership. Rather, in the Commission’s definition, emphasis is placed on the open management of social enterprises and participatory governance involving various types of stakeholders, such as ‘employees, consumers and stakeholders affected by the commercial activities’.⁹⁸

95 Defourny and Nyssens (n 1) 47; Cafaggi, and Iamiceli (n 8) 28.

96 Cafaggi and Iamiceli (n 8) 28.

97 Galera and Borzaga (n 2) 217.

98 SBI Communication of 2011 (n 36) 2.

2.5.1. The Belgian company with a social purpose (VSO)

The Belgian Companies Code of 1999 contains only few specific provisions regarding the governance of organisations with a VSO status.⁹⁹ Governance provisions pertinent to social enterprises in the Belgian Companies Code of 1999 apply to the different business organisations and corporate legal forms with the VSO status.¹⁰⁰

However, Article 661(4) and (7) prescribe an exception. Article 661(4) and (7) contain two legal provisions applicable to the governance structures of all organisations with a VSO label. Organisations with the VSO label are required to stipulate in their AoA that no owner of shares and/or member may participate in a vote in the general meeting of members (English translation for the Dutch term '*Algemene Vergadering*' below referred to as the 'general meeting') where the number of votes any member casts will exceed one tenth of shares represented in such general meeting.¹⁰¹ The maximum number of votes is reduced to 5% when employees are owners of shares and members of the organisation and participate in the general meeting.

In the VSO, the decision-making power remains correlated with the financial participation of the owners of shares and members in the share capital of the organisation. However, the voting cap imposes a more democratic rule of representation in the processes of the general meeting by virtue of the fact that it: (i) eliminates the voting rights attached to some of the represented shares, and as such, control over decisions put to a vote cannot be aggregated to the owners of shares and members owning the largest part of the share capital; (ii) imposes a limit on the number of votes VSO owners of shares and members may exercise; and (iii) strengthens the voting rights of employees who are owners of shares and members. Coates and Van Opstal, two Belgian scholars, note that VSO social enterprises have the flexibility to stipulate more 'stringent' restrictions in their AoA to eliminate the voting rights of the owners of shares and members that could potentially result in the application of full democratic representation in accordance with the 'one man, one vote' rule.¹⁰²

Additionally, Article 661(7) of the Belgian Companies Code of 1999 provides the employees of a VSO with a legal right to assume membership and ownership of shares after the completion of one working year.¹⁰³ Article 661(7) stipulates an additional obligation for the VSO to establish an internal policy and special procedures to facilitate the provision of ownership of shares and membership to employees. Accordingly, the

99 As explained above, the VSO is a legal label, which can be adopted by any business organisation and corporate legal form with legal personality. Belgian Companies Code of 1999, arts. 661 and 2(2); Cafaggi and Iamiceli (n 8) 43.

100 *ibid* art. 664.

101 *ibid* art. 661(4).

102 Coates and Van Opstal (n 67) 38.

103 Belgian Companies Code of 1999, art. 661(7). This capacity will automatically expire one year after the employment relationship has been terminated.

provision of ownership of shares and membership rights to employees is subject to various legal requirements.¹⁰⁴

2.5.2. The Greek social cooperative enterprise (Koinsep)

The governance model applicable to the Greek Koinsep generally requires equal treatment and participation of its members. The members are entitled to enjoy equal rights and are subject to equal obligations in the case of all the variations of the Koinsep.

The Social Entrepreneurship Law of 2011 and its amendment of 2016 stipulate a democratic model of representation that applies to the Koinsep. Such a democratic governance model requires the equal representation of all Koinsep members in its decision-making organs.¹⁰⁵ It is likewise stipulated that every member must contribute to the cooperative capital and acquire one mandatory share. If desired, additional optional shares may possibly be acquired.¹⁰⁶ The acquisition of optional shares does not confer any voting rights in favour of the acquirer.¹⁰⁷ In this way, voting is exercised with the application of the ‘one man, one vote’ rule. Therefore, all members of the Koinsep equally enjoy influence and participation in decision-making.¹⁰⁸ Furthermore, members of the Koinsep enjoy an equal right to be informed regarding the cooperative’s affairs, i.e. to receive information regarding the enterprise’s organisational, operational and financial progress and state of affairs.¹⁰⁹

104 The requirements prohibit employees without legal capacity under Belgian law to be engaged in shareholder ownership of shares and membership. Art. 661(8) also stipulates that VSO should not maintain ownership of shares and membership with employees whose employment relationship has been terminated. Accordingly, any VSO should provide for provisions in their AoA concerning the loss of shareholder ownership and membership of employees a year after the employment relationship has been terminated. Cafaggi and Iamiceli (n 8) 43; Coates and Van Opstal (n 67) 38; *ibid* art. 661(8).

105 The concept of equality in governance and equal participation in the affairs of the Koinsep is manifested in the decision-making rule of ‘one man, one vote’; see art. 3(1) of the Social Entrepreneurship Law of 2011 and art. 19 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions; see also art. 4(2) of the Law concerning Civil Cooperatives 1986.

106 Social Entrepreneurship Law of 2011, art. 3(6) and art. 16(3) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

107 *ibid* art. 2(1) and *ibid* art. 16(3) of the Law 4430/2016.

108 This aspect of the principle of equality is laid down in art. 4(2) of the Law concerning Civil Cooperatives 1986, which is also an applicable law to the Koinsep on the basis of art. 5(1) of the Social Entrepreneurship Law of 2011 and in art. 19(3) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

109 This is stipulated in art. 4(2) in the Law concerning Civil Cooperatives 1986 and applies respectively to the Koinsep according to the Law on the Social Entrepreneurship Law of 2011. Art. 4(2) states, ‘every member is entitled to request information about the state of affairs of the cooperative and receive copies of the minutes of the general assembly, the balance sheet and the profit and loss account.’

2.5.2.1. General meeting of the members

The general meeting of the members (English translation for the Greek term ‘Γενική Συνέλευση των Μελών’ - below referred to as the ‘general meeting’) is the highest decision-making body of the Koinsep.¹¹⁰ The general meeting has the exclusive competence to decide on the most important issues of the cooperative, and the general competence to make the most important decisions related to any matters with respect to the cooperative’s affairs.¹¹¹ It can also exert supervisory power and control over the managing committee (English translation for the Greek term ‘Διοικούσα Επιτροπή’ below referred to as the managing committee) of the Koinsep.

Legislation requires the general meeting to decide validly and legitimately pursuant to a quorum and according to the applicable laws and terms included in the Koinsep’s SoA.¹¹² Legitimate decisions are made in good faith based on the social objectives and following the basic principles applicable to cooperative organisations. These decisions of the general meeting, which are particularly contradictory or conflicting with the applicable legislation to Koinsep or with the content of the Koinsep’s SoA are automatically void and invalid by force of law and they do not produce any legal effects.¹¹³ Other decisions of the general meeting can be declared void by a Greek court following the filing of a claim by the members or anyone with a legal interest. Claims against the decisions of the general meeting can be filed within an exclusive period of one year from the date of their issuance at the competent court of the area where the Koinsep maintains its statutory seat.¹¹⁴

2.5.2.2. Managing committee

The daily management and administration of the Koinsep is exercised by the managing committee.¹¹⁵ The managing committee comprises at least three members and an equal

110 Art. 5 of the Social Entrepreneurship Law of 2011 and art. 6(1) of the Law concerning Civil Cooperatives 1986. See also art. 19 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

111 Such as, amongst others: (i) the amendment of the statute of association; (ii) the merger, the extension of the duration of, the dissolution of, and the revival of the cooperative; (iii) the adoption of any balance sheet and/or profit and loss account; and (iv) the election and the discharge of the managing committee from any responsibility and their representatives and any dismissal of the members of the managing committee. See art. 6(2), of the Law concerning Civil Cooperatives 1986.

112 *ibid* art. 5(3).

113 Social Entrepreneurship Law of 2011, art. 5(2) and the Law concerning Civil Cooperatives 1986, art. 5(8).

114 *ibid*. The period was reduced to 30 days in the amended regime in Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

115 Social Entrepreneurship Law of 2011, arts. 3(9) and 6; Law concerning Civil Cooperatives 1986, art. 7(5); See also art. 20 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

number of substitute members elected by the general meeting.¹¹⁶ The entire managing committee is appointed for a period of two to five years.¹¹⁷ The office of its members is honorary and unpaid.¹¹⁸ It is also a legal requirement that only the Koinsep's members are appointed as members of the managing committee.¹¹⁹ The relationship between the members of the managing committee and the Koinsep is not contractual or based on a pre-arranged employment contract, but emanates from the membership relationship with the Koinsep. In this sense, the members of the managing committee are not considered Koinsep employees. However, it is questionable whether the members of the managing committee are entitled to enter into any employment relationship with the Koinsep and receive remuneration for the provision of services that are not related to their managing duties. The Social Entrepreneurship Law of 2011 does not impose any explicit restriction in either respect.¹²⁰

Equally, the employees who are Koinsep members enjoy the rights that membership and ownership of cooperative shares confers. Initially, employees enjoy the right to participate in the highest decision-making organ, i.e. the general meeting, by providing either verbal or written statements, by conferring opinions and by voting with one vote. The employees who are Koinsep members also enjoy, equally to the other members, the right to appoint the members of the managing committee and/or to be appointed as members of the managing committee.¹²¹

116 Social Entrepreneurship Law of 2011, art. 6(1) and art. 20 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

117 *ibid.*

118 Law concerning Civil Cooperatives 1986, art. 7(5).

119 See the general requirements for any Koinsep's registration (n 75).

120 Art. 4(7) of the Social Entrepreneurship Law of 2011 and art. 17(9) of the Law 4430/2016 refer to art. 713 of the Greek Civil Code 1940 regarding services provided by Koinsep members who are not in an employment relationship with the Koinsep and who aim to serve the purpose of the Koinsep. Those should be carried out without remuneration. Thus, it can be understood from the wording of those articles that the directors of Koinsep belong to this category of members without having an employment relationship with the Koinsep for which they should not be remunerated (*ibid* art. 4(7) and art. 17(9)). However, art. 7(5) in the Law concerning Civil Cooperatives 1986 stipulates that the general meeting must have the competence to decide whether the members of the managing committee can be remunerated for the provision of services that they provide (see art. 8(5) of the Law concerning Civil Cooperatives 1986). The newer legal regime, i.e. the Social Entrepreneurship Law of 2011 in its art. 4(6) and art. 17(8) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions provides to employees the legal right to acquire membership and assume ownership of Koinsep's cooperative shares. The rule applies *vice versa* by also permitting Koinsep members to be employed by the Koinsep. Therefore, it is generally understood that this general rule also applies to Koinsep members who should constitute the managing committee. This can be deduced from art. 3(1) of the Social Entrepreneurship Law of 2011 and art. 17(1) in the Law 4430/2016. Both articles refer to those provisions applicable to the Koinsep from the Law concerning Civil Cooperatives 1986. Art. 7 of the Law concerning Civil Cooperatives 1986 is an applicable article to the Koinsep.

121 Additionally, in larger Koinseps with more than 20 employees, the legislation provides a legal right to the employees who are non-members to appoint also one of the members of the managing

Amongst other duties, the members of the managing committee bear duties and responsibilities that apply equally to the other Koinsep members, such as: (i) to participate in the activities of the Koinsep with good faith; (ii) to cooperate in the operation of the Koinsep; and/or (iii) to refrain from actions that may harm the interests of the Koinsep or oppose the social objectives and the basic cooperative principles.¹²² They are also obliged to comply with the provisions of the SoA and with the legitimate and valid decisions of the general meeting aimed at protecting the Koinsep's interests.¹²³ The applicable standard of responsibility and diligence in managing the affairs of a Koinsep is the same standard of diligence that members of the managing committee would apply to their own personal affairs.¹²⁴ The managing committee is the body that manages and represents the Koinsep and decides any matters relating to its affairs, with the exception of those that fall within the exclusive competence of the general meeting.¹²⁵ Any decisions made by the managing committee that either are contrary to the applicable laws or to the legitimate and valid decisions of the general meeting and/or to the SoA are voidable.¹²⁶ Unlike the unlawful decisions of the general meeting, which do not produce any legal effect, the illegitimate decisions made by the managing committee produce legal effects until the moment they are finally declared void by a Greek court.

2.5.3. The Community Interest Company (CIC) in the UK

The CIC is subject to the ordinary corporate law provisions of the 2006 Act as well as the corporate governance regime applicable to all public or private limited liability companies in the UK. Accordingly, the power to manage is devolved to the board of directors and only limited powers are provided to the members/shareholders in the annual general meeting (hereafter 'the general meeting').¹²⁷

2.5.3.1. The annual general meeting

A CIC has members and/or shareholders depending on whether it is a CIC limited by guarantee or by shares. CICs limited liability by shares may refer to 'members' and 'shareholders' interchangeably. For CICs which are limited by guarantee and that consequently have no share capital, 'members' are considered to be either the guarantors of the company or other persons admitted into membership. This means that these types of CICs have no shareholders.

committee. Law concerning Civil Cooperatives 1986, art. 7(1).

122 *ibid* art. 4(3).

123 Such as the responsibility for complying with possible restrictions on the right of representation that are included in the Koinsep's SoA, and which may be conferred upon them in the decisions of the general meeting; *ibid* art. 7.

124 *ibid* art. 7(4).

125 *ibid*.

126 Social Entrepreneurship Law of 2011, art. 6(3) and art. 20(5) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

127 Palmer (n 76) paras. 1.225, 2.041.

The rules regarding membership of a company are set out in Section 112(1) of the 2006 Act, which stipulates that the subscribers of a company's memorandum should be deemed in agreement with becoming members of the company.¹²⁸ The 2006 Act also contains provisions that provide limited powers and statutory rights to the general meeting of shareholders/members of the limited liability company.¹²⁹ These powers may be exercised by the shareholders of limited liability companies including CICs, in the general meeting or by written resolutions outside a general meeting (in the case of a private limited liability company).¹³⁰ However, when a CIC is a plc, the option to pass a written resolution is not available. Section 336 of the 2006 Act requires plcs to hold general meetings. As such, where a CIC is a plc, it must call on an ordinary general meeting and/or an extraordinary general meeting.¹³¹ Either the directors and/or the members or a UK court requests a general meeting.¹³² The general meeting decides by exercising a voting process, which leads to a resolution. A valid resolution of the general meeting requires the existence of a quorum.¹³³ Resolutions can be ordinary or special. Special resolutions are resolutions of great importance and impact on the company's most important affairs. For instance, a special resolution is required for a plc to convert to a CIC by changing its name or its AoA.¹³⁴ An ordinary resolution is passed by a simple majority of those who are present and intend to vote in the general meeting, whereas a special resolution requires the approval of a super-majority, i.e. a minimum of 75% of those who are present and intend to vote.¹³⁵

2.5.3.2. Board of directors

A CIC limited by guarantee and/or by shares is governed and directed by a board of directors, which is responsible for the exercise of daily management and/or which

128 In the company's memorandum, the subscribers declare that they wish to form a limited liability company under the 2006 Act and agree to become members of the company. In companies limited by shares, the subscribers of the memorandum declare to take at least one share each. By effect of registration, they become holders of the shares as specified in the statement of capital and initial shareholdings (ss. 10-16). In companies limited by guarantee, the members declare as 'guarantors' to contribute to the assets of the company if the company is wound up (s. 16). Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is deemed a member of the company (see Companies Act 2006, s. 112 and s. 8(1)).

129 Inter alia, e.g. the power to reduce the company's share capital (s. 641(1)) and the power to appoint directors (s. 160(1)); A. Dorresteijn, T. Monteiro, C. Teichmann, E. Werlauff, *European Corporate Law* (2nd edn, Kluwer Law International 2009) 201-202.

130 According to the 2006 Act, a formal general meeting may not be the most appropriate forum for private limited liability companies to take shareholder/member decisions, since they are mainly small. Therefore, it is not necessary to convene annually, and resolutions may be passed either as a written resolution or at a general meeting. 2006 Act, ss. 281(1)(a)-(b) and 300; Explanatory Notes to the Companies Act 2006, para. 523. Hannigan (n 79) 325. Dorresteijn et al. (n 129) 202.

131 2006 Act, ss. 302-306. Dorresteijn et al. (n 129) 202, para. 6.80

132 *ibid* ss. 302-306.

133 *ibid* ss. 318 and 307. Dorresteijn et al. (n 129) 202, para. 6.80.

134 *ibid* ss. 21 and 77; Dorresteijn et al. (n 129) 202, para. 6.80.

135 *ibid* ss. 281 and 282.

employs managers to undertake management activities. It is a statutory necessity imposed by Section 154 of the 2006 Act that plcs have at least two directors who are either natural or legal persons.¹³⁶ However, in the case of private companies a minimum of one director is required. The rights and the powers of directors are conferred mainly by the company's AoA in conjunction with the statutory duties set out in the 2006 Act and principles emanating from common law.¹³⁷ The same rules apply to CICs, which are either plcs or private limited liability companies.

Limited liability companies in the UK and, consequently, CICs are subject to the one-tier board system which provides for the appointment of various types of directors within the context of a single unitary board, i.e. *de jure* and *de facto* directors, executive and non-executive directors, and/or shadow directors. The 2006 Act contains provisions regarding the appointment of the first directors of a company in the application for registration, which following registration are deemed appointed to office.¹³⁸ All CICs are obliged to include provisions in their constitutional documents regarding the appointment and the removal of directors.¹³⁹ CICs are also prohibited from permitting any person other than a member and/or director to appoint a director.¹⁴⁰ Therefore, directors can only be appointed by the members and/or directors of the CIC with the exception of the statutory stipulation empowering a director to be appointed by the Regulator where the 'default conditions' are satisfied. Here, Sections 41(2) and 45 of the 2004 Act regulate this supervisory power of the Regulator to appoint directors of the CIC (see Sub-section 2.6).¹⁴¹ What is more, the CIC members play a significant role in monitoring and safeguarding together with the Regulator the directors' activities and their extent in fulfilling the CIC objectives. Additionally, the CIC Regulations of 2005 encourage CIC directors to consult those affected by the CIC's activity in corporate governance and in decision-making. The outcome of these consultation processes should be included in the CIC report (see Sub-section 2.6).¹⁴² Such provisions incentivise rather than oblige CICs to undertake a minimum of formal or informal stakeholder consultations in its corporate governance and decision-making processes.¹⁴³

136 *ibid* ss. 154 (1) and (2). Dorresteyn et al. (n 129) 196, para. 6.71.

137 Hannigan (n 79) 114.

138 2006 Act, s. 12(3); Hannigan (n 79) 140. Dorresteyn et al. (n 129) 196, para. 6.71.

139 Thereafter, the CICs' AoA should illustrate the ways that directors are appointed. Such appointment is decided either by ordinary resolutions or by co-option on to the board by the other directors. 2004 Act, s. 32(4)(e); CIC Regulations of 2005, regs. 7-8; CIC Regulations of 2005 Sch 1; Sch 2 or Sch 3.

140 Sch 1, para. 3 (2); Sch 2, para. 3 (2); McLaughlin (n 78) 50-51.

141 2004 Act, ss. 41(2) and 45.

142 The consultation process involves consulting stakeholders alongside decision-making, i.e. persons or groups who have been affected by the CIC's activities. The broad legal definition of stakeholders allows the involvement of various types of stakeholders affected by the CIC's activities, i.e. members, directors, employees, customers and most importantly the community rather than merely investors as argued by A. Ebrahim, J. Battilana and J. Mair in 'The governance of social enterprises: Mission drift and accountability challenges in hybrid organizations' (2014) 34(1) *Research in Organizational Behavior*, 92; CIC Regulations of 2005, reg. 26(1)(b); Explanatory Notes to the 2004 Act, para. 221.

143 The Regulator notes that the consultation processes will vary depending on various factors including

Table 2.2: Participatory governance in Belgian, Greek and UK social enterprise law

	Belgium	Greece	UK
Multi-stakeholder ownership of shares and membership	The employees can become owners of shares and members if certain legal requirements are met, i.e. they have completed one working year and they maintain an active employment relationship	The employees are subject to no legal requirements concerning the ownership of shares and the acquisition of membership	There are no rules in the CIC legal framework allowing for the participation of the CIC employees in the ownership of shares and in the membership of the CIC
Participation of stakeholders in decision-making processes	Employees who are owners of shares and members	Employees who are owners of cooperative shares and members	Consultation with persons affected by the company's activities
Exercise of voting rights	10% voting cap	One man one vote rule	Simple majority Absolute majority

2.5.4. Intermediate comparative conclusions: the participatory governance of social enterprises in the Belgian, Greek and UK social enterprise law

To *conclude* and *compare*, the three examined legal frameworks have revealed various similarities and differences with respect to the legal variable of governance. Primarily, although Greek and Belgian legislation has tailor-made legal provisions regulating the governance of the Koinsep and the VSO, the UK legal framework does not contain special provisions for the CIC legal form (see Table 2.2). Accordingly, multi-stakeholder governance is fostered in Greek and Belgian legislation (see Table 2.2). Consequently, employees are allowed to become owners of cooperative shares and members of the organisation and to assume ownership of shares and membership by purchasing shares. Pursuant to provisions stipulated in the legislation, employees are also eligible to exercise the rights that ownership of shares and membership confers. They are eligible to participate in the decision-making processes that take place in the social enterprise, i.e. to participate in the general meeting and/or to appoint or to be appointed as members

the size of the CIC, its purpose, its geographical designation or the economic costs related to the process. They may be organised by CICs either as informal processes in the form of dissemination of newsletters and/or informal stakeholder meetings. However, they may be also formal, resulting in formal consultation documents and/or in having an official standing in the CIC's memorandum and/or AoA. See the Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 9 - Corporate Governance' (March 2013) 5-6; Cafaggi and Iamiceli (n 8) 48.

of the governing bodies that exercise daily management, such as the board of directors and the managing committee.

However, unlike the Greek legal framework, the conferral of ownership of shares and membership in favour of employees in the Belgian legal framework is restricted by particular legal requirements. Belgian legislation requires a certain level of nexus/relationship developed and maintained between the employees and the organisation prior to acquiring membership rights, i.e. they should have completed one working year and their employment relationship with the organisation must be active. Similar legal requirements were not identified in the Greek legal framework. Moreover, a common identifiable characteristic in the Belgian and Greek legal frameworks is that only one type of stakeholder is eligible to participate in multi-stakeholder governance, namely the employees. Unlike the Greek and the Belgian legal framework, the UK regime does not specifically encourage multi-stakeholder ownership of shares and membership in the 2004 Act or the CIC Regulations of 2005. However, in light of a broad definition for stakeholders, i.e. as 'those affected by the CIC activities', the UK legal framework encourages the involvement of various types of stakeholders in consultation processes alongside the CIC's decision-making processes.

The legal analysis also showed that the participation of stakeholders in decision-making processes may vary (Table 2.2). It can be *formal* in the sense of being based directly either on legal provisions (in Belgium, Greece and the UK) or on the social enterprises' constitutional documents, for instance its memorandum, AoA or SoA (in Belgium, Greece and the UK). As for *informal* participation, this takes place when a legal or contractual basis for the exercise of participatory rights is absent. The legal analysis also revealed that some legal frameworks (in Belgium and Greece) permit the *direct* participation of stakeholders in the decision-making processes. By assuming ownership of shares and membership, stakeholders are allowed to directly and/or physically participate in the decision-making process of a social enterprise, i.e. in the annual meeting (in Belgium and Greece) or in the managing committee (in Greece). Stakeholders are also permitted to participate *indirectly* in a social enterprise's governance via representation by other (natural or legal) persons (in Belgium and Greece). In view of the fact that participation may take place either formally and directly, it can be deduced that formal and direct participation is also structural when it takes place on a regular basis (in Belgium, Greece and the UK), for instance via participation in the annual meeting. Participation may also be non-structural (*ad hoc*) when it occurs in an irregular way that tends to be based on spontaneous communication between stakeholders and the decision-making body.

As regards the exercise of voting rights by stakeholders in the decision-making processes of social enterprises, the examination of the three legal frameworks has demonstrated that these differ in terms of ownership of share capital-membership and exercised control (Table 2.2). The Greek legal framework requires equality and democratic participation in decision-making. Equality and democracy is manifested in the rule of

‘one man one vote’. The voting rule differs in the Belgian VSO legal framework. The correlation between share capital ownership-membership and the number of votes cast is eliminated and is based on a voting cap of 10%, which prohibits anyone from having votes exceeding one tenth of the votes deriving from all shares represented in the general meeting. The voting cap is reduced to one twentieth when employees are members and participate in the general meeting. Unlike in the Greek and the Belgian legal frameworks, stakeholders in the UK legal framework have no stake in ownership of shares, membership and control, and thus no stake in decision-making.¹⁴⁴

2.6. Accountability and responsibility in the Belgian, Greek, and UK social enterprise law

This Sub-section 2.6 examines the legal variable of accountability and responsibility in each of the selected tailor-made legal forms. The variable addresses how the responsibility of decision-makers is organised and how decision-makers are made accountable to stakeholders. In this respect, the Commission defines a social enterprise as an organisation that is managed in an open, transparent and responsible manner (see Sub-section 2.2). Therefore, this legal variable concerns the way in which the activities of social enterprises are managed as well as the level of transparency they employ.

Particularly relevant is the form in which the tailor-made legislation imposes information duties and reporting requirements on the governing bodies of the social enterprises, and the content of such duties and requirements. The current Sub-section also considers the type of information that the social enterprise is obliged to present to its stakeholders in the context of discharging its duty of accountability and responsibility. This is discussed particularly concerning social enterprises that are often regarded as multi-stakeholder entities with high internal and external transparency standards.

2.6.1. The Belgian company with a social purpose (VSO)

Article 661(6) of the Belgian Companies Code of 1999 imposes an obligation on the directors of a VSO to issue an annual report demonstrating that the expenditure on investments, the company’s operating costs and the remuneration paid to the members of the board of directors have been used in a way that furthers the VSO’s social purpose.¹⁴⁵

¹⁴⁴ Cafaggi and Iamiceli (n 8) identify only two approaches in the governance of social enterprises attributed to the cooperative model and the company model of social enterprises. The first approach is the ‘one member one vote rule’ applicable to the cooperative model. The second approach is the strong correlation between capital investment and voting rights which can be either minimum or maximum depending on the concentration of votes that can be given to a single member. Cafaggi and Iamiceli (n 8) 64-65. In this respect, Fici notes that ‘the company form might be, in fact, a manager-run enterprise, since the members’ control and active participation are not required the way that they are for the social enterprise in the cooperative form’ see in Fici (n 2) 663.

¹⁴⁵ Belgian Companies Code of 1999, art. 661(6). It is unclear from the wording of the Belgian provision

The directors of a VSO are obliged to publish an annual social report that explains whether the company met the social objectives in practice.¹⁴⁶ The objective of this report is to show that the VSO owners of shares, members and/or the directors have not managed the company's reserves contrary to the social objectives of the company.¹⁴⁷ Where such a report has not been prepared, or where it has been unlawfully produced, directors can be held liable pursuant to the legal provisions of the Belgian Companies Code of 1999 and the AoA of the VSO.¹⁴⁸

In particular, Article 663 of the Belgian Companies Code of 1999 holds the directors of a VSO liable if they allocate the company's reserves to activities that do not seek the fulfilment of the social purpose mentioned in the AoA.¹⁴⁹ For example, this rule applies when a legal claim is filed by the VSO's owners of shares and members, by interested third parties (stakeholders) and/or by the public prosecutor. Additionally, the VSO owners of shares and members have the right to claim restitution when directors have breached their statutory duty to allocate reserves in accordance with the social objectives.¹⁵⁰ Restitution and damages can be also claimed against those who received the reserves improperly. The applicable decisive standard for the judiciary deciding on the case is whether those who received the reserves improperly knew or should have known the irregularity of the distribution.¹⁵¹

Finally, the VSO's obligation to submit annual reports and subsequently social reports depends on the legal form that a VSO social enterprise takes. In Belgium, limited liability companies are obliged to submit annual accounts regardless of their size. However, small

i.e. 'inzake de werkingskosten en bezoldigingen' whether the legislation refers to the remuneration of the members of the board of directors or to the employees' salary. However, reference to the explanatory notes clarifies that this part of the provision was introduced to prevent the distribution of dividends to (board) members in the form of additional remuneration, expense allowances or operation expenses. See P. Ernst, 'De vennootschap met sociaal oogmerk', in H. Braeckmans and E. Wymeersch (eds), *Het gewijzigde vennootschapsrecht* (Maklu 1996) 37-70 at 63 refers to the explanatory notes contained in the Parliamentary documents of the Belgian Senate, 1086, No. 2 (1993-1994) (8 March 1995) 308 available at: <www.senate.be/lexdocs/S0543/S05430131.pdf> accessed 20 June 2017.

146 The social report constitutes part of the annual report that the enterprise is obliged to submit to the Central Balance Office of the National Bank of Belgium. Belgian Companies Code of 1999, art. 661(6). Coates and Van Opstal (n 67) 39; National Bank of Belgium: see the list of legal forms that are obliged to file a set of annual accounts and the Central Balance Sheet Office available at: <www.nbb.be/en/central-balance-sheet-office/filing-annual-accounts/who-has-file-accounts/belgian-enterprises> accessed 24 September 2017.

147 Coates and Van Opstal (n 67) 39.

148 Belgian Companies Code of 1999, art. 263 (BVBA), art. 408 (CVBA) and art. 528 (NV).

149 If this duty is breached, the VSO directors could be held jointly and severally liable for the improper distribution (as well as for the consequences of such improper distribution) of the company's reserves. Cafaggi and Iamiceli (n 8) 44.

150 The law requires from the directors to provide the appropriate restitution and remuneration to the VSO owners of shares and members. Belgian Companies Code of 1999, art. 663.

151 *ibid* art. 663.

companies in Belgium without limited liability, such as the cooperative with unlimited liability or the partnership, are not obliged to report on their financial status.¹⁵²

2.6.2. The Greek social cooperative enterprise (Koinsep)

In the Social Entrepreneurship Law of 2011 and amendment of 2016, no stipulated obligations require from a Koinsep to report on its social activity. Any Koinsep is subject to random audits undertaken by the Registry. According to Article 11(1) of the Social Entrepreneurship Law of 2011, the Registry will request documentation and/or information regarding the Koinsep's social purpose during the process of registration.¹⁵³ Additionally, the Registry is authorised to request documentation and information regarding the cooperative's affairs in random audits from the members of the managing committee if being randomly audited. If the Registry notes any infringement regarding the responsibilities that the members of the managing committee and the Koinsep members should bear, it is authorised to impose strict or lenient administrative penalties on the Koinsep, starting with fines and/or even the temporary removal of the Koinsep from the Registry.¹⁵⁴ The Registry has the competence to request from the Ministry of Labour and Social Welfare a permanent removal of a Koinsep from the Registry. Requests are provided particularly in cases of grave misconduct committed by either the members of the managing committee and/or the Koinsep members where they obtain - for example - illegal financial benefits for their own account or on behalf of others.¹⁵⁵ Those who violate these provisions are also accountable to the general meeting, which decides on whether the violation was so severe that the participation of the lawbreaker in the activity of the Koinsep can no longer be tolerated.¹⁵⁶

152 Even though, small organisations in Belgium may be exempted from providing annual reports, it does not constitute a reason to infringe the VSO obligation to issue a social report in Coates and Van Opstal (n 67) 39; see also the requirements on the National Bank of Belgium website (n 146).

153 Social Entrepreneurship Law of 2011, art. 11(1). The scrutiny was particularly assigned to a special department of monitoring and control as prescribed in art. 11 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

154 The members of the managing committee bear responsibility to comply with the applicable legislation governing the Koinsep, the provisions of the SoA and the valid and legitimate decisions of the general meeting; *ibid* art. 11(3) and (7) of the Social Entrepreneurship Law of 2011 and art. 20(6) of Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

155 An example is the breach of provisions providing favourable benefits to the Koinsep (in art. 10 of the Social Entrepreneurship Law of 2011); *ibid* art. 11(7) of the Social Entrepreneurship Law of 2011 and art. 11(4) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

156 The decision to dismiss can be appealed by the lawbreaker within one year at a Greek court starting from the day that the member was notified of the dismissal. The Law concerning Civil Cooperatives 1986, art. 2(8).

2.6.3. The Community Interest Company (CIC) in the UK

The CIC is subject to the financial reporting and disclosure requirements imposed by the 2006 and the 2004 Acts.¹⁵⁷ The financial reporting requirements of the CIC involve the directors in the annual preparation and submission of financial statements, accounts and annual reports. However, Section 34(1) of the 2004 Act introduces a special reporting obligation. According to this obligation, the directors of the CIC are obliged to prepare an annual CIC report that is submitted to the Companies House (Registrar) and should be forwarded to the Regulator.¹⁵⁸ The obligation to prepare legitimately the CIC report is a duty that is imposed specifically on the directors of the CIC by legislation and pursuant to the AoA.¹⁵⁹

The purpose of the CIC report is to provide evidence that the CIC pursues the agreed community objectives and continues to meet the CIC test in its affairs.¹⁶⁰ The CIC report also aims to illustrate whether the company engages appropriately with all the stakeholders that are affected by its activities. In this respect, Cafaggi and Iamiceli note that the CIC report is an illustration of the CIC's effort to serve the community.¹⁶¹

The CIC Regulations of 2005 provides for the minimum information that the CIC report must contain. The information includes:¹⁶²

(i) Information in the form of a description of the way the company's activities have benefitted the community. The description must be primarily 'fair' in the sense that it provides fully the necessary information that describes the company's activities and how these activities benefit the community.¹⁶³ The Regulator has commented that 'CICs should aspire to provide the fullest possible information rather than simply comply with the minimum requirements'.¹⁶⁴ The information must also be 'accurate'.¹⁶⁵ Considering that all the company's affairs are subject to the Regulator's monitoring, the accuracy of the information provided in the CIC report also falls within the scope of

157 2006 Act, Part 15, Accounts and reports, ss. 380-474; 2004 Act, Chapter 2 Accounts and Reports, ss. 8-18; Palmer (n 76) paras. 1.225, 2.041.

158 2004 Act, s. 34; Explanatory Notes to the 2004 Act, para. 220; Palmer (n 76) para. 2.041.

159 Directors are accountable to the CIC's members and shareholders for any breach of their duties contained within the AoA. Directors are also accountable to the Regulator for any breach of the statutory duties stipulated in the legislation and for any misconduct in the management of the CIC. 2004 Act, s. 34; CIC Regulations of 2005, regs. 26-29. Cafaggi and Iamiceli (n 8) 48.

160 Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 8 - Statutory Obligations' (March 2013) 4.

161 Cafaggi and Iamiceli (n 8) 48.

162 CIC Regulations of 2005, reg. 26; Explanatory Note to the 2004 Act, para. 221. Additionally, the Regulator provides online simplified and detailed CIC report templates. Those are available at: <www.gov.uk/government/publications/form-cic34-community-interest-company-report> accessed 24 September 2016.

163 CIC Regulations of 2005, reg. 26(1)(a).

164 CIC Regulator Office, 'Chapter 8' (n 160) 4.

165 CIC Regulations of 2005, reg. 26(1)(a).

the Regulator's investigation capacity.¹⁶⁶ Although neither the 2004 Act nor the CIC Regulations of 2005 mention what the consequences of preparing inaccurate and/or false CIC reports are, a breach can trigger a 'default condition' and subsequently the exercise of the Regulator's supervisory powers to initiate investigation proceedings into the CIC's affairs.¹⁶⁷ A default condition is specified in Section 41(3)(a)-(d) as a situation where:¹⁶⁸ (a) there has been misconduct and/or mismanagement in the administration of the company;¹⁶⁹ (b) there is a need to protect the company's property or to secure the proper application of that property;¹⁷⁰ (c) the company is not satisfying the CIC test;¹⁷¹ and (d) the company is not carrying out any activities to pursue the community interest objectives.¹⁷² Furthermore, Sections 41(2) and 45 of the 2004 Act determine the supervisory power of the Regulator to appoint directors of the CIC.¹⁷³

(ii) Information in the form of a description of the steps that the CIC has taken to consult stakeholders and the persons who are affected by the CIC's activities (see Sub-section 2.5).¹⁷⁴

(iii) Information regarding the transfer of assets other than for full consideration, for example donations to other bodies (see Sub-section 2.6).¹⁷⁵

(iv) Information regarding the directors' remuneration, their pensions and their compensation for loss of office.¹⁷⁶ Regulation 34(3)(a) contains provisions which oblige directors to include information regarding their remuneration in the CIC report. CICs appoint directors who hold an office in the company and can be remunerated for their services, although it is unnecessary for a director to be a company's employee.¹⁷⁷

166 2004 Act, s. 42.

167 *ibid* s. 41(3); Palmer (n 76) para. 2.042; CIC Regulator Office, 'Chapter 8' (n 160) 3; See 2004 Act, s. 44 for the right of the Regulator to initiate civil proceedings.

168 Explanatory Notes to the 2004 Act, paras. 239-241.

169 For instance, it could entail a breach of the director's duties in the CIC's AoA, e.g. the director's statutory duty to prepare accurately the CIC report. 2004 Act, s. 41(3)(a).

170 For instance, this would cover the situation during the CIC's dissolution and winding up processes. 2004 Act, s. 41(3)(b).

171 *ibid* s. 41(3)(c).

172 *ibid* s. 41(3)(d).

173 This Regulator can exercise this power only if a default condition has been triggered. Under default conditions, the Regulator's intervention into the CIC's affairs is stipulated in provisions that require the Regulator to provide remedies and solutions. In these instances, the Regulator appoints a director while the power of the general meeting in that matter is deprived regardless of any provisions in the AoA or the memorandum or any resolution made by the general meeting that might conflict with this decision. 2004 Act, s. 45(3)(b).

174 CIC Regulations of 2005, reg. 26(1)(b).

175 *ibid* reg. 26(2).

176 The information regarding the directors' remuneration can be included in the CIC report if it has not been embodied already in the annual accounts of the company; *ibid* reg. 26(3)(a) and (b).

177 D. French, S. Mayson and C.R. Mayson, *French and Ryan on Company Law* (Oxford University Press 2014) 449. Dorresteijn et al. (n 129) 196, para. 6.72.

2.6.4. Intermediate comparative conclusions: accountability and responsibility of social enterprises in the Belgian, Greek and UK social enterprise law

To *conclude* and *compare*, with respect to the legal label of *accountability* and *responsibility* all the examined legal frameworks contain mechanisms imposing transparency obligations. For example, they require, governing bodies of social enterprises to report or carry out random audits regarding the entrepreneurial activities and the use of financial resources for the fulfilment of social objectives (Table 2.3). The UK and Belgian legal frameworks oblige the directors of the CIC and the VSO to submit annual social reports integrated that demonstrate how the social purpose is achieved. In both countries, the social report is standardised and is based on various indicators (Table 2.3). The reporting indicators mainly focus on the allocation of financial resources to the fulfilment of the social purpose (five out of seven indicators in Belgium and in the UK). Greater extensive reporting obligations were identified only in the UK legal framework. Those covered the CIC's entrepreneurial activities, the pursuit of social objectives and/or the transfer of assets. Additionally, of the three examined legal frameworks, only the UK legal regime encouraged social enterprises to report on information regarding the consultation and engagement of stakeholders prior to decision-making. A similar encouragement is not found in the Greek legal framework, in which the issuance of a social report is not mandatory. Unlike the Belgian and UK legal frameworks, the Greek legal framework places the affairs of the Koinsep under the scrutiny of an external institution, i.e. the Registry, in the form of *ad hoc* audits that are not standardised but vary subject to the competence of the Registry.

Finally, all the examined legal frameworks stipulate external control mechanisms that scrutinise the activities of social enterprises with regard to the pursuit of the social purpose. The mechanisms vary per jurisdiction: (i) the courts in Belgium following the claim of a member, stakeholder, or prosecutor (see Sub-section 2.4); (ii) the Registry in Greece during the exercise of *ad hoc* audits and registration (see Sub-section 2.4); and

Table 2.3: Accountability and responsibility in Belgian, Greek and UK social enterprise law

	Belgium	Greece	UK
Social reporting requirements	Mandatory reporting indicators: expenditure on investments company's operating costs remuneration of directors to pursue the social purpose	Not stipulated mandatory reporting requirements but random reporting requirements. Random ad hoc audits by the Registry during which any Koinsep should account for its activities	Mandatory reporting indicators: activities that have benefitted the community stakeholder consultation transfer of assets directors' remuneration, pensions and compensation
External control and supervision	Belgian courts	Registry	Regulator

finally (iii) the Regulator in the UK following the requirements regarding the CIC test and ‘default conditions’ (see Sub-section 2.4).

2.7. Financial structure in the Belgian, Greek, and UK social enterprise law

This Sub-section 2.7 examines the final legal variable of financial structure and incentives. Sub-section 2.1 in this article indicated that there are several definitions of a social enterprise. Some of which (for instance the definition provided by EMES) highlight the significant level of economic risk that is borne by the members and/or stakeholders of a social enterprise. What is meant by the term ‘economic risk’ is that the financial viability of a social enterprise depends on the efforts of its members to secure adequate resources to support the enterprise’s social objectives. Therefore, this variable relates to the way in which the selected legal form used for the social entrepreneurial activities is sustained, i.e. funded, including the possibilities contained in the legislation for the social enterprise to obtain funding from external resources for example via its charitable status. A study conducted by the European Center for Not-for-Profit Law (ECNL) adds that social entrepreneurial activity should be an economic activity that produces goods and/or sells services and that there should be a trend towards paid work.¹⁷⁸ In its SBI Communication of 2011, the Commission notes the entrepreneurial character of social enterprises and the innovative nature of the business models that they adopt to exercise their business activities.¹⁷⁹ However, the defining characteristic of the financial structure of social enterprises relates to the use of their profits, which is directed primarily towards the achievement of the social purpose. The current Sub-section also covers the constraints on the distribution of profits and the existence of asset-lock schemes that prohibit any distribution, or transfer of the social enterprise’s assets to natural or legal entities with something other than a social purpose.

2.7.1. The Belgian company with a social purpose (VSO)

2.7.1.1. Profit distribution constraint: the asset-lock scheme

As explained above, VSO social enterprises are subject to a profit distribution constraint, which prohibits the distribution of any direct or indirect pecuniary benefit to the owners of shares and members of the enterprise as a matter of principle (see Sub-section 2.4). The owners of shares and members are obliged to clarify in the AoA that they are not committed to the pursuit of any pecuniary objectives. If they do pursue pecuniary objectives, they need to clarify that they will do so to a limited extent only. Where the owners of shares and members seek limited economic benefits, legislation stipulates that the payment of dividends should not exceed a regulated distribution cap. The distribution cap is a fixed rate applicable to the financial returns provided

178 Golubović 2012 (n 30) 5.

179 SBI Communication of 2011 (n 36) 2.

to the owners of shares and members. In particular, Article 661(3) of the Belgian Companies Code of 1999 requires a VSO to insert a profit distribution policy in its AoA, which explains how its profits will be allocated to pursue its social objectives.¹⁸⁰ The subsequent payment and distribution of any dividends is limited on the basis of a fixed rate distribution that currently stands at 6% of the VSO's total volume of assets. This fixed rate was introduced by means of a Royal Decree and in consultation with the National Cooperative Council.¹⁸¹

2.7.1.2. Asset-lock on winding up

Where a VSO is liquidated, a legislatively prescribed asset-lock scheme entails the distribution of its remaining assets after liquidation to a purpose that approximates to its prescribed social purpose.¹⁸² Whilst a new act was introduced to the Belgian legal system in 2012 simplifying the liquidation process of limited liability companies in Belgium,¹⁸³ the basic legal concepts regarding liquidation included in the Belgian Companies Code of 1999 remain the same. The Belgian Companies Code of 1999 stipulates that the liquidation of limited liability companies takes place in three steps by: (i) the determination of the outstanding claims and the realisation of the company's assets (the manner in which the assets will be realised will be determined in the AoA); (ii) the proportionate payment of debts; and (iii) the division of the remaining assets

180 The policy must be designed in conjunction with: (i) the social purpose of the company as stipulated in the AoA; (ii) the activities designed to pursue the social purpose; and (iii) the company's policy for building its reserves. Belgian Companies Code of 1999, art. 661(3); Coates and Van Opstal (n 67) 42.

181 Art. 1(2)(6), Koninklijk besluit tot vaststelling van de voorwaarden tot erkenning van de nationale groeperingen van coöperatieve vennootschappen en van de coöperatieve vennootschappen (19 January 1962) [Unofficial translation: Royal Decree establishing the conditions for recognition of national groups of cooperative companies and cooperative companies]. The current cap of 6% was fixed by Royal Decree dated the 10 November 1996 (Published in Belgian Official Journal 7 December 1996); See also Belgian Companies Code of 1999, art. 661(5); Cafaggi and Iamiceli (n 8) 43; Coates and Van Opstal (n 67) 37; CECOP 2009 (n 30) 9.

182 Belgian Companies Code of 1999, art. 190(1) and (2). Art. 661(9) states: 'bepalen dat na de aanzuivering van het hele passief en de terugbetaling aan de vennoten van hun inbreng, hetgeen na de vereffening overblijft, een bestemming krijgt die zo nauw mogelijk aansluit bij het sociaal oogmerk van de vennootschap [Unofficial translation: 'after settlement of any liabilities and the reimbursement of their presentation to the members, the surplus from liquidation shall receive an allocation that most nearly approximates the social purpose of the company] provided in D'Hulstère and Pollénus (n 47). In particular, art. 661(9) refers to the obligation of VSOs to include a provision in their AoA. Such provisions should indicate that following the discharge of liabilities, i.e. the satisfaction of creditors (see *ibid* art. 190(1)), and the repayment, i.e. 'terugbetaling', of shareholders ('inbreng' translated as contributions/shares; see *ibid* art. 190(2)), the remaining amount following liquidation ('vereffening') should be directed to a purpose which approximates to the social purpose of the company.

183 Wet tot wijziging van het Wetboek van vennootschappen wat de vereffeningprocedure betreft, Belgisch Staatsblad van 7 mei 2012 publiceerde de wet van 19 maart 2012 [Unofficial translation: Act amending the Belgian Companies Code with regard to the liquidation procedure, Belgian State Gazette on 7 May 2012 publishing the law of 19 March 2012].

to the shareholders.¹⁸⁴ However, in the VSO - after the settlement of any liabilities and the reimbursement to the members of their capital contributions - following Article 661(9), any remaining assets are allocated to a purpose which is stipulated in the VSO's AoA and which resembles the social purpose of the dissolved VSO social enterprise.¹⁸⁵

2.7.2. The Greek social cooperative enterprise (Koinsep)

2.7.2.1. Profit distribution constraint: the asset-lock scheme

The Koinsep is a commercial organisation by law. Any Koinsep can undertake commercial economic activities and thus generate revenue and make profit.¹⁸⁶ However, Article 7(1) of the Social Entrepreneurship Law of 2011 states that the Koinsep is not allowed to distribute any profits to its members. Profit distribution to Koinsep members is prohibited and profits are subject to legislated caps, which direct their distribution to specific activities (i.e. a 'targeted distribution cap'). In particular: (i) they must be mainly reinvested in the enterprises' activities and purpose, i.e. 60% of the profits must be reinvested for the generation of new employment positions; (ii) 35% is equally distributed to the employees in the form of remuneration for their productivity; and (iii) 5% is allocated to reinvestment in the enterprise's reserves.¹⁸⁷ However, from these legal requirements it is understood that this arrangement would enable the profit distribution constraint stipulated in the Greek legislation to be used by Koinsep members and the members of the managing committee to receive potentially part of the profits - subject to the cap - as a productivity award so long as they are also employed by the Koinsep.¹⁸⁸

184 Belgian Companies Code of 1999, art. 190(1) and (2); H. Bocken and W. de Bondt, *Introduction to Belgian Law* (Kluwer Law International 2001) 283. Van Bael and Bellis, *Business Law Guide to Belgium* (2nd edn, Kluwer Law International 2003) 69-70.

185 Consequently, when art. 661(9) refers to the term liquidation, i.e. 'vereffening', which is used consistently in the Belgian Companies Code of 1999 to refer to the liquidation process of companies with limited liability, it is deduced from the wording of art. 661(9) that it requires primarily the settlement of liabilities and the division of the remaining assets to the shareholders, and subsequently, the allocation of the remaining amount of assets to other entities with objectives which approximate to the social purpose of the company. Bocken and de Bondt (n 184) 283. Van Bael and Bellis (n 187) 69, para. 3.27. See also European Commission, 'A Map of Social Enterprises and their Eco-systems in Europe: Country Report: Belgium' (31 October 2014) 41.

186 Social Entrepreneurship Law of 2011, art. 7(1). The provision is repeated in the amended regime of 2016 particularly in art. 21(1) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

187 *ibid* art. 7(2) of the Social Entrepreneurship Law of 2011 and art. 21(2) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

188 *ibid* art. 7(1) and (2) of the Social Entrepreneurship Law of 2011 and art. 21(1) and (2) in the amended regime of Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

2.7.2.2. Asset-lock on winding up

Finally, during liquidation, the law imposes an asset-lock scheme that requires the Koinsep to settle any existing liabilities of the creditors. The identity of the liquidators is decided by the general meeting or, alternatively, the managing committee acts as the liquidator.¹⁸⁹ In the process of liquidation, the Koinsep is required to identify its assets and liabilities. The primary obligation of the liquidators is to satisfy the liabilities of a Koinsep to creditors and then to identify whether there are any remaining assets. These remaining assets are not distributed to Koinsep's members but are instead provided to the Fund of the Social Economy, an institution that has been regulated for this purpose, but which has not yet been fully established.¹⁹⁰

2.7.2.3. Financing of resources

Article 8 of the Social Entrepreneurship Law of 2011 indicates various types of capital resources for the financing of a Koinsep. The first type is the capital of the founding members, which comprises the capital from the purchase of the Koinsep's initial cooperative shares or from the issuance of new cooperative shares.¹⁹¹ Any Koinsep is also eligible to receive grants and subsidies from: (i) national investment programmes and funds; (ii) the EU; (iii) international or national organisations; and (iv) local governments.¹⁹² Any Koinsep is also eligible to participate in publicly funded schemes promoting entrepreneurship and employment, which are jointly financed by the EU and the Greek state and implemented by the Greek Manpower Employment Organization (hereafter 'OAED') that claims financing from the Social Economy Fund.¹⁹³ The Social Economy Fund is a financing instrument to support registered Koinseps by providing initial financing for its business activities. Although this Social Economy Fund was introduced by the Social Entrepreneurship Law of 2011 and was repeated in the latest amendment of 2016, its establishment has not yet been fully realised.¹⁹⁴ Finally, any

189 General rules concerning the liquidation of the legal persons in the provisions of the Civil Code arts. 73-76; *ibid* art. 13(2) and of the Social Entrepreneurship Law of 2011 and art. 22(2) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

190 *ibid*. See also art. 10 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

191 In Sub-section 2.5 it was explained that each member is obliged to purchase at least one mandatory cooperative share, the amount of which is determined in the SoA of any Koinsep.

192 Social Entrepreneurship Law of 2011, art. 8 and 9 and art. 2 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions. See also examples of potential public financing schemes and grant opportunities provided in the Greek National Strategic Plan for the Development of Social Entrepreneurship 2013 available in Greek at: <https://dasta.auth.gr/uploaded_files/635006205493669775.pdf> accessed 23 June 2017.

193 *ibid* arts. 8 and 9(1) and art. 2 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

194 M. Tzouvelekas and K. Zoehrer, 'Law 4019/2011: Prerequisites to Social Economy's function for a sustainable labour market' (2015) 3 Social Policy: Hellenic Social Policy Association, 122-136. See also art. 10 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of

Koinsep is entitled to bequests and donations. However, as of 30 April 2017 there is no legal and institutional framework to clarify the financing opportunities for Koinseps from donations and bequests.¹⁹⁵

2.7.3. The Community Interest Company (CIC) in the UK

2.7.3.1. Profit distribution constraint: the asset-lock scheme

The CIC's policy on the distribution of dividends should be laid down in its AoA. The economic right to dividends constitutes the shareholder's entitlement to benefits from the company's profits in the form of dividends. However, in the case of the CIC, a restrictive scheme has been put in place regarding the distribution of profits, assets and dividends to shareholders, namely: the so-called 'asset-lock' scheme. The asset-lock scheme is a set of restrictions in the provisions of the 2004 Act¹⁹⁶ and the CIC Regulations of 2005, which prohibit the distribution of assets to the CIC's members/shareholders and other investors.¹⁹⁷ The distribution is prohibited either during the active and operational period of the CIC or at the winding-up of the company.¹⁹⁸ The asset-lock is a mandatory provision that must be included in the CIC's constitutional documents.¹⁹⁹ The asset-lock provisions in the AoA should explain how the distribution of the CIC's assets is performed in the company inclusive of the period of winding up. Additionally, there are restrictions, which prohibit the CIC from transferring the company's assets to other organisations. The AoA should contain minimum statutory restrictions stipulated in the CIC Regulations of 2005 with respect to the transfer of assets which require that the asset transfer can only take place: (i) for full consideration; (ii) to other asset-locked bodies which are specified in the CIC's AoA; (iii) to other asset-locked bodies with the consent of the Regulator; or (iv) for the benefit of the community, i.e. following the CIC objectives.²⁰⁰

The implementation of the asset-lock provisions is subject to the Regulator's supervisory power. Section 30 of the 2004 Act regulates the asset-lock scheme,²⁰¹ laying down the

its Institutions and Other Provisions.

195 Social Entrepreneurship Law of 2011, art. 8; Tzouvelekas and Zoehrer (n 194).

196 2004 Act, ss. 30 and 31. The explanatory notes also explain that the prohibition covers 'every description of distribution of the company's assets to its members, made in their capacity as members, such as dividends, issues of bonus shares, and payments on the purchase or redemption of shares or on the reduction of share capital'. Explanatory Notes to the 2004 Act, paras. 207-208. Liao (n 2) 294.

197 CIC Regulations of 2005, Part 6, regs. 17-25.

198 The asset-lock scheme is justified. It is based on a constraint applicable to the inappropriate distribution of the CIC's financial assets, profits and surpluses to its members and/or investors. Consequently, the assets should be used for the benefit of the community. Explanatory Notes to the 2004 Act, paras. 207-208; Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 7 - Financing Community interest Companies' (October 2014) 4.

199 2004 Act, s. 32(4)(a) and (b).

200 CIC Regulations of 2005, Sch 1, Sch 2, Sch 3; McLaughlin (n 78) 51.

201 2004 Act, s. 30.

general rule that prohibits CICs from distributing their assets to their members.²⁰² Section 30(5)(a)-(b) of the 2004 Act also confers a right on the Regulator to impose certain limits on the distribution of assets thus imposing limits on the maximum amount of financial returns that the investors of the CIC can receive, i.e. dividend caps.²⁰³ Firstly, the Regulator may (a) set a 'limit' by reference to a rate determined by any other person. The explanatory notes further explain that the limit can be set by reference to an index, such as the Bank of England base lending rate to comply with national economic and governmental policy.²⁰⁴ Secondly, it is at the discretion of the Regulator to (b) impose a broad scope of different limits 'for different descriptions of community interest companies' applying to different categories of CICs according to their activity, size, sector or geographical area.²⁰⁵ In this respect, Section 30(6) addresses specific factors that the Regulator 'must' and 'may' take into consideration prior to determining the 'limits'. The Regulator must: (i) undertake appropriate consultation before setting the limit; and (ii) in setting a limit, have regard to the likely impact on community interest companies.²⁰⁶

All types of dividend caps are regulated by Regulation 22(1)(a)-(c) of the CIC Regulations of 2005, which provide for the amount of profits that can be paid to shareholders. According to Regulation 22, the dividend-related cap imposed is referred to as the *aggregate dividend cap*.²⁰⁷ The Regulator is the person authorised to issue and/or revises the cap under the approval and the supervision of the Secretary of State.²⁰⁸ The *aggregate dividend cap* is determined as a percentage of the CIC's distributable profits and is currently fixed at 35% of the CIC's distributable profits.²⁰⁹ It is noteworthy that the CIC Regulations of 2005 allow unlimited distributions to be made to members, which are themselves CICs or charities under the concept of 'exempt dividends'.²¹⁰ Also regulated in Regulations 21 and 22(c) is the interest cap that on the basis of the asset-lock applies to debenture²¹¹ or any debt issued by any CIC. Such debenture includes for example

202 The general rule is subject to regulatory provisions. Those may provide otherwise. Explanatory Notes to the 2004 Act, paras. 207-208.

203 2004 Act, s. 30(5)(a)-(c).

204 Explanatory Notes to the 2004 Act, para. 211.

205 2004 Act, s. 30(5)(b).

206 *ibid* s. 30(6)(a) and (b).

207 CIC Regulations of 2005, reg. 22(1)(a)-(c).

208 *ibid* reg. 22(3) and (8).

209 The 'distributable profits' are calculated as the accumulated, realised profits of the CIC that have not been previously used by the CIC by distribution or capitalisation, minus the accumulated, realised losses that were not previously written off in a reduction or reorganisation of the CIC's capital. As such, this formula follows the general pattern established by Section 830 of the Companies Act 2006 for the calculation of distributable profits. CIC Regulations of 2005, reg. 2.

210 In that case, the dividend cap will not apply if the CIC shares are owned by an asset-locked body, which is specified in the CIC's AoA as a potential recipient of the CIC's assets or if the Regulator has provided consent to the distribution of the dividend. CIC Regulations of 2005, reg. 17(3)-(5). McLaughlin (n 78) 51.

211 Regulatory Guidance explains that 'debenture' constitutes a financial instrument that is 'any document which creates or acknowledges a debt, but it is most frequently used either in connection

mortgage debenture or CIC issued bonds. As of 1 October 2014 this is a fixed rate of 20%, which is expressed in Regulation 22(4)(7) as a percentage of the average amount of debt, or the sum outstanding under a debenture, during the 12 month period immediately preceding the date on which the interest on that debt or debenture becomes due.²¹²

2.7.3.2. Asset-lock on winding up

The legal regime regulating CICs does not only restricts the distribution of a CIC's profits and financial assets whilst the CIC is an ongoing concern, but also places restrictions on its winding-up where asset-lock provisions apply in terms of Section 31 of the 2004 Act.²¹³ Section 31 contains restrictions on the distribution of the CIC's assets upon a winding up as another mechanism to safeguard its assets and provide the Regulator with the power to ensure that such assets are preserved to satisfy the community benefit.²¹⁴ The CIC Regulations of 2005 also contain detailed provisions on the application of the asset-lock scheme on the winding-up of a CIC.²¹⁵ Regulation 23 prescribes that a CIC must be wound up according to the provisions of the UK Insolvency Act of 1986, if there are residual assets remaining after the satisfaction of the company's liabilities to its creditors.²¹⁶ If there are residual assets remaining after distributions are made to the creditors and the members, those assets must be distributed to other asset-locked bodies. Regulation 23(5) and (6) distinguishes two conditions under which the assets are distributed to asset-locked bodies.²¹⁷ According to Regulation 23(5), assets are distributed to the asset-locked bodies that are specified in the CIC's memorandum and AoA as potential recipients of the assets. According to Regulation 23(6), the assets are distributed to other asset-locked bodies with the consent and approval of the Regulator.²¹⁸

with lending against the security of the [CIC's] company's assets (mortgage debentures) or to describe the issue of corporate bonds (where the company, instead of borrowing under contractual arrangements with financial institutions, sells bonds in exchange for cash to investors more generally: the investors then receive specified interest and capital repayments, and may in addition be able to make a profit by trading in the bonds themselves'. CIC Regulations of 2005, regs. 21 and 22(1) (c). CIC Regulator Office, 'Chapter 7' (n 198) 7; Office of the Regulator of Community Interest Companies, 'Information and guidance notes: Chapter 6 - The asset lock' (October 2014) 8.

212 CIC Regulations of 2005, reg. 22(4)(7); CIC Regulator Office, 'Chapter 6' (n 211) 8.

213 2004 Act, s. 31.

214 *ibid.*

215 CIC Regulations of 2005, reg. 23.

216 Any remaining assets are distributed to the CIC's members who are entitled by the membership rights stipulated in the AoA to participate in any process of distribution of assets on the winding up of the company. The entitled members are prohibited from receiving the CIC's assets that exceed the amount of the paid-up value of the shares, which they hold in the company. As such, the greatest value that a member will be able to extract from the CIC on its winding-up is the nominal value of the shares that they hold (assuming that they are fully paid up). CIC Regulations of 2005, reg. 23(1)(a); Palmer (n 76) paras. 1.225 and 2.040.

217 CIC Regulations of 2005, regs. 23(5) and (6) as amended by the Community Interest Company (Amendment) Regulations 2009/1942.

218 This is especially the case where: (a) the asset-locked bodies are not identified in the CIC's AoA

2.7.3.3. Financing of resources

A very important requirement for a CIC as a limited liability company is the fulfilment of its mission by accessing capital from either internal or external sources of finance.²¹⁹ Unlike private limited companies, either a CIC that is limited by shares or guarantee is excluded from acquiring a charitable status.²²⁰ Whilst a charitable company registered in England or Scotland is eligible to convert to a CIC (and *vice versa*) subject to the consent of the competent authorities, subsequent to any conversion, the company will lose its charitable status and any benefits that such status confers.²²¹

However, the CIC legislation contains provisions, such as the asset-lock schemes that attract investors who are looking for their investment to be preserved within the organisation in order to fulfil its community objectives. The types of investors that the CIC legal form will appeal to may differ from the investors that ordinary limited liability companies often attract.²²² Depending on whether a CIC is a company limited by guarantee or shares, CICs will be subject to differing financial opportunities.

As explained above, companies limited by guarantee are private limited liability companies with no share capital or shareholders. As such, they are prohibited from issuing any share capital, and they are not allowed to distribute profits to their members.²²³ Spiess-Knafl and Achleitner note that even though grants and donations

or memorandum; (b) the Regulator knows that the specified asset-locked body in the AoA or the memorandum no longer exists or has been wound up; and (c) the Regulator has received a statement from the CIC's member or director which explains why the asset-locked body mentioned in the memorandum or AoA is not the appropriate asset-locked body to receive the assets of the CIC after winding up. CIC Regulations of 2005, reg. 23(6)(a), (b) and (c).

219 W. Spiess-Knafl and A.K. Achleitner, 'Financing of Social Entrepreneurship' in C.K. Volkman, K.O. Tokarski, K. Ernst (eds), *Social Entrepreneurship and Social Business: An Introduction and Discussion with Case Studies* (Springer 2012) 158.

220 2004 Act, ss. 39-40, 26(3); Explanatory Notes to the 2004 Act, paras. 236-237; Palmer (n 76) paras. 1.225 and 2.035.

221 Although a CIC may qualify as having charitable purposes, it is nonetheless treated as not being established for such purposes as explained in the Explanatory Notes to s. 26(3) in 2004 Act, paras. 195-196. Therefore, CICs will not be subject to the benefits or obligations of charitable status, nor will they be subject to advantageous treatment afforded to charities, for instance tax reliefs or exemptions which are only available to charities or donations and which attract tax relief. However, it should be noted that a charity or a charitable entity might own a CIC or a CIC may be the trustee of a charitable trust, in which case the charitable trust and the CIC could pass assets, which are eligible for relief. Explanatory Notes to the 2004 Act, paras. 236-237. See OSCR, 'Memorandum of Understanding between the Office of the Scottish Charity Regulator and the Regulator of the Community Interest Company', available at: <www.oscr.org.uk/media/1418/community-interest-companies-mou.pdf> accessed 24 September 2017.

222 Dunn and Riley (n 81) 651. According to Dunn and Riley: 'The Government has attempted to walk a fine line here, pursuing the not-for-profit philosophy that is attractive to the philanthropic, without wholly alienating more commercial investors'. See also the main types of financing in CIC Regulator Office, 'Chapter 7' (n 198) 3-11.

223 See Sub-section 2.7.3. This means that they have very limited access to equity capital and they will

may confer advantages upon CICs limited by guarantee, such as the absence of obligations of repayment, voting rights or powers conferred upon the donors, they have also been proved disadvantageous for the development of a CIC limited by guarantee. That is because donors usually provide ‘only for project-related costs’ and they are ‘unwilling to cover more than a minimum share of the administrative costs or any expenditure for corporate development’.²²⁴ Companies limited by guarantee can be contrasted with companies limited by shares. The latter are private limited liability companies with share capital. Consequently, CICs that are limited by shares can raise ordinary share capital by issuing shares with a specific nominal value and provide rights to shareholders regarding the payment of dividends when profits are available for distribution.²²⁵ However, in the case of the CIC, the community objectives and the asset-lock provisions override shareholders’ objectives to receive profits.²²⁶

2.7.4. Intermediate comparative conclusions: financial structure of social enterprises in the Belgian, Greek and UK social enterprise law

To *conclude* and *compare* the varying financial structures of social enterprises in Belgium, Greece and the UK, we note that the tailor-made laws for the legal forms of the social enterprise contain asset-lock schemes and distribution-limitation provisions (Table 2.4).²²⁷ The profit-distribution limitations represent a significant characteristic of social enterprises (addressed in the Commission’s definition for social enterprises), namely that a social enterprise’s profits exist primarily to achieve a social purpose rather than to satisfy its members. Indeed, the aim of such restrictions is to maintain the assets in the organisation, to impose constraints on the distribution of profits and assets to the owners of shares and members of the organisation, and/or to direct the distribution of profits and assets to the fulfilment of the social objectives. For example, the asset-lock schemes allow only for a limited distribution of profits and assets subject to regulated caps.

Each of the selected legal frameworks for social enterprises includes similar asset-lock provisions. Moreover, there is an element of commonality for the reason that each of the asset-lock schemes either prohibits the distribution entirely or allows for a limited distribution of profits and assets on the basis of distribution caps. The established caps vary (Table 2.4).

Belgian legislation lays down a dual asset-lock mechanism, which prohibits the distribution of profits in the form of dividends to the owners of shares and members

be primarily financed either by loans, grants and donations or by the income which is generated by the commercial activities which they undertake.

224 Spiess-Knafl and Achleitner (n 219) 162.

225 A share capital fund contributed by the shareholders and maintained in fulfilment of creditors’ liabilities. 2006 Act, ss. 5 and 10(2). Dorresteijn et al. (n 129) 148-149, para. 4.23.

226 See Sub-section 2.4. See Nicholls (n 49) 394, 396.

227 See also Fici (n 2) 654 and the study of Cafaggi and Iamiceli (n 8).

Table 2.4: Financial structure in Belgian, Greek and UK social enterprise law

	Belgium	Greece	UK
Asset-lock on the distribution of profits and dividends	Profit distribution constraint and limited distribution of profits to members subject to regulated cap	Profit distribution constraint and targeted distribution of profits subject to regulated caps	Profit distribution constraint and limited distribution of profits and assets subject to a regulated cap
Distribution cap rate	6% of the company's total volume of assets.	60% of profits is to be reinvested in accordance with the purpose for the creation of new employment positions 35% is to be provided as a productivity award to employees 5% is to be retained in the reserves	35% of the distributable profits (aggregate dividend cap) can be distributed to shareholders Exempt dividend 20% interest cap on interest paid following the issuance of debenture and bonds
Asset-lock on winding-up	Transfer of the VSO's remaining assets after settlement of any liabilities and the reimbursement of the members' capital contributions, to a purpose which most nearly approximates the social purpose of the VSO	Transfer of the Koïnsep assets after liquidation to the Social Economy Fund	The transfer of CIC assets to other asset-locked bodies are allowed, provided that they are: specified in the AoA and/or memorandum or approved by the Regulator
Financing of resources	No stipulated provisions	Stipulated provisions regarding financing from: cooperative capital grants and subsidies publicly funded schemes, such as the Social Economy Fund bequests and donations	Limited by shares: ordinary share capital grants and donations, publicly funded schemes community development finance institutions Limited by guarantee: grants and donations, other publicly funded schemes community development finance institutions

but allows the limited distribution of profits subject to a regulated cap. The regulated cap is currently fixed at 6% and is related to the VSO's total volume of assets rather than its estimated profits.

Similarly, Greek legislation provides for an asset-lock scheme that appears to be stricter and more targeted, but it is possible to circumvent it. In short, the Greek asset-lock scheme prohibits entirely any distribution of profits to Koinsep members. Unlike in the Belgian and UK legal frameworks, no possibility is brooked in the Greek legislation for any limited distribution of profits to owners of cooperative shares and members. The stipulated distribution caps in the Greek legal framework point to the allocation/distribution of the Koinsep's profits to specific targets within the Koinsep organisation. However, based on the regulated caps, the profit distribution constraint does not apply to Koinsep members who are legitimately employed by the Koinsep and duly entitled to receive 35% of profits as remuneration.

Finally, similarly to the Belgian and the Greek legal frameworks, the UK framework contains restrictions on the distribution of assets in the form of regulated caps, and among others, i.e. an aggregate dividend cap, currently set at 35%. The dividend cap prevents the distribution of the accumulated, realised profits of the CIC beyond this prescribed level to its shareholders and members and to any organisations that do not pursue community objectives. Unlike the Belgian and the Greek legal frameworks, the UK framework introduces the concept of 'exempt dividends' that allow for the distribution of profits to any organisation that pursues community objectives and is subject to the approval of the Regulator. A similar concept was not identified in the Belgian and the Greek legislation, which are less sophisticated.

Asset-lock schemes have also been introduced by legislation to protect the distribution of assets during winding-up and liquidation (Table 2.4). Although the post-liquidation destination of the assets in the examined legal frameworks may vary, the provisions in each of the jurisdictions aim to protect the social enterprises' assets by directing them to organisations with a social purpose. In Belgium, the legal framework requires the allocation of remaining assets to a purpose that approximates to the social purpose of the dissolved VSO. Similarly, the Greek legal framework contains provisions, which require the remaining assets from a dissolved Koinsep to be transferred after liquidation to the Social Economy Fund from which Koinseps in Greece are eligible to be funded. In the UK, on winding up, the legislation prescribes the distribution of any assets only to other asset-locked bodies either specified in the AoA and/or memorandum or approved by the CIC Regulator.

Finally, with respect to financial instruments supporting the financial structure of the examined legal forms, only the Greek legislation contains stipulated provisions regarding financial instruments and eligibility regarding external financial resources (Table 2.4). However, secondary legislation and the regulatory framework in the Greek legal system continue to develop. Similar provisions were not identified in the Belgian

and UK legal frameworks. Accordingly, there is no reference to financial instruments in the Belgian legal framework regulating the VSO legal form, whereas in the UK the Regulator provides only limited guidance in this respect.

2.8. Conclusions

This article examined and analysed legal forms and structures that have been tailor-made specifically for use by social enterprises. In particular, the article examined three national legal frameworks, namely the legal frameworks in Belgium, Greece and the UK. These countries have regulated the concept of social enterprises in their national laws. They have thereby introduced special tailor-made legal forms that social enterprises may adopt. The content of legal rules for social enterprises was systemically analysed within the research scope of specific legal factors that have been extracted from the Commission's definition concerning social enterprises, namely: (i) social purpose; (ii) participatory governance; (iii) accountability and responsibility; and (iv) financial structure.

Subsequently, the article identified the differences and similarities in the content of the legal rules as regards their function and concluded that there were identifiable similarities and differences in the three examined legal frameworks and analogous legal forms. The similarities in the examined tailor-made legal frameworks for social enterprises highlight the existence of a similar substantive core in the legal characteristics of the compared legal forms for enterprises with social objectives. These similarities indicate that a harmonised tailor-made legal framework for social enterprises in the EU could be developed and could be based on a similar core. The aforementioned similarities may prove useful in refining and making more concrete the operational definition and the standards that currently apply to social enterprises at the EU level. Conversely, perceived differences can be viewed as confirming the existence of a substantive periphery in the legal characteristics of the compared legal forms that can vary according to the context of the various legal systems considered. The similarities and differences can be further examined according to legal cultures and legal traditions.

2.8.1. The points of similarity

The requirement for a social enterprise to promote and pursue a social purpose arguably lies at its irreducible core. In fact, in each of the three examined tailor-made legal frameworks for social enterprises, it is notable that the social purpose is a mandatory legal requirement and a key component of the activities of the examined legal forms, i.e. the VSO, Koinsep and the CIC. The purpose of the tailor-made legal forms comprises non-financial (social, collective, community-based) elements that differ in the various examined legal frameworks. However, the commercial and entrepreneurial character of the purpose is maintained without necessarily addressing profit-making activities.

Additionally, at the core of the legal nature of a social enterprise are also its participatory and inclusive governance arrangements. The participatory governance variable features in the role and rights of various types of stakeholders in decision-making processes. Although the various types of participation of stakeholders in decision-making processes are constituted differently in the examined legal frameworks, the legislatively prescribed participation and consultation rights allow for either formal/informal, direct/indirect and/or the structural/ad hoc participation of stakeholders in decision-making processes.

Another element that is part of the core legal substance of social enterprises is the responsibility and transparency element that was also encountered in the examined legal frameworks. A requirement was detected for compliance with reporting obligations and/or the application of high levels of transparency regarding transactions and activities of the social enterprise. Such provisions serve to prioritise the social objectives of the social enterprise over other financial objectives and to promote the use of its assets and profits towards the fulfilment of those social objectives. The production of social reports integrated into the annual accounts of the social enterprise (an integrated account of financial and non-financial elements) was a common feature across the jurisdictions, as was the need for scrutiny by external authorities, i.e. the Registry or the Regulator, and/or the national courts. Thus, it amounted to a fundamental legal characteristic of the examined tailor-made social enterprise legislation.

The accountability of the decision-makers is another factor addressed in the examined legal frameworks. The accountability of decision-makers regarding the pursuit of social objectives is commonly safeguarded via external mechanisms prescribed by law, which scrutinise the activities and the affairs of social enterprises.

Finally, at the core of the legal substance of the social enterprise, there is also the profit and asset distribution constraint that was identified in all three examined legal frameworks. Likewise, the legal frameworks each contained asset-lock provisions that either entirely prohibit the distribution of profits and assets to the members of the organisation or allow for a limited distribution of profits subject to regulated caps either during the active period of the social enterprise or in its winding-up phase.

2.8.2. The points of difference

Each of the jurisdictions comprises a tailor-made legal form for social enterprises aimed at pursuing a social purpose. However, the exact essence and content of that purpose varies, in terms of its social, collective and community-based dimensions. From one point of view, the purpose prescribed by law can be broad with respect to its scope, covering activities that could benefit the community and society based on human considerations. The purpose may also be much narrower, promoting activities that facilitate public policies regarding social issues or activities to promote collective needs and protect collective/common goods. The purpose may have either a collective and universal character addressing the society-community as an entirety and/or it may

cover smaller groups of individuals as distinctive parts of a society and/or community, vulnerable groups for example. However, the introduction of the notion of social impact-making activities, as opposed to profit-making activities, has not been developed in any of the examined legal frameworks, nor has it been elaborated upon in policy documents.

Furthermore, the manner in which the social purpose is legislated in each of the three legal regimes differs. As such, the implementation of the social purpose should vary in accordance with the legal system of each examined country. The social purpose is either: (i) explicitly contained in legislation and as such, must be embodied in the SoA of the social enterprise to fulfil the registration criteria; (ii) included only in the constitutional documents (AoA/memorandum) but subject to the consideration of a Regulation on the basis of a legislated mechanism/test; or (iii) subject to the scrutiny of the national courts on the basis of a *laissez-faire* approach which requires the members of the social enterprise to define the social purpose as the case may be.

The essence of participatory and inclusive governance also differs in the examined legal regimes, i.e. it can be realised either by multi-stakeholder ownership of shares and membership and subsequently multi-stakeholder governance, or by consultation with various types of stakeholders alongside the company's decision-making processes. Additionally, the correlation between share capital ownership and control and the exercise of voting rights (number of votes) by stakeholders varies in the three examined legal frameworks. In the jurisdictions where multi-stakeholder ownership of shares, membership and governance is permitted, no strong correlation is found between capital ownership and control. For instance, the decision-making processes can be characterised by both equality and democratic decision-making with the application of the rule of 'one man, one vote' and/or subjected to a voting cap, which eliminates the number of votes of the participants in the decision-making processes.

The accountability of the decision-makers is safeguarded via legislated mechanisms that scrutinise the activities of social enterprises in pursuit of the social purpose. However, the enforcement mechanisms differ in the different national legal systems including, i.e. the courts, the Registry, and the Regulator. A different emphasis is placed on the content of reporting that is directed mainly to safeguard transparency concerning activities in pursuit of the social purpose, rather than activities that are undertaken in governance with stakeholders and/or the outcome of activities in terms of social impact. Finally, the financial instruments prescribed in legislation to support social enterprises are also different.

Chapter 3

Case studies concerning the participatory governance of social enterprises in Belgium, Greece, and the UK*

* This Chapter is an edited compilation of articles which are: (i) either accepted for publication; (ii) published in academic journals and books; or (iii) not published yet. For the purpose of coherence and styling in the manuscript the citations in the text have been moved to footnotes. In the published articles, for comparison purposes: (i) Sub-section titles have been slightly amended; (ii) illustrative tables have been added; and (iii) typographical mistakes and misprints have been corrected. The compiled articles are: A. Argyrou et al., 'Unravelling the Participation of Stakeholders in the Governance Models of Social Enterprises in Greece' [2017] 17(4) *Corporate Governance: The international journal of business in society*, 661-677; A. Argyrou et al., 'Social Enterprises and the Integration of Persons with Mental Disabilities: A Case-study of Koispe Athena-Elpis' in M. Pirson et al. (eds), *Responsible Leadership: A Humanistic Perspective* (Business Expert Press 2018) (forthcoming); A. Argyrou et al., 'An Empirical Investigation of Supportive Legal Frameworks for Social Enterprises in Belgium: A Cross-sectoral Comparison of Case Studies for Social Enterprises from the Social Housing, Finance and Energy Sector Perspective', in V. Mauerhofer (ed), *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues* (Springer International Publishing 2016). Sub-sections 3.4-3.6 comprise articles which are not published yet: A. Argyrou, 'Stakeholder Participation in Social Enterprises: Two Case Studies Involving Community Interest Companies in Scotland', A. Argyrou, 'Participatory Governance in Community Energy Schemes in the UK: The Case Study Stratford Community Energy PLCIC', and A. Argyrou, 'A Meta-synthesis and Cross-case Analysis of Case Studies Regarding the Participatory Governance of Social Enterprises in Belgium, Greece and the UK'. This doctoral thesis elaborates on the outcome of research activities carried out until 30 April 2017. I would like to express my gratitude to the following persons for providing review comments concerning several parts of the compiled articles: Mr. David Cabrelli, Senior Lecturer in Commercial Law at Edinburgh University, Dr. Yue Ang, Lecturer in Law at Oxford Brookes University, Guus Nieuwenhuijzen Kruseman, Attorney at Law at Van Doorne and Duco Hora Siccama, research assistant at Utrecht University.

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

Abstract

This study aims to investigate how the existing legal framework for social enterprises in Belgium affects the activity of social enterprises in the social housing, finance and energy sector. The focus is thereby on the legal factor of governance and the decision-making power of stakeholders. These matters are examined in respect of one particular type of social enterprises, the so-called company with a social purpose, i.e. *‘Vennootschap met Sociaal Oogmerk’* (VSO). We conducted three case studies in Belgium. We examined in which way the VSO law has been implemented in three social enterprises which are active in different sectors, i.e. the energy, finance and housing sector and compared the results. By comparing the case studies, this article aims to generate: (i) a cross-sectoral theoretical analysis regarding the practical application of the legal factor of governance in the three Belgian social enterprises; and (ii) a comprehensive understanding of the involvement of different stakeholders in the social enterprises’ governance in these sectors. Useful conclusions were drawn for the improvement of the legal framework for social enterprises in Belgium as well as for the improvement of the social enterprises functioning.

Keywords

Social Enterprises, Cooperatives, Governance, Stakeholders, Belgium

3.1.1. Introduction

3.1.1.1 Governance of social enterprises

The international academic society has agreed that social entrepreneurship applies to a broad range of diverse organisations which do not share one, but rather various organisational and legal characteristics. From a legal point of view, social enterprises are institutionalised economic entities with a social purpose. They use existing legislation to promote their commercial activities and transactions aiming at achieving social goals as opposed to ordinary commercial enterprises which aim to fulfil solely financial objectives. However, social enterprises constitute a ‘facet’ of social entrepreneurship.¹ They use existing or tailor-made legal forms to promote their mission-based entrepreneurial activities and commercial transactions to achieve a social impact.² Social enterprises do not share unique entrepreneurial or legal characteristics but they are rather hybrid entities using various legal forms that combine for-profit with non-for-profit characteristics.³ The organisational and legal differences between the various types of social enterprises make ‘governance’ in social enterprises a complicated concept. Furthermore, due to the diversity of the organisational and legal forms of social enterprises, research regarding governance in social enterprises has been segmented. It focuses either on the examination of governance in particular legal forms, for instance concerning the cooperative legal form or the UK corporate legal form (hereafter ‘CIC’),⁴ or on the organisational forms of social enterprises, such as work integration social enterprises (hereafter ‘WISE’).⁵ Moreover, various governance theories apply to organisations that belong to different sectors including the for-profit sector and the non-profit sector.⁶ Finally, in some studies a specific national context is examined, e.g. the UK national

- 1 G. Galera and C. Borzaga, ‘Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation’ [2009] 5(3) *Social Entrepreneurship Journal*, 216.
- 2 J. Defourny 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*, 44.
- 3 H. Haugh, ‘A Research Agenda for Social Entrepreneurship’ [2005] 1(1) *Social Enterprises Journal*, 2-3.
- 4 R. Spear, ‘Governance in Democratic Member-Based Organisations’ [2004] 75(1) *Annals of Public and Cooperative Economics*, 33-59; R. Spear, C. Cornforth and M. Aiken, ‘The Governance Challenges of Social Enterprises: Evidence from a UK Empirical Study’ [2009] 80(2) *Annals of Public and Cooperative Economics*, 247-273; A. Ebrahim, J. Battilana and J. Mair, ‘The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations’ [2014] 34(1) *Research in Organizational Behavior*, 81-100; A. Ebrahim and V.K. Rangan, ‘What Impact? A Framework for Measuring the Scale and Scope of Social Performance’ [2014] 56(3) *University California Berkeley*, 130.
- 5 S. Campi, J. Defourny and O. Grégoire, ‘Work Integration Social Enterprises: Are they Multiple-goal and Multi-stakeholder Organizations?’ in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006).
- 6 C. Low, ‘A Framework for the Governance of Social Enterprises’ [2006] 33(5/6) *International Journal of Social Economics*, 376-385.

context of social enterprises.⁷ However, Low - elaborating on the governance of social enterprises - emphasises that we need to conduct research on the aspects of governance which at least transcends the discrepancies of social enterprises that belong to different sectors (i.e. for-profit, non-profit, social economy sector).⁸

The issue of corporate and organisation governance has been significantly elaborated in academic literature on social enterprises. Pestoff emphasises the importance of researching the governance of social enterprises in Europe and the underlying values of the social economy sector, which tend to be characterised by a 'quest' for democracy.⁹ Ebrahim et al. note the importance of research on the challenges of governance that social enterprises encounter when striving to achieve a trade-off between their commercial activities and the fulfilment of their social mission.¹⁰ Spear et al. aiming at generating theoretically grounded foundations for the discussion on governance of social enterprises, suggest a typology of governance structures, including: (i) self-selecting governance models for social enterprises in which the board of directors is the most powerful organ and its members have no ownership rights; (ii) governance models in which the decision-making organs are selected by the members following the principle of democracy; and (iii) hybrid governance models in which self-selecting governance and membership governance schemes are combined.¹¹

Governance of social enterprises is also characterised by the 'internalisation' of stakeholders in the decision-making processes and their active participation as internal components of the social enterprise, which ultimately lead to more open and democratic decision-making processes.¹² Stakeholders can either participate in the organisational decision-making processes as formal members and co-owners of the social enterprises, or they can influence informal processes of decision-making.¹³

The stakeholder theory elaborates on the influence of various stakeholders on the decision-making processes of a social enterprise. Stakeholders have been widely defined by Freeman and Reed, to contain any group or individual who can affect or is affected by the activities of an organisation to achieve its purpose.¹⁴ Di Domenico et al. emphasise the active participation of stakeholders in the social enterprises' governance

7 C. Mason, J. Kirkbride and D. Bryde, 'From Stakeholders to Institutions: the Changing Face of Social Enterprise Governance Theory' [2007] 45(2) *Management Decision*, 284-301.

8 Low (n 6) 337.

9 V.A. Pestoff, 'The Role of Participatory Governance in the EMES Approach to Social Enterprise' [2013] 2(2) *Journal of Entrepreneurial and Organizational Diversity*, 56.

10 Ebrahim et al. (n 4) 82; Ebrahim and Rangan (n 4).

11 R. Spear, C. Cornforth and M. Aiken, 'Major Perspectives on Governance of Social Enterprise' in J. Defourny, L. Hulgård and V. Pestoff (eds), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective* (Routledge 2014) 138.

12 Campi et al. (n 5) 35; Mason et al. (n 7) 288-289.

13 Campi et al. (n 5) 36.

14 R.E. Freeman and D.L. Reed, 'Stockholders and Stakeholders: A New Perspective on Corporate Governance' (1983) 25(3) *California Management Review*, 91.

and management as a prerequisite for social enterprises to generate social benefits such as social capital.¹⁵ Spear et al. stress that it is an advantage for multi-stakeholder organisations to bring together and balance different perspectives and interests, however, there are also disadvantages towards achieving a clear purpose and coming to an agreement.¹⁶ Campi et al. finally, elaborate on the advantages of multi-stakeholder governance such as ensuring organisational stability, providing better access to resources including legitimacy and reducing external constraints.¹⁷

However, the use of the stakeholder theory has been criticised to have direct implications in the governance of social enterprises. The underlying foundation of the stakeholder theory is the responsibility of the decision-making organs to give attention to the legitimate interest of stakeholders and to reconcile the conflicts of interest that occur between the organisation's interests and the interests of the various stakeholder groups.¹⁸ Thus, directors and managers become accountable to a large variety of stakeholders with diverse interests that need to prioritise.¹⁹ However, Mason et al. argue that the stakeholder theory is incompatible with corporate governance of social enterprises because the theory envisages accountability of directors towards multiple stakeholder groups which might not directly relate to social enterprises.²⁰ Furthermore, Mason et al. point out that the inclusion and participation of stakeholders in the decision-making processes of social enterprises can be doubtful if it is not transparent, well-established and subject to external scrutiny.²¹ In this respect, the Lambooy and Argyrou study, which elaborates on tailor-made national legislation for social enterprises in Belgium, the UK and Greece, showcases that legal concepts such as governance, transparency and accountability have been addressed and regulated differently from legal regimes available for ordinary companies.²² Tailor-made legislation for social enterprises in various national contexts, i.e. in the UK and Belgium, imposes legal duties on the directors of social enterprises concerning the fulfilment of the enterprises' social purpose. Particularly, the Belgian legislation for social enterprises provides legal rights to stakeholders to that end. They can request the dissolution of a social enterprise by court decision if the social enterprise's Articles of Association (hereafter 'AoA') do not comply with the applicable legal obligations that protect the social purpose of the enterprise. Another example is

15 H. Di Domenico, H. Haugh and P. Tracey, 'Social Bricolage: Theorizing Social Value Creation in Social Enterprise' [2010] 34(4) *Entrepreneurship Theory and Practice*, 695-696.

16 Spear et al. 2009 (n 4) 256.

17 Campi et al. (n 5) 40-42.

18 Di Domenico et al. (n 15) 682; T. Donaldson and L.E. Preston, 'The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications' [1995] 20(1) *Academy of Management Review*, 65-91; R. Phillips, E.R. Freeman and A.C. Wicks, 'What Stakeholder Theory is Not' [2003] 13(4) *Business Ethics Quarterly*, 479-502.

19 Ebrahim et al. (n 4); Ebrahim and Rangan (n 4).

20 Mason et al. (n 7) 289.

21 *ibid.*

22 T. Lambooy and A. Argyrou, 'Improving the Legal Environment for Social Entrepreneurship in Europe' [2014] 11(2) *European Company Law*, 71-76.

the tailor-made legislation in the UK for social enterprises which imposes obligations on CIC directors to adopt formal stakeholder consultation processes. Annually, they must report on this in detail in a social report. The social enterprise is obliged to submit the social report to an external institution. Thus, the examination of tailor-made legislation for social enterprises, and the examination of the legal rights and duties that such legislation confers to the governing organs of social enterprises, can contribute to the academic discussion, as well as to the effective and efficient implementation of stakeholder governance in social enterprises.

3.1.1.2. The legal factor of governance in tailor-made legislation for social enterprises

Lambooy and Argyrou, elaborating on the legal factors that characterise tailor-made and enabling legislation for social enterprises, identified that the legal factor of governance is a crucial one.²³ They revealed that governance has a particular meaning within the existing tailor-made legislation. Primarily, governance reflects the decision-making power of participants in the function of the social enterprise which is not per se based on capital ownership.²⁴ Most importantly, governance entails the role and the legal rights of the various categories of stakeholders in the decision-making processes of the tailor-made legal forms for social enterprises.²⁵

Legislation provides particular rights and obligations to decision-making bodies in social enterprises. We note, however, that there are various tailor-made legal forms for social enterprises in the different EU Member States. Thus, the rights and obligations for the governance organs of social enterprises vary in the different national contexts. The emergence of tailor-made legislation for social enterprises is a milestone in the development of social enterprises. However, legal theory regarding the governance of the newly introduced tailor-made legal forms for social enterprises is still underdeveloped. In its definition for social enterprises in the SBI Communication of 2011, the European Commission mentions a uniform criterion that applies to the governance of social enterprises. According to this criterion, social enterprises are ‘managed in an open and responsible manner and, in particular, involve employees, consumers and stakeholders affected by its commercial activities’.²⁶ However, according to the mapping report on the ecosystems of social enterprises ‘important differences remain, especially with respect to the interpretation and relevance of the ‘governance dimension’’, even in countries with

23 *ibid* 74.

24 *ibid*; A. Argyrou et al., ‘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*, 495-496 [Argyrou et al. 2016a].

25 *ibid*. Lambooy and Argyrou (n 22); Argyrou et al. 2016a (n 24) 495-496; C. Borzaga and J. Defourny, *The Emergence of Social Enterprise* (Routledge 2001); Campi et al. (n 5).

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

tailor-made legislation for social enterprises.²⁷ Thus, we hypothesise that the rights and obligations that tailor-made legislation for social enterprises provides to the governance organs of social enterprises primarily vary on a national level, and secondarily differ from ordinary governance schemes for commercial enterprises in the sense that they safeguard open, transparent and participatory decision-making processes. The various rights and obligations that national tailor-made legislation confers to the decision-making organs of social enterprises, as well as to the different types of stakeholders, need to be theoretically elaborated and empirically examined. Theoretical elaboration will generate the foundations for the development of legal theory relevant to the newly introduced tailor-made legislation for social enterprises whereas empirical examination will contribute to the existing theoretical discussion regarding the governance of social enterprises and the participation of stakeholders.

3.1.1.3. The necessity for empirical research in the governance of social enterprises

Mason et al. point out the need for more empirical research concerning the governance of social enterprises.²⁸ Campi et al. while looking at the functioning of stakeholders in the governance of Belgian WISEs, examine the importance of stakeholders as members of the organisation thereby taking into consideration the legislation regarding stakeholder participation and the influence of stakeholders within the decision-making formal processes.²⁹ In the Campi et al. study, it is also emphasised that deeper analysis is needed of the real influence of stakeholders in decision-making processes, especially regarding informal processes such as informal coalition building and the access to information.³⁰

Campi et al. also conclude that the legal status constitutes a weak indicator of whether a WISE has a single or multi-stakeholder nature.³¹ They state that the choice of a multi-stakeholder status:

[t]ends to depend on the autonomous decision of its founders (more generally, members/owners) within legal frameworks that often permit - explicitly or implicitly - but do not require the involvement of more than one category of stakeholders.³²

We note that this conclusion may however vary depending on the specific rules provided in the tailor-made legislation for social enterprises in the various countries. For example, in the UK, the CIC Regulations of 2005 encourage the involvement of more than one category of stakeholders in the decision-making processes of the CIC.

27 European Commission, 'A Map of Social Enterprises and their Ecosystems in Europe: Synthesis Report' (European Union, 2015) vi available at: <ec.europa.eu> accessed 15 June 2017.

28 Mason et al. (n 7) 297.

29 Campi et al. (n 5) 38.

30 *ibid* 43.

31 *ibid* 38-39.

32 *ibid* 38.

The CIC Regulations of 2005 consider stakeholders to be all the ‘persons affected by the company’s activities’³³ a definition which entails the involvement of various types of stakeholders.

In the following sections, we examine by means of the case study method how the Belgian VSO legal provisions are implemented in practice. We assess how specific provisions stimulate cooperatives with a social purpose in different sectors to include, primarily, employees, and subsequently, other stakeholders in the decision-making processes. The legal form of the cooperative was chosen because it is the dominant legal form adopted by Belgian VSO social enterprises. Subsequently, we provide a cross-sectoral explanation of the involvement of employees and other stakeholders in the decision-making processes of three Belgian cooperatives with a social purpose in different sectors. We compare the incentives for employees to acquire membership rights, which provide formal access to decision-making processes as it is prescribed by law, with the incentives for other categories of stakeholders, which can only participate indirectly in decision-making processes using informal processes and means of communication. If we take into consideration the Campi et al. conclusion, that the legal provisions applicable to VSOs permit but do not require the participation of employees in the decision-making processes, we can hypothesise that the concept of employee participation will differ in the various VSO social enterprises in the different sectors, depending on the autonomous decisions of their founders.³⁴ Furthermore, by examining the Belgian VSO legislation which contains only enabling provisions for the participation of one category of stakeholders in the decision-making processes of the governing bodies, i.e. only for employees, we hypothesise that other types of stakeholders are less incentivised to participate in the decision-making processes of the social enterprises. By comparing the incentives for employees with the incentives for other categories of stakeholders, we also aim to contribute to the discussion on whether the VSO legislation should be revised and improved.

Furthermore, the empirical examination of the practical implementation of the Belgian tailor-made legislation by social enterprises will enrich the theoretical framework of governance for these types of social enterprises. The discussion will ultimately lead to conclusions that will improve the understanding of social enterprises’ organisational function and corporate activity.³⁵

The following Sub-section elaborates on the existing tailor-made legislation for VSO social enterprises in Belgium, which allows the participation of employees in governance and in decision-making processes. The position of other types of stakeholders in the VSO decision-making processes will be also discussed later in this article. The sections that follow contain our findings derived from the empirical examination of the

33 Art 14(b), Community Interest Company Regulations of 2005 (SI 2005/1788).

34 Campi et al. (n 5).

35 Argyrou et al. 2016a (n 24) 500.

implementation of the Belgian legislation on the issue of participation and influence of employees and other types of stakeholders in the governance of these social enterprises.

3.1.1.4. The Belgian *Vennootschap met Sociaal Oogmerk* (VSO) legal label

In Belgium, in 1995, the legal label for social enterprises, the so-called ‘VSO’ label, was included in the Belgian Companies Code of 1999. The VSO legal label was introduced to increase the marketability and recognition of existing social enterprises, such as cooperatives and mutual societies. Furthermore, it provided an alternative entrepreneurial type to commercial enterprises with for-profit objectives that wish to shift to social purpose seeking activities.³⁶ However, in Belgium, the VSO legislation has not been widely used.³⁷ Defourny and Nyssens reported that the VSO label has only had little success over the years.³⁸ Cafaggi and Iamiceli - based on the research results of Defourny and Nyssens - also argued that the evolution of the company with a social purpose was unsuccessful ‘due to the burden of the requirements imposed by the law or the lack of substantial tax incentives’.³⁹ Additionally, in a country-specific empirical research project implemented by the Belgian King Baudouin Foundation in 2013, it was pointed out that:

The dedicated legal form “with a social purpose” (*met sociaal oogmerk/ avec finalité sociale*) has so far not widely spread across the sector of social enterprises. This finding raises some doubts on the adequacy and added value of this legal form for social enterprises.⁴⁰

It has been reported that up to 700 organisations have adopted the VSO legal label so far.⁴¹ In an earlier legal study, Lambooy and Argyrou provided an overview of the legal regime for the VSO label.⁴² It appeared that the VSO label can be adopted by all types of business organisations with legal personality, including companies, regulated

36 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) 43; A. Coates and W. Van Opstal, ‘The Joys and Burdens of Multiple Legal Frameworks for Social Entrepreneurship: Lessons from the Belgian Case’ (EMES Conference Papers Series, 2009) 38 available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1432427> accessed 30 April 2017; T. Breesch and D. Coeckelbergh, *De VSO: Non Profit, recht and management-reeks* (Mys and Breesch 1995).

37 Synthesis Report (n 27) i.

38 J. Defourny and M. Nyssens, ‘Social Enterprise in Europe: Recent Trends and Developments’ [2008] 4(3) *Social Enterprise Journal*, 202-228.

39 J. Defourny and M. Nyssens, ‘Belgium: Social Enterprises in the Community Services Sector’ in C. Borzaga and J. Defourny (eds), *The Emergence of Social Enterprise* (Routledge 2001) 47; Cafaggi and Iamiceli (n 36), 42.

40 King Baudouin Foundation, ‘Mapping social enterprises in Belgium’ (October 2013) 15 <www.oksigenlab.eu/sites/default/files/selusi_belgium_-full_report.pdf> accessed 16 October 2017.

41 European Commission, ‘A Map of Social Enterprises and their Eco-systems in Europe-Country Report: Belgium’ (14 October 2014) 3.

42 Lambooy and Argyrou (n 22) 75.

by the Belgian Companies Code of 1999. Article 661 in conjunction with Article 2(2) of the Belgian Companies Code of 1999 provides the rules on the VSO label. Article 661 contains a list of cumulative requirements that all forms of business organisations with a share capital, and established under Belgian law, can adopt if they wish to acquire the VSO label. These are the private limited liability company, the limited liability cooperative and the unlimited liability cooperative, the public limited liability company, and the European economic interest groups (hereafter 'EIG'). The Article 661 requirements have to be included in the business organisation's AoA either prior to incorporation or by amending the existing AoA. The most characteristic requirements include: (i) explicit reference in the AoA that the shareholders only seek limited profit or no profit; (ii) a description of the social purpose; (iii) a policy for the distribution of profits according to the social purpose; and (iv) a voting cap which cannot exceed one tenth of the votes deriving from all shares represented in the general assembly (i.e. the imposition of a 10% voting cap to each shareholder). Additionally, legal entities with the VSO label are required to annually issue a special report which explains the means that the business organisation has undertaken to implement the statutory social purpose. The special report must be in the form of an overview that showcases how investments, operating expenses, rewards and remuneration have been allocated towards the fulfilment of the social purpose.

Article 661 does not contain provisions that create a special corporate governance regime for social enterprises with the VSO legal label. Thus, the corporate governance is subject to the pertinent rules provided by the Belgian Companies Code of 1999 for the specific legal type of such VSO social enterprise. However, Article 661(8) of the Belgian Companies Code of 1999 introduces the obligation for VSO social enterprises to include provisions in the AoA which permit employees to acquire membership rights/shares after the completion of one working year and to lose this capacity a year after the employment relationship has been terminated.⁴³ The purchase of shares, either existing or new, and the entrance into the organisation as members/shareholders, is also subject to the approval of the competent governing body of the VSO; either the general assembly or the board of directors.

Furthermore, various rights are conferred to employees who acquire membership rights/shares in an organisation that has adopted the VSO label. These include: (i) management rights; (ii) voting rights; (iii) rights to profits and dividends; and (iv) rights to acquire information. Regardless of the number of shares which an employee is allowed to purchase, Article 661 requires that each VSO include in its AoA a provision with respect to the exercise of voting rights attached to such membership rights/shares. According to this provision, everyone who takes part in a vote at the general assembly, can exercise only a certain number of votes which cannot exceed the maximum of one tenth of the votes deriving from all the shares represented. The percentage is reduced

⁴³ Cafaggi and Iamiceli (n 36) 43; Coates and Van Opstal (n 36) 38; Breesch and Coeckelbergh (n 36).

to one twentieth if employees are members/shareholders. Legislation imposes only this maximum rate of voting rights that can be exercised by the members/shareholders. However, VSO social enterprises are also allowed to stipulate in their AoA more stringent restrictions to further reduce the voting rights of the members/shareholders. This can ultimately result in the application of the democratic ‘one man, one vote’ rule, which is usually applicable to cooperatives.⁴⁴

As regards the rights of members/shareholders to profits and dividends, Article 661(5) allows members/shareholders to participate in the enterprises’ profits, by receiving dividends only to the limited extent prescribed by law. Currently, the regulations provide for a cap of 6%.

Finally, the right to information entails the rights of members/shareholders to particular information concerning the company’s operations, financial situation, access to books and other documentation. With respect to these rights, different rules may apply depending on the type of legal entity that has adopted the VSO label.

3.1.2. Method

3.1.2.1. A case study approach

The research that has been employed is partly theoretical and partly empirical. We did desk research regarding the application, interpretation and implementation of the Belgian legal requirements to the governance structure of VSOs. This research was complemented by the conduct of three case studies concerning Belgian social enterprises that have adopted the VSO legal requirements in their AoA. According to the report published by the Belgian King Baudouin Foundation, the majority of social enterprises in Belgium have activities that belong to more than one industrial sector.⁴⁵ We selected VSO social enterprises from three random sectors, i.e. the energy sector, the financial sector, and the social housing sector.

Based on the results of the three case studies and the subsequent comparison, we aim to formulate cross-sectoral theoretical statements regarding the practical application of the legal factor of governance in social enterprises.⁴⁶ In addition, we aim to develop a comprehensive baseline theory - generated inductively - regarding the involvement of various stakeholders in the organisational structure of social enterprises in different sectors.⁴⁷ Finally, the three case studies aim to highlight the various ways in which Belgian VSO provisions can be implemented in practice and how this affects the activity of the social enterprise to enable the involvement of stakeholders in the decision-making

⁴⁴ Coates and Van Opstal (n 36) 38.

⁴⁵ King Baudouin Foundation 2013 (n 40) 16.

⁴⁶ K.M. Eisenhardt and M.E. Graebner, ‘Theory Building from Cases: Opportunities and Challenges’ [2007] 50(1) *Academy of Management Journal*, 25-32.

⁴⁷ *ibid.*

processes. The development of the case studies and their comparison will also contribute to the discussion regarding the legal forms of social enterprises in Belgium. Moreover, the comparison of the case studies will generate cross-sectoral suggestions for improving the organisational functioning of social enterprises in different sectors in Belgium.

3.1.2.2. Respondents

The development and execution of the research project was conducted between May 2014 and July 2015. For the collection of data, various methods were employed. Primarily, we examined the Belgian legislation regarding VSO and we collected legal data concerning the three social enterprises such as their AoAs, annual reports and other documents produced and published by them. We also collected empirical data using the method of semi-structured interviews and developing subsequent transcriptions of the interviews. In total, we conducted 14 semi-structured interviews with three social enterprises in Belgium that have adopted the VSO label, i.e. CORE, Microstart, and Volkshuisvesting. A minimum of four interviews were conducted with each social enterprise. From every social enterprise in our sample, we interviewed at least four persons who represented four corresponding organisational layers. These layers were (a) shareholders; (b) external stakeholders, i.e. client or beneficiary; (c) directors; and (d) employees. Different questionnaires were developed for the respondents per organisational layer. With CORE we conducted two additional interviews, i.e. with a stakeholder and an employee, to enrich our data. In that way we achieved collecting responses from at least one respondent per organisational layer from every social enterprise while collecting at least three interviews per organisational layer in total. By means of selecting respondents from different and various organisational layers, we achieved plurality in the responses and variety in the representation of various angles and perceptions. We also achieved to validate and cross-examine the existing data.

The interviews were of a broad nature and had a semi-structured character. Draft tables and memos were used to systemise the methodological, observational and theoretical input during the analytical process, whereas during the interview stage interview reports were also used and coded. Interview transcriptions were supplemented with observations and information that was retrieved from the relevant legal documents. All interviews were transcribed by professional transcribers in the original language in which the interview was conducted, i.e. English or Dutch. All transcriptions were translated by professionals in the English language.

3.1.2.3. Procedure and analysis

The validity of the collected data and the analysis were tested with the technique of qualitative data triangulation. Triangulation entails the use of a plurality of methods to validate data which describe various facets of the same social phenomenon.⁴⁸ Initially,

48 R.K. Yin, *Case Study Research: Design and Methods* (5th edn, Sage 2013) 119.

some data were retrieved from applicable regulation and each social enterprise's legal documents, whereas empirical in-depth data were collected with the conduct of semi-structured interviews. Data accuracy and validation were achieved primarily with follow-up questions and through the thorough revision of the interview transcriptions and the interview reports by the respondents. Subsequently to data collection, the constant comparison method (coding) was used for the data analysis, according to which codes were created to constantly compare and contrast the text ideas collected in the interviews. By using codes, all data were sorted, grouped, subdivided and matched to categorised themes. Even though some pre-selected codes were used deductively, which emerged from the legal analysis of the topic, i.e. governance and stakeholder participation, the majority of the codes were extracted from the existing data inductively. We used an a priori framework with a list of the definitions of the selected concepts and contrasted these definitions with codes emerging from the data. The codes emerged from the content of the interview transcription. The process consisted of creating codes using open in-vivo coding with the use of software for qualitative analysis, i.e. ATLAS t.i. The emerging codes from the interview transcriptions were: influence, board of directors, decisions of directors, stakeholder participation, stakeholders meeting, informal meetings, shareholder types, trust, voting process, general assembly process, social report, voting rights, consensus, services, stakeholder information, and values. Following the completion of the interviews, we processed the data further by refining the already existing codes to directly relate them to the research question of this article; we created the following themes, i.e. decision-making processes, employee participation, membership rights, incentives for membership, incentives for employment, profit distribution, formal participation, informal participation, voting cap, and incorporation. Template analysis was the main analytical method.⁴⁹ By applying template analysis we contrasted pre-existing concepts with emergent concepts from the data and we integrated them into patterns with respect to stakeholder and employee participation in the governance of social enterprises.⁵⁰ In the following section, we will discuss the results of the empirical investigation.

49 N. King, 'Using templates in the thematic analysis of text' in C. Cassell and G. Symon (eds), *Essential Guide to Qualitative Methods in Organizational Research* (Sage 2004) 256-257; B.F. Crabtree and W.L. Miller, *Doing Qualitative Research* (2nd edn, Sage 1999) 167.

50 J. Corbin and A. Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Sage 2014).

Table 3.1: Codes and themes in the three Belgian case studies⁵¹

Legal codes	Emerging codes	Refined codes	Themes	Different roles of stakeholders
Organisation	Incorporation Legal structure Maturity Mission Services	Incorporation of the organisation Legal structure Maturity of the organisation Mission Services	The organisation and its maturity	
Governing bodies	Board of directors Decisions of board of directors The board has directors-representatives General assembly competence General assembly process Type and competence of directors Trust towards the decision-makers Trust towards representatives	Composition of board of directors-representatives Competence of employees in the general assembly Director's competence Trust towards decision-makers and representatives	Composition and competence of stakeholders (formal participation) Decision-making processes Trust towards decision-makers and representatives	Stakeholders as decision-makers
Ownership and membership rights	Employees shareholders Trust towards the new members-shareholders Motivation membership (support capital, contribution to the social purpose) New experience, new projects, new knowledge	Membership to employees Trust towards the new members-shareholders Motivation membership New members bring something new	Employee participation in membership Trust towards the new members-shareholders Motivation (incentives) membership	Stakeholders as owners and members

Table 3.1 continues on next page

Table 3.1: *Continued*

Legal codes	Emerging codes	Refined codes	Themes	Different roles of stakeholders
Voting rights	Voting in the general meeting	Voting with one vote in the general meeting	Stakeholder voting in the general meeting (formal)	Stakeholders as decision-makers
	One vote in the general meeting			
	Consensus in decisions-unanimity	Consensus in decisions-unanimity		
	Voting cap for balance	Voting cap for balance		
	Representative vote in the board	Representative vote in the board	Stakeholder representation in the board	
	Raise voice and interrupt the general meeting	Interaction of stakeholders in the general meeting	Interaction of stakeholders in the general meeting	
	Non-members no vote	Non-members no vote	No vote to no members	
Information rights	Email communication	Email communication	Communication with stakeholders	Stakeholders as recipients of information
	Social reporting	Reporting		
	Social media	Social media		
	Information to members	Information to members		
	Transparency	Transparency		
	Written feedback after thematic events	Written feedback after thematic events		
	Newsletter	Newsletter		
	Website	Website		
Stakeholder participation	Stakeholder influence in decision-making	Stakeholder influence in decision-making	Consultation with stakeholders (informal participation)	Stakeholders as consultants
	Tenants committee	Tenants committee		
	Thematic events/thematic weeks	Thematic events/thematic weeks		
	Meetings with community leaders	Meetings with community leaders		
	Satisfaction survey	Satisfaction survey		
	Stakeholder meetings	Stakeholder meetings		
	Discussion with clients	Discussion with clients		

51 This table is not in the original manuscript of this article. It was inserted in this dissertation for consistency and illustrative purposes.

3.1.3. The case study results

3.1.3.1. Cooperatives with a social purpose (VSO label) in the renewable energy, financial and housing sector

In Europe, special types of cooperatives with new organisational and operational aspects have emerged, i.e. social cooperatives, WISE,⁵² and multi-stakeholder cooperatives.⁵³ Cooperatives by definition are organisations which are owned by their members rather than by investors.⁵⁴ They are characterised by democratic ownership and (equal) representation in the decision-making processes. Cooperatives also tend to involve a variety of stakeholders in decision-making by assigning ownership and membership rights to stakeholders.⁵⁵ The governance of cooperatives involves different types of stakeholders, such as producers, consumers, investors, etc. In contrast, the various interests of the different groups of stakeholders in traditional commercial for-profit companies will not always be taken into account in the decision-making processes by the governing bodies. For example, decisions can favour particular members/shareholders over other stakeholders. In cooperatives, equality, democratic governance and the involvement or participation of stakeholders in decision-making converge the interests of stakeholders towards the achievement of a common mission. Huybrechts and Mertens elaborate on pragmatic legitimacy that cooperatives enjoy from stakeholders when they offer them options for ownership and membership.⁵⁶ Additionally, they address normative legitimacy that cooperatives enjoy as an alternative organisational form, which differs substantially from for-profit organisational entities. Campi et al., examined stakeholder participation of various categories of stakeholders in WISE and other social enterprises in Belgium.⁵⁷ Their study indicates that the dominant type of stakeholders, which participates in decision-making, is employees (24%). However, the study concludes that: (i) none of the different categories of stakeholders has an overwhelming influence at boards of directors; and that (ii) the participation and the existence of stakeholders is not only reflected on the board level but it means actual sharing of voting power.⁵⁸

According to the Belgian legislation, cooperatives and other business organisations, i.e. public and/or private limited liability companies can adopt the VSO label. A cooperative can become 'a cooperative with a social purpose' by reforming its AoA to

52 B. Huybrechts and S. Mertens, 'The Relevance of the Cooperative Model in the Field of Renewable Energy' (2014) 85(2) *Annals of Public Cooperative Economics*, 195; Ö. Yildiz, J. Rommel, S. Debor, L. Holstenkamp, F. Mey, J.R. Müller, J. Radtke and J. Rognli, 'Renewable Energy Cooperatives as Gatekeepers or Facilitators? Recent Developments in Germany and a Multidisciplinary Research Agenda' (2015) 6 *Energy Research and Social Science*, 62.

53 Spear (n 4).

54 Huybrechts and Mertens (n 52).

55 Spear (n 4).

56 Huybrechts and Mertens (n 52).

57 Campi et al. (n 5).

58 Campi et al. (n 5).

include all the cumulative requirements that have been introduced in Article 661 of the Belgian Companies Code of 1999. Spear and subsequently Coates and Van Opstal, stress that the majority of VSOs in Belgium have the legal form of a cooperative.⁵⁹ However, the introduction of the VSO legal requirements into the cooperatives' AoA will not suffice. The legal requirements need to be implemented in practice too. Belgian legislation contains sanction mechanisms in Article 667 applicable to VSO social enterprises that do not implement the legal requirements. The lack of implementation can ultimately lead to the termination of the VSO-status by court decision. Members/shareholders, interested third parties and the public prosecutor can assert a legal claim that an organisation declares itself as a VSO, while not having its AoA in line with the VSO legal requirements. They can also claim that although a VSO meets the legal requirements in its AoA, it does not act in practice accordingly. In both cases, the court has the competence to judge whether a termination of the VSO-status is reasonable in relation to a particular breach. In the following part, we will examine how the three social enterprises of our case studies have implemented the VSO legal requirements in practice. We will start with introducing the cooperatives which are the subjects of the three case studies.

3.1.3.2. Cooperatives with a social purpose in the renewable energy sector - Cooperative Enterprise in Rational Energy (CORE)

The number of social enterprises in the Belgian renewable energy sector has recently increased.⁶⁰ Huybrechts and Mertens justify the emergence of cooperatives and social enterprises in the Belgian renewable energy sector by exhibiting the emergent motivation of consumers to better control the production and the supply of energy with positive effects to the environment and the community.⁶¹ Belgian energy social enterprises have been developed to raise awareness concerning the necessity to reduce energy consumption, climate change issues, and other current environmental challenges.

The Cooperative Enterprise in Rational Energy (hereafter 'CORE') is a cooperative with a social purpose, located in Leuven, Belgium. CORE was incorporated as a cooperative with a social purpose to bridge social entrepreneurship and education with the promotion of technical projects and social awareness for rational energy consumption in society. In its educational programmes, CORE also introduces the values of a cooperative, social entrepreneurship, and of sustainable development to students.

CORE has been operating and executing technical projects since 2012. The projects of CORE are either designed or commissioned by members/shareholders or they are developed by CORE to supply other cooperatives and social enterprises. The managing director of CORE mentions 'If they [clients] ask us to do projects, we first ask them

59 Spear (n 4) 105; Coates and Van Opstal (n 36).

60 Country Report Belgium (n 41).

61 Huybrechts and Mertens (n 52).

'can you become a shareholder' (...). We invite them, we don't force them and it's also that they might say no (...). If they become a shareholder, the price for the services will be lower' (Interview with SJ, 16 February 2015). Hence, CORE has promoted the creation and development of technology solutions for rational and sustainable use of energy which can be used by other cooperatives and social enterprises, and by the members/shareholders of CORE (Interview with SJ, 16 February 2015). In that way, CORE, promotes to its clients and potential stakeholders the idea of social and cooperative entrepreneurship.

CORE is not operated by employees with a typical employment relationship with the organisation. The development of CORE's projects as well as the operationalisation of the daily business is performed by students-volunteers who attend the 'Postgraduate Innovative Entrepreneurship Programme' for engineers at the *Katholieke Universiteit in Leuven* (hereafter 'KU Leuven'). Students-volunteers are mainly involved in the execution of the projects in exchange of student credits for the provision of part-time services. Subsequently, CORE's deliverables are communicated by the involved students-volunteers to the academic world in the form of classes, courses, academic outcome (i.e. student theses), and in student events focused on raising awareness regarding rational and sustainable energy consumption through social entrepreneurship and cooperative membership (Interview with YG and G, 13 November 2014).

CORE is a limited liability cooperative with a social purpose which has adopted three types of shares that correspond to three different types of members (AoA, Article 7). The categories include: (i) Type A shares for CORE's founders and structural partners, either legal or natural persons; (ii) Type B shares for legal or natural persons. Type B shares are offered to CORE's clients and other stakeholders, for instance community partners; and (iii) Type C shares for students. Students are only allowed to purchase one share each. Type C shares are offered to (1) students-volunteers who participate in the operationalisation of CORE; (2) any individual who is a student enrolled in an accredited public institution of higher education in Belgium and wishes to participate in CORE's projects; and (3) student alumni or former CORE volunteers who maintain their share; they constitute a very important part of CORE Type C members/shareholders with the responsibility to promote and communicate the idea of CORE in the business society (Interview with YG and G, 13 November 2014). All the shares of CORE have the same nominal value of €100.

CORE is governed by a board of directors which is composed of 14 members and a general assembly which meets yearly. The board of directors has been appointed to be the organ with the most extensive powers at CORE towards the achievement of the social purpose of the organisation and the management of the daily business. In the board of directors, each type of member/shareholder ought to be represented as follows: (i) a minimum of three directors from the members/shareholders with Type A shares, i.e. founder/structural partners. CORE has appointed four directors to represent Type A members/shareholders; (ii) a maximum of three directors from the members/

shareholders with Type B shares, i.e. clients and community. CORE has appointed three directors to represent Type B members/shareholders; and (iii) a maximum of three directors from the members/shareholders with Type C shares, i.e. students-volunteers. CORE has appointed three directors to represent Type C members/shareholders. A total of 10 out of 14 directors are also CORE members/shareholders. Additionally, the board comprises external directors who are not members/shareholders of CORE. This is the case for the managing director, the director of legal support, the director of financial support, and the secretary who is a student with the responsibility to check and control the organisation (Interview with SJ, 16 February 2015). The board of directors is the competent organ to decide on the acceptance, the resignation, and the exclusion/dismissal of members/shareholders, and on the provision to employees of membership/shareholdership rights (Interview with SJ, 16 February 2015). Each member/shareholder must act in compliance with CORE's AoA and with the decisions that are taken by the general assembly and the board of directors.

CORE's general assembly is annually convened with the responsibility to authorise the board of directors to continue activities for the following year. In compliance with the VSO legal requirement, every member/shareholder participates in the voting. The voting power per member/shareholder is however limited to a maximum of 10% of the total voting power of all the shares represented in the general assembly (Interview with SJ, 16 February 2015). The 10% voting cap differs from the democratic rule of 'one man one vote' but it results in a better balance and democracy at CORE according to the managing director. He explains:

One of the reasons why we don't go for one share-one vote, is because Type A and B shareholders are companies, they can only be represented by one person in the general assembly while the students-shareholders in five years or ten years' time can grow to a group of 200 shareholders. Then, you will have a different balance.' (Interview with SJ, 16 February 2015).

However, as of today, decisions in the general assembly of CORE have been taken unanimously (Interview with YG, 13 November 2014). The voting power of members/shareholders can be diluted further down to 5% on the occasion of employees-members/shareholders participating in the voting process. However, there are no persons with a traditional employment relationship at CORE.

3.1.3.3. Cooperatives with a social purpose in the financial sector - Microstart

Microfinance has been defined as the provision of direct or intermediate financial services to marginalised individuals, entrepreneurs and communities that have no access to commercial financial banking services.⁶² Microfinance services are provided

⁶² J. Morduch, 'The Microfinance Promise' [1999] 37(4) *Journal of Economic Literature*, 1569-1614; A. Périlleux, 'When social enterprises engage in finance: agents of change in lending relationships: A Belgian typology' [2015] 24(3) *Strategic Change*, 285-300; A. Périlleux, M. Hudon and E.

by a variety of microfinance institutions in Belgium among others, cooperatives and non-profit organisations, with double bottom line objectives which aim at creating not only financial but also social returns.⁶³ Microfinance institutions in Belgium are considered social enterprises.⁶⁴ Many microfinance social enterprises have been incorporated as cooperatives and are accredited by the Belgian National Cooperative Council (hereafter 'CNC') that they fully comply with the cooperative principles.⁶⁵ Other cooperatives have adopted the VSO social purpose label by introducing the legal requirements in their AoA.⁶⁶

Microstart is a microfinance social enterprise which is located in Brussels, Belgium. Microstart was incorporated in 2011 by the French non-profit organisation *Association pour le droit à l'initiative économique* (hereafter 'Adie') and the bank BNP Paribas Fortis with the financial endorsement of the European Investment Fund (hereafter 'EIF'). Adie is the founder of Microstart, and one of the largest microfinance institutions in Europe. It provides microcredit and microfinance to French micro-entrepreneurs. With the establishment of Microstart, Adie aimed at the extension of its successful microfinance practice to Belgium (Interview with LH, 16 June 2015).

Microstart's organisational structure combines the operating and financing aspects of two legal entities and corresponding organisations, i.e. Microstart, a limited liability cooperative with a social purpose, and Microstart Support, a non-profit organisation. Microstart has been assigned with the task to provide microcredit and microfinance to clients who are excluded from the traditional Belgian banking system, such as unemployed people, jobseekers, recipients of welfare support and self-employed persons. Microstart Support is a non-profit organisation with the task to provide coaching and business development services to clients who receive microcredit and microfinance.

Microstart is a cooperative that has adopted the social purpose and accordingly it should comply with the VSO legal requirements. The members/shareholders of Microstart are not allowed to strive for any pecuniary gain (profit) (AoA, Article 1). The cooperative is required to act both financially and commercially, directly or indirectly, in accordance with the social purpose mentioned in its AoA. Microstart is a for-profit legal entity. However, according to Microstart's AoA, the distribution of dividends to its members/shareholders is not allowed (AoA, Article 29). On the contrary, profits are used for the development of new agencies, the design of new projects, the elimination of costs, and rewards to employees (AoA, Article 29).

Bloy, 'Surplus Distribution in Microfinance: Differences among Cooperative, Nonprofit, and Shareholder Forms of Ownership' [2011] 41(3) *Nonprofit Voluntary Sector Quarterly*, 386-404.

63 *ibid* Périlleux (n 62).

64 *ibid*. See also Périlleux et al. (n 62).

65 *ibid*.

66 H. Münkner, 'Multi-stakeholder Co-operatives and their Legal Framework' in C. Borzaga and R. Spear (eds), *Trends and Challenges for Co-operatives and Social Enterprises in Developed and Transition Countries* (Edizioni 2004) 49-62.

Adie and BNP Paribas Fortis have purchased the majority of Microstart shares. The AoA of Microstart provide for three types of shares: (i) Type A shares that are reserved for Adie; (ii) Type B shares that are reserved for BNP Paribas Fortis; and (iii) Type C shares that can be purchased by other legal and natural persons. In Microstart, all types of shareholders ought to be represented in the board of directors. Microstart Support is also represented with one member in the board of directors. The general assembly has the competence to appoint additional directors if the capital of the cooperative exceeds a certain amount (€1,210,000) (AoA, Article 17). The president of the board is an independent director elected and appointed by the general assembly.

Microstart is governed by a board of directors. The board is appointed as the competent organ to exercise the broadest powers and activities necessary for the cooperative to achieve the social purpose. The board of directors has been elected directly by the general assembly. At Microstart the general assembly is convened annually to decide on issues of major importance for the continuation of Microstart's activity, i.e. to review and accept the annual accounts, to decide on the use of profits, and to discharge the liability of directors (AoA, Article 21). Decision-making processes at a general assembly level are subject to the VSO legal requirement according to which no one is allowed to participate in the voting procedure with more than 10% of the total number of votes. However, as of today, all Microstart decisions in the general assembly have been taken unanimously (Interview with LH, 16 June 2015). Finally, even though Microstart has adopted the majority of the legal VSO requirements, its AoA exclude the provision of membership rights/shares to employees and other stakeholders. A member of the board of directors mentioned that 'we don't give membership rights to employees and so I would be surprised if that particular aspect would be in the statutes' (Interview with LH, 16 June 2015).

3.1.3.4. Cooperatives with a social purpose in the social housing sector - Volkshuisvesting

Social housing is a regional competence in Belgium for the various different regional governments, i.e. the Flemish region, the Walloon region, and the Brussels-capital region. Each regional government has the competence to generate and implement its own housing and social housing policy. In the Flemish region, the Flemish Housing Code of 1997 has been introduced to regulate the Flemish social housing policy.⁶⁷ The Flemish Housing Code of 1997 constitutes the primary legislative source for the housing policy in the Flemish region. Furthermore, the Flemish Government has the competence to recognise organisations with a social purpose as social housing corporations which can implement the objectives that the Flemish Government aims to fulfil with respect to the social housing policy. In the Flemish region, social housing corporations are not public organisations but independent legal entities. They are obliged to execute the

⁶⁷ Flemish Housing Code of 1997 [Decreet houdende de Vlaamse Wooncode 1997]. Available at: <www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1997071539&table_name=wet> accessed 30 April 2017.

tasks prescribed by the Flemish Housing Code of 1997 and its supporting regulations. Social housing organisations are operated in the Flemish region under the supervision and monitoring of the thereto established supervision and monitoring organisations.⁶⁸ Social housing corporations are also allowed to benefit from favourable loans and subsidies.

However, due to their public task, social housing corporations are highly regulated. According to the Flemish Housing Code of 1997, social housing corporations are obliged to take the legal form of either a cooperative or a public limited company and to adopt the VSO legal label. Therefore, social housing corporations are in principle subject to the provisions of the Belgian Companies Code of 1999. However, the provisions of the Belgian Companies Code of 1999 only apply in so far as the Flemish Housing Code of 1997 or the AoA designed by the Flemish Government for social housing corporations, do not deviate from the Belgian Companies Code of 1999.⁶⁹

One deviation, which emanates from the Flemish Housing Code of 1997 is the following: social housing VSO organisations cannot provide membership rights/shares to employees.⁷⁰ Thus, the 10% voting cap on the exercise of the voting rights does also not apply to the public members/shareholders in social housing corporations.⁷¹

Volkshuisvesting is a social housing cooperative in the Flemish region of Belgium. It provides renting and social housing facilitation services to people requiring social housing according to income or (eligibility to dispose of) property. The enterprise was incorporated in the early 1920s as a private limited liability company, whereas in 2009 it converted into a cooperative with a VSO label.

Volkshuisvesting has adopted a tripartite social objective to fulfil the regional housing policy (AoA, Article 4). Primarily, it aims to improve the living conditions of families and individuals in need of social housing, such as low-income families and individuals, the elderly, and people with disabilities. Secondly, Volkshuisvesting aims to realise social housing neighbourhoods by purchasing property. Finally, Volkshuisvesting aims to contribute to society by renovating or otherwise improving the quality of existing old houses.

In Volkshuisvesting's AoA, it is explicitly mentioned that the members/shareholders are allowed to seek pecuniary (capital) gain only to a limited extent (AoA, Article 5). In principle, profits are not distributed to the members of Volkshuisvesting. Members can only receive dividends subject to the regulated cap, i.e. currently 6% (AoA, Article 21).

68 Art. 40(1), Flemish Housing Code of 1997.

69 *ibid* art. 40(2).

70 *ibid*.

71 *ibid* art. 40(3).

Volkshuisvesting has different types of members/shareholders: 23 from the public domain and 49 from the private domain (Interview with MP, 18 February 2015). However, the classification of members/shareholders is not explicitly mentioned in Volkshuisvesting's AoA. According to Volkshuisvesting's AoA (Article 11), public institutions that are allowed to acquire the shares of Volkshuisvesting are the Flemish Government, any province, any community, and any public institutions for social welfare. Private institutions that own Volkshuisvesting shares are banks and insurance companies (Interview with MP, 18 February 2015).

The social cooperative is managed by a management committee of seven members. According to Volkshuisvesting's AoA, the board of directors can entrust the day-to-day management to a management committee assigned for that purpose (AoA, Article 14). The management committee makes the decisions regarding the daily management and operations. However, these decisions can be subject to the approval of the board of directors.

Volkshuisvesting is governed by the board of directors, which is the competent organ to decide on any matter that concerns the cooperative including all matters that are not reserved to the competence of the general assembly (AoA, Article 14). It decides with a unanimous majority but if unanimity cannot be reached, simple majority applies. The board of directors is also the competent organ to decide on the issuance of new shares (AoA, Article 8). In such case, only the members/shareholders of the cooperative are in principle allowed to purchase newly-issued shares. A person or entity can however be nominated by two existing members/shareholders, after which the board of directors decides in a confidential meeting on the allowance of such new member/shareholder. The regular transfer of shares between members/shareholders is also subject to the approval of the board of directors (AoA, Article 9).

The board of directors is required to comprise of at least 11 members in order to represent both the private and the public members/shareholders, i.e. five directors from the public domain and five directors representing the private members/shareholders (AoA, Article 11). Volkshuisvesting has a board of directors, which consists of 13 members. At Volkshuisvesting, the board of directors prepares and publishes an annual social report in which it is showcased how the cooperative's activities pursue the social purpose. The social report particularly indicates in which way the expenditures on investment, operating costs and salaries have contributed to achieving the social purpose of the cooperative. The report is integrated in the annual report of Volkshuisvesting (AoA, Article 13, Interview with MP, 18 February 2015).

At the top of the governance hierarchy, Volkshuisvesting is also governed by the general assembly of the members/shareholders. The general assembly is assigned to convene annually to decide on any proposals regarding amendment of the AoA and/or on proposals formulated by the board of directors (AoA, Article 26). However, Volkshuisvesting, and any other recognised social housing corporation in the Flemish

region, is not allowed to amend the AoA without the permission of the Flemish minister responsible for housing.⁷² This provision does not apply to several designated minor changes.⁷³

The general assembly is entitled to appoint and dismiss the members of the board of directors (AoA, Article 12). According to Volkshuisvesting's AoA, members/shareholders from the public domain, i.e. Flemish Government, any province, any community, and any public institution for social welfare, can exercise their voting rights with as many votes as are attached to the membership rights/shares which they own. The remaining members/shareholders from the private domain are subject to the VSO legal requirement, according to which no one is allowed to participate in the voting procedure with more than 10% of the total number of votes (AoA, Article 24).

However, in practice, according to the managing director of Volkshuisvesting, 'the cooperative strives for a unanimous majority in the general assembly, which has worked out fine so far' (Interview with MP, 18 February 2015).

Furthermore, employees are not allowed to become a member/shareholder of Volkshuisvesting. Article 40(2) Flemish Housing Code of 1997 explicitly excludes the application of Article 661(7) and (8) of the Belgian Companies Code of 1999, which regulates the legal right of employees to acquire membership/shareholdership rights. Volkshuisvesting's AoA mention in this context that the employees cannot become members/shareholders (AoA, Article 9). The same rule applies vice versa to Volkshuisvesting's members/shareholders. They can only become an employee of Volkshuisvesting provided that they dispose of their shares. Due to the exclusion of membership rights/shares, the employees of Volkshuisvesting do not have a direct access to the decision-making processes of the cooperative. In the Sub-section that follows, we will elaborate on the cross-sectoral comparison and synthesis of our findings.

3.1.4. Discussion

3.1.4.1. Participatory governance

CORE, Microstart and Volkshuisvesting are cooperatives with a social purpose, which operate in three different industrial sectors, respectively, in the energy sector, the financial sector and the social housing sector. All of the examined cooperatives with a social purpose have adopted the VSO legal label by incorporating the VSO legal requirements

72 Art. 8(1), Decision of the Flemish Government of 22 October 2010, 'Laying down the additional conditions and the procedure for recognition as social housing and establishing the procedure for assessing the performance of social housing' [Official translation of Besluit van de Vlaamse Regering van 22 oktober 2010 tot vaststelling van de aanvullende voorwaarden en de procedure voor de erkenning als sociale huisvestingsmaatschappij en tot vaststelling van de procedure voor de beoordeling van de prestaties van sociale huisvestingsmaatschappijen].

73 *ibid* art. 8(2).

into their AoA. The VSO legal label can be adopted by social enterprises operating in different sectors. However, in particular industrial sectors, e.g. the housing sector, the VSO legal label has been prescribed for organisations that implement the regional public policy regarding social housing.

The governance of cooperatives is characterised by a standard correlation between membership/shareholdership and decision-making. The general assembly of the members/shareholders is the competent organ to elect the board members. Therefore, we contend that the traditional self-selecting governance models, which are characterised by a powerful board of directors comprised mainly of directors who are not also members/shareholders, is not the prevailing model in cooperatives with a social purpose. In the governance models of cooperatives with a social purpose, the decision-making organs are closely associated with the rights that membership/shareholdership confers. However, they are not characterised by the principle of democracy per se as it is expressed by the concept of ‘one man, one vote’. Contributing to the taxonomy of Spear et al.,⁷⁴ we argue that cooperatives with a social purpose in Belgium, showcase hybrid governance models in which self-selecting governance and membership governance schemes are combined.⁷⁵ Thus, we identify the following types of cooperatives with a social purpose that apply hybrid governance schemes.

Those VSO cooperatives, which applied a voting cap in the decision-making processes of the general meeting

(i) Cooperatives with a social purpose that apply a regulated 10% cap on the exercise of voting rights of the cooperative members/shareholders according to the VSO legal requirements. The reduction of the voting rights of the members/shareholders in the form of a regulated cap is required by the VSO legislation. Even though, the voting cap differs from the principle of democratic participation embodied in the ‘one man, one vote’ rule, it introduces a hybrid decision-making model which allows members/shareholders to achieve balance and democracy in the decision-making processes of the general assembly. At CORE, the voting cap incorporated in the AoA reduces the ordinary voting rights that are attached to the cooperative shares to a certain extent, i.e. one tenth. This 10% voting cap ensures a balance between the voting power of Type A and B shareholders - which are legal persons that can be only represented by one person at the general assembly - with the voting power of Type C shareholders, i.e. the growing number of students-volunteers who represent themselves personally at the general assembly. At Volkshuisvesting, the 10% voting cap only applies to members/shareholders of the private domain, whereas the members/shareholders of the public domain may always exercise their voting rights in full. Resuming, with respect to the implementation of the legal VSO requirement which imposes a 10% voting cap to the exercise of the voting rights, we identify:

⁷⁴ Spear et al. 2014 (n 11).

⁷⁵ ibid 138.

- (i) cooperatives with a social purpose which apply a 10% cap to the exercise of voting rights but which cap is reduced to 5% for employees-members/shareholders (CORE);
- (ii) cooperatives with a social purpose, which do not allow employee participation, but which do apply a 10% voting cap to the exercise of voting rights of members/shareholders (Microstart); and
- (iii) cooperatives with a social purpose, which do not allow employee participation, and where the 10% cap only applies to members/shareholders belonging to the private domain (Volkshuisvesting).

Those VSO cooperatives, which strived for unanimity at the board level

Even though the implementation of the 10% voting cap has been introduced in the AoA of the examined cooperatives with a social purpose, it follows from the interviews that at the board level and general assembly level, the board members and the members/shareholders strive for unanimity and consensus. At CORE, a director mentions 'We try to vote as few times as possible, I think we almost never really vote (...). We vote that we all agree, we discuss the problem and we go for reaching consensus. Until now we didn't have situations in which we had to really vote' (Interview with YG, 13 November 2014). Both Microstart and Volkshuisvesting also strive for a unanimous majority in the general assembly (Interview with MP, 18 February 2015; Interview with LH, 16 June 2015).

Those VSO cooperatives, which employed hybrid governance models at the board level

These are cooperatives with a social purpose that appoint directors who represent various types of members/shareholders. In addition, the general assembly can appoint independent directors to either: (i) supervise and control the board of directors; (ii) provide expertise with respect to legal, financial and management issues, or with respect to the fulfilment of the social purpose; or (iii) represent any supportive organisations to the operation of the cooperative with a social purpose.

3.1.4.2. Employee participation in decision-making processes

Employee participation in the decision-making processes of cooperatives with a social purpose is required by the Belgian VSO legislation. The legal requirement imposes on the VSO social enterprise to provide a right to the employees to become a member/shareholder and to participate in the decision-making processes in the general assembly. As noted above, according to Article 667 of the Belgian Companies Code of 1999, the lack of implementation of the cumulative VSO legal requirements in the AoA can lead to sanctions. Claims submitted by a member/shareholder, interested stakeholders, or the public prosecutor could cause the termination of the VSO label. However, in practice, there is no great pressure on a VSO social enterprise to implement the employee co-ownership legal requirement. Apparently, there is no monitoring public institution/

body with the competence to validate the compliance of the VSO social enterprise with the legal requirements of the VSO regime.

Furthermore, the implementation of the legal requirement regarding employee membership/shareholdership may be also barred by later and more specific legislation. The latter can derogate the earlier and less specific legislation (*lex specialis derogat legi generali and lex posterior derogate legi priori*). We noted that this is the case with respect to social cooperatives in the housing sector.

Subsequently, as regards employee participation in the decision-making processes, based on our interview data, we can distinguish various attitudes in social cooperatives:

(i) Cooperatives with a social purpose which are keen to allow employee participation and to provide membership rights/shares to employees. At CORE, even though the AoA allow the provision of membership rights/shares to employees, there are no 'regular' employees to purchase such shares. In this social cooperative, students-volunteers design, operate and execute CORE's projects for as long as they are students. In return, they receive study points and they acquire knowledge in the field of social cooperative entrepreneurship and sustainable energy innovation, working experience, and a big network in industrial engineering. Working at CORE is also part of their education. Students-volunteers are considered the 'real employees' at CORE and that is why they are invited to become members/shareholders by purchasing one Type C share (Interview with SJ, 16 February 2015; Interviews with YG and G, 13 November 2014; Interview with PO, 16 February 2015). As members/shareholders, they participate in the decision-making processes in the general assembly, they exercise voting rights, they elect and appoint representatives at the board of directors, and they influence the daily decisions that are taken at CORE. Students-volunteers who graduate are allowed to maintain their membership rights/shares but they are not allowed to provide services at CORE anymore (Interview with YG and G, 13 November 2014). They, however, still constitute a very important sub-category of Type C members/shareholders as they promote the values and the idea of CORE to the market, attract new projects and new members/shareholders. They also share with the new students-volunteers their experiences by coaching and mentoring (Interview with YG and G, 13 November 2014).

(ii) Cooperatives with a social purpose which are not keen to allow employee participation nor do they provide membership rights/shares to employees. At Microstart, employees are not allowed to purchase shares. The VSO legal requirements to that end have not been introduced in Microstart's AoA. The involvement of employees in the decision-making processes and the provision of membership rights/shares are perceived to be related with risks in governance due to the fact that the organisation is in the start-up phase (Interview with LH, 16 June 2015). An employee at Microstart mentions 'we are still at the first steps, so we first have to make the company very stable and then maybe we will open the shares to old clients and maybe to employees and some volunteers' (Interview with CO, 16 June 2015).

(iii) Cooperatives with a social purpose which are excluded from offering membership rights/shares to employees. Volkshuisvesting, is a cooperative with a social purpose in the housing sector and is subject to the regional social housing policy of the Flemish region. The Flemish Housing Code of 1997, forbids the provision of membership rights/shares to employees. Hence, Volkshuisvesting cannot provide membership rights/shares to employees. Furthermore, members/shareholders of this social cooperative can only become employees after they have disposed of their shares.

3.1.4.3. Other types of stakeholder participation in decision-making processes

In the context of social enterprises, a ‘stakeholder’ can entail any group or individual who can affect or is affected by the achievement of a social enterprise’s purpose. The emphasis is put on the external stakeholders of a social enterprise, such as supporters, clients and beneficiaries.⁷⁶ According to the VSO legal regime, cooperatives with a social purpose are not required to include in their AoA provisions regarding stakeholders (other than employees), e.g. which allow stakeholder participation or provide membership rights/shares to various kinds of stakeholders. Based on our interview data, we can identify cooperatives with a social purpose with the following attitudes as regards stakeholder participation in the decision-making processes.

(i) Cooperatives with a social purpose, which are keen to allow stakeholder participation in the decision-making processes by implementing provisions regarding membership rights/shares in the AoA as well as by allowing stakeholder participation through informal processes. It has been already explained how students-volunteers have access to decision-making processes at CORE. In addition to students-volunteers, clients and customers are invited to purchase Type B shares (Interview with SJ, 16 February 2015). For CORE, it is important that the projects that are executed either stem from clients or are directed to clients, which are or aim to become a member/shareholder (Interview with SJ, 16 February 2015). Upon a request for a new project, CORE invites the new client to join the cooperative as a member/shareholder. Membership/shareholdership confers to such client formal power to participate in the decision-making processes because it will have the right to vote in the general assembly and to elect and appoint representatives for the board of directors.

Furthermore, both students-volunteers and clients, besides being allowed to participate in formal decision-making processes, can also participate in informal meetings. Students-volunteers and alumni at CORE can participate in monthly Type C member/shareholder meetings to discuss ideas, problems, strategies or claims with their representatives in the board (Interview with YG and G, 13 November 2015). Existing clients or prospective clients at CORE can participate in monthly thematic events organised by CORE’s students-volunteers. During the thematic-events the progress of CORE’s projects is explained with reference to the specific social mission that CORE’s projects address,

76 Freeman and Reed (n 14).

e.g. rational energy consumption, mobility or sustainable energy in housing. Hence, knowledge is shared between the existing and potential clients and the cooperative's members/shareholders. They all are interested in adopting a multi-stakeholder approach and support the social mission of CORE (Interview with JW, 13 November 2013). At CORE, the application of democratic procedures between shareholders, directors and employees/volunteers is a crucial issue. The principle of democracy is not only reflected in the application of the 10% voting cap but also in the open and participatory decision-making processes, in which employees and stakeholders can equally contribute. Furthermore, the communication between the members/shareholders is open and informal (Interview with GY and G, 13 November 2014; Interview with SJ, 16 February 2015). A student-volunteer at CORE was allowed to attend the meeting of the board of directors as a visitor in order to finally decide on the advantages of becoming a member/shareholder (Interview with G, 13 November 2014). Stakeholders perceive that they influence decision-making both directly and indirectly by sending emails, by reporting on projects, by voting, and by communicating directly with directors. At CORE, there is no decision made either by the board of directors or the general assembly that remains secret from employees or stakeholders (Interview with SJ, 16 February 2015). The managing director of CORE mentions 'when a meeting is finished, I don't mind to tell everything. Before a meeting, I'm always trying to ask everybody what their opinion is' (Interview with SJ, 16 February 2015; Interview with YG and G, 13 November 2015). Between the members/shareholders, this is a feeling of trust and respect because communication is open.

(ii) Cooperatives with a social purpose which are keen to allow informal stakeholder participation or self-selecting representation of stakeholders in the decision-making processes but which are not keen to allow in the AoA for the provision of membership rights/shares to any type of stakeholders. Those cooperatives with a social purpose, have stakeholders who cannot influence the decision-making formally, e.g. by the exercise of voting rights. However, they can do so in an indirect way through informal means of communication, e.g. by the involvement of intermediaries, such as managers or self-selected representatives/directors who are not members/shareholders. We found an example thereof at Microstart, where employees and volunteers have never attended physically any meeting of the board of directors. However, they communicate their interests to intermediaries and trust their representatives at the board level (Interview with CO and interview with LH, 16 June 2015). They also feel that they actually influence decision-making. For instance, Microstart employees contributed substantially to the decision-making process regarding the modification of Microstart's business plan. Initially, Microstart's business plan was perceived by Microstart employees to be ambitious including very high objectives in terms of numbers of microcredit and returns (Interview with CO, 16 June 2015). The business plan was transplanted from the French practice and was not really adapted to the Belgian context. Microstart employees managed to communicate with the board of directors that it was not feasible to achieve the objectives in the due time. Furthermore, employees and volunteers at

Microstart indicate that they trust the members of the board of directors because governance decisions comply with the social objectives of the operational part of the cooperative (Interview with CO, 16 June 2015; Interview with E, 13 November 2014). The board of directors serves its role to equally guarantee the social and the financial objectives of the cooperative: (i) the financial objectives are safeguarded by directors who represent the main financiers of Microstart, i.e. BNP Paribas Fortis and the EIF; and (ii) the social goals of Microstart are safeguarded by directors who are representatives of the non-profit organisation Adie. Even though physical contact between the board of directors and employees or volunteers is not regular, meetings and informal discussion take place between volunteers, employees, managers and directors (Interview with CO, 16 June 2015; Interview with LM, 13 November 2014). One Microstart employee mentioned that although employees, volunteers and managers are invited to meet and discuss with the board members, there is however still the perception that in respect of certain information and decisions, the board members are not allowed to disclose any information. But generally, communication at Microstart between the board members, managers and employees is relatively open. Information in the form of a newsletter is distributed weekly to employees and managers regarding the operational activities of Microstart (Interview with CO, 16 June 2015). Annually employees are provided with access to financial information. Other information is disseminated to employees and other managers, e.g. decisions that have been taken by the board of directors and/or the general assembly. One Microstart employee mentions ‘if there is a decision which involves everybody, everybody is going to receive the information.’ (Interview with CO, 16 June 2015). The Microstart website also contains information accessible for stakeholders, including newsletters, annuals reports, financial statements and organograms.

Besides employees and volunteers, also customers can influence indirectly the decision-making processes at Microstart. Annually, Microstart organises a client satisfaction survey. Questions are submitted to clients with respect to: (i) their level of satisfaction with the services that Microstart provides in terms of microcredit and support; (ii) the level of satisfaction with the interest rate that Microstart applies to its microcredits; and finally (iii) the level of satisfaction concerning the contact with Microstart’s advisors and consultants. Additionally, Microstart organises informal events where clients are invited to evaluate and discuss Microstart’s services and activities. For example, a Microstart employee mentions that meetings are organised with clients in the same sector. It is also common practice at Microstart to involve clients in the operational decisions (Interview with CO, 16 June 2015).

At Volkshuisvesting, both the employees and the tenants of the social housing units are not allowed to acquire membership rights/shares nor to participate in the decision-making processes. The reason hereof lies in the provisions of the Flemish Housing Code of 1997, which bar the issuance of employee and stakeholder membership rights/shares (Interview with MP and S, 18 February 2015; Interview with IGT, 19 February 2015).

The Flemish Government, any province, any community, and any public institutions for social welfare are considered the only stakeholders that are allowed to participate in the decision-making processes through the exercise of membership rights/shares. Even though specific types of stakeholders, i.e. employees and tenants are not allowed to participate formally and directly in the decision-making processes, they can still participate in informal meetings (Interview with MP and S, 18 February 2015). At Volkshuisvesting, employees can participate in staff meetings. The outcome there of is communicated informally with the managing director of Volkshuisvesting and the President of Volkshuisvesting (Interview with MP and S, 18 February 2015; Interview with IGT, 19 February 2015). Furthermore, Volkshuisvesting also organises meetings

Table 3.2: The role of stakeholders in the governance of the three Belgian case studies⁷⁷

CORE	Microstart	Volkshuisvesting	Role of stakeholders
Employees as members-shareholders	-	-	
Employees as decision-makers, appointed managers and representatives	-	-	
Employees as controllers and supervisors	-	-	
Other stakeholders (clients and volunteers) as members-shareholders	-	-	
Other stakeholders (clients and volunteers) as decision-makers, appointed managers, and representatives	-	-	Formal
Other stakeholders (clients and volunteers) as controllers and supervisors	-	-	
Other stakeholders (clients and volunteers) as informal consultants	Other stakeholders (clients and volunteers) as informal consultants	Other stakeholders (clients and volunteers) as informal consultants	Informal
Other stakeholders (clients and volunteers) as recipients of information and communication	Other stakeholders (clients and volunteers) as recipients of information and communication	Other stakeholders (clients and volunteers) as recipients of information and communication	

⁷⁷ This table does not exist in the original manuscript of the article. It was added here for illustrative and comparison purposes.

with the tenants of the social housing units - directly or via the tenants committee. The tenants and their representatives are allowed to propose ideas for the improvement of the housing units. They can also submit claims and complaints. The tenants' committee comprises at least four members. A delegate from Volkshuisvesting participates as a member of the committee. The tenant committee is allowed to make proposals and submit requests. The managing director of Volkshuisvesting has the responsibility to forward these to the Volkshuisvesting governing committee, which will deal with such proposal, claims and complaints.

3.1.4.4. Incentives for formal versus informal participation of employees and stakeholders

In this Sub-section we will compare: (i) the incentives that stimulate employees and stakeholders to acquire membership rights/shares, which provide them formal access to decision-making processes; with (ii) the incentives that stimulate other categories of stakeholders to participate indirectly to decision-making using informal processes and means of communication. With this part we aim to contribute to the theoretical discussion that was initiated by Campi et al.⁷⁸

Employees and stakeholders with membership and ownership of shares

Employees and stakeholders can formally participate in the decision-making processes of social enterprises by exercising their voting rights at the general assembly and by electing representatives at the board of directors. The provision of membership rights/shares to employees is a legal requirement under the VSO legal regime that applies to cooperatives with a social purpose. It can be implemented by including this right in the AoA. A variation is to introduce a special type of shares for employees. The VSO legal regime does not require the provision of membership rights/shares to other type of stakeholders like clients, supporters and beneficiaries. Although not legally required, a VSO can provide membership rights/shares to other type of stakeholders. Some have formalised this by creating a special category of shares for stakeholders, e.g. CORE. The existence of provisions regarding membership rights/shares to both employees and stakeholders in the AoA generates an enabling environment for employee and stakeholders' participation. At CORE, all students-volunteers who operate the cooperative have purchased Type C shares (Interview with YG and G, 13 November 2014). They perceive the possession of membership rights/shares as a means to acquire insights as to how the organisation functions and how the legal framework can be used to safeguard their interests (which are of a non-financial character) in decision-making (Interview with YG and G, 13 November 2014). In respect of the purchase of one share of €100, a student-volunteer mentions 'I immediately filled in the information form to become a shareholder Type C (...)' (Interview with G, 13 November 2014). The underlying idea behind CORE's success and development is that participation,

78 Campi et al. (n 5).

membership/shareholdership and the communication of the social mission, will on a continuous basis generate new projects with a social purpose and new clients (who will also become a member/shareholder) (Interview with SJ, 16 February 2015). CORE is a for-profit cooperative with a social purpose, which aims to bridge entrepreneurship with education. Profits cannot be distributed to the cooperatives' members/shareholders. They are rather reinvested in the cooperatives' social purpose and growth in the form of new projects. A part of CORE's mission is the promotion of social and cooperative entrepreneurship for the fulfilment of social objectives, which ultimately leads to the execution of projects and to decision-making processes, which is influenced substantially by values of equality, democracy and participation. Thus, students-volunteers are incentivised to participate and become members/shareholders. Simultaneously, they are educated and they acquire professional experience in industrial engineering aimed at promoting rational energy use, sustainable mobility and social entrepreneurship. They also build up a strong network, which allows them to communicate and promote further the idea of sustainable energy use in all aspects of daily life and social entrepreneurship (Interview with YG and G, 13 November 2014).

Clients and stakeholders also purchase CORE shares to support the cooperative financially and to have access to the decision-making processes by voting. A Type B member/shareholder, who is an academic and a scientist, mentions 'I'm not interested in getting that money back, so for me that money is gone, but it is well-spent' (Interview with JW, 13 November 2014). He believes that investing in human capital, i.e. students-volunteers who work together with stakeholders and members/shareholders on projects concerning rational energy use in mobility, is very valuable, especially because in the current business landscape, the major business players have not yet developed solutions in this area (Interview with JW, 13 November 2014). Another example is the Belgian company Pantarein, also a Type B member/shareholder of CORE. Pantarein designs the construction and operation of factory plants. In collaboration with CORE students-volunteers, they advise on energy optimisation for the consumption of water in factory plants such as textile factories (Interview with FM and PO, 16 February 2015). Even though the representatives of Pantarein are invited to participate in all the decision-making processes of CORE, they have only been engaged in a few of them. They feel that they contribute to the fulfilment of the social mission by influencing the decision-making processes, directly or indirectly, by sending emails and by reporting on existing and new projects to the board of directors (Interview with FM and PO, 16 February 2015).

Employees and stakeholders who informally participate in decision-making

If a cooperative with a social purpose does not offer to employees and/or to other stakeholders the chance to buy membership rights/shares, they thus have no formal power to participate in the decision-making processes. In that situation, the only way of exercising influence is through informal participation. Interests, suggestions and ideas communicated to managers, directors and to self-selected representatives. The contribution by employees and stakeholders to the fulfilment of the social purpose is

in that situation restricted to the operational side of the cooperative while decisions and information are communicated indirectly, and only to those parties that need to be involved. At Microstart, employees are sceptical about whether they would purchase shares or acquire membership rights/shares even if the opportunity of acquiring membership rights/shares was offered to them (Interview with CO, 16 June 2015). Personal interests and motivations generally have not yet been aligned with the fulfilment of the social purpose that the cooperative serves. An employee mentions:

It is very important where I put my money and I like my independence, so in my opinion I would probably put my money somewhere else (...). Maybe for symbolic purposes I would put some money [in Microstart shares] to be able to have more power in the decision-making. Just for personal interest, I would be very interested to see how the decisions are taken in the board.’ (Interview with CO, 16 June 2015).

Table 3.3: Participatory stakeholder mechanisms in the three Belgian case studies⁷⁹

	Formal	Informal	Regular	Ad hoc	Direct	Indirect
Stakeholder participation in one cooperative’s general meeting	X		X		X	
Stakeholder participation as non-members in the cooperative’s board meetings		X		X	X	
Stakeholder participation as members of the cooperative’s board	X		X		X	
Employees’ and stakeholders’ meetings with the members of the board		X	X		X	
Employee consultation processes regarding technical matters		X		X	X	
Stakeholder thematic events		X	X		X	
Employee and staff meetings		X	X		X	
Email and oral communication		X		X	X	
Newsletter information		X	X		X	
Satisfaction surveys		X	X		X	
Shareholders committee	X		X		X	

⁷⁹ This table does not exist in the original manuscript of the article. It was added here for illustrative and comparison purposes.

Even though the employees trust the decisions that are taken by the board of directors and the general assembly, they feel the urge to participate in a more direct way in the decision-making processes.

It is perceived by Microstart's employees that if Microstart would provide membership rights/shares to employees and clients, the mix of such different types of members/shareholders could improve the decision-making processes because the operational side of the social enterprise would then be formally represented. Furthermore, our interview data suggest that informal communication between the board, management, employees and stakeholders has generated the impression that there is asymmetry of information between the Microstart branches in Brussels and outside Brussels.

Finally, our interview data indicate that at Volkshuisvesting, employees and stakeholders have no urge to be involved in the cooperatives' affairs nor are they actually aware of the opportunities that exist to informally participate in the decision-making processes (Interview with MP and S, 18 February 2015).

3.1.5. Case study conclusions

3.1.5.1. Limitations, practical implications and future research

Social enterprises have contributed substantially to the promotion of sustainable development and inclusive growth in Europe. This article elaborated on tailor-made legislation regarding social enterprises. We particularly examined how the VSO tailor-made legislation for social enterprises in Belgium influences the participation of employees and other types of stakeholders in the decision-making processes. We tested this question by conducting three case studies relating to three cooperatives with a social purpose, each in another sector; respectively, the renewable energy sector, the microfinance sector, and the social housing sector. Main achievements, from an academic perspective, are: (i) the contribution to the emerging legal theory with respect to the VSO tailor-made legislation; and (ii) the generation of empirical findings which build on and contribute to existing theoretical foundations regarding the participation of stakeholders in the governance of social enterprises.

Primarily, our findings in the three case studies confirmed that even though the Belgian tailor-made legal framework regarding social enterprises is conducive to employee participation in the decision-making processes, the concept of employee participation differs in the examined cooperatives with social purpose in the three sectors. In some cases, the direct and formal participation of employees in the decision-making processes of the social enterprise came with the acquisition of a legal right, i.e. membership right/share. The acquisition of membership rights/shares allows employees to participate in a direct way in the decision-making processes of VSO social cooperatives, by: (i) exercising voting rights in the general assembly, subject to a regulated cap, i.e. 10%; and indirectly by (ii) electing the members of the board of directors. Additionally, we

found indirect participation of employees via informal and unregulated participation settings in all three cases in the different sectors. In one sector, employee participation was excluded by special sectoral legislation.

From a practical point of view, this article also contributes to a social entrepreneur's understanding of the substance and the implementation of the VSO legislation in Belgium. The enrichment of the discussion with empirical findings of current best practices will also induce Belgian social entrepreneurs to consider creating more inclusive and participatory models in governance and decision-making.

In this article, we limited our research and focused mainly on the examination of the formal participation of employees and stakeholders in the decision-making processes of social enterprises and the effects of tailor-made legislation for social enterprises. We provided only limited references to informal means of employee and stakeholder participation as a more elaborated examination is required to test the informal and non-institutionalised dynamics that take effect in the absence of enabling legislation.

Furthermore, even though the participation of other types of stakeholders is not supported by the VSO legislation, cooperatives with a social purpose have in practice independently developed both formal and informal means to include stakeholders in the decision-making processes. One example of stimulating formal stakeholder participation is the creation of a specific category of shares for certain types of stakeholders. The opportunity to purchase membership rights/shares enhances the incentives for stakeholders to participate in the decision-making processes, either directly by: (i) exercising voting rights in the general assembly, often subjected to a regulated cap, i.e. 10%; and indirectly by (ii) electing members-representatives in the board of directors. We also found examples of informal stakeholder participation in the decision-making processes in the examined case studies. Taking into consideration the existing legal framework, the theoretical framework regarding governance, and the criticism regarding the application of stakeholder theory to the governance of social enterprises, there are additional issues that future research can address. What needs to be further examined is how formal and informal participation of stakeholders can improve: (i) the accountability of the decision-making organs within social enterprises; and (ii) the transparency of the decisions towards stakeholders and the society. The empirical findings of this article indicate that employees and stakeholders have better and direct access to information in the cooperatives with a social purpose which are keen to encourage formal participation of stakeholders and employees in the decision-making.

3.2. Greece: Unravelling the participation of stakeholders in the governance models of social enterprises in Greece

Abstract

This article aims to examine the concept of participatory governance through membership in the context of the tailor-made legal form for social enterprises in Greece, i.e. the social cooperative enterprise (Koinsep). As such, the article aims to contribute to the theoretical discussion regarding the participation of stakeholders in the governance of social enterprises not only as a theoretical construct prescribed by law but also by examining its implementation in practice. The development of two in-depth case studies demonstrate whether and how the application and implementation of legal requirements regarding governance and membership permit and encourage stakeholders to participate in the decision-making processes of social enterprises. The study accordingly showcases the influence exerted by the legal regime over the social enterprise. The case studies demonstrate how participatory governance is not realised in a formal manner in the organisational set-up of two social enterprises. It thereby shows how stakeholders and employees participate informally in the decision-making processes of Greek social enterprises, although legislation is conducive to formal means of participation. This study is part of a larger project involving a comparative research of tailor-made legal forms of social enterprises and corresponding organisations in three jurisdictions, i.e. Greece, Belgium, and the UK. In this study, the research was limited to the legal form of Koinsep. This article also contributes to the development of a better understanding of the Koinsep as a new tailor-made legal form for social enterprises in Greece. It therefore, sheds light in its function and its participatory governance structure. The study is an original attempt to theoretically and practically examine the subject of participatory governance in the Greek social enterprises context.

Keywords

Greece, Stakeholders, Participatory Governance, Social Enterprises, Social Cooperative

3.2.1. Introduction

3.2.1.1. Participatory governance for social enterprises

The theoretical underpinning of governance in the context of social enterprises has been influenced substantially by various scholars who have developed the *L'urgence de l'entreprise sociale en Europe* (the emergence of social enterprises in Europe - hereafter 'EMES') research network's approach for conducting research on the governance of social enterprises.⁸⁰ The significance of examining the governance of such enterprises is grounded on various arguments: (i) the important socio-economic role of these organisations as alternative, socially innovative, socially contributing and socially responsible economic actors,⁸¹ qualities that require a clear understanding of the nature of social enterprises, their drivers, their key characteristics and their structures (including governance structures); (ii) their potential to contribute significantly to diverse economic schemes by complementing the provision of public goods and services;⁸² and finally (iii) the currently limited understanding of the new and emergent concept of social enterprises, of their function and of their accountability and responsibility towards third parties, the state and society in general.⁸³

According to the EMES approach, the governance of social enterprises is typified as follows: it is: (i) participatory in nature, including various stakeholders; (ii) not based on the ownership of capital; and finally (iii) independent and autonomous.⁸⁴ Research on the governance structures of the vanguards of social enterprises, i.e. the cooperatives, has shown that their decision-making is characterised by the application of democratic means.⁸⁵ However, international scholars elaborating on a theoretical framework for the participatory governance of social enterprises beyond their legal structure⁸⁶ have noted that, at least in theory, social enterprises have a hybrid character. The hybrid

80 J. Defourny and M. Nyssens, 'Social Co-operatives: When Social Enterprises Meet the Co-operative Tradition' [2013] 2(2) *Journal of Entrepreneurial and Organizational Dynamics*, 11-33; Defourny and Nyssens (n 3) 2010; Galera and Borzaga (n 1); Borzaga and Defourny (n 25).

81 Mason et al. (n 7) 286.

82 Spear et al. 2014 (n 11) 133-134; Mason et al. (n 7) 286.

83 Spear et al. 2014 (n 11) 134.

84 J. Defourny and M. Nyssens, 'The EMES Approach of Social Enterprise in a Comparative Perspective' in J. Defourny, L. Hulgård and V. Pestoff (eds), *Social Enterprise and the Third Sector - Changing European Landscapes in a Comparative Perspective* (Routledge 2014) 21, 23; Defourny and Nyssens (n 3) 43; Galera and Borzaga (n 1) 214, 217-218; Borzaga and Defourny (n 25) 17-18.

85 Defourny and Nyssens (n 80) 21; Spear et al. 2014 (n 11) 145; Defourny and Nyssens (n 2) 47; Spear et al. 2009 (n 4) 252; Argyrou et al., 'An Empirical Investigation of Supportive Legal Frameworks for Social Enterprises in Belgium: A Cross-sectoral Comparison of Case Studies for Social Enterprises from the Social Housing, Finance and Energy Sector Perspective' in V. Mauerhofer (ed), *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues* (Springer International Publishing 2016) 154-156 [Argyrou et al. 2016b].

86 Spear et al. 2014 (n 11); J. Larner and C. Mason, 'Beyond Box-ticking: a Study of Stakeholder Involvement in Social Enterprise Governance' (2014) 14(2) *Corporate Governance*, 181; Mason et al. (n 7); Low (n 6).

character of social enterprises requires their governance structure to be approached from a different theoretical perspective, such as the stewardship theory for instance, as opposed to the democratic theory developed from research on cooperatives and other non-profit organisations.⁸⁷

Spear et al. describe a typology of the governance structures of different social enterprises which is based on whether or not board reproduction is associated with the requirement of membership.⁸⁸ These scholars divide the governance structures of social enterprises into structures that involve self-selection (in organisations in which boards are not elected by members), structures that are associated with membership (in organisations in which boards are directly elected by members) and structures that are hybrid (where the reproduction of boards combines both aspects). Empirical research has added to the 'multiple-goal, multi-stakeholder' character of social enterprises, something that has subsequently enabled us to unravel various stakeholder participation mechanisms in the governance bodies of social enterprises.⁸⁹ The governance structures of social enterprises have also been considered significant for aligning the conflicting objectives and interests of social enterprises' decision-makers and stakeholders so that mission drifts can be avoided and organisational hybridity can be maintained.⁹⁰ Finally, appropriate governance is also a way to increase stakeholder legitimacy in decision-making, to stimulate effective performance and to ensure better access to resources.⁹¹

3.2.1.2. Participatory governance as a legal concept: the conceptual framework

Because the concept of social enterprises is very recent and in view of its hybrid structure, the concept is still nascent in legal theory; this explains the lack of universally accepted rules and provisions for social enterprises.⁹² The development of new legal forms for social enterprises in various jurisdictions and legal systems, which are designed per se to better fit the needs of these enterprises and resolve some of their major challenges as hybrid organisations, shows the importance of closely examining participatory governance in the context of these new legal formats.⁹³ Therefore, the conceptualisation

87 Low (n 6).

88 Spear et al. 2014 (n 11) 137.

89 Campi et al. (n 5); Spear et al. 2009 (n 4); Spear et al. 2014 (n 11); Argyrou et al. 2016b (n 85).

90 Ebrahim et al. (n 4); Ebrahim and Rangan (n 4); F. Santos, A.C. Pache and C. Birkholz, 'Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises' [2015] 57(3) California Management Review, 36-58.

91 J. Austin, H. Stevenson and J. Wei-Skillern, 'Social and Commercial Entrepreneurship: Same, Different, or Both?' [2006] 30(1) Entrepreneurship Theory and Practice, 1-22; J.E. Austin, R. Gutierrez, E. Ogliastri and E. Reficco, *Effective Management of Social Enterprises: Lessons from Businesses and Civil Society Organizations in Iberoamerica* (Harvard University Press 2006); Di Domenico et al. (n 15).

92 Ebrahim et al. (n 4) 85; A. Argyrou and T. Lambooy, 'An Introduction to Tailor-made Legislation for Social Enterprises in Europe: A Comparison of Legal Regimes in Belgium, Greece and the UK' [2017] 12(3) International and Comparative Corporate Law Journal, 47-107.

93 Ebrahim et al. (n 4) 92-93.

of participatory governance in that context will contribute to the process of improving and formulating better and innovative legal constructs while also offering researchers and entrepreneurs alternative insights into governance and participation.

In a series of studies, the current authors have elaborated on the meaning of the legal concept of governance of social enterprise in the context of tailor-made legislation for social enterprises in various countries.⁹⁴ It is well-noted in the literature on international social enterprises⁹⁵ that legislation has an arbitrary role in determining the function and the governance dynamics of social enterprises - for instance, because of the variety of legal forms for social enterprises prescribed in adjustable Articles of Association (hereafter 'AoA') and adapted in different or mixed legal and organisational structures. However, social enterprises would always be incorporated legal entities operated and organised to a certain extent in a way that does not go beyond stipulated legal rules, rights and responsibilities. From this rational perspective, we note that the participatory governance of social enterprises is apparently featured in the role and rights of various types of stakeholders in decision-making processes, differently prescribed in various legal frameworks.⁹⁶ These decision-making processes reveal a role for various categories of stakeholders in the governance of social enterprises as well as their level of involvement on the basis of legal rights, i.e. ownership rights, voting rights, consultation rights and rights to information. They are conferred to them and as such allow them to participate in the decision-making processes of the governing bodies to a certain extent.⁹⁷ This conceptual approach aligns very well with what Spitzreck and Hansen conceptualised as stakeholder governance on the basis of power and scope.⁹⁸ In their model, 'power refers to the level of influence stakeholders are granted in corporate decision making', which also entails the level of involvement on the basis of legal rights and rules; the term 'scope' refers to the 'breadth of power in corporate decision making', which entails the roles and the competences of stakeholders in decision-making.⁹⁹ Spitzreck and Hansen's empirical investigation of the conceptual model led to the clustering of identified stakeholder mechanisms on the basis of patterns regarding the governance structures and the level of involvement of stakeholders in corporate governance.¹⁰⁰

94 Argyrou and Lambooy (n 92); Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Lambooy and Argyrou (n 22).

95 K. Alter, *Social Enterprise Typology* (Virtue Ventures LLC 2007); Spear et al. 2014 (n 11).

96 Argyrou et al. 2016a (n 24).

97 *ibid* 495; Argyrou et al. 2016b (n 85) 178-180; Argyrou and Lambooy (n 92).

98 H. Spitzreck and E.G. Hansen, 'Stakeholder Governance - How do Stakeholders Influence Corporate Decision-making?' [2010] 10(4) *Corporate Governance: The International Journal of Business in Society*, 378-391.

99 *ibid*.

100 *ibid*. H. Spitzreck, E.G. Hansen and D. Grayson, 'Joint Management-Stakeholder Committees - A New Path to Stakeholder Governance?' [2011] 11(5) *Corporate Governance: The International Journal of Business in Society*, 560-568.

From the aforementioned perspective, we aim to conduct an in-depth examination of the concept of participatory governance in the context of the Greek tailor-made legal framework for social enterprises. In particular, we aim to conduct an in-depth examination of the concept of participatory governance in the context of two Greek social enterprises which use in their legal structure the legal variations of the Greek tailor-made legal form for social enterprises, the Social Cooperative Enterprise (here abbreviated as Koinsep). The case studies concern a Koinsep of Care and a Koinsep of Collective and Productive Purpose. With these two case studies, we aim to explore and illustrate how the relationships and responsibilities between various stakeholders and the social enterprises are shaped, particularly in these two Greek social enterprises, and how they are in compliance with the Greek legal framework for social entrepreneurship.

3.2.1.3. The concept of stakeholder participation in Greek legislation regarding social enterprises

The Greek tailor-made legal form for social enterprises is a hybrid legal entity named Social Cooperative Enterprise, the English translation for the term ‘*Κοινωνική Συνεταιριστική Επιχείρηση*’ (hereafter Koinsep) introduced in the Greek Social Entrepreneurship Law of 2011.¹⁰¹ Greek legislation mentions three distinct types of Koinsep: the Koinsep of Integration, the Koinsep of Care and the Koinsep of Collective and Productive Purpose, all of which are subject to the same rules, rights and responsibilities. Additionally, the Greek Koinsep has a statutory social purpose which varies for each of the three distinct types of Koinsep (i.e. work integration of vulnerable groups, the provision of social care to the disadvantaged, the production of goods and the provision of services of a collective significance).¹⁰² The social cooperative differs from the traditional Greek civil cooperatives which aim to fulfil economic, social and cultural objectives for the benefit of the members.

The Koinsep governance structure is associated with membership, although its decision-making processes and voting are disconnected from the ownership of capital through the application of democratic processes, thus following a democratic governance paradigm (as opposed to a stewardship paradigm). Traditionally, cooperatives are membership organisations characterised by their members’ participation and the influence that these members exert over decision-makers following their appointment through democratic election processes.¹⁰³ Democratic decision-making processes determine the functioning of the two major Koinsep governing bodies with distinguished competences: (i) the decision-making body with the highest competence that meets annually, i.e. the general meeting of the members; and (ii) the decision-making body for routine management, i.e. the managing committee.¹⁰⁴

101 Argyrou et al. 2016a (n 24); Argyrou and Lambooy (n 92); Lambooy and Argyrou (n 22).

102 Argyrou et al. 2016a (n 24) 496-500; Argyrou and Lambooy (n 92).

103 Spear et al. 2014 (n 11) 137-138; Spear et al. 2009 (n 4) 252; Spear (n 4).

104 Argyrou et al. 2016a (n 24) 499.

Table 3.4: Koinsep governance structure

The governance model of the Koinsep - General competences of the Koinsep governing bodies	
Managing Committee	General Meeting of the Members
It administers and represents the Koinsep in accordance with the provisions of its statute of association and of the law.	It decides regarding all Koinsep's matters. The members can be appointed as members of the managing committee.
It decides on all matters relating to the administration and management of the Koinsep with the exception of those falling under the exclusive competences of the general meeting.	It exercises supervision and control on the processes and decisions of the managing committee.
It is assembled ordinarily often on a monthly basis.	It is assembled ordinarily on an annual basis.
It is assembled extraordinarily upon the request of the Koinsep's president and the 1/3 of the members of the managing committee.	It is assembled extraordinarily upon the request of the managing committee and the request of 1/3 of the Koinsep's members.
It is in quorum and convenes validly, if at least 4 members are present.	It is in quorum and convenes validly, if at the beginning of the general meeting at least 2/3 of the Koinsep's members are present.
The decisions are made by vote.	The decisions are made by vote, carried by a show of hands, unless one-fourth (1/4) of the Koinsep members requests otherwise.
Decision-making requires the majority of the members who are present. Every member has one vote.	Decision-making requires the absolute majority of the members who voted. Every member has one vote. Regarding issues of exclusive competence, decision-making requires the absolute majority of the sum of the Koinsep's members.

The governance powers should be characterised by equality in the sense that all admitted members who are necessarily cooperative shareholders of one mandatory cooperative share have equal rights with respect to the decision-making processes of the social enterprise. In the Greek Koinsep, equality and democracy are expressed in the voting rules that apply when decisions are made, whereby - regardless of the number of cooperative shares that a member owns (one mandatory cooperative share and additional optional cooperative shares) - a member has the right to possess only one vote in the decision-making processes and exercised in the general meeting of the members and/or the managing committee. This is also known as 'one man one vote' rule.¹⁰⁶ Additionally, every Koinsep member enjoys the rights that membership

105 This table is not part of the original manuscript. It was added here for illustrative purposes to demonstrate indicatively the Koinsep's governance structure.

106 Argyrou et al. 2016a (n 24) 499; Argyrou and Lambooy (n 92).

confers equally in respect of governance. Thus, every member will participate equally: (i) in *the highest competences of decision-making*, which means that every member can participate in the decision-making processes of the general meeting of the members, decide on the most important matters of the organisation by conferring opinions and decisions (orally or with written statements), seal the decisions by voting with one vote and request and acquire information regarding the Koinsep's state and affairs; and (ii) in the competences of routine management, namely by electing and appointing the members of the managing committee and/or by being elected and appointed as a member of the managing committee.

Beyond equality and democracy in the exercise of the rights of the cooperative members, the Greek Koinsep is a multi-stakeholder organisation based on multi-stakeholder ownership and membership. Multi-stakeholder ownership is subsequently translated into certain decision-making roles of various stakeholders with powers which are equally conferred and exercised with the other members.¹⁰⁷

If the term 'stakeholder' entails participation in the Greek Koinsep and in the decision-making activities of the Koinsep of any group or individual who can affect or can be affected by the activities of the Koinsep to achieve its purpose,¹⁰⁸ then multi-stakeholder ownership and membership in the Greek Koinsep is not reflected in the classification of membership on the basis of multiple predefined types of shares or members. Primarily, cooperative shareholders and members of the Greek Koinsep can be any natural person and a certain number of legal persons (one-third of the total number of members). Public institutions are excluded from membership and ownership. Theoretically, in this setting, any group or individual who can affect or who can be affected by the activities of the Koinsep could be integrated in one group under membership. Examples include the providers and beneficiaries of the goods and services that the Koinsep provides as well as its financiers, customers and clients. However, this is not something that is stipulated in the Greek Social Entrepreneurship Law of 2011. This is what Campi et al. meant when they concluded in their empirical study that the legal form is a weak indicator of whether a social enterprise has a single - or multi-stakeholder nature, because

the choice of a multi-stakeholder status instead tends to depend on the autonomous decision of its founders (more generally, members/owners) within legal frameworks that often permit - explicitly or implicitly - but do not require the involvement of more than one category of stakeholders.¹⁰⁹

They also noted that 'the membership-ownership structure is the key indicator to be analysed in order to identify the various categories of stakeholders'.¹¹⁰ As such, Pache

107 Galera and Borzaga (n 1) 214, 217; Defourny and Nyssens 2013 (n 80) 23; Cafaggi and Iamiceli (n 36) 28.

108 Freeman and Reed (n 14) 91.

109 Campi et al. (n 5) 38.

110 *ibid* 36.

and Santos showed how competing (commercial and social welfare) logics influence social enterprises on what legal structures, governance and organisational structures and practices they should adopt.¹¹¹ This in turn influences the founders and leaders of social enterprises on the choice of legal and organisational structures and processes with the aim to control the organisation and ensure accountability to stakeholder groups.¹¹² In the Greek Koinsep, this is exactly the case.

Other than the cooperative owners and members, the employees of a Koinsep are only admitted and internalised in membership and ownership and in governance, respectively.¹¹³ The employees, for instance, are subject to the standard procedure for appointing new members. The procedure requires the approval of the managing committee and subsequently the approval of the general meeting of the members. The underlying existing employment relationship can be maintained and does not conflict with the rights conferred by membership. The employees may also stem from various disadvantaged groups, especially in a Koinsep of Integration.¹¹⁴ This does not mean, however, that various other types of stakeholders, for instance financiers, volunteers, beneficiaries or clients, do not request their admission in membership. It does not also mean that other types of stakeholders do not interact, either formally or informally, with the decision-makers of the Greek Koinsep, nor does it mean that the decisions do not affect other types of stakeholders of the Greek Koinsep because they are not included in the decision-making processes by law. This is precisely why the issue of membership of the stakeholders of a Koinsep needs to be examined further.

Membership: The rights and roles of stakeholder-members in the decision-making processes (the scope of stakeholder participation in governance)

Theoretically, stakeholders who are granted Koinsep membership enjoy equal rights and obligations together with all the Koinsep members regarding their participation in decision-making activities. Through membership, stakeholders may acquire equal roles in the governance structure for the following positions and competences:

(i) *Managers of the Koinsep*: As members and managers of the organisation, this group decides on all matters either related with the most important issues of the administration or related with the routine management of the organisation. As managers, they have the right to make decisions through voting, but they also bear the responsibility of making

111 A.C. Pache and F. Santos, 'Embedded in Hybrid Contexts: How Individuals in Organizations Respond to Competing Institutional Logics' [2013] 39(1) *Research in the Sociology of Organizations*, 3-35.

112 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*, 417-436; C. Cornforth and R. Spear, 'The Governance of Hybrid Organisations' in D. Billis (ed), *Hybrid Organizations and the Third Sector: Challenges for Practice, Theory and Policy* (Palgrave 2010).

113 Argyrou et al. 2016a (n 24) 498; Argyrou and Lambooy (n 92); Lambooy and Argyrou (n 22).

114 Argyrou and Lambooy (n 92).

decisions in accordance with the provisions of the Koinsep's statute of association and following principles and duties prescribed in the applicable legal framework.

(ii) *Representatives of the Koinsep*: As representatives of the organisation, this group has the right to represent the organisation in transactions with third parties.

(iii) *Supervisors of the Koinsep*: As supervisors of the organisation, this group supervises the processes led by the managers. They have the right to request information, to review and inspect all the documents that the organisation produces during the governance processes and to monitor the financial and operational position of the organisation.

(iv) *Controllers of the Koinsep*: As controllers of the organisation, this group has the right to discharge the members' liabilities and/or terminate their membership at any time for good reasons that constitute a breach of duty or an inability to exercise good governance as required by the statute of association and the applicable legal framework.

A rational taxonomy of stakeholder participation mechanisms

The theoretical analysis of the roles and rights of stakeholders in the governance of the Koinsep as prescribed in the Koinsep's legal form can be seen as stakeholder participation mechanisms to the extent that they are: (i) formal or informal - by having a legally binding basis in legislation or in the constitutional documents, i.e. AoAs and statutes, for instance of the social enterprise; (ii) direct/indirect - by allowing or not allowing stakeholders to physically participate in the decision-making processes of social enterprises; and (iii) structural/non-structural (regular/ad hoc) - by taking place on a routine or non-routine basis.

As such, cooperative membership in the Greek Koinsep legal form allows and requires a minimum participation of stakeholders in the general meeting of the members on the basis of legal rights and/or obligations that are either stipulated in law or in the constitutional documents of the Koinsep, i.e. in a formal manner.

The participation of stakeholders as members in the general meeting of the members is a means of participation in decision-making that can be exercised in a direct manner. Stakeholders are actually required to physically attend and participate by voting directly in certain regular decision-making processes in a structural manner. Additionally, cooperative membership requires from stakeholders as members to appoint representatives in the managing committee and/or to be appointed as members of the managing committee, and thus attend the decision-making processes and represent other stakeholders. The obligation of the members to appoint or be appointed as representatives and members of the managing committee is also a formal participation mechanism which may be exercised in a direct as well as an indirect way and in a regular manner. Therefore, the stakeholders who are members of the managing committee can directly and physically participate in governance through regular decision-making processes. They can be represented indirectly as well, namely by the appointed

representatives of their choice in the decision-making processes of the managing committee. Finally, while being cooperative members, stakeholders can formally and directly request information regarding the Koinsep's state of affairs.

Although the above is a convenient theoretical perspective for further development, a previous study undertaken by a Greek scholar, Adam, has shown that in a 'precursor' legal form for social enterprises in Greece (i.e. a social cooperative tightly regulated for the socio-economic integration of mentally disabled persons), the multi-stakeholder character was mainly driven by the legal and institutional framework rather than the actual participation of stakeholders in the management and governance of the social enterprise.¹¹⁵ By examining the level of participation of local partners as members in 16 such social enterprises, Adam noted that their membership materialised as a coercive necessity because of the legal framework rather than as an actual cooperation.¹¹⁶ Accordingly, the multi-stakeholder character was not translated into formal participation of stakeholders in the governance of the organisation.¹¹⁷ Additionally, Campi et al. noted that the participatory governance of stakeholders in various social enterprises was exercised in a formal manner according to which stakeholders have a real voting power and not just 'a symbolic one'.¹¹⁸ In contrast, social enterprises were characterised 'by a high degree of informality', something which also affects their decision-making processes.¹¹⁹ This has led us to formulate the following research question:

RQ1: How is the participatory governance (the role and rights of various types of stakeholders in decision-making processes) of two selected Greek Koinsep organisations realised (formal, informal or regular manner) through membership?

3.2.2. Method

3.2.2.1. Case study approach

We opted for a case study approach, as this approach offers us an empirical inquiry method which investigates a contemporary phenomenon within its real-life context.¹²⁰ As Yin argues the method is used in situations 'when the boundaries between phenomenon and context are not clearly evident and in which multiple sources of evidence are used'.¹²¹ This is very much related to the topic we want to examine, as was discussed in the previous section. The case studies in this article were developed on the basis of the following techniques:

115 S. Adam, 'Social Economy, Work Integration and Social Exclusion: The Experience of Koispe in Greece' [2012] Published Doctoral Thesis (DPhil Thesis, University of Thrace) ii.

116 *ibid.*

117 *ibid* 168-169.

118 Campi et al. (n 5) 38-39.

119 *ibid.*

120 R.K. Yin, *Case Study Research: Design and Methods* (Sage 1984).

121 *ibid* 23.

- (i) the collection of interview data from interviews conducted with respondents from two randomly selected Greek social enterprises, i.e. Koinsep Merimna Ygeias (KMY) and Koinsep Ekati (KE); and
- (ii) the collection of relevant data from relevant documents, such as statutes, AoAs, annual reports and publications.

We conducted in-depth semi-structured interviews in 2014. These interviews involved individuals from various organisational layers: (i) shareholder level; (ii) stakeholder level; (iii) manager level; and (iv) employee level. We did not develop one single questionnaire to collect our responses, but instead developed four different questionnaires for: (i) shareholders; (ii) stakeholders; (iii) managers; and (iv) employees. However, in both Koinseps, because of their small size, the boundaries between ownership, governance, management and employees were not always entirely clear, and the titles of the respondents often overlapped. For instance, some of the Koinseps' shareholders were also members of the managing committee, as normally happens in cooperatives, but at the same time they were also employees of the organisation. This is why we asked the respondents to indicate with which of the four titles they were affiliated the most. We then used one of the four applicable questionnaires for the interview. All interviews were conducted in Greek. The interviews were transcribed and translated from Greek into English by professionals. Following the interviews, we sorted the collected data into interview reports and interview transcriptions that we shared with the respondents, asking them for feedback and validation. The validation of the interview transcriptions and reports by the respondents was completed with follow-up questions to the interviewees for clarification purposes regarding words and expressions that were used.

3.2.2.2. Respondents

To ensure credible responses as well as diversity in the perspectives and perceptions of the respondents, we conducted interviews with highly knowledgeable respondents who held a functional position in the Koinsep social enterprises, i.e. respondents who operated as decision-makers, owners and operators at the time when the interviews were conducted. The respondents that we interviewed reported having a long working experience, mostly outside the organisation (between 10 and 30 years of employment). We also selected respondents from heterogeneous organisational layers who were able to view the examined phenomena from various and diverse perspectives.¹²² These respondents varied in terms of education and working experience. We interviewed respondents with high educational qualifications (obtained in postgraduate or doctoral programmes) and respondents with a basic educational background (obtained through basic education). We not only selected respondents who hailed from various governance layers, (e.g. (i) appointed or non-appointed members in decision-making bodies of the social enterprises; (ii) respondents who were members of the managing committee; and/

122 Eisenhardt and Graebner (n 46) 28.

or (iii) holders of cooperative shares and members of the general meeting of members) but also stakeholders and employees who were not involved in governance. Finally, we selected respondents who had either a strong or a weak past background with activities related to social entrepreneurship.

3.2.2.3. Procedure and Analysis

The collection of extensive and complex textual data, i.e. long interview transcriptions and relevant documents, required a careful sorting of the data as well as the application of the constant comparison method (coding) prior to data analysis. During this initial phase, descriptive data were separated from meaningful data. The descriptive data containing background information regarding the cases - organisations and the issue or problem under examination - were used to frame the case and the examined issue. Next, codes were created by means of open in vivo coding using software for qualitative analysis, i.e. ATLAS.ti, to constantly compare and contrast the ideas captured in the text contained in the meaningful data and to sort and group the data on the basis of periodic recurrences and patterns in the interviewees' responses. These were later integrated into categorised themes (see the 'initial codes' in full in Table 3.5).

We then developed a coding template including codes that had emerged deductively from the theoretical analysis (see the 'legal' codes in full in Table 3.5), which we subsequently refined with the emerging codes from the interview transcriptions (see the 'refined codes' and 'progress themes' in full in Table 3.5). Combined with our objective to capture experiences in the text and to add quality to the data, the use of an analytical technique called 'template analysis' was preferred.¹²³ This template analysis was used to constantly compare and contrast the pre-existing legal concepts in the template which had emanated deductively from the theoretical analysis with real-life concepts in the template that had emerged from the data inductively, which we integrated into themes with respect to stakeholder and employee participation in the governance of social enterprises.¹²⁴ In a follow-up round, the respondents were asked to provide feedback and validation with respect to the case study. This feedback was included in the text of the analysis.

3.2.3 The case study results

3.2.3.1. Koinsep Merimna Ygeias (KMY)

KMY is a Greek Koinsep of Care. Its statutory social purpose is to provide social care services exclusively to disadvantaged and vulnerable societal groups. KMY was founded in 2013 by six paediatricians with a social mission to provide medical and care services to children, the elderly, the disabled and people who are chronically ill. In

123 King (n 49); Crabtree and Miller (n 49); Corbin and Strauss (n 50); Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85).

124 Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85).

Table 3.5: Codes and themes in the two Greek case studies

Legal codes	Initial coding categories	In progress themes	Final themes	Roles of stakeholders
Organisation	Incorporation Size Mission Legal form Services and products	Social enterprise model	Social enterprise model	
Governing bodies	Managing committee General meeting of the members Competences Decision-making Voting	Extent of competences in decision-making	Unrealised membership - no formal role or rights of stakeholders in the governance processes	Stakeholders as decision-makers
Ownership and membership rights	Purchase of shares Future success Young company-maturity Motivation for ownership Membership Trust towards the legal/institutional framework	Limited motivation of stakeholders to participate in membership and in governance		Stakeholders as members and owners
Voting rights	No legal rights Not participated			Stakeholders as decision-makers

Table 3.5: *Continued*

Legal codes	Initial coding categories	In progress themes	Final themes	Roles of stakeholders
Information rights	No legal rights Not informed			Stakeholders as recipients of information
Employee participation	Trusting issues with law Exposure to risks Information regarding membership Financial crisis Crisis of values Employees not invited in the decision-making Need evidence from success Member-employee relationship			Stakeholders as advisors and consultant
Stakeholder participation	Informal communication with employees about technical issues Regular informal employee meetings No legal rights Volunteers Public institutions	Employees informally participate in governance	Significant informal participation	Limited motivation of other types of stakeholders to participate formally and directly

its start-up phase, KMY was actually involved in a public policy scheme, provided in the Greek tailor-made legislation for the Koinsep, which allowed the award of direct public contracts to the Koinsep by municipal authorities and public law entities for the implementation of delayed public projects. The public policy scheme was ultimately terminated on the basis of consistent decisions from the Greek Court of Audit, which ruled that this policy breached the EU and Greek public procurement law. The ruling significantly affected the contracts of many Koinseps in Greece, which assigned them with large projects as their core business activity. In the context of this public policy, KMY agreed in a public contract with the Greek *Εθνικό Ίδρυμα Κωφών* (Greek National Institute for the Deaf - hereafter 'EIK') to implement two major projects in a period of one year: (i) the provision of social care services to children with hearing problems in three Greek big cities, particularly with respect to the early detection and the early intervention, diagnosis and treatment of children and infants with hearing problems; and (ii) the provision of training and learning of Greek Sign Language (hereafter 'GSL') to students. For this project, KMY 21 experts-employees, such as doctors, social workers, nurses, teachers and administrative staff, nursery teachers, speech therapists, sign language interpreters and a psychologist.

Is participatory governance realised through membership?

All members participating in KMY's managing committee (i.e. six members) are KMY's cooperative shareholders/members (out of eight members) and thus members of the general meeting of the members (Art. 32, Statute of Association; EK Interview, 13 October 2014).

Decisions regarding the daily management and administration of the organisation are made by the managing committee; the general meeting of the members is the highest governing body to have the competence to decide on every matter and to supervise and control the managing committee (Art. 22 and 12, Statute of Association). The general meeting of the members is annually convened, as opposed to the managing committee which meets on a weekly basis to discuss and take decisions. Thus, it is the body competent of dealing with all issues relevant to the implementation of the assigned public contact (Art. 13 and 23, Statute of Association; EK Interview, 13 October 2014; NK Interview, 2 November 2014). The members of the managing committee exercise their voting rights equally with one vote. Voting is always exercised openly and democratically, and decisions are always made unanimously (EK Interview, 13 October 2014; NK Interview, 2 November 2014).

The decision-making processes of KMY's managing committee are not regularly open to third parties or non-members, such as employees and stakeholders (NK Interview, 2 November 2014; EM Interview, 14 October 2014; EK Interview, 13 October 2014). Membership is crucial, and employees who are not members are not regularly allowed or invited to attend the decision-making processes of the managing committee (NK Interview, 2 November 2014; EM Interview, 14 October 2014; EK Interview, 13

October 2014). Nevertheless, KMY provides comprehensive information to employees regarding the rights, obligations, benefits and challenges that membership confers by explaining to the employees that membership will allow them to participate in the decision-making processes (EK Interview, 13 October 2014; EM Interview, 14 October 2014). Contrary to the empirical findings reported by Campi et al. concerning social enterprises in the examined Greek social enterprises, the decision-making power of the stakeholders is symbolic rather than real.¹²⁵

Except for KMY's founder, president and owner, who was initially assigned to the project as an employee (follow-up interview by NK, 21 March 2016), none of the other KMY staff employed as of October 2014 has been granted membership. Accordingly, as Adam notes, the participation of stakeholders does not materialise as a coercive necessity in formal terms because the legal framework,¹²⁶ which in the case of Greece indeed, as Campi et al. note, permits but does not require the involvement of even one category of stakeholders.¹²⁷ None of KMY's employees/non-members could therefore participate in KMY's decision-making processes. Two KMY members who are also members of KMY's managing committee stated that employees did not feel the urge to become members by assuming ownership of the organisation and participating in KMY's governance. They did so mainly out of distrust and because they are uncertain about the Koinsep's legislative and regulatory framework. One KMY member mentioned that 'When the legislation regarding the Koinsep was introduced, we were already in a crisis. There was already a crisis of [personal] values and distrust towards the state, which turned out to be reasonable' (EK Interview, 13 October 2014).

Additionally, due to the same lack of trust in the legal and regulatory framework, the members of KMY let to make the governance model less attractive and more closed to employees and new members without further developing the concept of employee participation (EK interview, 13 October 2014; NK interview, 2 November 2014). They only decided to retain the founding members of the organisation in governance positions, aiming to gradually open the governance and ownership model to other stakeholders and employees depending on KMY's future growth and success. The decision was made on the assumption that the concluded public contract, pending the ruling of the Greek Court of Audit, could be terminated. The termination of the contract could expose the members of the cooperative to financial risks that employees as members could not potentially bear, precisely in view of their status and origin from vulnerable groups in Greek society, i.e. the long-term unemployed and the poor. This shows that, other than the autonomous decisions of the social enterprise's founders and owners, the materialisation of stakeholder participation and membership depends not only on the urges of stakeholders but also on other factors, such as institutional trust.

125 Campi et al. (n 5).

126 Adam (n 115).

127 Campi et al. (n 5).

Indeed, prior to the termination of the public contract and while implementation of the project was proceeding, KMY accepted two new cooperative members, a decision that ultimately proved to be 'problematic' - as it was characterised by both KMY members (EK Interview, 13 October 2014; NK Interview, 2 November 2014). The new members were two midwife-experts who voluntarily designed new projects to expand KMY's business activities beyond the collaboration with the public sector, i.e. the provision of parenting support classes and breastfeeding seminars (EK Interview, 13 October 2014; NK Interview, 2 November 2014). While explaining why she abstained from assuming ownership and membership and thus from participating in the decision-making activities, one KMY employee claimed that the organisation was still young and evolving. This also showed that the organisation was still immature and did not have concrete evidence regarding its growth and success (EM Interview, 14 October 2014). According to the employee, the project was going well and she was convinced that membership was the next step. However, her employment with KMY was eventually ended following the termination of the public contract (EM Interview, 14 October 2014). Despite never participating in formal decision-making activities, the same employee always felt that she influenced decisions by communicating continuously and informally with KMY's President. As such, she felt that she always had a clear understanding of the decisions that were made and was able to make a contribution. She said that 'although I was not a member of the managing committee, I always had a voice in the decision-making. I was asked to provide one' (EM Interview, 14 October 2014). This type of interaction is characterised by actual cooperation with a high degree of informality as noted by Adam and Campi et al.¹²⁸ Additionally, with regard to employee issues concerning the operational implementation of the project, the employee indicated that informal regular participation mechanisms were developed internally. She mentioned that 'informal employee meetings took place every Friday after working hours' and that these became more frequent over the course of time 'when issues occurred, we could always schedule informal meetings with the President of KMY to discuss and exchange views on a common ground' (EM Interview, 14 October 2014). She also said that with regard to decisions made following the termination of the public contract, she attended regular meetings with the members of KMY in which she was asked to present her view.

Another significant stakeholder of KMY is EIK: KMY's client and major financier. Based on the concluded public contract, EIK was responsible for financing and providing all the resources required for the implementation of the project in return for the services provided by KMY. Although KMY's President was in continuous communication with EIK's representatives, not only regarding developments in the implementation of the project (through structural and informal working meetings), but also regarding work in progress and future plans, EIK representatives never attended a session of KMY's managing committee (follow-up interview by NK, 21 March 2016, deduced CR interview, 19 January 2015). EIK's representatives confirmed that

128 Adam (n 115); Campi et al. (n 5).

they always had sufficient access to information regarding KMY's decision-making processes. Upon being asked the questions 'did you have access to information regarding KMY's activities and decisions that were made?' and 'did you ever attend consultation processes regarding the decisions made by KMY', EIK's representative confirmed that 'yes, this is what we had agreed. I was a member of the Committee that controlled the implementation of the project (...). At the beginning, I was also in charge of signing the consultation processes' (CR Interview, 19 January 2015). The contracting parties agreed to establish a monitoring committee with a formal and regular character to which they entrusted the design, administration, monitoring and evaluation of the project (Art. 9, Programmatic Agreement). The KMY-EIK monitoring committee was a forum comprising representatives from EIK's administration and KMY's managers with the responsibility to evaluate and monitor the progress of the implementation on a monthly basis.

Depending on the outcome of the evaluation, the monitoring committee could authorise the provision of financial resources from EIK to KMY. During the sessions of the monitoring Committee, EIK's representative admitted that she was often informed extensively and in detail regarding decisions made by KMY's managing committee (CR Interview, 19 January 2015). These decisions were often discussed and views were exchanged prior to their authorisation. However, there was also always a great deal of uncertainty among EIK's representatives regarding the legal framework and the cooperation with KMY; this did not allow the relationship to grow, neither as a coercive necessity because of the legal framework nor as an actual cooperation. As EIK's representative put it:

I am telling you that great uncertainty was created as to the cooperation with these companies. It was not easy afterwards. (...) The main problem is the legislative framework. This definitely needs to be adjusted' (CR Interview, 19 January 2015).

Prior to the termination of the public contract, the sessions of the Monitoring Committee were ultimately ended because of a lack of legal grounds for the collaboration (CR Interview, 19 January 2015).

3.2.3.2. Koinsep Ekati (KE)

Koinsep Ekati (KE) is a Koinsep of Collective and Productive Purpose. KE was founded in August 2012 by a mixed team of agriculturalists, geo-technicians and the President of the Greek Homeless Association (AS Interview, 16 January 2014).¹²⁹ In accordance with its statutory purpose, KE provides services with respect to spatial planning, green management and recycling as well as services for the protection, care and nursing of pets and stray animals.¹³⁰ Following a public policy scheme that was similar to the

¹²⁹ Argyrou et al. 2016a (n 24).

¹³⁰ *ibid.*

one adopted by KMY, KE, in its start-up phase, concluded a public contract with the Municipality of Athens to protect and provide daily care to more than 120 stray animals in a small animal nursery facilitated by the Municipality of Athens for a period of 18 months. To implement the project, KE employed a total of five employees (one veterinary doctor and four animal care givers).

Is participatory governance realised through membership?

KE has eight members. According to one KE member, admitted members can be any natural or legal person who aspires towards KE's social goals and activities, except for local administrative authorities and public law entities which are excluded by law (AS Interview, 16 January 2014).¹³¹ KE's most powerful governance body is the general meeting of the members. This is not only because of its competence to decide on the most important organisational matters, but also because of the supervision and controls that it exercises over KE's managing committee. The members in the general meeting of members can decide by voting with one vote. KE is a small organisation with a total of eight cooperative shareholders and members, five employees and three members of the managing committee. These have been directly elected by the general meeting of the members. On a monthly basis, KE's managing committee decides on mainstream issues that affect the administration and management of the enterprise. The meetings of the managing committee, although open to all members, are not open to third parties and/or to employee-non-members (AS Interview, 16 January 2014).¹³² The managing committee is responsible for communicating the decisions made during their sessions to members and to employees (AS Interview, 16 January 2014).¹³³ In KE's case, this means that employees and other stakeholders are not involved in the decision-making process of the managing committee. Nevertheless, informal consultation processes may take place concerning technical matters on the basis of the employees' expertise (AS Interview, 16 January 2014; AF Interview, 16 January 2014).¹³⁴

As of June 2014, none of KE's employees had become a member of the enterprise, and neither had any volunteers assisting KE's operations requested membership. This lack of motivation on the part of employees and other stakeholders to participate in membership, and thus in governance, is justified. The justification rests on the fact that KE's members provided very limited information to employees and other stakeholders regarding this opportunity. Additionally, financial concerns arose in an adverse economic and financial environment. As one respondent mentioned, KE's core focus was the expansion of the organisation and the fulfilment of its social objectives rather the enlargement of stakeholder participation in KE's governance (AS Interview 16 January

131 *ibid.*

132 *ibid.*

133 *ibid.*

134 *ibid.*

2014).¹³⁵ This again shows, in line with Campi et al., that the multi-stakeholder character of a social enterprise does indeed depend substantially on the autonomous decisions of its founders and owners in cases where the legal framework permits but does not require the participation of employees and other stakeholders.¹³⁶ However, as was mentioned earlier, other institutional factors and the personal motivations of stakeholders also play a role. For instance, many respondents mentioned that Greek society is generally unaware of the institutional and legal framework concerning Koinseps in Greece and of the opportunities that this legal form offers to social entrepreneurs and stakeholders (AS Interview, 16 January 2014; AF Interview, 16 January 2014).¹³⁷

3.2.4. Discussion

3.2.4.1. The roles and rights of stakeholders in the governance of social enterprises

The case studies examined in this article have shown that various types of stakeholders (employees, volunteers, financiers and public institutions) in two Koinseps, KMY and KE, have no rights and hardly any formal role in the enterprises' decision-making processes. Stakeholders do not participate formally in the two selected Koinseps, neither as managers and representatives nor as supervisors and controllers. Instead, stakeholders have acquired a more consulting role, one which was found to materialise in informal settings. This is because of the fact that participatory governance is not expressed in a formal manner through membership of these two Greek Koinseps, but rather in a symbolic and informal way. The type of informal participation that is developed in the Koinseps' governance emerges not as a coercive necessity through compliance with the applicable legal framework, but rather as an actual cooperation with respect to crucial decisions that need to be made. Primarily, participatory governance does not materialise through membership because of: (i) the limited urge and motivation on the part of stakeholders to be involved in the ownership and membership of the organisation for financial and risk-related reasons; (ii) the limited awareness of stakeholders regarding the opportunities that membership provides for participation in governance; and finally (iii) the constraints that have been imposed by law and public policy (especially with respect to the participation of legal persons and public institutions).

Stakeholders also show a lack of trust concerning the legal and institutional framework of the Koinsep, which might be justified considering its emerging character, a series of unsuccessful policies that have been implemented and the lack of knowledge and awareness in society regarding this new type of social enterprise. The inconsistency of the legal framework and its repercussions are manifested in the detrimental policy applied to Koinseps concerning public contracts, something which besides being inconsistent with the EU and the national public procurement law (as ruled by the Court of Audit) is also

135 *ibid.*

136 Campi et al. (n 4).

137 *ibid.*

irreconcilable with the Koinsep's legal form. Therefore, although Koinsep governance with its participatory and multi-stakeholder character could complement, for instance, the provision of public goods and services by public institutions, the law excludes the internalisation of municipal authorities and public law entities in the membership of a Koinsep - and consequently in its governance. This lack of trust is also noted among stakeholders with respect to the successful outcomes, the future growth and eventually the development of the new legal form of the Koinsep, which is still in its start-up phase. This leads to the assumption that participatory governance through membership may become more likely in fully grown and more mature Koinsep social enterprises in Greece. However, in view of the fact that the Koinsep legal form was only introduced in 2011-2012 and that even the oldest Koinsep in Greece has only been in operation for a maximum of four years, this assumption is not firmly grounded on a comprehensive basis of empirical research, at least not for the near future. Additionally, and apart from the limited motivation of stakeholders to participate in governance, in an uncertain institutional environment, there is a limited urge on the part of a Koinsep's founders and principal decision-makers to make membership - and thus the decision-making processes - attractive to new members. This is primarily because founders and decision-makers in the examined social enterprises disregarded the means by which stakeholders can jointly contribute to the governance of the organisation or the fulfilment of social objectives through decision-making.

3.2.4.2. Participatory stakeholder mechanisms

Although the participation of stakeholders is not realised formally, through membership, in the governance of the two Greek Koinseps discussed in this article, informal means of participation and consultancy are available; these are presented in Table 3.6 below. The informal means of stakeholder participation override the formal means that have been duly legislated but not implemented in practice. These informal stakeholder mechanisms have a thriving structural and direct character, even though membership is not realised.

3.2.5. Case study conclusions

3.2.5.1. Limitations and future research

The current study is part of a larger project involving comparative research on tailor-made laws and corresponding legal forms of social enterprises in three jurisdictions: Greece, Belgium and the UK. This larger study involved the development of single case or multiple case research designs regarding three corresponding legal forms for social enterprises, i.e. the Koinsep in Greece, the *Vennootschap met Sociaal Oogmerk* in Belgium and the Community Interest Company in the UK. Both studies used the same research method. In the current study, we limited our research to the examination of two Greek social enterprises which employ legal variations of the legal form of the Koinsep, i.e. a Koinsep of Care and a Koinsep of Collective and Productive Purpose.

Table 3.6: Participatory stakeholder mechanisms in the two Greek case studies

	Formal	Informal	Regular	Ad hoc	Direct	Indirect
Stakeholder participation in the general meeting	Not realised					
Stakeholder participation as members of the managing committee	Not realised					
Employees' meetings with members of the managing committee		X		X	X	
Employees' consultation processes regarding technical matters		X		X	X	
Working sessions with EIK		X	X		X	
EIK - KMY monitoring committee	X		X		X	
Communication of the decisions of the managing committee		X	X		X	

We limited our research to the development of two case studies to show that rich qualitative data collected through narratives and reflections by key respondents and additional supporting evidence obtained from relevant documents can produce results that go beyond the legal variations of the Koinsep legal form.

Knowing that the selection of a single case study approach would affect the validity of our inferences, we built on evidence from two case studies. We opted for this approach because it enabled us to comprehensively demonstrate the evidence identified in the data and in the emerging patterns. To eliminate the danger of overgeneralisation and to address concerns regarding the sampling of the case studies, we limited our research to two highly illustrative cases which were directly linked to our legal and theoretical elaborations. However, we are aware of the fact that the results of case studies may be case bound and significant only to the relevant subject matters in each case. Our objective, therefore, is to test the existing theoretical propositions to a greater extent and in the larger project, to develop a generalisable theory from case studies presented cumulatively in all the examined jurisdictions and regarding all the corresponding tailor-made legal forms for social enterprises. The replication logic that we have adopted will allow us to generate comparable results for various legal forms and corresponding organisations for social enterprises in different jurisdictions, i.e. in Greece, Belgium and the UK.¹³⁸

138 Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85).

It will also enable us to obtain research results which will likely reveal variations that go beyond the different legal variations of the legal forms.

3.2.5.2. Practical implications

This study contributes, in a substantial and a practical manner, to a better understanding of the new Koinsep as a tailor-made legal form for social enterprises in Greece: it sheds light on the Koinsep's function and its governance structure. It also criticises unsuccessful Greek public policies and legislation affecting the function and the activities of Koinsep social enterprises by pointing at what needs to be considered in future revisions of applicable legislation. Finally, the implications of empirical findings in the discussion with respect to employees and stakeholders participating in the decision-making processes of the Koinsep will allow Greek social entrepreneurs to consider existing theories and improve the organisational functioning of their social enterprises on the basis of evidence from similar case examples.

3.3. Greece: Social enterprises and the integration of persons with mental disabilities in Greece: A case study of Koispe Athena-Elpis

Abstract

We have developed a single case study that examines the participatory governance model of a work integration social enterprise (hereafter 'WISE') in Greece which aims at the integration of persons with mental disabilities. The case study examines particularly how legal requirements tailor-made to social enterprises accommodate the participation of persons with mental disabilities in the governance structure of the examined social enterprise and how these are implemented in practice. The study aims to contribute to the concept of 'humanistic management' which aspires to the promotion of dignity and human virtue of every person in an organisational context by means of fair and participatory decision-making.

Keywords

Work Integration Social Enterprise, Stakeholders, Participatory Governance, Persons with Mental Disabilities, Decision-Making

3.3.1. Introduction

3.3.1.1. Social enterprises of work integration in Greece

Scholarship notes that social enterprises could assist: (i) in the allocation and production of quasi-public goods and services in a redistributive manner, through the provision of services to deprived people; and (ii) the deprived persons, who are at risk of permanent exclusion from the labour market, to return to work.¹³⁹ Social enterprises can support the employment of the long-term unemployed, the persons with disabilities, or other deprived and vulnerable groups in need of socio-economic integration, such as ex-convicts or drug addicts.¹⁴⁰

Since the 1990s, this role was reflected in a significant social enterprise type called the work integration social enterprise (hereafter 'WISE').¹⁴¹ The WISE can be found in the tailor-made laws for social enterprises of various countries in the EU, including, for example the Finnish Law on Social Enterprises 2003, the Polish Law on Social Cooperatives and the Greek Social Entrepreneurship Law of 2011.¹⁴²

In Greece, the Social Entrepreneurship Law of 2011 and its amendment introduced a special legal form for the social enterprise of work integration, i.e. the Koinsep of Integration.¹⁴³ The Koinsep of Integration has a social purpose, which aims to promote the social and economic integration of individuals, and groups who are 'vulnerable' through labour and employment opportunities.

In the Social Entrepreneurship Law of 2011 and amendment, 'vulnerable groups' are understood as those groups of individuals who belong to the weakest and most excluded parts of the Greek society. The Social Entrepreneurship Law of 2011 and its latest amendment of 2016 defines these groups as groups whose integration into the social and economic life is hindered by delinquent behaviour and/or by physical and psychological constraints. In the legislation, indicative examples are provided concerning 'vulnerable groups' as groups which consist of people with disabilities, i.e.

139 J. Defourny, 'Introduction: From Third Sector to Social Enterprises' in C. Borzaga and J. Defourny (eds), *The Emergence of Social Enterprise* (Routledge 2001) 1-2; J. Defourny, 'From Third Sector to Social Enterprise: A European Research Trajectory' in J. Defourny, L. Hulgård and V. Pestoff (eds), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective* (Routledge 2014) 20.

140 Defourny and Nyssens (n 2) 37.

141 B. Huybrechts, S. Mertens and J. Rijpens, 'Explaining Stakeholder Involvement in Social Enterprise Governance Through Resources and Legitimacy' in J. Defourny, L. Hulgård and V. Pestoff (eds), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective* (Routledge 2014) 166-167; Campi et al. (n 5) 31; R. Spear and E. Bidet, 'Social Enterprise for Work Integration in 12 European Countries: A Descriptive Analysis' (2005) 76(2) *Annals of Public and Cooperative Economics*, 197.

142 Defourny and Nyssens (n 2) 37.

143 See arts. 1(3) and 2(2)(α), Social Entrepreneurship Law of 2011 and art. 14(2) of Law 4430/2016; Argyrou et al. 2016a (n 24); Argyrou and Lambooy (n 92).

physical, mental or sensory disability, prisoners and former convicts. The legislation also prioritises the integration of individuals who belong to this type of groups in the Koinsep of Integration by introducing a mandatory employment quota.¹⁴⁴

However, the policy that promotes the socio-economic integration of persons with disabilities is not a new one in Greece. In 1999, the Greek legislator introduced a legal form for one specific type of WISE only, the so-called 'Limited Liability Social Cooperative' (the English term for *Κοινωνικός Συνεταιρισμός Περιορισμένης Ευθύνης*, hereafter 'Koispe'), which could employ predominantly persons with mental disabilities and psychosocial problems.¹⁴⁵ The Law concerning the Reformation and Modernisation of Mental Health Services of 1999 (hereafter 'the Mental Health Services Law of 1999') introduced the Koispes legal form. In the Mental Health Services Law of 1999, the Koispes is regulated as a mental health unit and a commercial enterprise that employs people with severe psychosocial problems. These are individuals who suffer from severe mental disorders. Their integration is accomplished through the vocational rehabilitation and training.

Koispe is a social cooperative that seeks to promote the social and economic integration of persons with psychosocial problems by means of contributing to their treatment and to their economic self-sufficiency and independence. The underlying idea behind the introduction of the Koispes legal form is that people with mental disabilities and psychosocial problems generally suffer from psychiatric problems, which impede their participation and equal contribution to the economic and social life in society. They deal with significant barriers in finding employment opportunities and with stigma that hampers them to enjoy a social and economic life. Mental disability is further translated into a lack of opportunity for employment, employment constraints, long-term unemployment and lack of education.

The Koispes legal form, similarly to the current form, i.e. the Koinsep of Integration, is a social cooperative of integration with a commercial capacity by law, which aims at the integration of one particular 'vulnerable group', i.e. the persons with mental disabilities. As such, although the Mental Health Services Law of 1999 predominantly regulates the Koispes, all Koispes organisations are also subject to the newer Social

144 Art. 2(2)(α) of the Social Entrepreneurship Law of 2011 requires from a Koinsep of Integration to employ at least 40% of employees, who belong to the societal sub-group, namely the 'vulnerable groups'. The quota was reduced to 30% in the amended Koinsep regime particularly in art. 13 of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions, Official Government Gazette A' 205/31-10-2016. See also art. 14(2)(αβ) of the same Law 4430/2016 concerning the introduction of the Koinsep of Integration particularly for special groups. This type of Koinsep of Integration is obliged to employ at least 50% of individuals, who belong to the category 'special groups'. See the analysis in A. Argyrou and S. Charitakis, 'Gender Equality in Employment Utilizing Female Social Entrepreneurship in Greece' [2017] 12(2) *International and Comparative Corporate Law Journal*, 36-60.

145 Law 2716/1999 concerning the Reformation and Modernisation of Mental Health Services of 1999, Official Governmental Gazette 96/17.03.1999.

Entrepreneurship Law of 2011 and to its latest amendment of 2016. Article 2(2)(a) of the Social Entrepreneurship Law of 2011 and Article 14(2)(αγ) of Law 4430/2016 amending the Social Entrepreneurship Law of 2011 provide that the Koispe legal form must also comply with all the requirements concerning the Koinsep of Integration. The legal requirements comprise but they are not limited to the rules regarding - amongst others - registration, governance, and accountability of the Koinsep.¹⁴⁶ In other words, the provisions stipulate that each Koispe must be considered as a Koinsep of Integration, which must ‘automatically adhere’ to the rules applicable to the latter special legal model, i.e. the Koinsep of Integration, included in the Social Entrepreneurship Law of 2011 and in its latest amendment of 2016.

Besides being a social cooperative of integration, a Koispe is also a mental health unit and forms part of the mental health sector in Greece. It is a private entity, which is subject to the monitoring and supervision of the Greek Ministry of Health. Furthermore, the Mental Health Services Law of 1999 requires from the Koispe to be incorporated as a social cooperative that operates predominantly as a mental health unit in a geographically and demographically designated manner. In the Mental Health Services Law of 1999, the geographical extent of Greece is divided into 64 Mental Health Divisions, which allow for a numerus clausus in the incorporation of 64 Koispe per Mental Health Division.¹⁴⁷

3.3.1.2. Participatory governance and the Koispe legal form

Koispe’s governance structure is rather complex. In principle, the capital of Koispe is divided into cooperative shares, which can be acquired, by three types of members and corresponding member categories.¹⁴⁸ All Koispe members, regardless of their member category, are obliged to acquire at least one mandatory cooperative share. The rules pertaining to the Koispe members constitute a combination of rules included in the Mental Health Services Law of 1999, the Social Entrepreneurship Law of 2011, its amendment of 2016 and the applicable legal framework regarding civil cooperatives in Greece.¹⁴⁹ Accordingly, the corresponding member categories are divided into the following:

- (i) *Category A* comprises members (Type A members), who due to mental disabilities are in need of vocational rehabilitation regardless of their diagnostic category, stage of disease, residence and legal (including contractual) capacity to act. The Koispe cooperative members of this category should constitute at least 35% of the total

146 Art. 2(2)(a), Social Entrepreneurship Law of 2011 and art. 14(2)(αγ), Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

147 However, since 1999 and as of 2017 in the 64 existing Mental Health Divisions only 25 Koispe have been incorporated.

148 Art. 1(4), Mental Health Services Law of 1999; see also art. 3(1)-(6), Social Entrepreneurship Law of 2011 repeated in art. 15 in Law 4430/2016; see also the Law 1667/1986 concerning Civil Cooperatives of 1986.

149 These are: the Law 4019/2011, the Law 4430/2016, the Law 2716/1999, and the Law 1667/1986.

sum of members and cooperative shareholders and they should be employed and receive remuneration by the Koispe for the provided employment.

- (ii) *Category B* comprises members (Type B members), are mental health professionals, e.g. occupational therapists, trainers, psychiatrists or psychologists. Type B members cannot exceed 45% of the total number of Koispe members and they are allowed to offer full or part-time services to the Koispe following the Koispe's SoA, constitutional documents and rules of operation.
- (iii) *Category C* comprises members (Type C members) which cannot exceed 20% of the total number of the Koispe members. Type C members are individuals or legal persons that constitute the strategic and community stakeholders of the Koispe, e.g. municipalities, communities, companies, psychiatric hospitals and/or public sector partners. Type C members are subject to additional rules included in the newer regime of the Social Entrepreneurship Law of 2011 and its amendment of 2016.

The newer Social Entrepreneurship Law of 2011 and its amendment of 2016 stipulate that the Koinsep should be - in general - allowed to have legal persons as members to a limited extent only. The number of members-legal persons should not exceed the rate of one third (i.e. 33.33%) of the total amount of the members of the Koinsep. The general rule differs from the special and more restrictive rule included in the older Mental Health Services Law of 1999 concerning Type C members, which can be legal persons. According to the special rule, the members-legal persons of the Koispe cannot exceed 20% of the total number of the Koispe members. However, the later general law does not repeal the prior special law.

Moreover, as a general rule public entities and municipal authorities are excluded from the membership and ownership of cooperative shares in the Greek Koinsep. The Koinsep of Integration, however, is exempted from this general rule.¹⁵⁰ In particular, legislation stipulates that public entities can participate as members in the Koinsep of Integration, subject to the approval of the public institution that scrutinises them.¹⁵¹ The exception applies also to the Koispe legal form *mutatis mutandis*, which in that case should seek the approval of the Greek Ministry of Health.

According to the applicable laws, the governance of the Koispe is exercised jointly by three governing bodies: (i) the general meeting of members (hereafter 'general meeting'); (ii) the management board; and (iii) the supervisory board. The general meeting is the highest decision-making body of the Koispe. It has the competence to make important decisions, such as the amendment of the terms in Koispe's constitutional documents, the determination of the annual management plan, the annual financial control and

150 Art. 3(3), Social Entrepreneurship Law of 2011 and art. 14(5) in Law 4430/2016.

151 *ibid.*

the scrutiny over operations.¹⁵² All types of members (Type A, B and C) are entitled to attend the general meeting and vote following the 'one man, one vote' rule. The general meeting elects, appoints and supervises the members of the management board and of the supervisory board. Where any infringement occurs the general meeting is the competent body to discharge the liability of the members of the management or supervisory board, or terminate membership. Termination may take effect at any time for a good reason that constitutes breach of the members' duty of care or inability to exercise good governance. Moreover, the general meeting makes decisions regarding the financial position and strategy of the Koispe. It approves the annual balance sheet and the annual accounts.

The management board is in charge of the daily management. Its competence is stipulated in the SoA of the any Koispe and the legal framework concerning the Koispe and the Koinsep. For instance, the management board coordinates the economic management of the organisation.¹⁵³ Such competence requires, amongst others: (i) the administration of the purchase of assets and consumable goods; (ii) the hiring or dismissal of staff; (iii) the representation in transactions with public authorities and third parties; and (iv) the conclusion of contracts with third parties. However, except for managerial decisions the management board has a more significant role in: (i) convening regular and extraordinary general meetings; (ii) determining the issues to be discussed; (iii) preparing annual accounts for approval; and (iv) admitting new members in accordance with the provisions of the SoA and the Koispe and the Koinsep legislation.¹⁵⁴

The Mental Health Services Law of 1999 dictates that the general meeting appoints members of the management board of the Koispe by voting. The same law requires that the board comprise a maximum of seven members representing the different member-categories, i.e. Type A, B or C. Of these categories, a maximum of five members must belong to categories B and C, and a maximum of two members must belong to Type A.

Additionally, Type A members are only permitted to become members of the management board where they are not in full privative judicial assistance, i.e. their legal capacity is not limited nor deprived by law, and they are consequently in a position in which they can exercise legal transactions.¹⁵⁵

3.3.1.3. Type A members in the governance of the Koispe legal form

According to Article 12(9) of the Mental Health Services Law of 1999, the members of the management board vote openly to appoint a president, vice president, secretary, and treasurer. Specifically Type A members can be appointed as board member but

152 Art. 12(11), Mental Health Services Law of 1999.

153 *ibid* art. 12(9); See also art. 7(4), Law concerning Civil Cooperatives of 1986.

154 Art. 12(11), Mental Health Services Law of 1999.

155 *ibid* art. 12(9)(1).

they are explicitly excluded from being appointed in these high-level decision-making positions. The exclusion is justified in the applicable legal framework on Type A members' ineligibility to undertake the legal transactions that these positions may require.¹⁵⁶ As such, they are deprived from the right to be appointed in these positions.

Additionally, all the appointed representatives of Type A members are excluded from acquiring higher managerial positions in the management board. The exclusion applies regardless of their status as legally capacitated or otherwise. The foregoing deprivations are justified as necessary to safeguard the perceived legality and the legal certainty of transactions performed by the Koispe members-representatives with third parties.¹⁵⁷

Type A members are also excluded from their appointment as members of the supervisory board. The justification of this exclusion rests on the grave responsibility and the important role of the supervisory board.¹⁵⁸ In particular, the competence of the supervisory board rests on ensuring that the actions of the management board comply with the decisions produced by the general meeting. Accordingly, the members of the supervisory board have the right and the obligation: (i) to inspect the accounting books, documents and materials produced by the Koispe administration and operation; (ii) to carry out ad hoc controls; and (iii) to monitor the financial and operational position of the Koispe. Hence, Type A members are precluded from these tasks of supervising the organisation.

Therefore, it is understood that Type A members, i.e. the persons with mental disabilities, are capable of being forming part of the membership and governance of a Koispe, but they do not enjoy their governance rights equally with other Koispe members. This is done regardless of whether they are able to undertake physically and/or legally such responsibilities.

It is also understood that Type A members may exercise most of the rights in the decision-making processes of the Koispe, such as ownership of the cooperative shares and admittance into membership, exercising also their voting rights in the general meeting. Additionally, they may equally appoint or be appointed as members of the management board. However, they are not yet equally and fairly included in the governance of the Koispe legal model. They and their representatives are excluded by law from the higher positions of the management board based on their legal capacity.

The arguments, which are used in the Explanatory Notes of the Mental Health Services Law of 1999 to justify the exclusion of Type A members from the higher managerial

156 Explanatory Notes to the Mental Health Services Law of 1999 available only in Greek at: <www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=4e4cda7b-1724-4d20-a323-7b2152d5e9dd> accessed 16 October 2017.

157 *ibid.*

158 Art. 12(10), Mental Health Services Law of 1999; Explanatory Notes to the Mental Health Services Law of 1999 (n 156).

positions of the Koispe are largely discriminatory based on disability and legal capacity. Those arguments are contrary to the existing normative framework regarding the human rights of persons with disabilities in all aspects of life, which recognises that ‘persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life’.¹⁵⁹ Such arguments may jeopardise the social purpose of the Koispe legal form, which is the process of integration of persons with mental disabilities into society and economy.

The precarious effects of the provisions that exclude Type A members from the governance of Koispe are demonstrated in the empirical study of a Greek scholar, i.e. Adam.¹⁶⁰ In her doctoral thesis, she empirically examined the multi-stakeholder character and governance of sixteen Koispe social enterprises. She concluded that the multi-stakeholder character of the Koispe legal form does not entail the formal participation of stakeholders into the governance of the Koispe in contrast to the findings of the study conducted by Campi et al.¹⁶¹ This particular finding in Adam’s study was then tailored to stakeholders, such as persons with mental disabilities, i.e. Type A members, and the strategic and community partners of Koispe, such public hospitals and disability associations, i.e. Type C members.

In particular, Adam demonstrated that the greatest advantage of the multi-stakeholder structure of the management board of a Koispe is furnished when Type A members are empowered and determined to participate in labour and in governance.¹⁶² She also noted the potential for Type A members to gain ground and power in the organisation and to obtain a more comprehensive view of the cooperative operation.¹⁶³

However, Adam also revealed that the equal participation of Type A members with members from categories B and C in the management board is perceived by the members from other categories (i.e. Type B and C) as detrimental to the functioning of the organisation for certain reasons. First, she demonstrated that members from other categories perceived that Type A members are unstable and they may relapse during the decision-making processes due to their mental disability and their psychiatric institutionalisation background. Other respondents perceived that Type A members are often low class individuals with lower education and socio-economic standing. Second, Adam criticised the omission of the Greek legal framework to embrace equality and the human rights of mentally disabled people in the Koispe legal framework.¹⁶⁴ Third, she noted that there are risks for Type A members, if they have knowledge of sensitive information that may relate to their mental health status or the status of others. Lastly, she considered that the knowledge of the financial position of the Koispe could make

159 Art. 12, UN General Assembly, Convention on the Rights of Persons with Disabilities: resolution adopted by the General Assembly, 24 January 2007, A/RES/61/106.

160 Adam (n 115).

161 Campi et al. (n 5).

162 Adam (n 115).

163 *ibid* 167-171.

164 *ibid*.

Type A members susceptible to uncertainty and frustration.¹⁶⁵

Indeed, in Adam's study, the majority of Type B members, i.e. mental health professionals, admitted that a barrier to integrating Type A members in the higher management board positions is the absence of their social skills and training.¹⁶⁶ The lack of social skills and training of Type A members exceeded in quantified terms their lack of willingness to participate in the higher managerial positions of the organisation in Adam's study.¹⁶⁷ Adam also noted that some of the examined Koispe organisations lacked a uniform and systematic process that promotes the confidence of Type A members to participate in the higher positions of governance.¹⁶⁸ In her study, Type B members indicated that Type A members should be first encouraged to participate in the formal governance bodies, i.e. the management board and the general meeting. Likewise, Type A members indicated that they perceive their participation in the processes of the management board to be the most essential for their integration, due to the importance of its content and the greater frequency of meetings.

However, the undermined position of persons with mental disabilities in the management of the Greek Koispe may actually impede their integration and participation with equal terms in all Koispe's decision-making levels. As such, it is the objective of this article to investigate, through the development of an in-depth single case study, how the legal framework regarding the participation of stakeholders, i.e. (Type A) members is implemented in practice. The single case study also aims to examine the effect of law on the governance of the examined organisation. Consequently, the following Sub-sections examine how the stipulated legal provisions regarding governance and management shape the participatory governance of a selected Koispe, and whether other processes have been developed in the organisational governance of the examined Koispe to provide for a fairer participation of persons with mental disabilities in all the levels of governance.

The research examines the exerted influence of legislation (the legal form and the rules included in the applicable framework) over one selected social enterprise. We employ empirical research to allow for an in-depth examination of the implementation of legal provisions and their effect in terms of how they shape the governance and organisational functioning of the selected social enterprise. In other words, by virtue of employing empirical techniques, this article aspires to outline the concrete role of the various types of stakeholder in the governance of the selected social enterprise and unravel even further the concept of participatory governance.

165 *ibid* 172.

166 *ibid*.

167 *ibid* 278.

168 *ibid*.

3.3.2. Method

3.3.2.1. Case study approach

The case study presented in this article contributes to a broader research in which the participatory governance of various types of social enterprises is examined through the development of various single or multiple case studies, examined in different jurisdictions. All case studies imitate and replicate the same method in the development and analysis of a collection of empirical data.¹⁶⁹ Subsequently, through the development of an in-depth case study, the shape and the functioning of participatory governance is investigated, as is the effect and the effectiveness of the examined tailor-made legal model in terms of its implementation. As such, the research method used for this study is based on the examination of the practical implementation of tailor-made legal rules for social enterprises in one social enterprise in Greece, which is the country of interest in this article. Other countries considered within the scope of the broader case study research are Belgium and the UK. The findings are then compared.

3.3.2.2. Respondents

In replicating the research method applied in other case studies, we collected data from interviews conducted with respondents from one selected Greek social enterprise, the Koispe Athena-Elpis (hereafter 'KAE'). The collected information was further triangulated with information that was collected from relevant documents. These are: (i) the constitutional documents of the selected social enterprise, including its SoA; (ii) annual and other reports; (iii) recent publications; and (iv) several observations from the visits at the location of the interviews. Feedback and validation of the interviewees was constantly provided to us during the phase of processing the collected data, and while developing the case study draft. We conducted the interviews based on a replicated interview protocol with persons from different organisational layers to safeguard the plurality of perspectives and insights. The interviewees were persons from different organisational layers, i.e. (a) one member-owner-shareholder of the organisation; (b) one stakeholder; (c) one manager; and (d) one employee. The respondents comprised professionals with mental health backgrounds in medicine, business administration, and management of health care units. One respondent, albeit having basic education, had long working experience in a bank and in a retail company. Additionally, two of the respondents were found to be previously involved in social entrepreneurial initiatives. One of the respondents is a founding member of another Koispe organisation.

169 Yin 1984 (n 120); Corbin and Strauss (n 50); Crabtree and Miller (n 49). See Argyrou et al. 2016a (n 24); 2016b (n 85); See A. Argyrou et al., 'Unravelling the Participation of Stakeholders in the Governance Models of Social Enterprises in Greece' [2017] 17(4) *Corporate Governance: The international journal of business in society*, 661-677 [Argyrou et al. 2017].

Table 3.7: Codes and themes in the Greek single case study

Legal codes	Initial coding categories	Themes	Roles of stakeholders
Koispé organisation	Size of organisation Social impact Economic impact Duality Multi-faceted mission	Hybridity	
Functional activities	Integration and treatment Beneficiaries of the policy Emotions play a role Engagement in entrepreneurial activities Psychological support and treatment at work Organisational structure Services in the market	Recipients of mental health and employees	Recipients of mental health and employees
Governing bodies	Participation in the management board Participation in the general meeting Participation in administration Conformity in decision-making	Unfairly excluded decision-makers	Stakeholders as members and owners of shares
Ownership rights	Policy challenges Legal form challenge Unjust exclusion Justification of exclusion Multi-membership is a challenge	Hesitant Type A members and owners of shares in the organisation	Stakeholders as members and owners of shares
Voting rights	Democratic participation		
Information rights	Members access to information		
Employee participation	Website	Structured process	
Stakeholder participation	Newsletter Non-member participation in the management board Counselling committee (Type B members) Individual appointments with supervisors Employee meetings		Stakeholders as consultants and advisors

3.3.2.3. Procedure and analysis

We collected data from in-depth interviews and we processed them using the constant comparison method (coding technique) that was then followed by a template analysis.¹⁷⁰ Thus, we developed an ancillary a priori template of codes that we deduced from the legal analysis. We refined the code template with inductive codes from the data. We combined the inductive codes into themes (see Table 3.7).

3.3.3. The case study results

3.3.3.1. The participation of Type A members in the functioning and governance of the Koispe Athena-Elpis

KAE was incorporated in 2012. The statutory purpose of KAE is the integration of people with severe psychosocial problems into the labour market and their psychosocial rehabilitation to the extent that they are economically self-sufficient and can live independently. The organisation is characterised by a duality in its purpose, which is simultaneously economic and social. The duality was reflected in the organisation's public mission which states that '[w]e operate with a social orientation'.

According to KAE, the organisation seeks to operate as a distinguished social enterprise on the market, which offers labour opportunities, quality working conditions and adequate remuneration to persons with mental disabilities. Additionally, KAE aims to achieve financial viability and participation through membership opportunities provided to local and institutional partners and by reinvesting any generated profits to the social purpose of the organisation for further growth and development. The social element of the purpose is demonstrated in KAE's objective to develop a standard integrated psychotherapeutic rehabilitation process through the employment of people with severe psychosocial problems.

Vocational rehabilitation aims to reduce the symptoms and improve the social and professional skills of the mentally disabled. The provision of labour opportunities to mentally disabled persons and their participation in entrepreneurial activities will in turn increase their autonomy and self-sufficiency and mitigate their exclusion, discrimination and stigma in society. The social element of the therapeutic rehabilitation and social integration is realised via 'on the job' treatment and the professional training of these persons. However, according to one respondent, KAE is primarily a mental health unit and secondarily an undertaking (1.1 interview, 16 October 2014). Therefore, this respondent perceived the social element of the purpose as more important than the economic element.

KAE was initially founded by 112 members. At the time of the interviews KAE comprised 125 members divided into three categories of members as the Mental Health

170 King (n 49).

Services Law of 1999 requires. KAE's membership comprised: (i) 60 Type A members, who were persons suffering from psycho-social problems and were, therefore, recipients of mental health treatment and rehabilitation; (ii) 45 Type B members who were mental health professionals; and (iii) 20 Type C members who were natural or legal persons from the public and/or private domain. Type C members comprised, four NGOs, two public hospitals, a community mental health centre, a private elderly care unit and the Athens Association of Alzheimer's Disease and Related Disorders in particular.

The increase of Type C membership since KAE was initially established was perceived by the founding members as a proof of society's intention to support the activities of KAE with tangible resources (cooperative shares) in the pursuit of the social purpose (2.2 interview, 13 September 2014). Despite the large number of cooperative members, KAE was a small organisation. It comprised only 35 employees, of whom 18 were recipients of mental health services. In their majority, these employees also constituted Type A members.

The participation of employees in membership was not mandatory for KAE's employees, neither were all Type A members found to be Koispe's employees. According to one respondent, the employment and membership of Type A members supported Koispe's objective to create job opportunities for people with serious psychosocial problems, while also assisting them in accessing broader psychosocial rehabilitation through community structures (3.3 interview, 16 October 2014). Additionally, persons with mental disabilities had the following roles in KAE's organisation. They were: (i) recipients of mental health services and of vocational training; (ii) employees-providers of commercial services; (iii) (Type A) members of the general meeting of the organisation; and (iv) decision-makers and appointed managers.

3.3.3.2. The various roles and rights of the mentally disabled in the functioning and decision-making of the organisation

Type A members as recipients of mental health services and of vocational training

Persons with mental disabilities are recipients of mental health services that the KAE treats as a mental health unit. The mentally disabled are the beneficiaries of the psychosocial rehabilitation and integration through vocational training and employment. KAE deals with the mental health of persons with mental disabilities during training and after they had been employed. Persons with mental disabilities are commonly in need of special support from mental health professionals during complicated labour activities and in training. As one mental health professional mentioned:

We need this type of support to control the recipients' expectations at the beginning regarding the processes of new entrepreneurial initiatives. Such entrepreneurial initiatives might ultimately move slowly or not move at all, creating feelings of frustration and disappointment to them (2.2 interview, 13 September 2014).

As Adam notes, the emotional engagement of persons with mental disabilities with entrepreneurially risky operations is constantly demonstrated in Koispe.¹⁷¹ KAE in its organisational structure had developed a supportive counselling department to deal with that issue. The supporting counselling committee constituted a group of mental health professionals and doctors, e.g. psychiatrists and psychologists. The competence of the supportive counselling department was the application of psychotherapeutic processes and support, which was integrated 'on the job'. The psychotherapeutic process entailed processes, such as psychotherapeutic assessments and monitoring of the mentally disabled. The function of the supportive counselling department was autonomous during the psychotherapeutic process. However, the department had an obligation to inform the higher levels of management and administration of the progress of the recipients of mental health services.

During the psychotherapeutic process, the supportive counselling committee did not substitute or replace the treating doctor of the mental health recipients, nor any pre-existing therapeutic framework. In particular, KAE's supportive counselling committee had to consider the therapeutic treatment and medication of any recipient and potential trainee or employee with mental disabilities. It subsequently referred to the administration and management of the organisation to investigate the possibility of training and eventually employment. When a candidate was confirmed as eligible to proceed to the submission of an application to KAE then a confirmation letter from the treating doctor was asked. The candidates could only then proceed with comprising part of the organisation as employees.

The vocational training of Type A members was undertaken, while employment was under way. Candidates were hired based on their professional experience and were trained for two months by professionals and assigned instructors. Following this initial training, the recipients' working hours were increased and their performance was monitored. Supervisors and instructors supervised the entire process. One respondent mentioned that the clear rules and structured processes assisted Type A members to perform better and gain a clearer understanding of their responsibilities. It also assisted the organisation to account to the Greek Ministry of Health based on documentation and records regarding all aspects of administration and daily operation of the organisation.

Type A members as employees and providers of commercial services

KAE comprised several organisational departments including: (i) the administration; (ii) the supportive counselling committee; and (iii) the business operations. Persons with mental disabilities were employed by KAE to support positions in business operations and in administration.

171 Adam (n 115).

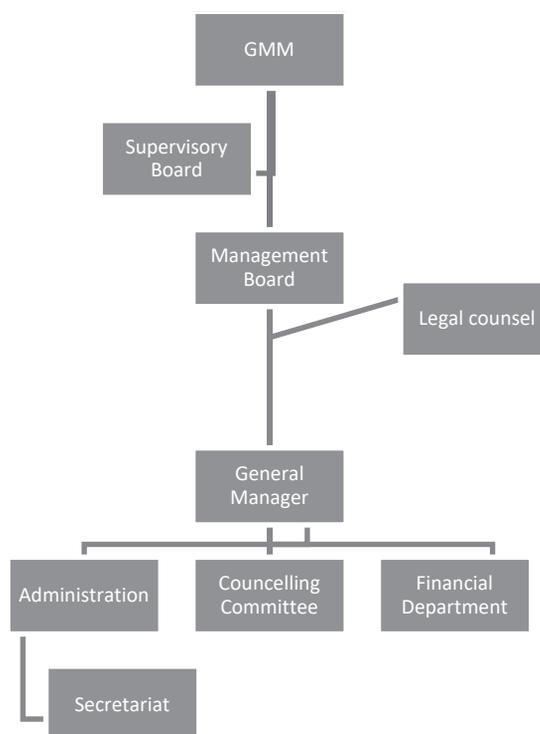


Figure 3.1: KAE's organisational structure

At the time the interviews were conducted, KAE ran three operational projects, namely: (i) cleaning and spatial management services; (ii) shop-in-shop retail; and (iii) catering services. Each project integrated persons with mental disabilities and mental health professionals into the workplace. Koispe employees were in their majority recipients of mental health services and Type A members, i.e. 18 out of 35 employees, at the time of the interviewees. They were the beneficiaries of the psychotherapeutic on the job treatment provided by KAE.

With respect to the provision of cleaning and spatial management services, KAE developed a professional cleaning crew, which offered service to large public institutions, such as the National School of Public Health. Additionally, the organisation ran small shops within other shops (shop-in-shop retail), such as copy stores and help desks in the premises of the National School of Public Health. Finally, KAE maintained a catering service, i.e. a small canteen in the facilities of a private elderly care unit, which in return, was admitted as a Type C KAE member.

Type A members and membership

Multi-stakeholder membership was found to be compulsory in the legal form of Koispe but burdensome and complex in terms of practical implementation. As one respondent

mentioned, 'we had to involve more than 100 members from three different categories A, B and C' (2.2 interview, 13 September 2014). He thereby displayed the difficulty of bringing together a significant number of persons with diverse stakes and characteristics in an entrepreneurial accomplishment.

Additionally, some employees were not found to be members of the organisation despite being recipients of mental health services. Similarly, some Type A members were not employed by the organisation despite being recipients of mental health services. That was mainly due to their having inadequate skills. Only 18 employees were found to be Type A members out of 60 Type A members and 35 in total employees. The foregoing numeric relationship demonstrates that KAE's objective to fulfil simultaneously the socio-economic integration of persons with mental disabilities, and assist their inclusion in the basic structures of the organisation was not successful.

One Type A member-employee mentioned that 'it is obviously right that the employees who are not members should become members (...) once they become members, they will be able to have a voice' (3.3 interview, 16 October 2014). However, non-member employees were also regularly invited to participate in KAE's decision-making processes (1.1 interview, 16 October 2014). They were permitted to attend the sessions of the general meeting and had the right to express freely their opinion without the right of voting. The provided right allowed - in practice - the existing non-members-employees to participate in the governance of the organisation. They had the opportunities to acquire knowledge regarding decisions that could be made.

One Type A member who is also an employee noted - concerning those Koispe employees who were not yet admitted into membership - that they may have not as yet 'become members because it is possibly something stressful for them' (3.3 interview, 16 October 2014). Indeed, in doing so, he indicated once again the emotional engagement with which persons with mental disabilities carry out entrepreneurial operations.

Additionally, financial considerations determined membership according to the interviewed Type A member. In KAE's case, the financial burden that membership entailed was a minimum of €100 for the purchase of one cooperative share (3.3 interview, 16 October 2014).

The participatory character of governance may also be another important determinant of membership in KAE. Participation necessarily entails more care according to the interviewed Type A member. The due care goes beyond the employment responsibilities that Type A members normally undertake as employees (3.3 interview, 16 October 2014). For instance, one respondent claimed that the general meeting was a time-consuming process which needs an entire day, or at least of four-five hours to be finalised. The process of the general meeting included a discussion of all the perspectives of the members in the organisation. As this respondent stated, 'the members come especially in the accounting sessions and it takes time because there are discussions and questions.

We spend too much time on the discussion regarding what we can do. Everybody says his or her ideas' (3.3 interview, 16 October 2014).

Type A members as decision-makers

KAE was governed by the basic cooperative principles of democratic and equal participation. As one Type A respondent stated that 'No I don't feel that I have a greater influence on the decision-making (than the others). This is because, the influence, is reflected in the vote. If everyone has the right to vote, with one vote he or she can actually vote against' (3.3 interview, 16 October 2014). Democratic participation by means of the 'one man, one vote' rule was also a means for the organisation to achieve the social element of its purpose. One respondent indicatively mentioned that 'the democratic participation of the members is a means and an end in itself'. He mentions:

In KAE, we are contributors to the psychiatric reform. We do not want to act only for the recipients, but we want to give a role to the recipients and a voice in the decision-making (...) this is non-negotiable. We stand for democratic participation and consultation among all and before all (1.1 interview, 16 October 2014).

The same respondent referred to the inspiring for him example of the vice-president of the Pan-Hellenic Federation of Koispe (hereafter 'POKOISPE'), who is a person with mental disabilities (1.1 interview, 16 October 2014). However, that was not the case concerning the participation of Type A members into higher managerial positions of the KAE. Indeed, KAE's Type A members were not allowed to appoint or to be appointed in the higher managerial positions of the organisation, e.g. the position of president, the vice-president, the secretary, and the treasurer of the management board, and/or in any position of the supervisory board. As such, KAE's Type A members who constituted a majority among the members in the organisation, had a lesser decision-making power in the management board. Subsequently, KAE's Type A members were substantially deprived from exerting a certain amount of control in the organisation. They were also deprived from contributing equally and fairly to the governance of the organisation in which they had invested a significant for them financial contribution.

A respondent justified the exclusion of Type A members from the higher managerial positions by stating that it was the 'legislator's decision' (2.2 interview, 13 September 2014). According to the rationale of the respondent, the legislator considered that the participation of Type A members, i.e. people who may lack legal capacity and/or judicially assisted people might be in conflict with the applicable cooperative legislation (2.2 interview, 13 September 2014). He mentioned that this is 'a more polite way of the legislator to avoid excluding the group from the board of the Koispe and simultaneously the conflicts with the applicable legislation' (2.2 interview, 13 September 2014).

Another respondent mentioned that '[a] recipient of mental health services cannot be president of the Koispe (...) [t]his is stipulated in legislation' (1.1 interview, 16 October

2014) with which the organisation should comply. Consequently, it is understood that the provisions of the Mental Health Services Law of 1999 are perceived by these two respondents as those impeding Type A members from the equal enjoyment of rights and their fair participation in the governance of the organisation.

3.3.3.3. Towards a structured process for the participation of the mentally disabled in the Koispe governance structure

Adam notes the absence of a structured process in the organisational functioning of the Koispe to promote the participation of Type A members in the governance of the organisation.¹⁷² Hence, according to her, Type A members are not determined and empowered to participate in the governance. The realisation of participatory governance in KAE, albeit fragmented for the mentally disabled, is understood to contain elements that could be categorised under the following taxonomy:

- (i) formal/informal participatory mechanisms, by being prescribed in legally binding instruments, such as the law or the SoA, or not being prescribed in such legally binding instruments;
- (ii) direct/indirect participatory mechanisms, by allowing or not allowing stakeholders to physically participate in the decision-making processes of social enterprises; and
- (iii) regular/ad hoc participatory mechanisms, by taking place on a routine basis or sporadically.

Formal and direct participation of the mentally disabled in Koispe governance

The empirical research carried out, demonstrated that Type A members were able to participate either at the general meeting and/or at the processes of the management board. The right is stipulated in legislation and in the SoA of the Koispe. As such, it constitutes a formal means of participation, which takes place regularly. Annually, an average of 50 Type A members participated at the general meeting of KAE. The general meeting was the highest governing body of KAE, which meets ordinarily or extraordinarily whenever the management board calls it. Whether ordinary or not, the general meeting had to produce decisions. In the meeting, Type A members exercised their voting rights on the basis of the 'one man, one vote' rule. If necessary, at the general meeting, voting was formally organised with polls, screens, and ballots. There was also an election committee to supervise the process.

In the process of the general meeting, there was great conformity in decision-making. In essence, the processes comprised the setting of goals without controversies, which only occurred concerning the way the goals should be implemented with regards, in particular, to solutions for complex problems. A Type A member mentioned that

172 Adam (n 115).

‘although the general meeting comprises members who come to attend the accounting sessions, the process is inefficient’ (3.3 interview, 16 October 2014). He also stated that:

It takes time because there are discussions and questions. I noticed in the last two general meetings that the members who are not employees have many suggestions. We spend too much time on the discussion regarding what we can do (for the organisation). I just might have advance information (due to my position) (...) Beyond that, there is participation (3.3 interview, 16 October 2014).

Once a year, prior to the regular meetings of the general meeting, electronic invitations were sent to all members including information regarding the balance sheet of the KAE, the net income of the cooperative, the profits and the losses. During the general meeting sessions, all members had an equal right to declare freely their opinion regarding current management systems and the organisational methods used by the administration.

However, the structure of the management board was mixed. KAE’s management board comprised seven members. Five members were elected and appointed representatives of Type B and C members. Two members were elected by Type A members. One respondent says ‘Type A members are not just asked (to participate), they are involved in the decision-making process. They become decision-makers’ (1.1 interview, 16 October 2014).

Informal and indirect participation of the mentally disabled in Koispe governance

Research demonstrated that Type A members participated in the governance of the organisation in a direct or indirect, but more informal, manner. For instance, regular information regarding the KAE’s affairs was provided to KAE’s members and stakeholders on the social enterprise’s website, which is accessible to everyone. Additionally, KAE regularly circulated newsletters to its members and employees. A Type A member who was not an elected representative of the management board, reported a common practice of informal but direct participation during the management board sessions. He explained that:

The management board is the formal decision-making organ. Part of my job is to support the I.T. facilities (during the meetings of the management board). However, exactly because the directors apparently discuss I can also speak informally (...) I will jump in the discussion and I will say I think we can do this (...) The members of the management board say their opinion on the basis of the experience that anyone has through work and I can say my opinion. I will say it by my own and I will be also asked to do so. I feel that there is freedom and participation (3.3 interview, 16 October 2014).

The informal and indirect participation of Type A members in the decision-making was demonstrated in the inner workings of a counselling committee. Although the

competences of such a committee were not found in the SoA of KAE, its responsibility was to meet employees and trainees biweekly and to support them psychologically, while documenting their problems and claims that were eventually conveyed to the administration (i.e. bottom-up approach of conveying Type A members' claims). Where employees had individual requests, they could arrange individual appointments with the counselling committee. Accordingly, the counselling committee and the administration met biweekly.

In this way, the counselling committee operated as an internal confidential grievance mechanism for the organisation. For instance, one respondent mentioned that 'sometimes the employees seek something that they would not say to their supervisors or to their instructors. There is more confidentiality between the counselling committee and the mental health recipients' (1.1 interview, 16 October 2014).

Additionally, daily operations and the implementation of KAE's managerial decisions required actions from Type A members-employees concerning changes in the activities that they already carried out. Those actions were further developed by Type A member-employees into organised informal processes. For instance, managerial decisions were communicated informally by the supervisors to every operational section (i.e. top-down approach of conveying the content of decisions to Type A members). In practice, the supervisors communicated or implemented the decisions made by the management and the administration. For instance, one respondent mentioned that:

Somebody's working hours will change or we will hire a new employee who needs guidance or (the supervisor) should announce to employees something (that it was decided). Even regarding practical issues, he will provide information. He will try to consult with them (with the employees). Obviously, you cannot inform 35 people simultaneously. You inform each operational group about its own issues. Most of the issues do not concern everyone. Different issues concern each group (3.3 interview, 16 October 2014).

On the occasion that an issue affects collectively the employees and Type A members, KAE organises informal seminars. A respondent mentioned in that respect:

For instance, we organised a seminar regarding safety at work. We gathered everyone (...) we gave presentations at the plenary to all the employees. We saw some videos on what to be careful of (...) how to be safe (...) how to clean carefully (...) what we should be aware of (3.3 interview, 16 October 2014).

Table 3.8: Participatory stakeholder mechanisms in the Greek single case study

Stakeholder participation mechanisms	Formal	Informal	Regular	Ad hoc	Direct	Indirect
Participation of stakeholder members at the general meeting	X		X		X	
Participation of non-members at the general meeting	X		X		X	
Participation of members in the management board	X		X			X
Supervisors-employees seminars		X		X	X	
Biweekly supportive counselling committee meetings		X	X			X
Newsletters and feedback to public information		X		X	X	

3.3.4. Discussion

Adding to the empirical studies of Campi et al. and Adam, stakeholder participation in Koispe organisations may be translated into Type A members' formal and direct voting power. The voting power is particularly evidenced in the examined case for the decisions made in the general meeting and in the management board to some extent. However, despite the enabling multi-stakeholder character of the Koispe legal form, the formal participation of Type A members was restrained in the higher positions of the management and supervisory board. The legal provisions in the Mental Health Service Law of 1999, which excluded Type A members from the higher managerial positions impeded Type A members to participate equally in the participatory governance structure of KAE.

The participation of Type A members in KAE also materialised in an informal way by means of informal participation mechanisms, which were semi-structured in regular organisational processes. KAE's informal stakeholder mechanisms encouraged the participation of Type A members in the governance and decision-making of the organisation.

In these stakeholder participation mechanisms, the emotional engagement of Type A members was an important determinant of their attitude towards participation in the decision-making processes. The emotional engagement of Type A members was mitigated through the development of KAE's counselling committee.

However, the formal and/or informal participation of Type A members with the members of other categories in the governance of the Koispe organisation could contribute to their empowerment and determination in order to be more engaged in the entrepreneurial or labour activities carried out by the organisation. It could also provide them with concrete roles and responsibilities regarding core managerial issues on the basis of clear rules, and a fairer position in the organisation and consequently in society.

3.3.5. Case study conclusions

3.3.5.1. Limitations and future research

The research was limited to the development of a single case study, in which qualitative data i.e. narratives and reflections collected from interviews with various respondents, regarding the implementation of participatory governance in one social enterprise were analysed. The collected data were validated and verified with additional supporting evidence from relevant documents and feedback that was collected from the respondents during data processing. We elaborated on a single case study as it demonstrated comprehensively and in a unique manner empirical evidence supporting theoretical development and contribution.

The selected case study was an informative one regarding the problem at hand, namely the participation of stakeholders in the governance of a social enterprise. However, the results stemming from a single case study could be heavily case-bound and pertinent only to the relevant subjects in the case. Through the development of multiple case studies this article aims to be part of a broader research which develops a generalisable theory from cumulative case studies of a repetitious method. The replication logic will allow for the development of research that investigates other legal models of social enterprises in various other jurisdictions.¹⁷³

3.3.5.2. Practical implications

The case study contributed, in a practical manner, to the development of a better understanding of the Koispe as a work integration legal form for social enterprises in Greece. It shed light on the functioning of a social enterprise in Greece and to issues related to participatory governance structures and their limitations. Finally, the case study raised a very significant question of a humanistic nature that could be addressed in future research, i.e. how participatory governance and decision-making processes of social enterprises could contribute to the integration process and invigorate the human dignity and virtue of vulnerable groups.

173 See also the replicated methodology in the research conducted in Greece by Argyrou et al. 2016a (n 24), in Argyrou et al. 2016b (n 85) and in Argyrou et al. 2017 (n 169).

3.4. UK: Stakeholder participation in social enterprises: two case studies involving community interest companies in Scotland

Abstract

This study aims to examine whether participatory governance of stakeholders is realised in the UK tailor-made legal form for social enterprises, i.e. the Community Interest Company (CIC) through stakeholder consultation and engagement mechanisms. As such, two in-depth case studies of two variations of the CIC legal structure, i.e. CIC limited by guarantee and CIC limited by shares have been developed. This study provides evidence of the governance challenges experienced by two social enterprises in Scotland. It shows that although the 'light touch' character of the regulatory framework encourages rather than obliges stakeholder participation in the corporate governance of the CIC, complexities and trade-offs at all the levels of decision-making hamper participatory governance to be practically substantiated. The development of stakeholder mechanisms as consultation processes in the operations of the CIC does not entail the participation of stakeholders in the decision-making activities. The study aims to explain: (i) the legal and regulatory environment relating to the CIC legal structure of social enterprises in the UK/Scotland; and (ii) the impact of the regulatory environment on the organisational structure of two social enterprises. The study focuses in particular on the subject of stakeholder involvement and participatory governance in social enterprises that have adopted the CIC legal form. This study identifies the practical implications and complexities of implementing the special legislation on participatory governance of social enterprises, and promotes their comprehensive understanding by exploring various ways in which social entrepreneurs deal with these complexities in every-day life.

Keywords

Participatory Governance, UK, Social Enterprises, Stakeholders, Community Interest Company, CIC Regulator

3.4.1. Introduction

3.4.1.1. Social enterprises in the UK and the CIC legal form

The term ‘social enterprise’ in the UK is used predominantly to describe organisations operating in the framework of the social economy, also called the ‘third sector’. The term has a general meaning, which describes ‘a trading enterprise having a social purpose’ comprising various types of organisations and legal forms.¹⁷⁴ However, as noted by Spear, with regards to UK company law and other laws applicable to social economy organisations, ‘UK law was never tailored to the idea of the social enterprise’.¹⁷⁵ Social enterprises in the UK were traditionally incorporated using the legal forms of the ‘company limited by guarantee’ or the ‘industrial and provident society’.¹⁷⁶

In 2002, the UK Government initiated a dialogue regarding the development of a favourable legislative environment for social enterprises.¹⁷⁷ The Strategy Unit of the Cabinet Office emphasised the necessity of reforming the legislation for charities and non-profits in the UK and introduced an elaborate legislative proposal for a special type of social enterprise, i.e. the Community Interest Company.¹⁷⁸

In 2005, the Companies (Audit, Investigations and Community Enterprise) Act of 2004 (Companies Act of 2004) came into force.¹⁷⁹ The Companies Act of 2004 introduced the CIC, i.e. a tailor-made legal form for social enterprises in the UK (in part 2, ss. 26 *et seq*). The Companies Act of 2006 (Companies Act of 2006) is also applicable to the CIC, as well as secondary legislation which regulates the features of the new corporate entity in detail. Secondary legislation was later included in the CIC Regulations of 2005 and in the subsequent amending regulations.

174 Mason et al. (n 7); R. Spear, ‘United Kingdom: A Wide Range of Social Enterprises’ in C. Borzaga and J. Defourny (eds), *The Emergence of Social Enterprise* (Routledge 2001) 254; Spear et al. (n 4); B. Huybrechts and A. Nicholls, ‘Social Entrepreneurship: Definitions, Drivers and Challenges’ in C.K. Volkmann, K.O. Tokarski and K. Ernst (eds), *Social Entrepreneurship and Social Business* (Springer 2012).

175 Spear (n 174) 254.

176 *ibid*.

177 H. Haugh and A.M. Peredo, ‘Critical Narratives of the Origins of the Community Interest Company’ in R. Hull, J. Gibbon, O. Branzei and H. Haugh (eds), *The Third Sector* (Dialogues in Critical Management Studies, Volume 1, Emerald Group Publishing Limited 2011); A. Nicholls, ‘Institutionalizing Social Entrepreneurship in Regulatory Space: Reporting and Disclosure by Community Interest Companies’ [2010] 35(1) *Accounting, Organizations and Society*, 394-415; Mason et al. (n 7); Spear et al. 2009 (n 4).

178 UK Cabinet Office: ‘Private Action, Public Benefit: A Review of Charities and the Wider Non-profit Sector: Strategy Unit Report’ (September 2002) available at: <<http://efc.issuelab.org/resource/private-action-public-benefit-a-review-of-charities-and-the-wider-non-profit-sector-strategy-unit-report-september-2002.html>> accessed 12 October 2017; Department of Trade and Industry, ‘Enterprise for Communities: Proposals for a Community Interest Company’ (March - June 2003) available at: <<http://webarchive.nationalarchives.gov.uk/20040722013649/http://www.dti.gov.uk/cics/>> accessed 30 April 2017.

179 Nicholls (n 177).

CICs are introduced as companies with limited liability, either in the form of the company limited by guarantee often without share capital, or as a company limited by shares (private or public). The CIC legal framework contains provisions regarding: (i) the community purpose; (ii) participatory governance; (iii) accountability; and (iv) the financial structure. The CIC legal provisions are underpinned by an overarching community interest, which is also reflected in the new legal form's name.¹⁸⁰ The service to the community and the engagement of the CIC with the community's constituents are core principles that underlie the CIC legal regime in its entirety. Accordingly, the CIC's core characteristics were designed by the national legislator to safeguard, namely: (i) the community objectives of the company; (ii) the profit and asset distribution constraint through an asset-lock scheme; and (iii) accountability and the participatory governance of the CIC.¹⁸¹ In the following Sub-sections, the manner in which these characteristics were given a place in the law applicable to CICs will first be briefly discussed. Thereafter, the discussion will focus on the characteristics of participatory governance.

3.4.1.2. The community purpose of the CIC

Any CIC is required to set community benefit objectives in its constitutional documents, i.e. its memorandum and/or AoA. The CIC constitutional documents are reviewed by the Regulator (hereafter 'the Regulator') through a legislatively prescribed test known as the 'community interest test' (hereafter 'the CIC test'). The Regulator was introduced in the UK Company Act of 2004 together with the introduction of the CIC legal form. The Regulator is the competent monitoring and adjudicating authority to decide whether the company meets the CIC test on a continuous basis through the review of submitted documents, i.e. constitutional documents, annual accounts and annual CIC reports.¹⁸² The standard for the Regulator to decide if a CIC meets the CIC test is whether a reasonable person would consider the activities carried out by the CIC for fulfilling the company's objectives to benefitting the community.¹⁸³

3.4.1.3. The financial structure of the CIC

The 'asset-lock' scheme is a set of restrictions in the Companies Act of 2004 and the CIC Regulations of 2005. The asset-lock prohibits - as a rule in general - any distribution of assets, profits or dividends to the CIC's members and/or shareholders and other investors in order to safeguard the CIC's assets for the pursuit of the community objectives. A right is conferred on the Regulator to impose certain limits on the distribution of assets and profits. Indeed, the CIC Regulator has adopted an aggregate dividend distribution cap. This is a determined percentage of the CIC's distributable profits. The cap is at 35% of the CIC's distributable profits. Moreover, the Regulator can determine that

180 Argyrou and Lambooy (n 92).

181 Ebrahim et al. (n 4); Nicholls (n 177).

182 Argyrou and Lambooy (n 92); Ebrahim et al. (n 4); Nicholls (n 177).

183 Cafaggi and Iamiceli (n 36); Galera and Borzaga (n 1); Nicholls (n 177); Argyrou and Lambooy (n 92).

the distribution of the CIC assets is prohibited either during the active and operational period of the CIC or during the winding-up of the company. Essentially, the asset-lock scheme also prohibits the CIC from transferring the company's assets to other organisations or individuals, other than for full consideration. The CIC assets can be distributed to a certain extent only: (i) to other asset-locked bodies, which are specified in the CIC's AoA; (ii) to other asset-locked bodies with the consent of the Regulator; or (iii) for the benefit of the community, i.e. following the CIC objectives.¹⁸⁴

3.4.1.4. The participatory governance of the CIC and accountability

Like other limited liability companies, the governance of the CIC is regulated by the provisions of UK company legislation regarding limited liability companies. Likewise, CIC directors are subject to the rights and duties stipulated in the Companies Act of 2004 and the Companies Act of 2006, as well as to additional duties included in the CIC Regulations of 2005. Due to the asset-lock scheme and the CIC test, a CIC is obliged to serve - primarily - the interests of its community beneficiaries, i.e. the community constituencies addressed in its constitutional objectives. Accordingly, in the terms of the CIC Regulations of 2005, the CIC directors and members are encouraged to consider the community stakeholders and beneficiaries that they serve including the persons affected by the CIC's activities. Such a requirement is expressed in Article 26(1)(a) and (b), which stipulates that a CIC shall report annually on 'the company's activities during the financial year (that) have benefited the community'.

Article 26(1)(b) continues that a CIC shall report annually on 'the steps, if any, which the company has taken during the financial year to consult persons affected by the company's activities, and the outcome of any such consultation' in an encouraging rather than obligatory way.¹⁸⁵ It is a statutory requirement for the CIC to provide a description of the steps that the CIC has taken to involve and consult stakeholders and persons who are affected by a CIC's activities.¹⁸⁶ Such description is submitted annually in a pre-arranged CIC report template provided by the CIC Regulator to any CIC. However, the CIC Regulations of 2005 have adopted what is considered a 'light touch' regulatory oversight, which rejects a tight and hierarchical supervision of the CIC's activities regarding the CIC's community objectives and asset-lock.¹⁸⁷

In contrast, 'external regulatory command and control structures' are replaced in the CIC regulatory framework 'by (semi) enforced self-control mechanisms' that allow for 'cooperation between the regulator and the regulated'.¹⁸⁸ This means, according to Nicholls, a UK scholar, that the Regulator is not expected to apply an extended form of control and supervision over a CIC's activity regarding compliance with the CIC

184 Argyrou and Lambooy (n 92).

185 Art. 26(1)(b) CIC Regulations of 2005.

186 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36); Nicholls (n 177).

187 Nicholls (n 177).

188 *ibid* 399.

test and asset-lock. Instead, CICs are encouraged to develop and apply self-controlled mechanisms and standards that safeguard the community character.¹⁸⁹ The light touch regulatory regime applicable to CICs is also subject to the principles of proportionality, accountability, consistency, transparency and targeted focus, as noted by Nicholls.¹⁹⁰

The legislative proposal regarding the CIC reveals that the UK Government, while drafting the CIC legislation, considered the active involvement of community stakeholders in the CIC's corporate governance to be a very significant characteristic of the CIC.¹⁹¹ Accordingly, Regulatory Guidance was produced to indicate the best practices of involving community stakeholders in decision-making and the ways in which the CIC's corporate governance structures could balance the interests of different stakeholder groups. Additionally, a statutory requirement obliges any CIC to seek the views and engage with community stakeholders.¹⁹² However, the UK Government's proposal concerning the increase of the power of stakeholders in the corporate governance of the CIC 'generated the greatest opposition of all the Government's proposals' in the public consultation regarding the CIC legislation and regulatory framework.¹⁹³

In this debate, supporters claimed that a statutory provision is imperative to safeguard the involvement of stakeholders in the CIC's affairs. In contrast, opponents claimed that such a provision is complex and difficult to monitor and that it may eventually become an inhibitor to the potential users of the CIC legal form.¹⁹⁴ The debate resulted in the UK Government's decision to issue a compromise. CICs were encouraged to 'take appropriate steps to engage with their stakeholders', while 'the Regulator will promulgate good practice in engaging stakeholders' and 'companies will have to report on whether they comply, or explain why they do not'.¹⁹⁵ This was captured in a statutory obligation for the CIC to describe, in an annual CIC report template provided by the Regulator, the steps that the CIC has taken to consult stakeholders and the persons who are affected by the CIC's activities.¹⁹⁶

The extent of involvement of stakeholders in the corporate governance of CICs varies in the UK. The diversity is also reflected in existing CIC reports. An empirical study, undertaken by Nicholls, examined 80 published CIC reports.¹⁹⁷ It demonstrated that

189 *ibid.*

190 *ibid.*

191 Proposals for a Community Interest Company (n 178) 20.

192 *ibid.*; Department of Trade and Industry, 'Enterprise for Communities: Proposals for a Community Interest Company - Report on the public consultation and the government's intentions' (October 2003) 26 available at: <<http://webarchive.nationalarchives.gov.uk/20040722013649/http://www.dti.gov.uk/cics/>> accessed 12 October 2010.

193 A. Dunn and C.A. Riley, 'Supporting the Not-for-Profit Sector: the Government's Review of Charitable and Social Enterprise' [2004] 67(4) *Modern Law Review*, 654.

194 *ibid.* 654; Public consultation and the government's intentions report (n 192) 27.

195 Dunn and Riley (n 193) 654.

196 Cafaggi and Iamiceli (n 36) 45-50; Nicholls (n 177) 396.

197 *ibid.* Nicholls (n 177).

the aforementioned special CIC report template does not facilitate the consistent annual presentation of data provided by the CICs. It is noted by Nicholls that the completion of the CIC report regarding community and stakeholder involvement may be a practical and 'symbolic' action of the CICs with a view to maintain their CIC status.¹⁹⁸ Subsequently, whatever is reported may not fully reflect what actually happens in practice. The diversity is observed in the content of the various CIC reports, which are of varied quantity and quality.¹⁹⁹ Accordingly, the study of stakeholder participation in the governance of the CIC requires an in-depth examination, which involves the direct engagement of actors involved in this governance phenomenon.²⁰⁰

In explaining the discrepancy between the CIC's practice and the reported outcomes, on the basis of the empirical findings of Spear et al., Nicholls, provides that certain emerging governance challenges take place due to an 'entrepreneurial bias' of social entrepreneurs.²⁰¹ The governance challenges encountered by hybrid social enterprises exist due to the phenomenon of 'entrepreneurialism'.²⁰² Entrepreneurialism constitutes the developing of skills that are needed to run a business in organisations, which may combine commercial and social activities. Scholarship notes that these challenges, which may result in a governance failure, constitute barriers that could hamper social enterprises in achieving a balance in their hybrid governance structure.²⁰³

The entrepreneurial bias of the social entrepreneurs induces them to focus more on implementation of operations rather than transparency and effective reporting. The entrepreneurial bias, according to Spear et al. and Nicholls, shifts the focus of social entrepreneurs from being accountable to community beneficiaries to *first* recruiting board members with the right skills and experience, *second* managing membership and *third* balancing social and financial goals.²⁰⁴

With respect to the *first*, i.e. recruiting board members with the right skills and experience, Low suggests that the boards of hybrid social enterprises are more likely to exhibit a stewardship model and recruit members on the basis of skills and expertise rather than on the basis of a representative status.²⁰⁵ Doherty et al. confirm the diversity of boards of social enterprises in general, and the probability of recruiting members based on skills and expertise.²⁰⁶ They note that the board members of social enterprises are

198 *ibid* 404.

199 *ibid*.

200 T. McNulty, A. Zattoni and T. Douglas, 'Developing Corporate Governance Research through Qualitative Methods: A Review of Previous Studies' [2013] 21(2) *Corporate Governance: An International Review*, 183-198.

201 Spear et al. 2009 (n 4); Nicholls (n 177).

202 Spear et al. 2009 (n 4) 269.

203 C. Mason and B. Doherty, 'A Fair Trade-off? Paradoxes in the Governance of Fair-trade Social Enterprises' [2016] 136(3) *Journal of Business Ethics*, 451-469.

204 Spear et al. 2009 (n 4); Nicholls (n 177).

205 Low (n 6) 381-382.

206 Doherty et al. (n 112).

not predominantly representatives of the stakeholders that they aim to benefit.²⁰⁷ They also note that the governance structures of social enterprises are always determined by the applicable legal forms and reporting obligations. Accordingly, the board members are always exposed to institutional pressures to achieve financial sustainability, social value and stakeholder engagement.²⁰⁸

The tendency of social enterprises to adopt a stewardship model in their governance is conceptualised by Spear et al. and Nicholls as part of the entrepreneurial biases of the social entrepreneurs.²⁰⁹ However, it is understood that the stewardship model will make more sense for the governance of the hybrid social enterprise. The stewardship governance model will make more sense particularly in instances where social enterprises exhibit predominantly for-profit aspects. These are instances where ownership is exercised and a certain margin of asset (including profit) distribution is allowed to shareholders by law. Accordingly, the stewardship model mandates the decision-makers (managers) and shareholders to be partners based on the notion of trust, with an overarching objective to increase the organisational performance. All is done in a way that articulates and safeguards the social purpose of the social enterprise.²¹⁰ Alternatively, if social enterprises exhibit predominantly non-profit characteristics, i.e. there is an absence of ownership and an absolute profit-distribution constraint is imposed, the democratic and stakeholder model of governance makes more sense for the governance of the hybrid social enterprise.

Mason et al. also indicate that a stewardship model for social enterprises moves away 'from the inclusive representation at board level of a range of key stakeholders regardless of their strategic utility'.²¹¹ They claim that a stewardship model for social enterprises moves 'towards a skill set (of managers and/or directors) that can more effectively manage the entire operation' of the social enterprise. They proceed by explaining that a mix of representative and sufficiently skilled managers and/or directors is crucial for social enterprises.²¹² However, a significant trade-off in between 'enabling stakeholder democracy and adapting to the demands of the market, forcing a change in philosophy at board level' is a consequence that the social enterprise will always have to deal with.²¹³ This situation, according to Mason et al., affects the legitimacy that social enterprises enjoy from their beneficiaries and stakeholders.²¹⁴

207 *ibid* 427.

208 *ibid*; Mason et al. (n 7).

209 Spear et al. 2009 (n 4); Nicholls (n 177).

210 C. Conforth, 'Introduction: The Changing Context of Governance-Emerging Issues and Paradoxes' in C. Conforth (ed), *The Governance of Public and Non-profit Organizations* (Routledge 2003) 1-20; C. Conforth, 'The Governance of Cooperatives and Mutual Associations: A Paradox Perspective' [2004] 75(1) *Annals of Public and Cooperative Economics*, 11-32.

211 Mason et al. (n 7) 290.

212 *ibid*.

213 *ibid*.

214 *ibid*.

With respect to the *second*, i.e. managing membership, in the empirical studies conducted by Spear et al. a significant challenge is also noted - especially in those social enterprises that are democratically governed on the basis of a membership regime, such as the CIC limited by guarantee - which is the problem of inactive membership, i.e. the members, who become gradually inactive in exercising their membership duties.²¹⁵ According to Spear et al., in democratically owned and participatory-governed organisations inactive membership results in an impulse of such organisations to be governed ultimately by an 'oligarchy' of directors.²¹⁶ This practice may lead to the decline of the company's legitimacy, accountability and trust towards its members and stakeholders.

With respect to the *third*, i.e. balancing social and financial goals, Ebrahim et al. and Battilana and Lee, note that governance challenges emerge due to the hybrid character of the social enterprise that pursues a societal mission using market mechanisms.²¹⁷ According to the scholarship, social enterprises deal with governance challenges regardless of their tailor-made legal form that seeks to accommodate their hybrid features. Scholarship notes that the CIC in particular could be challenged by a 'mission drift' when attempting to 'generate enough revenues but without losing sight of their social purpose'.²¹⁸ The mission drift challenge is due to: (i) the daily trade-offs of social enterprises, such as the 'potential cost of attracting market investors for financing growth' at the expense of a social mission, and (ii) no strict legal 'requirement for empowering stakeholders other than investors', which allow the governing bodies of the CIC to maintain a focus on the CIC's providers of capital.²¹⁹ Spear et al. also notice this type of governance challenge for social enterprises.²²⁰

Ebrahim et al. contemplate on the issue of accountability towards multiple stakeholders in social enterprises.²²¹ The theories of Freeman and Reed suggest the prioritisation of such stakeholders in the governance of organisations, i.e. social enterprises, which could provide the appropriate resources for the viability of the organisation.²²² Examples of such resource-providers are clients, customers, employees, volunteers, (impact) investors, and other financiers. Owing to the fact that social enterprises normally operate in markets that function poorly, social enterprises often have to deal with the scarcity of resources.²²³ Consequently, the decision-makers of social enterprises may

215 Spear et al. 2009 (n 4); Spear (n 4).

216 *ibid.*

217 Ebrahim et al. (n 4); J. Battilana and M. Lee, 'Advancing Research on Hybrid Organizing - Insights from the Study of Social Enterprises' [2014] 8(1) *Academy of Management Annals*, 397-441.

218 *ibid* Battilana and Lee (n 217); Ebrahim et al. (n 4) 82; Mason and Doherty (n 203); T. Ramus and A. Vaccaro, 'Stakeholders Matter: How Social Enterprises Address Mission Drift' [2014] 143(2) *Journal of Business Ethics*, 307-322.

219 Ebrahim et al. (n 4) 86 and 92.

220 Spear et al. 2009 (n 4).

221 Ebrahim et al. (n 4); Freeman and Reed (n 14).

222 Austin et al. 2006a and 2006b (n 91).

223 Di Domenico et al. (n 15).

seek the co-optation of those stakeholders that control the access to resources.²²⁴ This is what Ebrahim et al. call ‘upward accountability’, i.e. the prioritisation of the interests and the demands of resource providers into the participatory governance of social enterprises.²²⁵

However, social enterprises are also dependent on fulfilling of their social objectives.²²⁶ To that end, ‘upward accountability’ differs from ‘downward accountability’, i.e. the prioritisation of the interests and the demands of beneficiaries and community stakeholders into the governance of social enterprises in pursuit of the social purpose.

Although tensions may exist between the accountability demands of ‘upward’ and ‘downward’ stakeholders according to Ebrahim et al., both are equally significant for the sustainability of a social enterprise, such as the CIC.²²⁷ It is understood that ‘upward accountability’ is imperative for a social enterprise’s survival, whereas ‘downward accountability’ is necessary for implementing and maintaining the social purpose in a social enterprise.

Downward accountability also requires the adoption of stakeholder ‘enforcement’ mechanisms, i.e. representation and participation stakeholder mechanisms, in regard of the governing bodies, which safeguard the transparency and the scrutiny over the decisions made by social enterprises.²²⁸ According to Mason et al., it is imperative that the decision-makers of the social enterprises facilitate such routine processes.²²⁹

Stakeholders as members and owners of shares

Community stakeholders who have an interest in the realisation of the CICs’ objectives, may assume membership of any CIC limited by shares or limited by guarantee either by being involved in its incorporation or during its active period. Various studies address the multi-stakeholder nature of social enterprises in connection to their membership and ownership regime.²³⁰ Membership could offer particular rights and obligations to extend community stakeholders’ participation and as such to increase the CIC’s legitimacy towards the community.²³¹ These are, for instance, the rights of stakeholders to participate in the decision-making processes of the annual general meeting (hereafter ‘general meeting’) to appoint and to scrutinise the directors, to make decisions on financial distributions and liquidation of the company, as well as on changing the AoA, and finally, to be given access to information relevant to the company’s affairs.

224 Austin et al. 2006b (n 91); Ebrahim et al. (n 4); Mason et al. (n 7); Huybrechts et al. (n 141).

225 Ebrahim et al. (n 4) 93.

226 *ibid* 91.

227 *ibid*.

228 *ibid*; Larner and Mason (n 86); Mason et al. (n 7).

229 Mason et al. (n 7) 294.

230 Campi et al. (n 5); Galera and Borzaga (n 1).

231 *ibid* Campi et al. (n 5); Ebrahim et al. (n 6); Galera and Borzaga (n 1).

Membership allows for a substantial role and a level of involvement of any type of stakeholder with the view to safeguard the community objectives. In particular, CICs are prohibited from permitting any person to appoint a director in exceptional circumstances other than a member and/or director and/or the Regulator.²³² Such obligation allows for a certain level of stakeholder influence in decision-making. Additionally, the CIC members bear the most significant responsibility, namely to uphold the community objectives of the company through a monitoring role over the directors' activities and through facilitating the supervisory task of the Regulator.²³³

Stakeholders as decision-makers

The role 'decision-maker' entails the participation of stakeholders in the main decision-making processes of the CIC through the exercise of voting rights and the adoption of the most appropriate governance model in, for example, the board of directors and the CIC's general meetings. Accordingly, community stakeholders may shape and direct the governance model of the CIC towards the use of a democratic and stakeholder-based governance model, which accommodates the interests of various representative stakeholder sub-groups of the community on an equal basis. Alternatively, a stewardship governance model could be used, which facilitates the appointment of trustful managers and decision-makers who are bound by the overarching community objective of increasing organisational performance.²³⁴

Stakeholders as consultants

The role 'consultant' entails the participation of stakeholders in various stakeholder consultation mechanisms adopted by CICs with different characteristics. Consultation could be undertaken with the view of furthering the organisation's downward accountability to its community beneficiaries and stakeholders by means of stakeholder mechanisms, which accommodate scrutiny over the decision-making processes, enhance transparency, and increase the legitimacy of the CIC to the community that it serves.²³⁵

Stakeholders as recipients of information

The role 'recipient of information' entails the participation of stakeholders in the acquisition of information regarding the CIC affairs and decision-making especially when stakeholder participation through membership and decision-making is not an option. Such a role reduces existing asymmetries of information regarding decisions that are

232 Argyrou and Lambooy (n 92); S. McLaughlin, *Unlocking Company Law* (2nd edn, Routledge 2013) 50; Cafaggi and Iamiceli (n 36) 47; Schedule 1-3 CIC Regulations of 2005, art. 3(2).

233 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36); See the Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes: Chapter 9 - Corporate Governance' (March 2013).

234 Conforth 2003 and 2004 (n 210). Low (n 6); Mason et al. (n 7); Spear et al. 2009 (n 4) and 2014 (n 11).

235 Ebrahim et al. (n 4); Larner and Mason (n 86); Mason et al. (n 7).

decided and/or pending to be decided between the decision-makers and the community stakeholders.²³⁶ Accordingly, decisions, which may seem inappropriate or incompatible to community stakeholders, i.e. concerning the use of various business methods for the maximisation of a community and/or social benefit are thus legitimised and balanced.²³⁷

3.4.2. Method

3.4.2.1. The case study approach

This article seeks to investigate empirically in an in-depth manner the involvement of stakeholders in the governance of two Scottish CICs. The examination identifies the effect of the light touch regulatory regime - in relation to the participation of stakeholders - on the governance of the two examined CICs. The effect is examined in relation to the governance challenges encountered by the CICs.

In the following Sub-sections, I developed two case studies regarding the Breadshare CIC and the GTS Solutions CIC. A qualitative research is applied to identify the effect of the law on the governance of these two CICs and the outcomes of its implementation. Accordingly it is the objective of this article to identify how CIC organisations and their decision-makers are influenced by legal and regulatory regimes that encourage stakeholder involvement and how they deal with their complexity and challenges in their implementation.²³⁸

The development of the case studies in this article replicates the case study method applied in previous case studies.²³⁹ McNulty et al. indicate the lack of qualitative research in the field of corporate governance and note its importance as a research method, which investigates phenomena in a thorough and in-depth way that can lead to new and innovative theoretical and methodological insights to corporate governance.²⁴⁰ With this in mind, I developed a dual (multi) case study to investigate stakeholder involvement as part of participatory governance within its real-life organisational context.²⁴¹ The dual case study enables the comparison of cases holistically and produces insightful evidence regarding emerging themes and patterns.²⁴²

The cases provide relevant and plentiful evidence relevant to the concept of participatory governance and its implications discussed in this case study.²⁴³ They constitute two variations of the CIC legal form prescribed by law in the UK legal framework, i.e. a

236 *ibid.*

237 *ibid*; Santos et al. (n 90).

238 McNulty et al. (n 200).

239 Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).

240 *ibid.*

241 Yin (n 120); J.W. Creswell, *Research Design, Qualitative, Quantitative and Mixed Methods Approaches* (Sage 2003); Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).
242 Creswell 2003 (n 241).

243 See also the replicated methodology in the research conducted by Argyrou et al. 2016a (n 24), Argyrou et al. 2016b (n 85) and Argyrou et al. 2017 (n 169).

CIC limited by guarantee and a CIC limited by shares. Accordingly, empirical data from multiple sources were collected including:

- (i) Collection of interview data from in-depth and semi-structured interviews with respondents from the selected CICs.²⁴⁴ The interviews were conducted by me assisted by a senior researcher in February 2016 at various locations in Scotland, Edinburgh. The semi-structured interviews involved respondents from various organisational layers, namely: (i) shareholders; (ii) stakeholders; (iii) directors; and (iv) employees. A separate questionnaire was developed for each category, making four in total.²⁴⁵ The interviews were recorded and transcribed into verbatim transcripts by professionals. The transcriptions were sent to the respondents for comments, validation and approval;²⁴⁶
- (ii) Collection of relevant data from relevant documents and publications, e.g. the CIC AoA, annual financial and CIC reports retrieved from the UK Companies House, and other relevant publications and statements regarding the mission, quality and management system produced by the two CICs;²⁴⁷
- (iii) Personal observations from interacting with the respondents at the interview location.²⁴⁸

3.4.2.2. Respondents

The purpose of the interviews was to capture a plurality of perceptions that were based on an assortment of varied responses.²⁴⁹ Plurality in responses was the reason for selecting interviewees with different roles and responsibilities inside and outside of the examined social enterprises.²⁵⁰ The sample of interviewees comprised respondents with strong and continuous involvement in the affairs of the examined social enterprises, such as founding members, long-term employed staff, experienced directors, and involved stakeholders. Persons occasionally involved or newly introduced into the social enterprises' operations, such as newly employed staff members and/or new directors or randomly engaged stakeholders, were also interviewed. The interviews involved persons with various demographic characteristics, in terms of age and gender.

3.4.2.3. Procedure and analysis

The collected data comprised several interview transcriptions, interview reports, data tables and other relevant documents.²⁵¹ The collected data amounted to a large

244 *ibid.*

245 *ibid.*

246 *ibid.*

247 *ibid.*

248 *ibid.*

249 *ibid.*

250 *ibid.*

251 *ibid.*

Table 3.9: Codes and themes in the two UK case studies

Legal codes	Emerging codes	Refined codes-Focus coding	Themes	Different roles of stakeholders
Organisation	Products and services provided Size of the company Objective-aim-mission Community benefit	Product and services of the CIC Size of the CIC Community benefit purpose Community benefit	Community benefit model of the CIC	
Governing bodies	Experts versus stakeholders Directors' skills Directors' involvement in the company's affair Board meetings Stakeholders in the board Stakeholders in the annual general meeting of members	Board's composition Skills of directors in the board Commitment of the directors Decision-making process Stakeholder representation in the governing bodies	The CIC governance structure	Stakeholders as decision-makers
Voting rights	One man, one vote Voting in the board			Stakeholders as decision-makers

Table 3.9: *Continued*

Legal codes	Emerging codes	Refined codes-Focus coding	Themes	Different roles of stakeholders
Ownership and membership rights	Number of members Control of the organisation Opportunities of membership New members	Owners and members of the CIC	Ownership and control of the CIC	Stakeholders as members and owners
Information rights	Newsletter, email, phone calls Website and social media One to one communication	Communication with stakeholders Communication with employees	Communication with employees, stakeholders and the community	Stakeholders as recipients of information
Stakeholder participation	Volunteering in the company Employee involvement in decisions Communication with suppliers Surveys, open days, workshops, community events, education activities and training Community and social enterprise networks Strategic partners and clients Opportunities to participate	Volunteers' voice Employment setting in the CIC Stakeholder involvement in operations Opportunities to participate	Opportunities for providing feedback	Stakeholders as advisors and consultant

compilation of complex and lengthy textual data. In order to analyse the collected data, the application of the constant comparison method (coding) was required.

Initially, a coding template was developed including a priori codes (legal codes in Table 3.9) that emerged deductively from the theoretical analysis of the legal framework. Thereafter, these were refined based on emerging codes from the interview transcriptions using coding techniques.²⁵² The emerging codes were created by means of in vivo coding using a software for qualitative analysis, i.e. ATLAS t.i. Coding was used to compare and contrast the ideas captured in the text and to sort and group the data into emerging patterns (focus areas) that were categorised into themes.²⁵³

The analysis of the interview data was guided by the primary objectives of identifying real-life evidence in the text in respect of identified theoretical propositions. The use of the analytical technique of template analysis was hence adopted.²⁵⁴ Through template analysis, pre-existing legal concepts which could be derived from the theoretical analysis on a deductive basis were routinely contrasted against the real-life concepts that emerged from the data inductively and which were then integrated into patterns and emerging themes (Table 3.9).

3.4.3. The case study results

In the presentation of the case study results, the themes of membership, decision-making in the board, consultation and accountability, and communication and information are discussed and analysed. Concerning each of these four subjects, an aggregate analysis is provided regarding the stakeholder mechanisms developed to accommodate formal or informal, direct or indirect, and regular or ad hoc participation in the examined CICs. The case studies consider two organisations in Scotland that adopted the legal form of the CIC. The first organisation is Breadshare CIC (hereafter 'Breadshare').

Breadshare is a community bakery incorporated in 2011. It produces organic 'real bread' - as defined in the UK Real Bread Campaign that this organisation is part of - which promotes community supported baking from locally sourced ingredients to the market and to consumers. The community objective of Breadshare is not explained fully in the AoA (Art. 5, AoA), but is publicly proclaimed in the company's website. Breadshare's community objectives include: (i) the production and retail of real bread that is accessible to everyone in the community of Scotland. Accordingly, Breadshare seeks to raise awareness of the healthy benefits that organic bread provides if it is

252 J. Saldana, *The Coding Manual for Qualitative Researchers* (Sage 2009) 45-50; See also the replicated methodology in the research conducted by Argyrou et al. 2016a (n 24), Argyrou et al. 2016b (n 85) and Argyrou et al. 2017 (n 169).

253 *ibid.*

254 Crabtree and Miller (n 49); King (n 49); See also the replicated methodology in the research conducted by Argyrou et al. 2016a (n 24), Argyrou et al. 2016b (n 85) and Argyrou et al. 2017 (n 169).

accessible to everyone; (ii) the involvement of the community in every organisational aspect of the company. Accordingly, Breadshare integrated the community aspect into its business model by providing employment and/or volunteering opportunities and assistance to set up; (iii) the promotion of the concept of ‘community bakery’ in other communities. Breadshare raised awareness of the community benefits of community bakery; (iv) the pursuit of an ecological and sustainable bakery practice. Breadshare also promoted the principle of sustainable development in the bakery practice; and finally (v) the development of a sustainable local bread supply chain in collaboration with local suppliers.

The second organisation examined in this article is GTS Solutions CIC (hereafter ‘GTS Solutions’), a social enterprise which was established in 2012 in Scotland and which provides security services to corporate and non-profit organisations. In particular, the security services provided by GTS Solutions are - amongst others - static security services, hospitality security services, parking spaces security, crowd management and strategic planning services to community events, such as concerts and sport events. It also provides security training to young and disadvantaged adults. The social objective that the company serves is the assistance of disadvantaged and unemployed adults and young persons to find employment in the security industry. The company’s articles mention that the company aims to:

Fund training courses for the unemployed and financially hard up create jobs where possible within the security industry for the unemployed and under privileged, provide grants towards events, which will enhance communities within the performing arts, sporting environments and young persons (Art. 5, AoA).

As such, GTS Solutions qualifies young adults by delivering basic training in the security service industry. Those trainees are later employed by GTS Solutions or by its clients and strategic partners, which belong to other industries.

3.4.3.1. Stakeholders as members and owners of shares in the examined CICs

Breadshare

Breadshare is a CIC limited by guarantee with no share capital. It consists of members rather than shareholders. Subject to membership, its founding and active members enjoy limited liability and limited exposure to entrepreneurial risks that equals to the amount that the members (guarantors) agree to contribute in the event of the CIC winding-up (that is commonly £1; Art. 7, AoA). The use of the CIC limited by guarantee legal form was a decision of Breadshare’s board of directors, which corresponded with the board’s preferences, namely: (i) the absence of ownership of any shares; and (ii) the asset-lock. As one interviewee said, ‘that’s what we all felt was a social enterprise. You can’t really be a social enterprise and have shares (...) The two big things from our point of view back then were the asset-lock and who the assets would go to’ (A interview, 19

February 2016). Initially, the directors developed the idea of attracting a large number of community members, which it felt would provide greater opportunities for grant funding, donations and legitimacy to the community. However, the company did not receive any grant funding through membership as expected. Therefore, it developed its own commercial and entrepreneurial activity to be sustained financially and to keep pursuing the social objectives. The financial sustainability was confirmed by an interviewee who remarked that she preferred to compete on a level playing field with small businesses rather attracting public funding similarly to non-profits (A interview, 19 February 2016). However, the company always maintained an 'open policy' on membership, addressing mainly community stakeholders.

Membership allowed the community stakeholders to be active in the company's affairs and decision-making processes. Initially, Breadshare developed a scheme to promote membership. The scheme promoted funding opportunities in the form of donations of a minimum amount of £50, simultaneously providing opportunities for membership in return for organic bread vouchers offered to potential members through the company's website. The potential members could instantly declare whether they wished to become a Breadshare member.

The membership scheme attracted almost fifty members, most of whom never became involved in the company's affairs over the course of time. As one interviewee said that 'we didn't even know who they were, we never met them' (A interview, 19 February 2016). Inactive membership made the decision-makers of Breadshare to rationalise Breadshare's membership list and impose a requirement for board approval in respect of the proposed admission of new members in 2013 - 2014.

The company started to identify a list of members who had never been involved in the company's active membership (B interview, 19 February 2016). An interviewee said that the company never charged a membership fee and people used 'to just register' (B interview, 19 February 2016). New members were welcome to be involved in the company's governance and they were at an equal footing with other members of the company. However, as another interviewee mentioned '[t]hey didn't want to be involved. Those that did want to be involved became directors' (A interview, 19 February 2016). Membership inactivity was recognised at the first general meeting when only a few members attended. However, the extent of power and control that membership could exert over the organisation's objectives also raised questions and concerns on the part of the principal managers and directors. In particular, the company's active and principal members and decision-makers worried concerning the possibility and implications of a 'mission drift' if membership grew. One interviewee said:

Say hypothetically you have a much bigger group of people and then they decide to vote, we do not think it (the bread) should be organic anymore (...). I am guessing there are other issues that as you grow you lose control in some ways, and it is part of a growth. But I think we need to be careful

what we keep control of and it's something that other people could make changes to, because bottom line, I think there is an aim there. And there is quite a strong drive on the social side. And we wouldn't want something to water that down, whether it be quality, whether it be something doesn't quite fit ethically or something (A interview, 19 February 2016).

Indeed, scholarship notes that a 'mission drift' is a core governance challenge for social enterprises.²⁵⁵ Although the CIC's legal form is bound by regulation to uphold its community benefit objectives through the ongoing CIC test and the concept of the asset-lock, the light touch regulatory regime urges CICs to continue dealing with internal tensions and daily trade-offs as part of their routine social and commercial activities. In this case, Breadshare dealt with a similar trade-off, namely to either enlarge the membership base and taking the risk of a mission drift or to maintaining membership for those members who are actively involved in the company's affairs.

Accordingly, the participation of stakeholders through formal membership was not well received among the Breadshare managers and decision-makers. The inconvenience was confirmed by a participant who was deeply worried and said that:

I have for almost five years put my whole heart and soul into this and then someone could just walk in and go, see you later, you're gone, and on no basis whatsoever other than they can get a core of votes that was sufficient to.. [sentence ends there] (...) Yeah, they would need a majority but with a whole list of members you could just go and get proxies from all these people and not even know who they are (A interview, 19 February 2016).

Another interviewee similarly mentioned that 'I think the risk would be as we grow, how we grow, you know, and also how much control we give to other people who can then, I guess, have too much impact on your core business' (B interview, 19 February 2016).

GTS Solutions

GTS Solutions is a CIC limited by shares. At the time of the interviews, the company comprised two shareholders (members) who held an equal amount of ordinary shares, i.e. 50 shares each with a nominal value of £1. Between the two shareholders, one shareholder was actively involved, whereas the other shareholder was inactive concerning organisational activities. Although the company did not develop an open membership policy towards third parties, employees and community stakeholders, the active shareholder of GTS Solutions (E interview, 18 February 2016) perceived this concept positively. With regards to the concept of offering shares to community stakeholders and employees, the interviewee mentioned that 'well, I can give them shares if they want but they are not of any value (...) so them having shares is not something at the moment although it is something that we have looked at.' (E interview, 18 February 2016).

255 Ebrahim et al. (n 4).

GTS Solutions was not a democratically governed organisation in which community membership was encouraged. The active shareholder who also served as the Director of Operations and the Chief Executive Officer (hereafter the 'CEO') of the organisation controlled GTS Solutions. Although ownership and control was concentrated in the hands of the active shareholder, interviews with respondents from different organisational levels (a manager and an employee) revealed that they were not willing to accept the responsibility that membership and ownership of shares confers. An interviewee mentioned that 'I would rather be an employee at the moment (...) I don't want the massive responsibility of owning part of the company' (F interview, 18 February 2016). The attitude of the other interviewee was similar. They mentioned that 'it would be one of those things I would have to take a lot of thinking and decide if I want to do that because I think that's quite a big decision to make' (G interview, 18 February 2016).

3.4.3.2. Stakeholders as decision-makers in the examined CICs

Breadshare

The board of directors of Breadshare was found to comprise four members, i.e. a founding member, a business development manager, an operations manager, and a volunteer coordinator who was also the education and network development officer. In the past, the board of directors comprised a larger body of seven or eight members. The current board members had an overlapping role at Breadshare as employees and thus operational managers. The management of the organisation also included a 'quality and training manager' who in the past served as a member of the board. As one interviewee said, 'we tend to invite people who are involved from the community to be directors' (A interview, 19 February 2016). The standard selection of the board members was based on the criteria of an active involvement in the company's affairs, a constant participation and commitment in operations and an understanding of the 'ethos' that the company represents (B interview, 19 February 2016). The office of the director was a voluntary appointment at Breadshare. However, the four identified board members were also employed by the organisation.

In the case of Breadshare, there was no representative participation of community stakeholder groups in the decision-making processes, such as those undertaken in the general meeting or in the board of directors, for instance. Scholarship claims that community representative participation requires a 'legitimate selection and training to build the capacities of beneficiaries to contribute to board deliberations'.²⁵⁶ However, Breadshare selected its board members from a broader stakeholder basis but on grounds, which were more related to performance, i.e. their active engagement and commitment in the company's daily business affairs.

256 Ebrahim et al. (n 4) 93.

Although the majority of the board members were selected from a broader stakeholder basis following a stakeholder theory approach, community representation never took place in Breadshare.²⁵⁷ Breadshare strived to ‘achieve a balance’ between members who were experts and persons stemming from the stakeholder base. An interviewee mentioned that:

As Breadshare grows, I want to see the board grow that way (...) if we can get the experts from the stakeholder base, even better. And, you know, the people here in Portobello, who I know, who have some of those business skills, but I’m not sure they have the get up and go, entrepreneurial type, risk taking attitude (B interview, 19 February 2016).

Indeed, as Breadshare grew and its entrepreneurial activities expanded, it sought financial sustainability through commercial and market activities, and entrepreneurial expertise became imperative in the CIC’s decision-making.

It is therefore understood, as Mason et al. and Low, have validly hypothesised,²⁵⁸ that there was a change of philosophy in the mind-set of Breadshare’s decision-makers. The change of philosophy in governance most likely resulted in the impulse of Breadshare’s decision-makers to seek business experts, i.e. following a stewardship governance model, rather than seeking representatives from the stakeholder basis, i.e. following a stakeholder and/or democratic model. An alternative was to seek persons who can combine both characteristics.

Additionally, the board meetings of Breadshare were private and their content was only known amongst the board members. They took place every four to six weeks and its composition varied in terms of membership over the years. For the meetings, the board members developed a standard agenda (C interview, 10 February 2016). Each director reported on specific core objectives against the overall performance of the CIC (C interview, 10 February 2016). No third parties or community representatives were invited to attend and to participate informally in the board meetings. Elaborating on the results of the decision-making powers awarded to third parties, one employee stated that ‘I think the strategic decisions should remain with the board. This is because everyone has an opinion concerning what it should be done. I think the risk to Breadshare is that everyone, anyone, can sort of decide’ (B interview, 19 February 2016). Neither the decisions made nor the meeting minutes were published or distributed amongst the CIC members. Where decisions involved employees, the board produced explanatory documents for all employees to understand why the decisions were made and how they were made in practice (A interview, 19 February 2016).

257 Conforth 2003 (n 210).

258 Mason et al. (n 7) and Low (n 6).

GTS Solutions

The board of directors of GTS Solutions comprised three directors. Government regulations stipulated a mandatory requirement for the selection of board members, namely that they have expertise in the security industry. The decision-making power was concentrated in the hands of the Director of Operations who had various overlapping roles in the organisation, i.e. as the CEO, the active shareholder and the founder of the social enterprise.

The active shareholder selected the other two directors, i.e. a legal expert and a financial expert, based on their expertise. Other than their expertise, the selection of the board members was based on their skill set and/or whether they had an acute interest and innovative outlook.

The foregoing characteristics demonstrated that the board of directors was most likely to apply the stewardship model in the governance of GTS Solutions. The decision-makers were selected based on their expertise for bringing value to decision-making. They were also selected to increase the company's performance. They thereby acted more as trustful partners of the active shareholder rather than agents of the active shareholder or representatives of the stakeholders.²⁵⁹ Additionally, the board received advice of seven external advisors who were permitted to attend the board meetings but not to participate in voting. However, none of the advisors were stakeholders nor were they a community representative. They were all professionals who offered consulting and advice regarding the company's affairs to the company's active shareholder upon request. The board meetings were monthly and private. Stakeholders were allowed to attend board meetings only by invitation. The board meetings' minutes were then produced and distributed among the board members. The decision-making process in the board meetings comprised a constructive dialogue with agreements and disagreements between the board members and the advisors. As one interviewee mentioned that 'as the Director of Operations and CEO myself, I am there to oversee the day-to-day running, (...) the rest of the guys on the board they are experts in their own right and they will say yes you can do that, no you can't do that and this is the reason why' (E interview, 18 February 2016).

Other than the active shareholder who maintained his main decision-making power, it is apparent that the other board members and external advisors had mainly a counselling role in the decision-making processes of the board. Considering that the control and the decision-making power of the organisation were concentrated mainly in the hands of one person, it was in the active shareholder's discretion to encourage participatory governance to (community) stakeholders. The discretion of the governing bodies to provide formal or informal participation opportunities to stakeholders is noted in scholarship regarding both the participatory governance of the CIC and of social enterprises in general.²⁶⁰

259 Conforth 2003 (n 210).

260 Ebrahim et al. (n 4); Campi et al. (n 5).

3.4.3.3. Stakeholders as consultants in the examined CICs

Breadshare

Breadshare's employees were among the key stakeholders acknowledged in the annual Breadshare CIC report. The company was found to employ fifteen employees at the time the interviews took place. The interviews and the examination of relevant documents, such as the CIC reports 2012 - 2016 of Breadshare revealed other categories of community stakeholders and beneficiaries, such as the volunteers of Breadshare, members, customers in Scotland, the local community, bread retailers and bakeries, regional social enterprise sector development organisations, and Breadshare's suppliers of organic ingredients.

It was earlier mentioned that other than the four directors-employees, who were also members of the company and of the board, other employees and/or other groups of stakeholders did not have a participatory role in the decision-making processes of Breadshare's governing bodies, i.e. the general meeting or in the board of directors. Formal participation through membership was not exercised by the company's employees or by the company's stakeholders due to inactive membership. Additionally, there was no regular consultation regarding the company's decisions between the employees of Breadshare and the board members. The idea of developing a regular, informal and monthly staff meeting including board members was considered. However, the organisational setting of shift work did not allow for the realisation of regular meetings between board members and the employees (D interview, 10 February 2016). Accordingly, one interview respondent mentioned that 'so one person has mentioned about maybe having a staff meeting every month or something. But then you've always got that issue where people want to come in on a day off, (...) But the other thing I suppose is the way the shifts work' (D interview, 10 February 2016).

Instead, employees were consulted intensely and informally on an ad hoc basis by the board members on decisions and specific activities. An interviewee who is a director said that:

It depends on what we're trying to achieve at the time but generally speaking, running a bakery operationally, I consult with the (quality and training manager) and the (full-time employee baker) and then the employees, who are in the management positions to debate the decision (A interview, 19 February 2016).

Although customers were consulted regularly regarding pending decisions, feedback was also received informally and on a regular basis concerning the type and quality of products, i.e. through personal interactions of employees and decision-makers with customers at the company's retail outlets. In response to this informal client feedback, Breadshare introduced several new products and changes were suggested to existing products.

Additionally, the bakery attended and held informal community events, i.e. food networking meetings and bakery visits, and offered open days during which anyone interested in the company could visit and discuss any aspects of the business. Breadshare also took part in informal educational activities, e.g. visits to primary schools and other community groups that were an alternative opportunity to engage with stakeholders. Furthermore, community visitors sought to learn from the bakery, wheat and bread production activities. The community activities were organised in the form of bakery workshops. Breadshare also engaged with the community by providing opportunities for people to volunteer.

With this in mind, it can be understood that, in terms of the organisational functioning of Breadshare, a regularly informal consultation process was developed, which assisted various types of stakeholders to engage with the activities of Breadshare, while not intervening or participating in the decision-making activities. Those consultation processes were informal and regular but they were provided for direct contact with stakeholders that could safeguard the downward accountability to beneficiaries rather than the formal representative participation of stakeholders in the decision-making processes.²⁶¹

GTS Solutions

It was earlier mentioned that the decision-making processes of GTS Solutions' governing bodies was not open to stakeholders. However, the decision-making process of GTS Solutions' board of directors was structured in such a manner that it comprised a higher and a lower level. Although stakeholders could not participate in the higher level, i.e. the board meetings where directors contemplated strategic issues and synthesised their ideas in collaboration with advisors, they could do so in a lower preparatory level prior to decision-making.

The lower level required the company's directors - prior to board meetings - to work in consultation with the company's strategic partners (the partners which accommodate the employment and the vocational training of the disadvantaged young adults), clients (the recipients of the security services) and community stakeholders (the young disadvantaged adults who attend the company's training). Consultation was exercised through the constant application of consultation and feedback mechanisms, on the basis of which directors sought to identify what these different stakeholder groups either demanded and/or required. As such, directors strived to understand how the company's interests could be aligned with what stakeholder groups seek. The outcome of the consultation was presented in action plans delivered and distributed to the board members, who were in charge of directly communicating their contents to stakeholders.

Downward accountability in GTS Solutions was achieved through stakeholder consultation processes, which were standardised as stakeholder feedback mechanisms. Feedback was

261 Ebrahim et al. (n 4).

collected through satisfaction surveys and phone calls with clients and the company's employees. The company collected regular (monthly) feedback from the community stakeholders, the clients and the staff (GTS Solutions annual reports of 2013 - 2016).

Furthermore, monthly feedback was also processed in the form of satisfaction surveys sent to the company's employees. At the time the interviews took place, the company employed a workforce of approximately forty employees and a registry in which more than 100 employees with zero hour contracts were registered. These were volunteers, who preferred to work only a few hours per year. GTS Solutions collected details of the employee's perceptions and their rates of satisfaction regarding various employment issues through regular satisfaction surveys. The monthly employee survey was developed as a regular process and it constituted a distinguished part of the company's quality management system. The collected survey data were further compared with observational data collected by the personal interaction of the management with the employees. They were thus verified. A monthly survey was also sent to the company's clients and strategic partners regarding their satisfaction with the offered services. The monthly surveys were standardised into a list of indicators that were reviewed by the directors of GTS Solutions on a regular quarterly basis and in consultation with its clients. Similarly, to Breadshare, GTS Solutions realised downward accountability through informal, regular and direct stakeholder mechanisms.

3.4.3.4. Stakeholders as recipients of information regarding decisions

Breadshare

Breadshare was found to have a close relationship with its customers, suppliers and volunteers, who were encouraged to provide informally and on a regular basis any feedback regarding operational affairs through social media and email communication. However, the requested feedback did not concern the content of pending decisions to be taken by the governing bodies of Breadshare, i.e. the strategic decisions. Nevertheless, stakeholders were easily informed concerning the company's products, new developments in business, and organised events from the company's website and social media. Information directly communicated to the company's employees.

Other than this, Breadshare developed a group of (inactive) members and registered stakeholders, who received regular newsletters electronically and who were annually invited to attend the general meeting. Breadshare's newsletters were provided on the company's website. The newsletter was developed to have an informative character that communicated the company's news regarding decisions to CIC members and community stakeholders. Regular communication was also taken place with the employees concerning operational issues of daily business activities rather than issues that were pending to be decided.

Direct communication regarding decisions took place on an ad hoc basis only concerning specific activities. One interviewee mentioned that the communication between

employees and decision-makers regarding daily operations was regular, direct (on a one-to-one basis) and informal. He mentioned that there were issues that remained unknown regarding decisions. He mentioned that:

Throughout the week it more or less rotates around so everyone kind of sees everybody or somebody who knows somebody (...) I'm sure they (the directors) are probably not going to tell every single one what they do, probably more things that are successful (...) So yeah, I think I was kept fairly well informed (D interview, 10 February 2016).

Breadshare was also engaged in regular, informal and direct weekly communication with suppliers. Such communication regarded operational issues rather than issues pending to be decided by the board. The informal communication was mostly conducted by phone. The communication with the company's customers, which was also informal, regular and direct, was conducted in a similar manner. One interviewee said that 'we have a diverse range of community activities that we would do all the time and we do them regularly (...) We receive feedback from the customers' (A interview, 19 February 2016). It was thereby understood that communication regarding operational issues between the directors of Breadshare and its members with community stakeholders and employees was part of the company's regular business activities and it was regular, informal and direct. However, directors would not communicate the content of pending decisions. Additionally, not all Breadshare members communicated on a regular basis. As was previously mentioned, many of the Breadshare members were not involved in the company's affairs due to inactive membership.

GTS Solutions

The communication between the company and its clients was regular. Feedback from the clients was collected in the form of surveys but also through regular telephone calls during which complaints or essential operational issues were discussed. The feedback was collected and documented on a weekly basis by the company's board. The board's decisions were communicated to the company's clients. The managers and directors provided information to the employees and clients via phone calls or email.

The interviews revealed that there was regular communication among employees from different organisational levels regarding the board's decisions. An interviewee confirmed that he receives extensive information by the decision-makers regarding all matters. He noted that 'I think because at the moment I'm informed on everything so apart from the financial matters, which I don't need to know about, I'm involved with all the clients, I've met all the clients' (G interview, 18 February 2016). Another interviewee mentioned that 'Yeah, I get informed about all the decisions before anybody I either get a phone call or I receive an email by the manager, by the director-manager, who's the one who's in charge' (F interview, 18 February 2016).

3.4.4. Discussion

This article has provided evidence of the governance challenges faced by two social enterprises in Scotland with the legal form of the CIC. Evidence-based results were exhibited regarding the realisation of participatory governance under a 'light touch' regulatory regime, which encourages - rather than obliges - stakeholder participation in the corporate governance of the examined CICs. The examined case studies revealed that participatory governance is not formally realised through membership and the acquisition of ownership of shares and/or the exercise of decision-making rights that membership confers. Indeed, where participatory membership was realised it remained inactive.

In particular, it was observed that both examined CICs encountered trade-offs at all levels of decision-making due to the lack of formal means of participation that could potentially provide a more obligatory and essential role to stakeholders in the decision-making processes. For instance, Breadshare, the CIC constituted as a company limited by guarantee, strived to achieve a trade-off in its membership in balancing the complexities of inactive membership and/or the risk of a mission drift, with the requirements to maintain a representative, democratic and participatory character in its governance via encouraging community membership and participation (Table 3.10). Another trade-off for Breadshare related to achieving a balance in the composition of its board of directors by involving representatives of the stakeholders, while simultaneously being governed by experts, who have the knowledge and skills to run a business (Table 3.10). Ultimately, these experts may not be in conformity with the community objectives of Breadshare leading, consequently, to a so-called mission drift.

Similarly, GTS Solutions, the CIC incorporated as a company limited by shares that was governed by one active shareholder, also experienced a trade-off. The trade-off required the achievement of a balance between the governance power concentrated in the hands of one active shareholder in collaboration with trustful managers and co-directors, with the community character of the organisation and the realisation of community objectives that the CIC is obliged to serve (Table 3.10). Accordingly, it was at the discretion of the active shareholder to provide for a more participatory role to the community stakeholders that GTS Solutions serves, namely young adults, strategic partners, clients and employees.

However, despite the challenges that Breadshare encountered as a more open and participatory organisation, in GTS Solutions the concentration of the decision-making power in the hands of the active shareholder averted the risks of inactive membership. Furthermore, due to the board composition of GTS Solutions - which comprised only members, who were business experts and the active shareholder - a trade-off, required a balance between the decision of experts who have the knowledge and skills to run a business with the involvement of community stakeholders at a lower level (Table 3.10).

Table 3.10: Governance challenges experienced by the two examined CICs in the UK

	CIC limited by guarantee	CIC limited by shares
Ownership and membership	Governance challenges, i.e. inactive membership and mission drift vs. democratic and stakeholder models of governance.	Sole shareholder: a concentrated power structure (discretion of the shareholder to provide decision rights) versus community objectives.
Board composition	Board comprises directors who are representatives of the stakeholder basis vs. experts with entrepreneurial competence.	Board comprises members who are experts (lack of community representation) versus lower level of communicating decisions with stakeholders.

As such, various informal stakeholder mechanisms were developed in both organisations in the form of standardised processes to collect - in a regular but informal manner - the feedback of stakeholders directly. Such mechanisms were not formal. They could not be translated into direct and actual stakeholder participation or representation in the formal sense i.e. by virtue of decisions being made in the board of directors and/or the members of the general meeting.

Additionally, both organisations established a governance model, which bares close resemblance to the stewardship model rather than the democratic and stakeholder model. For instance, decision-making in both CICs was in the main competence of the board of directors. Breadshare's general meeting was subject to inactive members, whereas GTS Solutions comprised only one active member.

As such, in Breadshare, the board of directors, which had to make the most important organisational decisions, comprised few directors - 'oligarchs'. In GTS Solutions, it comprised one active shareholder and two experts. Stakeholders and third parties were not permitted to participate in the meetings of either of the board of directors examined in the case studies. This important part of decision-making activity remained unaligned with the interests of the community stakeholders. Its implementation was not reflected in the CIC reports, which were often insufficiently explanatory concerning the engagement of stakeholders and their involvement in the decision-making and affairs of the CIC.

As such, in the two examined CICs, the participation of stakeholders in the governing bodies of the social enterprises, i.e. the general meeting and/or board of directors, was not formally realised. However, informal means of stakeholder participation and consultancy were developed. The informal means of stakeholder participation are presented in Table 3.11 and they were standardised as regular and direct processes within the organisational functioning of the examined social enterprises.

Table 3.11: Participatory stakeholder mechanisms in the two UK case studies

	Formal	Informal	Regular	Ad hoc	Direct	Indirect
Stakeholder participation in the general meeting as members	(Inactive at Breadshare)		(Inactive at Breadshare)		(Inactive at Breadshare)	
Stakeholder participation in the board meetings as members	Not realised	Not realised	Not realised	Not realised	Not realised	Not realised
Stakeholder representation as members of the board	Not realised	Not realised	Not realised	Not realised	Not realised	Not realised
Stakeholders' communication with the decision-makers regarding operational issues		X	X		X	
Stakeholders' communication with the decision-makers regarding governance		X		X	X	
Stakeholders' thematic events (open days, educational activities, workshops, community events)		X	X		X	
Communication via electronic means (website, newsletter, social media)		X	X		X	
Email and oral communication		X	X		X	
Satisfaction surveys		X	X		X	

3.4.5. Case study conclusions

3.4.5.1. Limitations and future research

The case studies examined in this article discussed how participatory governance is realised in two Scottish social enterprises with the legal form of the CIC. The case study concluded that participatory governance was not formally realised in the examined CICs. In contrast, other types of stakeholder mechanisms were developed to accommodate the stakeholders' feedback regarding decisions that were already made, though not in respect of those issues that were pending to be decided. Informal stakeholder mechanisms were developed in the organisational functioning of the examined CICs, which took place in a regular and direct manner by engaging the decision-makers of the examined social enterprises with their community stakeholders. However, the case studies were limited to the examination of one particular legal form for social enterprise and were subject to the rules of one particular jurisdiction, i.e. the CIC legal form in the UK. Thus, the results were case-bound. Consequently, a combination of studies considering other legal forms for social enterprises in other jurisdictions may contribute to a more comprehensive understanding of the concept of participatory governance that could then be generalised.²⁶² Additionally, this article focused only on the examination of participatory governance under the auspices of the light touch regulatory regime employed in the UK, in which the participatory consultation of stakeholders was encouraged rather than obliged. As such, further research could be conducted in a comparative setting in other jurisdictions, in which the participation of stakeholders in the governance of social enterprises is a binding concept.²⁶³ The comparative angle will indicate whether the concept of participatory governance is more effective when it is regulated as a binding or an optional legal concept.

Furthermore, the case studies in this article did not examine the effect that stakeholder participation and consultation may have on the legitimacy of social enterprises in relation to their community stakeholders. Accordingly, future research could examine the effects of stakeholder participation and consultation on community legitimacy. In the context of the UK, future research could examine how the regulatory framework could provide CICs with proper instructions and tools to implement, communicate and report participatory governance in a more consistent and effective way.

3.4.5.2. Practical implications

The discussed case studies could contribute to an understanding of the day-to-day complexities and practical problems that emerge in the governance of a CIC. In particular, the findings of these studies could shed light on the actual functioning of CIC governance. They could provide inspiration in relation to the development of

262 See also the replicated research methodology in Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (169).

263 *ibid.*

stakeholder engagement, involvement mechanisms and standardised processes in other UK social enterprises. All could be done in the context of examining the implementation of the applicable regulatory regime and the ways in which social entrepreneurs choose to deal with it.

3.5. UK: Participatory governance in community energy schemes in the UK: The case study Stratford Community Energy PLCIC

Abstract

This article aims to examine whether participatory governance of stakeholders is realised in the UK tailor-made legal form for social enterprises, i.e. the Community Interest Company (CIC), through community consultation and community engagement. The article contains a single case study of a variation of the CIC legal structure, i.e. the public limited CIC. The case study provides preliminary evidence of the application of participatory governance in community energy schemes in the UK. It shows how the community can participate in the ownership and the decision-making of a social enterprise in the UK that produces and trades renewable solar energy. The study aims to explain: (i) the implementation of the CIC legal environment in practice; and (ii) its impact on the organisational structure of a social enterprise in the UK. The study focuses in particular on the subject of community ownership and community governance adopted in the CIC legal form.

Keywords

Community, Community Interest Company, Solar energy, Community energy schemes, Stakeholders, Participatory Governance

3.5.1. Introduction

3.5.1.1. The CIC in community energy schemes

In the last 20 years, the UK has sought to promote the development of community and locally driven renewable energy initiatives as part of a national strategy, which aims to increase the production and the wider use of renewable energy in the country.²⁶⁴ The national strategy promoting renewable energy use and production was primarily the result of the country's obligation as a Member State of the EU to achieve a certain target, i.e. 15%, in energy consumption from renewable sources by 2020.²⁶⁵ It was also the country's objective to safeguard the abundance of its national energy resources and to protect the environment through the reduction of carbon emissions by 57% by 2030.²⁶⁶ All it was done simultaneously with promoting policies that could encourage community active engagement and the collective change of behaviour towards energy production and consumption.²⁶⁷

To that end, the UK favoured a policy concerning community driven renewable energy generation. Such a policy encouraged the development of a wide range of community and locally driven activities undertaken by community-based organisations.²⁶⁸ As such, the UK Government established national measures and subsidies, which facilitated community energy schemes.²⁶⁹ Among the measures introduced by the UK Government in 2010 is the feed-in-tariff (hereafter 'FIT') measure. The FIT promotes the generation of low-carbon electricity from a range of small-scale initiatives, such as community and individual renewable energy installations. The FIT is also a measure designed to reward and promote the generation of low carbon electricity from different small-scale initiatives.

In the scope of the FIT, individuals, households, communities and small businesses are encouraged to adopt, invest and participate in small-scale renewable energy generating projects, e.g. small-scale solar photovoltaic installations. As part of the FIT regime, the so called 'export tariff' allows individuals, communities and small businesses to trade

264 G. Walker, 'What Are the Barriers and Incentives for Community-owned Means of Energy Production and Use?' [2008] 36(12) *Energy Policy*, 4401-4405; G. Seyfang, J.J. Park and A. Smith, 'A Thousand Flowers Blooming? An Examination of Community Energy in the UK' [2013] 61(1) *Energy Policy*, 977-989; P. Jones, D. Comfort and D. Hillier, 'Spotlight on Solar Farms' [2015] 15(1) *Journal of Public Affairs*, 14-21. P. Jones, D. Hillier and D. Comfort, 'Solar Farm Development in the United Kingdom' [2014] 32(2) *Property Management*, 176-184.

265 Jones et al. 2015 (n 264); Department of Energy and Climate Change, 'National Renewable Energy Action Plan for the United Kingdom' (1 July 2010) 11 available at: <www.gov.uk/government/publications/national-renewable-energy-action-plan> accessed 13 October 2017.

266 Department for Business, Energy and Industrial Strategy, 'Setting of the third, fourth and fifth carbon budget' (22 July 2016) available at: <www.gov.uk/guidance/carbon-budgets> accessed 13 October 2017.

267 Seyfang et al. (n 264); National Renewable Energy Action Plan (n 265) 15-25.

268 Seyfang et al. (n 264).

269 Walker (n 264); National Renewable Energy Action Plan (n 265) 15-25.

the electricity produced by them through renewable energy means back to certain FIT accredited energy suppliers.²⁷⁰ Accordingly, eligible and certified small-scale installations are allowed to receive payments for the electricity produced which is exported-traded to the FIT accredited energy suppliers.²⁷¹

The FIT regime determines the involvement of certain types of community organisations in the development of eligible small-scale energy installations for the production of renewable energy. These are small businesses and community organisations, in particular: (i) CICs; (ii) charities; (iii) subsidiaries wholly owned by charities; (iv) community benefit societies (hereafter BenComs); and (v) cooperative societies, defined in the FIT policy framework as ‘any of the following which has 50 or fewer employees’.²⁷²

The scholarship notes that the types of community energy schemes in the UK vary. They comprise a variety of community activities and community actors. In an empirical study on community energy projects, Seyfang et al. demonstrate that the broad spectrum of community energy actors in the UK engaged predominantly in renewable energy production and renewable energy conservation (storage) activities.²⁷³ The CICs are among them. According to Seyfang et al., renewable energy production and renewable energy conservation activities are either managed and/or owned by such community actors, such as the CIC.²⁷⁴ Walker notes, in this respect, the phenomenon of community ownership of community energy schemes in the UK.²⁷⁵ He discusses the advantages of ownership for communities owning and running such community energy schemes. According to him, community energy schemes can be used as incentives to encourage community engagement pursuant to the policy ambitions of the UK Government.²⁷⁶ The most significant advantage of community owned energy schemes acknowledged in the studies of Seyfang et al. and Walker include the generation of local income for the community, which allows the local community’s regeneration.²⁷⁷ According to Walker, community-owned means of production could generate income locally, through: (i) ‘returns on investment’; (ii) ‘the sale of generated energy in the form of electricity or heat’; or (iii) ‘the creation of employment’.²⁷⁸

270 *ibid.*

271 FIT Order of 2010 no. 678 and amendments of 2012, 2015 and 2017. All the amendments are available at: <www.legislation.gov.uk/all?title=feed-in%20tariffs> accessed 13 October 2017.

272 Ofgem, ‘Feed-in-Tariff: Guidance for community energy and school installations’ (2015) 7 available at: <www.ofgem.gov.uk/ofgem-publications/100090> accessed 16 October 2017; Art. 11(6), FIT Order of 2015; See UK Government, ‘Community Energy: Guidance’ (2013) available at: <www.gov.uk/guidance/community-energy> accessed 16 October 2017.

273 Seyfang et al. (n 264) 981.

274 *ibid.*

275 Walker (n 264); G. Walker and P. Devine-Wright, ‘Community Renewable Energy: What Should it Mean?’ [2008] 36(2) *Energy Policy*, 497-500.

276 Walker (n 264); Walker and Devine-Wright (n 275).

277 Seyfang (n 264); Walker (n 264); Walker and Devine-Wright (n 275).

278 Walker (n 264) 4402.

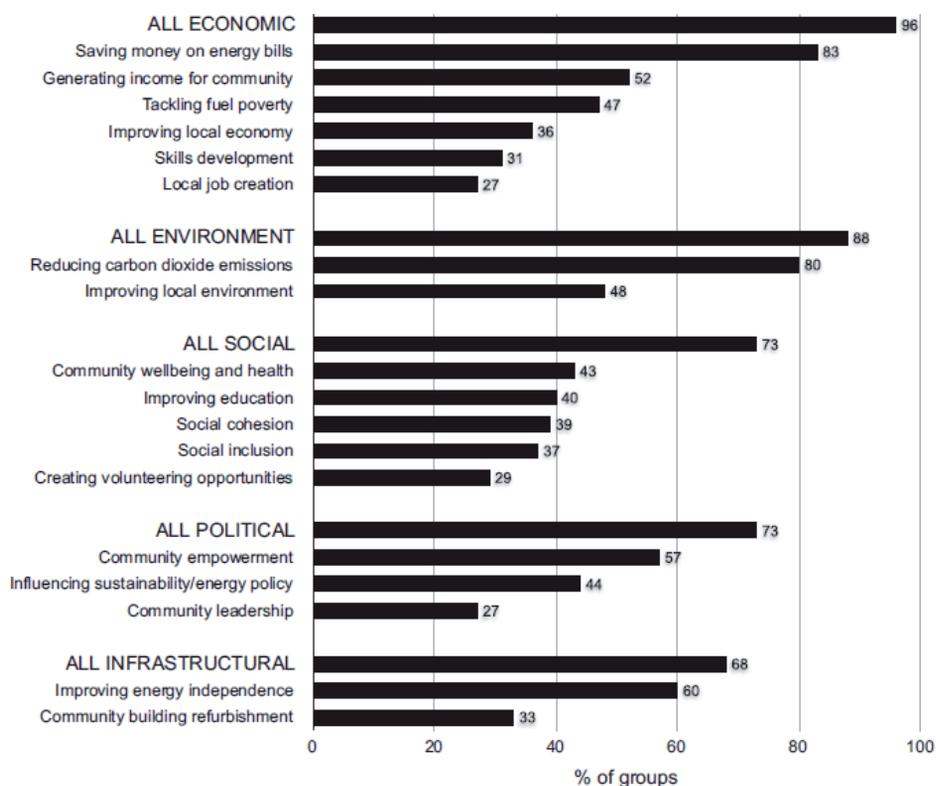


Figure 3.2: Incentives of community energy groups in the UK according to Seyfang et al. (2012: 982).

Another second advantage of community owned energy schemes is the possibility of achieving lower energy costs for the community users. As such, the cost in the use of energy for the community is reduced. Thirdly, community owned energy schemes allow for the maintenance of community approval and legitimacy. Accordingly, community energy activities are subject to the community's acceptance and legitimacy. Finally, the maintenance of local control over the community energy scheme safeguards the community's control over the pace of development and operation of this scheme. Seyfang et al. also demonstrate the predominant economic, social, environmental, political and infrastructural incentives (Figure 3.2) of participants in community energy schemes.²⁷⁹ Such incentives are characterised by a tendency to 'save money on energy bills', 'generate income for community', 'reduce carbon dioxide emissions', increase 'community well-being and health', 'promote community empowerment; and 'improve energy independence'.²⁸⁰

279 Seyfang et al. (n 264) 982.

280 *ibid.*

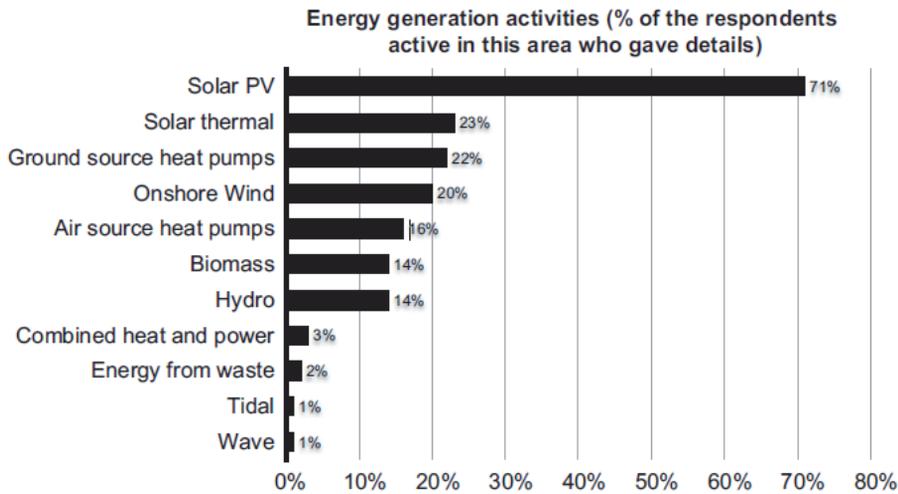


Figure 3.3: Energy generation activities of community energy groups in the UK according to Seyfang et al. (2012: 982).

In their empirical study, Seyfang et al. also found that among the community energy schemes in the UK, which undertake activities of renewable energy production, a majority of 71% among 190 examined community energy schemes, enable the installation of solar photovoltaic renewable technologies (Figure 3.2).²⁸¹ The biggest part of these schemes is the development of solar panel farm projects. A solar panel farm is defined as:

An area of land on which a large number of solar panels are deployed to generate electricity producing very little noise, having no moving parts and no harmful emissions. More specifically, solar farms are large arrays of interconnected solar panels that work together to capture sunlight and convert it directly into electricity.²⁸²

Accordingly, scholarship notes the current and rapid increase of solar farms in the UK.²⁸³ However, such statements are unreliable in that there is no formal registration facility to quantify the existing solar farms developed in the UK as there is no official registry to demonstrate data regarding the development of existing solar farms in the UK. However, aggregate data regarding the increase of solar photovoltaic installations on the basis of total energy capacity in the UK are publicly available in the monthly Solar Photovoltaics Deployment Report produced by the UK Department of Energy and Climate Change.²⁸⁴

²⁸¹ Seyfang et al. (n 264) 983.

²⁸² Jones et al. 2015 (n 264) 12.

²⁸³ Jones et al. 2015 (n 264); Seyfang et al. (n 264).

²⁸⁴ Department of Energy and Climate Change, 'Solar Photovoltaics Deployment Report' (April

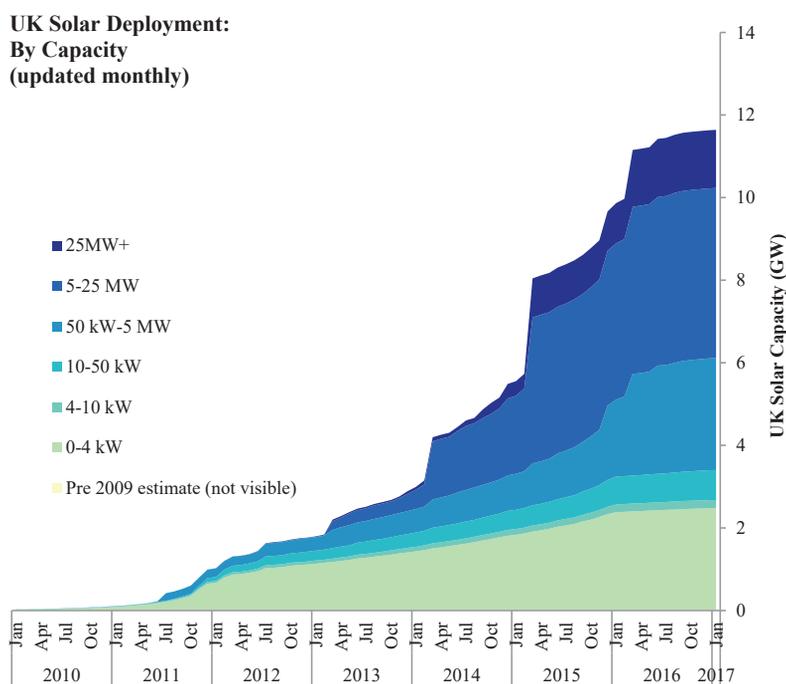


Figure 3.4: Solar deployment by capacity in the UK.

The data demonstrate a significant increase of solar photovoltaic installations of high and/or low power capacity in the last seven years 2010 - 2017 in the UK.²⁸⁵

3.5.1.2. The CIC and the CIC legal framework

Various empirical, theoretical and comparative studies provide in-depth analyses regarding the specificities of the CIC legal framework.²⁸⁶ The aforementioned studies note that these provisions are underpinned by an overarching community interest. The service to the community and the engagement of the CIC with the constituents of the community are core propositions that underlie the CIC legal and regulatory regime. Of particular importance are the provisions regarding: (i) the community objectives of the company; (ii) the profit distribution constraint through the asset-lock; and (iii) the participatory governance and accountability of the CIC to its community beneficiaries.²⁸⁷

2017) available at www.gov.uk.

285 *ibid.*

286 Ebrahim et al. (n 4); Cafaggi and Iamiceli (n 36); see also Argyrou and Lambooy (n 92); Lambooy and Argyrou (n 22).

287 Ebrahim et al. (n 4); Nicholls (n 177). Argyrou and Lambooy (n 92); Lambooy and Argyrou (n 22).

3.5.1.3. Community participation in the governance of the CIC and accountability

Subject to the asset-lock restriction and the CIC test, a CIC is obliged to serve the interests of its community beneficiaries, i.e. the community constituencies addressed in its constitutional objectives. As such, the CIC directors and members are encouraged to consider and consult by any means possible the community stakeholders-beneficiaries served by the community objectives and the persons affected by the CIC's activities.²⁸⁸ CICs are also obliged to report and describe their consultation activities in an annual CIC report. This is a statutory requirement expressed in Article 26(1)(b). This article stipulates in an encouraging rather than obligatory way that a CIC shall report annually on: (i) 'the company's activities during the financial year (that) have benefited the community'; (ii) 'the steps, if any, which the company has taken during the financial year to consult persons affected by the company's activities; and (iii) the 'outcome of any such consultation'.²⁸⁹ Accordingly, a pre-arranged CIC report template is provided by the Regulator to the CICs. The CIC report requires the CIC to describe the steps that it has taken to involve and consult stakeholders and the persons who are affected by the company's activities.²⁹⁰

3.5.1.4. The role of stakeholders in the CIC

The role of community stakeholders in the CIC legal framework comprises: (i) community stakeholders as members and owners of the CIC; (ii) community stakeholders as decision-makers of the CIC; (iii) community stakeholders as consultants of the CIC; and (iv) community stakeholders as recipients of information from the CIC.²⁹¹

Community stakeholders as members and owners of shares in the CIC

The role 'members' and 'owners of shares', entails the participation of stakeholders in the ownership of shares and in the membership of the CIC. Accordingly, the acquisition of membership and the ownership of shares from stakeholders could allow for the participation of the community in the realisation of the CIC objectives.²⁹² Hence, stakeholders can exercise particular rights and obligations prescribed in the CIC legislation for the CIC's members. Indeed, this may extend the community's participation in the CIC's affairs and decision-making.²⁹³ Such rights include amongst others:

- (i) the right to participate in the decision-making processes of the CIC's governing bodies (board of directors and annual general meeting of members);

288 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36).

289 CIC Regulations of 2005; Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36).

290 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36); Nicholls (n 177).

291 Ebrahim et al. (n 4).

292 Campi et al. (n 5); Galera and Borzaga (n 1).

293 Argyrou and Lambooy (n 92); Ebrahim et al. (n 4); Campi et al. (n 5); Galera and Borzaga (n 1).

- (ii) the right to appoint and scrutinise decision-makers following a prohibition for the CICs to permit any person other than a member and/or director and/or the Regulator to appoint a director.²⁹⁴ All members have a responsibility to uphold the community objectives of the company through scrutinising the directors' activities;²⁹⁵
- (iii) the right to participate in decision-making processes of the board of directors concerning financial distributions, as well as in the processes of the general meeting concerning the change of the AoA and the company's strategy.²⁹⁶

Community stakeholders as decision-makers

The role of 'decision-maker' entails the participation of stakeholders in the main decision-making processes of the community interest company, e.g. the board of directors and the CIC's general meeting. Such a role is accomplished through the exercise of voting rights and the adoption of the most appropriate governance model. Accordingly, community stakeholders may shape and direct the governance model of the CIC towards a democratic and stakeholder based governance model, which accommodates the interests of various representative stakeholder sub-groups of the community on an equal basis. Alternatively, a stewardship governance model could be used to facilitate the appointment of trustful managers and decision-makers bound by the overarching community objectives in the increase of organisational performance.²⁹⁷

Community stakeholders as consultants

The role of 'consultant' entails the participation of stakeholders in various stakeholder consultation mechanisms adopted by CICs with different characteristics. Such a role can be accomplished in furtherance of the organisation's downward accountability, i.e. the downward accountability of a social enterprise to its community beneficiaries and stakeholders. Downward accountability is achieved by means of stakeholder mechanisms, which accommodate scrutiny over the decision-making processes, enhance transparency, and could increase the legitimacy of the CIC to the community that it serves.²⁹⁸

Community stakeholders as recipients of information

The role of 'recipient of information' entails the participation of stakeholders in the acquisition of information regarding the affairs of the CIC and its decision-making especially when stakeholder participation through membership and decision-making

294 Argyrou and Lambooy (n 92); McLaughlin (n 232) 50; Cafaggi and Iamiceli (n 36) 47; Schedule 1-3 CIC Regulations of 2005, art. 3(2).

295 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36); Office of the Regulator of Community Interest Companies, 'Information and Guidance Notes: Chapter 9 - Corporate Governance' (March 2013).

296 Argyrou and Lambooy (n 92); Cafaggi and Iamiceli (n 36).

297 Conforth 2003 (n 210); Low (n 6); Mason et al. (n 7); Spear et al. (n 4).

298 Ebrahim et al. (n 4); Larner and Mason (n 86); Mason et al. (n 7).

is not an option. Such a role reduces existing asymmetries of information regarding decisions that are decided and/or pending to be decided between the decision-makers and the community stakeholders.²⁹⁹ Accordingly, decisions, which may seem inappropriate or incompatible to community stakeholders, i.e. the use of various business methods for the maximisation of a community and/or social benefit are thus legitimised and balanced.³⁰⁰

3.5.2. Method

3.5.2.1. The case study approach: data collection and data analysis

Similarly, to previous case studies this case study attempts to examine the participation of stakeholders in the governance of one tailor-made legal form for social enterprises, i.e. the CIC.³⁰¹ The case study examines the last legal variation of the CIC legal form, i.e. the public limited CIC. The CIC to be examined is the Stratford Community Energy Public Limited Community Interest Company (hereafter 'Stratford PLCIC'), which operates a community energy scheme in the UK.

The case study is developed in such way in order to replicate the case study method used in previous empirical case studies.³⁰² This method used three significant qualitative techniques in the process of data collection, namely: (i) the collection of empirical data through interviews; (ii) the collection of data from the review of relevant documents; and (iii) observations from the interaction with the respondents at the interview location or at the social enterprise's facilities.³⁰³ However, the research in this case study is subject to certain limitations in the data collection and data analysis due to the young and developing character of Stratford PLCIC.

Stratford PLCIC is a young organisation, which initiated its activities early in 2016. This particular social enterprise was selected purposefully as it fits uniquely into the research sample, which examines the participatory governance of the CIC variations provided in the CIC legal framework. Stratford PLCIC has adopted one of the three legal variations of the tailor-made legal form prescribed by law in the UK CIC legal framework, i.e. the public limited CIC. Stratford PLCIC also constitutes the only public limited CIC registered in the area of England as of March 2017 and the second public limited CIC in the UK.³⁰⁴ The second identified registered public limited CIC was located in the region of Northern Ireland. The public limited CIC is the last remaining variation of the CIC legal variations prescribed in the CIC legal framework. What is

299 Mason et al. (n 7).

300 *ibid.* Santos et al. (n 90).

301 Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).

302 Argyrou et al. 2016a (n 24), Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).

303 *ibid.*

304 Companies House, available at: <<https://beta.companieshouse.gov.uk/>> accessed 13 October 2017. This information was retrieved after a personal communication with the CIC Regulator.

more, Stratford PLCIC was also selected theoretically due to operating a community energy scheme in the UK with the objective of transforming itself into a community-owned and community-managed energy CIC.

3.5.2.2. Limitations in the data collection and data analysis method employed for the development of the Stratford PLCIC case study

Nevertheless, the development of the case study regarding the selected Stratford PLCIC, could accommodate only in part the consistent application of the qualitative techniques applied in other case studies.³⁰⁵ In particular, the most significant burden to the full realisation and operationalisation of the qualitative methods applied and replicated in previous case studies was the young maturity of Stratford PLCIC which did not grow in the course of the time. The Stratford PLCIC initiated its activities early in 2016 and had no organisational structure as of April 2017.

Accordingly, Stratford's PLCIC limited organisational structure did not allow for the collection of data from semi-structured interviews with various respondents from different organisational layers. For example, Stratford PLCIC was yet to have no employees in its organisational structure other than three directors. Moreover, there were no different organisational levels capable of being examined in a hierarchy in which decisions may flow. The only persons employed by Stratford PLCIC were three active directors in the board, all of whom represented the sole shareholder, i.e. the company group of which Stratford PLCIC was part. The active directors who made up Stratford's PLCIC board of directors, were full-time directors of many other subsidiary companies of the company group of which Stratford PLCIC was part. By way of example, one appointed director of Stratford PLCIC was appointed as a director in 22 other subsidiary companies, which were part of the company group of which Stratford PLCIC was part.³⁰⁶

Hence, if interviews were to be conducted with the only available respondents from Stratford PLCIC, i.e. the directors, there would be no plurality or variety of responses collected by persons from different and various organisational layers, such as shareholders (or shareholders' representatives), directors and/or employees. Furthermore, due to the young and incomplete character of the organisational structure of Stratford PLCIC, communication with the objective of obtaining data through interviews, as was the case in the replicated method and research design, was challenging. The efforts to communicate directly with the CIC's directors remained fruitless. Likewise, the identification of the CIC's community stakeholders that could potentially participate to interviews also proved to be a challenging task. For instance, there was no way of

305 Argyrou et al. 2016a (n 24) and Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).

306 The data were retrieved from the Amadeus database available at: <www.bvdinfo.com/en-us/our-products/company-information/international-products/amadeus> and the UK Companies House available at: <www.gov.uk/government/organisations/companies-house> all website accessed 12 October 2017.

identifying individuals or organisations that could be considered as benefitting from the selected CIC without having access to the CIC's company data, i.e. data concerning the individuals or organisations from the community, which received community energy produced by the Stratford PLCIC. Nor was there a means of identifying the Stratford's PLCIC community investors, i.e. persons who traded Stratford's PLCIC issued bonds online using a crowdfunding platform.

The preliminary development of the case study was mainly based on information and data collected through publicly accessible and relevant documents, such as the CIC's constitutional documents, i.e. the AoA, the CIC statements, reports and annual accounts made to the CIC Regulator and the UK Companies House. Although a proper investigation into the participatory governance of the CIC could not be executed entirely through examining the CIC reports and relevant documents only, such engagement was not feasible in this case study.³⁰⁷

Other publications and reports used for this study were administrative decisions, consultation documents and reports regarding the grant of permission to develop a solar panel farm, which were produced by the local authorities in the region where Stratford PLCIC operated. Only limited information could be collected from the website of the company group, i.e. Anesco group where the Stratford PLCIC actually belongs. The limited information related to the CIC's development and progress of its activities. However, this information could not be compared in terms of depth and quality with the extensive information provided by interviews. Because of the constrained opportunities for the conduct of in-depth interviews, there were no observations from the visits to the examined organisation and the interview processes. Nevertheless, desk research and an individual visit to the location of the selected CIC uncovered that the company did not maintain its own facilities yet, but it was fully operated and hosted by the parent company in the company group's headquarters.

As such, it was understood that the selected CIC had not developed its organisational structure as of April 2017 to such an extent that it resembled the maturity level of other organisations previously examined in other case studies. Accordingly, the selected CIC was not going to be added to the research scope of the case study broader research if it were not for its unique characteristics. Due to the unique characteristics: (i) the only public limited CIC registered in England; (ii) the growing character of the organisational structure; and (iii) its important role in theory development regarding community-owned and community-managed CICs, this case study was accommodated in the research design because it exhibits preliminary but substantial findings. The findings can be elaborated on to a greater extent in future research when Stratford PLCIC will have realised in full its community objectives and will have materialised its organisational structure. Accordingly, in the following Sub-sections, the realisation of participatory governance was examined using the data collected in the relevant documents. The

307 McNulty et al. (n 200).

discussion has been expanded to an extent that it contains elaborations regarding the Stratford's PLCIC realisation of community objectives to transfer the ownership of the organisation to community.

Due to the lack of data from in-depth and semi structured interviews, the method of coding was applied to the collected data obtained from the relevant documents. Accordingly, and following the replicated research method employed in previous studies, the data from the relevant documents were coded using a template with 'a priori' codes deductively originating from the theoretical analysis (Table 3.12). The a priori codes were eventually refined with codes emerging from the examined data retrieved from the relevant documents (Table 3.12). Subsequently, template analysis was used to contrast pre-existing legal concepts with emerging concepts that emerged from the data, and which were integrated into emerging themes that were later matched with the themes identified in the theoretical discussion.

3.5.3. Case study results

3.5.3.1. Introduction to the case study: the Drayton Manor Farm project, Anesco and the Stratford PLCIC

In this Sub-section, the relationship between Anesco and the Stratford PLCIC will be clarified, as well as their role in the development of the Drayton Manor Farm project. The Drayton Manor Farm Project is an ongoing project undertaken by Anesco - a UK company group - that concerns the development and operation of one of the largest solar panel farms in the UK. The development of the project comprised the installation and operation of a total of 200,000 ground-mounted photovoltaic solar panels. The solar panel photovoltaic installation is located in Stratford-upon-Avon, Warwickshire (Environmental Report 2015; Council Report 2015).³⁰⁸

The project was in principle developed by Anesco. Anesco was found to be one of the fastest-growing company groups in the UK.³⁰⁹ The company group specialises in the provision of services of renewable energy and energy efficiency.

Figure 3.5 shows the development site plan of the Drayton Manor Farm project and its operationalisation and compartmentalisation into discrete sections assigned to a group of CICs, which either constituted part of the Anesco company group or did not belong to that group but were assigned with the task of operating the Drayton Manor solar

308 See the environmental report submitted by Anesco to the Stratford-upon-Avon District Council: 'Drayton Manor Farm, 'Environmental Statement: Main Report' (January 2015) available at: <<https://apps.stratford.gov.uk/eplanning/AppDetail.aspx?appkey=NJAJX2PM0B400>> accessed 17 October 2017. See the Stratford-upon-Avon, 'Council Report in response to Anesco's application 15/00326/FUL' (June 2015) available at: <<https://apps.stratford.gov.uk/eplanning/AppDetail.aspx?appkey=NJAJX2PM0B400>> accessed 17 October 2017.

309 Fast Track 100 league tables 2013 - 2015 available at: <www.fasttrack.co.uk> accessed 13 October 2017.

Table 3.12: Codes and themes in the UK single case study

Legal codes	Emerging codes	Refined codes	Themes	Different roles of stakeholders
Organisation	Services Community benefit Community objective	Services provided by the CIC Community benefit objectives	Community benefit model of the CIC	
Governing bodies	Directors' powers Anesco directors Number of directors Decision-making process Delegation and third-party participation	Directors' powers Board composition Decision-making process	The governance structure	Stakeholders as decision-makers
Ownership and membership rights	Community owned company Purchase of shares Community income Community control	Community owners and members of the CIC	Community ownership and control	Stakeholders as owners and members

Table 3.12: *Continued*

Legal codes	Emerging codes	Refined codes	Themes	Different roles of stakeholders
Voting rights	Majority vote at board meeting Unanimous consent without board meeting No third party participation	The voting process in the CIC	The voting process in the CIC	Stakeholders as decision-makers
Information rights	Stakeholders kept up-to-date regarding developments Stakeholder feedback Communication for consultation Open dialogue Updates regarding progress	Communication with stakeholders	Communication with community stakeholders	Stakeholders as recipients of information
Stakeholder participation	Consultation for site development Partnership consultation for environmental protection Community consultation for impact Community investors participation	Stakeholder consultation	Consultations with stakeholders	Stakeholders as consultants

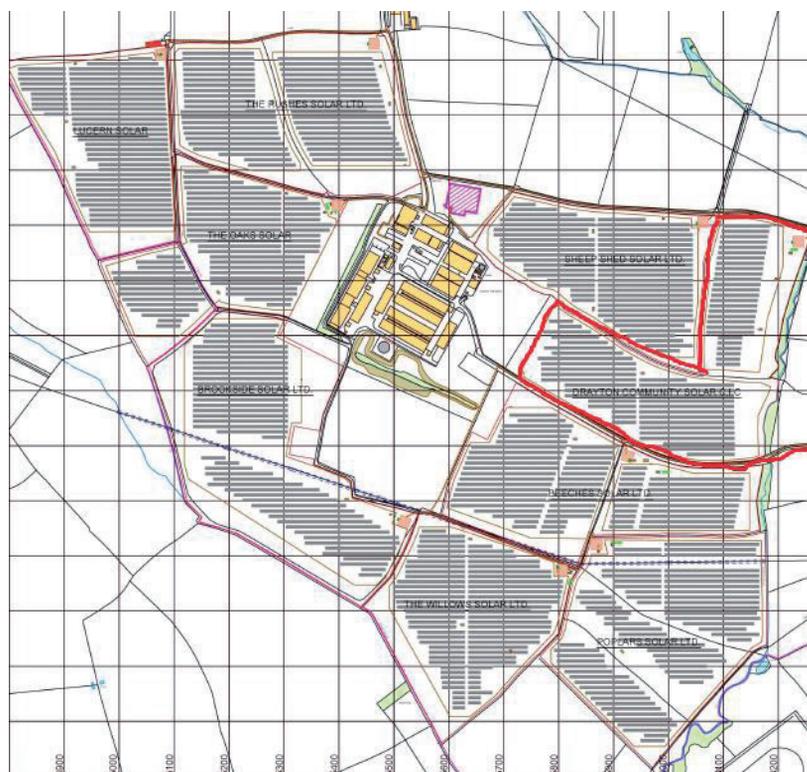


Figure 3.5: Development site plan of the Drayton Manor Farm.

panel farm (see Figure 3.5 and Table 3.13; Council Report 2015). Stratford Community PLCIC was included in the group of companies operating in the Drayton Manor Farm (see Figure 3.5 and Table 3.13). The CIC is depicted under its initial name, i.e. Drayton Community Energy CIC in Figure 3.5 (Council Report 2015).

In March 2016, Stratford PLCIC started operating part of the Drayton Manor Farm project, namely a solar photovoltaic installation (Figure 3.5). Stratford PLCIC was initially incorporated on 26 June 2015 as a private limited CIC under the name Drayton Community Solar private limited CIC (see Table 3.13; see the AoA of Stratford PLCIC).³¹⁰ On 24 March 2016, the company re-registered at the UK Companies House as a public limited CIC under its current name (Application for re-registration 2016).³¹¹

³¹⁰ UK Companies House, 'Incorporation of a Community Interest Company' (26 June 2015) available at: <<https://beta.companieshouse.gov.uk/company/09660160/filing-history?page=2>> accessed 17 October 2017.

³¹¹ UK Companies House, 'RR01 Application by private company for re-registration as a public company' (24 March 2016) available at: <<https://beta.companieshouse.gov.uk/company/09660160/>>

Table 3.13: List of companies involved in the operation of the Drayton Manor Farm

The Oak Solar CIC	Does not belong to Anesco group
Lucern Solar CIC	Does not belong to Anesco group
The Rushes Solar Limited (Drayton Solar 4 Limited)	Does not belong to Anesco group
Brookside Solar Farm Limited (Drayton Solar 3 Limited)	Does not belong to Anesco group
Sheep Shed Solar Limited (Drayton Solar 1 Limited)	Does not belong to Anesco group
Beeches Solar Limited (Drayton Solar 2 Limited)	Does not belong to Anesco group
West Midlands Community Energy CIC (Drayton Solar 5 Limited)	Belongs to Anesco group
Warwickshire Community Energy CIC (Drayton Solar 6 Limited)	Belongs to Anesco group
Stratford Community Energy PLCIC (Drayton Community Energy CIC)	Belongs to Anesco group

Stratford PLCIC was part of the broader Anesco company group, which comprises 48 organisations (Stratford PLCIC Annual Return 2016; Stratford PLCIC Annual Accounts 2016).³¹² As of April 2017, Anesco Community Energy Limited held all Stratford PLCIC shares that are 50,000 ordinary shares. The total nominal value of the Stratford PLCIC shares was £50,000 (Stratford PLCIC Annual Return 2016; Stratford PLCIC Annual Accounts 2016). The CIC's headquarters were located in the area of Berkshire in West London at the same location where the Anesco group was established (Stratford PLCIC Annual Accounts 2016). The CIC operated only in the county of Warwickshire where the Drayton Manor Farm Project is located. The parent company, Anesco Community Energy Ltd was owned by a holding subsidiary company, i.e. Anesco Bidco 2 Limited (Stratford PLCIC Annual Accounts 2016: 18 para. 19).

filing-history?page=2> accessed 17 October 2017.

- 312 The data were retrieved from the Amadeus database regarding Anesco. The Stratford PLCIC was found to be fully owned (100%) by a subsidiary of Anesco, the Anesco Community Energy Ltd. See Stratford PLCIC, 'Annual Return' (26 June 2016) available at the UK Companies House under the name 'Annual return made up to 26 June 2016 with full list of shareholders Statement of capital on 2016-07-15 GBP 50,000' available at: <<https://beta.companieshouse.gov.uk/company/09660160/filing-history?page=2>> accessed 17 October 2017; See Stratford PLCIC, 'Annual report and financial statement for the period ended 30 June 2016' (22 February 2017) available at the UK Companies House under the name 'Full accounts made up to 30 June 2016' available at: <<https://beta.companieshouse.gov.uk/company/09660160/filing-history?page=2>> accessed 17 October 2017.

3.5.3.2. Stratford's PLCiC community objectives in the Drayton Manor Farm Project

Stratford's PLCiC objectives that are mentioned in its AoA and accompanied CIC statement revealed that the company pursued the development of a sustainable community owned solar farm (Stratford PLCiC AoA; Stratford PLCiC Declaration on Formation of a Community Interest Company 2015; Stratford PLCiC CIC Report 2016).³¹³ The solar farm is part of the Drayton Manor Farm Project (Figure 3.4), which is operated and maintained by both Anesco and Stratford PLCiC. In particular, Stratford's PLCiC community objectives aspired to: (i) generate renewable energy for the community; (ii) protect and safeguard the environment for the benefit of the public; and (iii) support and promote the principles and practice of sustainable development (Art. 5, Stratford PLCiC AoA).

As such, the CIC sought to reduce local and national reliance on electricity from non-renewable forms of energy generation. Nonetheless, the company's community objectives were further elaborated on in a CIC statement to the Regulator, which explained that the company's objectives intended to benefit the community of Warwickshire and, in particular, the residents and the communities near the area of Stratford-upon-Avon. In doing so, it sought to develop a solar photovoltaic farm, which is eligible to receive FIT certification to operate as a renewable energy supplier in the national and local grid following negotiations with local and national electricity providers and distribution network operators (Stratford PLCiC Declaration on Formation of a Community Interest Company 2015; Stratford PLCiC CIC Report 2016). The generated energy could reduce national carbon emissions (Anesco public announcement 2016).³¹⁴ Furthermore, Stratford PLCiC also sought to sell and transfer its ownership to the community of Stratford-upon-Avon following community consultation with local community benefit societies and the community at large (Stratford PLCiC Declaration on Formation of a Community Interest Company 2015; Stratford PLCiC CIC Report 2016).

In particular, Stratford PLCiC envisioned the development and operation of a scheme in which, after the completion of the solar panel farm and its full initiation of operation, the company 'will be purchased' either by a local community benefit society or by the local community of Stratford-upon-Avon (Stratford PLCiC Declaration on Formation of a Community Interest Company 2015; Stratford PLCiC CIC Report

313 See the articles of association and the 'Declaration on formation of a Community Interest Company' of Stratford PLCiC in the document 'Incorporation of a Community Interest Company' (26 June 2015) available at the UK Companies House available at: <<https://beta.companieshouse.gov.uk/company/09660160/filing-history?page=2>> accessed 17 October 2017; see the Stratford's PLCiC CIC report in Stratford PLCiC, 'Annual report and financial statement for the period ended 30 June 2016' (22 February 2017) available at the UK Companies House under the name 'Full accounts made up to 30 June 2016' available at: <<https://beta.companieshouse.gov.uk/company/09660160/filing-history?page=2>> accessed 17 October 2017.

314 Anesco, 'Anesco constructs solar farm that will support local community in Stratford-upon-Avon' (7 April 2016) available at: <<http://anesco.co.uk/anesco-constructs-solar-farm-that-will-support-local-community-in-chesterfield/>> accessed 17 October 2017.

2016). As such, Stratford PLCIC could become a community owned energy enterprise that could be directly managed by the community for the benefit of the community. Additionally, the solar farm could be operated by Anesco, which has the technical expertise to support the operation of the installation (Anesco public announcement 2016).³¹⁵ However, as of April 2017, reference to Stratford's PLCIC annual accounts of 2016, has revealed that Stratford's PLCIC ownership of shares has yet to belong fully to Anesco (Stratford PLCIC Annual Accounts 2016: 18 at para. 19). Hence, as of this period, the ownership of Stratford PLCIC has not yet been transferred to the community of Stratford-upon-Avon.

3.5.3.3. The participatory governance of Stratford PLCIC

Community stakeholders as members and owners of Stratford PLCIC

According to Stratford PLCIC, the community may acquire ownership both formally and indirectly if represented by a community benefit society (hereafter 'BenCom'), or formally and directly by purchasing Stratford's PLCIC shares. As such, either the community or the community's representatives could be in a position to participate formally and directly in the decision-making processes of the CIC. Participation can also take place indirectly represented by a BenCom with a competence to decide the way in which energy production and the income generated by the energy trade should be managed and distributed for the benefit of the community. However, the transfer of the company's shares to the community was not realised as of April 2017. Hence, the CIC's revenue (£185,135) and profit (£18,972) recorded in its first operating year (2015 - 2016) could not be directed back to the community in the form of paid or proposed dividends (Stratford PLCIC Annual Accounts 2016: 6). Moreover, the community was not eligible to participate in either a formal and/or a direct way in the decision-making activities of Stratford PLCIC concerning the way in which the CIC's revenue could be distributed back to the community.

Nonetheless, a voluntary supporting scheme for local and community charity groups was initiated by Anesco and Stratford PLCIC, according to which, part of the revenues from the sale of the energy produced by the CIC was provided directly, in the form of donations, to selected local community projects and charities, namely the Stratford Hospital Appeal and the Welford-on-Avon Primary School (Anesco public announcement 2016).³¹⁶

Furthermore, the participation of the community in membership and decision-making may contribute to the development of various schemes of community investing. Stratford's PLCIC annual accounts revealed that the CIC was already partly financed by community investors in the development phase of the Drayton Manor Farm Project. Stratford PLCIC auctioned £3.4 million CIC solar bonds to the local community

³¹⁵ Anesco announcement (n 314).

³¹⁶ *ibid.*

(Stratford PLCIC Annual Accounts 2016: 16). Accordingly, the community was invited to purchase the CIC's solar bonds in order to finance the development of the solar panel arrays. The solar bonds, according to Stratford PLCIC, could yield a 5% annual gross return to community investors, with a specified interest paid every 6 months for 3 years (Anesco public announcement 2016).³¹⁷ The interest paid to community investors was subject to the Regulator's imposed interest cap. The raise of capital through solar bonds was reflected in the company's annual accounts and report of 2016. Crowdfund Insider also reported that the bonds were offered and purchased by community investors through a crowdfunding platform named Trillion Fund using the crowdfunding service 'Your Brand Crowdfunding'. The crowdfunding platform enabled Stratford PLCIC to crowdfund on its own website (Crowdfund Insider 2016).³¹⁸

Community stakeholders as decision-makers of Stratford PLCIC

The transfer of Stratford's PLCIC ownership to the community could also allow for the participation of the community into the membership of the organisation and accordingly in the decision-making processes of the CIC in a formal and direct way. Following Article 22(3) of Stratford's PLCIC AoA, each member of the company could become a director. At Stratford PLCIC, the directors could be appointed either by members and/or by a board's decision. The directors could decide collectively by a majority of votes either when board meetings were held, or unanimously in the event that the board decides without a directors' meeting (Arts. 12, 16, 18 and 22, AoA). Accordingly, the community could have the competence to contribute to the decision-making processes. This could be done through the exercise of voting following various governance models: (i) a democratic model in which decisions could be made through equal voting by either the representatives of community constituents and/or community members; (ii) a stakeholder model in which stakeholder representatives could be elected or appointed by stakeholder groups that could participate in decision-making with one or more (equal) votes; and (iii) a stewardship model, in which appointed experts (directors) could make decisions to improve the CIC's performance by serving the community benefit objectives and interests.

However, there were no provisions found in Stratford's PLCIC AoA that permit the participation of community stakeholders or third-parties other than directors and members in the decision-making processes of the CIC's governing bodies. Reference to third-party participation in decision-making was only made in Article 11 of the company's AoA, which allowed for the delegation of director's powers and/or their day-to-day implementation to third parties, i.e. individuals or committees. The delegation

317 *ibid.*

318 Crowdfund Insider, 'Trillion Announces Branded Crowdfunding Service. Launches with Two Corporate Clients' (20 April 2016) available at: <www.crowdfundinsider.com/2016/04/84526-trillion-announces-branded-crowdfunding-service-launches-with-two-corporate-clients/> accessed 17 October 2017.

could be exercised to such an extent that directors think as ‘fit’ in their powers and in accordance with the CIC’s objectives for the benefit of the community. However, as of April 2017 the community did not yet own Stratford PLCIC as it was still owned by Anesco.

As such, its board of directors comprised only three directors who represented the sole shareholder, i.e. Anesco. The annual accounts of 2016 of Stratford PLCIC mention that the company has no employees other than the active directors (Stratford PLCIC Annual Accounts 2016). Those directors did not receive any remuneration for the provision of their services (Stratford PLCIC Annual Accounts 2016). However, Stratford PLCIC is a young organisation that has not yet fulfilled its aspiration of becoming a community owned company.

Community stakeholders as consultants of Stratford PLCIC

In its CIC report of 2016, Stratford PLCIC remarked its intention to work closer in consultation with its community stakeholders. In fact, at the time of research the CIC was already accountable to its community stakeholders. It maintained an ‘open dialogue’ between its community stakeholders and the company ‘at all times’ with the objective to minimise the impact of the solar farm’s activities on the surrounding community stakeholders and the natural environment (Stratford PLCIC CIC Report 2016). For instance, community stakeholders had - on an ad hoc basis - an active and direct consulting role in the development of the solar farm through consultation processes that were formally required by the regional regulatory framework. Consequently, Anesco and thereby Stratford PLCIC were obliged to acquire permission from the local council to develop land in the area of Stratford-upon-Avon. They were also obliged to acknowledge the impact of the solar panel farm and its operation on the natural environment, which could be disturbed by the establishment of the solar panels (Stratford PLCIC CIC Report 2016; Environmental Report 2015).

The development of the farm was realised by Anesco in partnership with RSPB, a charity that was established to deal with nature protection consulting and conservation to ensure sustainability. RSPB and Anesco developed a joint project in which the sites of solar farms could be used to replicate and improve the natural habitat of threatened local wildlife (Anesco public announcement concerning RSPB 2016).³¹⁹ Anesco - in consultation with RSPB, suggested the protection of the local wildlife in the Drayton Manor Farm by providing a safer environment to the local and native animal species to live (Environmental Report 2015: 37-41).

Anesco and Stratford PLCIC were obliged to acquire permission from the local council to develop land in the area of Stratford-upon-Avon, also in relation to the impact this

319 Anesco announcement: ‘Anesco and RSPB shine light on solar farm biodiversity’ (29 February 2016) available at: <<http://anesco.co.uk/anesco-and-rspb-shine-light-on-solar-farm-biodiversity-2/>> accessed 13 October 2017.

development could cause to the local populations in the vicinity and surroundings of the site. Consequently, Stratford PLCIC and Anesco took into consideration the impact of the solar panel farm to the surrounding community stakeholders (Stratford PLCIC Report 2016; Environmental Report 2015). Such an impact comprised the visual, physical and noise impact of the solar farm to the landscape, and the impact to community life. Subsequently, the farm was developed following a formal, ad hoc and direct consultation process by the local council, which involved various third-parties and the community, e.g. local and administrative councils, such as the Stratford and Drayton Parish Council and the UK Department for Communities and Local Government; environmental, urban development, archaeology and other expert groups; and various NGOs and expert individuals, such as the Stratford Friends of the Earth and Ramblers Association, amongst others (Council Report 2015).

In these consultation processes, certain concerns were raised from the community and the involved stakeholders (Council Report 2015). In response to the claims, a variety of measures were developed by Anesco and Stratford PLCIC to assess and mitigate the impact of the solar farm on rural and local views, and on the dominating visual effect of the development on the landscape (Environmental Report 2015: 28-34).

Community stakeholders as recipients of information of Stratford PLCIC

Stratford PLCIC, in its CIC Report of 2016, also remarked its intention to maintain its communication with its community stakeholders. Certain types of community stakeholders received regular but informal information regarding the development of the Drayton Manor Farm project. The stakeholders included the landowners of the Drayton Manor Farm. As such, Stratford PLCIC was in direct communication with the landowners of the Drayton Manor Farm Project.

Stratford PLCIC, in its CIC Report confirmed that the landowners of the Drayton Manor Farm were regularly updated regarding the progress of the development. Regular communication was justified on the fact that other than the development of the solar panel farm - which could be a source of income for the landowners of the Drayton Manor Farm - a second type of renewable energy activity was undertaken by the landowners in the premise of the farm (Stratford PLCIC CIC Report 2016; Council Report 2016). The second activity delivered a portion of renewable energy from short rotation willow coppice harvested for biofuels. Accordingly, a small part of the willow coppice was maintained in the farm by the landowners and processed by them into biofuels, whereas the biggest part was diversified to accommodate the solar panels.

Regular communication also took place with the community investors who partly funded the farm's development. As such, Stratford PLCIC reported that continuous and direct communication was undertaken with the community investors who were regularly informed regarding the developments of the installation and operation of the solar panel arrays (Stratford PLCIC CIC Report 2016). The communication also

comprised information regarding the farm's initial performance and expected returns since March 2016, which is the date the farm initiated its full operation (Stratford PLCIC CIC Report 2016).

3.5.4. Discussion

The transfer of the CIC's ownership to the community could offer significant advantages to the community. In fact, the community could be eligible to decide formally and directly whether it will acquire a regular income (revenues) originating from the operation of the community solar farm and the provision of electricity to the distribution network. It could also take the advantage of the financial reward provided to eligible community installations under the national FIT scheme and export tariff.

The future participation of the community in the CIC's ownership and membership could grant the community regular participation in decision-making. As such, the community could direct the use of produced energy and the generated income of the CIC for its own benefit. Accordingly, the community will have the opportunity to decide formally and directly the way in which the generated revenues could be exploited for its own benefit, while simultaneously enjoying the privileges of producing and using the produced renewable energy in the most beneficial way.

Likewise, the participation of community into membership and decision-making may contribute to the development of various schemes of community investing and community financing. Community financing schemes may result in a sustainable financing scheme for Stratford PLCIC and a steady income for community investors. They may receive a regular income through capital returns and a specified interest regularly paid by the CIC (Stratford PLCIC CIC Report 2016; Stratford PLCIC Annual Accounts 2016).

The transfer of Stratford's PLCIC ownership to the community could also allow for the exercise of community membership in the organisation. Through membership, community stakeholders could be admitted into the decision-making processes of the governing bodies of Stratford PLCIC, such as the board of directors and/or annual meeting of members. In doing so, the community could thereby exercise voting rights and participation in decision-making in a manner that they will consider as beneficial to the community. Such a manner could entail, i.e. democratic processes that directly represent several stakeholder groups and community constituents and/or appointed experts who could be assigned to serve the community objectives.

Community ownership and membership and the participation and representation of the community as members in decision-making could also encourage the development of regular and more formalised consultation processes as the CIC grows, other than those already exercised by Anesco and Stratford PLCIC at the development phase. More regular and formalised consultation processes could increase the accountability of the

Table 3.14: Participatory stakeholder mechanisms in the UK single case study

	Formal	Informal	Regular	Ad hoc	Direct	Indirect
Stakeholder participation in the governing bodies, e.g. board of directors	Not realised	Not realised	Not realised	Not realised	Not realised	Not realised
Stakeholder communication with the decision-makers (updates, feedback)		X	X		X	
Stakeholder consultation for land permission	X			X	X	
Stakeholder consultation regarding environment		X	X		X	

CIC to its community stakeholders regarding: (i) the use of the produced energy; (ii) the distribution of the generated income back to the community; and (iii) the presentation of the natural environment, the minimisation of any adverse effects and the maximisation of the solar farm's socio-economic impact back to the local community. Community participation in the CIC's ownership and membership could also increase the level of communication and interaction of the CIC's owners of shares and decision-makers with the local community, which could be advanced using either formal and/or informal means of sharing information with community stakeholders.

The examined CIC was a young organisation, which had not yet met its community objectives fully. As such, the participation of the community was not yet formally realised in the ownership and membership of the organisation, nor had it been realised in the governance of the examined CIC discussed in this article. However, several informal means of communication and consultancy were available to community stakeholders (Table 3.14), and included the CIC's commitment to collaborate closely with them in the future.

3.5.5. Case study conclusions

This article examined how participatory governance is realised in a young social enterprise with the public limited CIC legal form in the UK. The case study concluded that the participatory governance of community stakeholders yet to be formally realised. Although the participation of the community in the ownership of shares

and membership of the organisation was at the core of Stratford's PLCIC objectives, the PLCIC was still developing its organisational structure. Accordingly, only the Stratford PLCIC with the objective to collect stakeholder feedback on the progress and development of the organisation's activities established several limited informal types of stakeholder mechanisms. As such, a number of informal stakeholder mechanisms were identified mainly as regards the organisational functioning of the examined CIC. Informal stakeholder participation was found to be exercised in a regular and direct manner by means of engaging the decision-makers of the examined social enterprises with their community stakeholders.

3.5.5.1. Limitations and future research

The case study was subject to certain methodological limitations, namely: (i) it only examined one particular legal form of social enterprise, and was subject to the rules of one particular jurisdiction, i.e. the public limited CIC legal form in the UK; (ii) it lacked the input of interviews due to the young and incomplete organisational structure of the selected organisation; and finally (iii) it lacked my input of empirical observations regarding the processes conducted in the examined organisations. Consequently, the outcome of the examined case study was preliminary and immature. However, it could be further developed in future research, which could employ - in full - the replicated method used in other empirical studies. The foregoing could be done when Stratford PLCIC grows and fulfils its community aspirations, objectives and organisational structure largely.

3.5.5.2. Practical implications

However, the examined case study contributed to a preliminary understanding of participatory governance in social enterprises as part of the broader research attempt.³²⁰ As this Sub-section demonstrates, participatory governance is also realised in community owned energy schemes in the UK that employ the PLCIC, and as such, the research also uncovers the practical implications that may emerge in PLCIC governance. The examined case study also shed light on the developing functioning of the examined CIC's governance and it may provide inspiration in relation to the development of stakeholder participation mechanisms for other similar community owned energy schemes undertaken by similar social enterprises in the UK.

³²⁰ See also the research conducted in Argyrou et al. 2016a (n 24); Argyrou et al. 2016b (n 85); Argyrou et al. 2017 (n 169).

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

Abstract

This article provides a meta-synthesis and a cross-examination of findings from nine qualitative case studies regarding the participatory governance of social enterprises. The meta-synthesis comprises a cross-case comparison amongst the examined cases and a synthesis/integration of findings which explains how the element of participatory governance in tailor-made legal forms for social enterprises works in practice. In this article, the aggregate results of the qualitative case studies are presented. The case studies considered social enterprises which employed variations of legal forms from different jurisdictions operating in different sectors.

Keywords

Meta-synthesis, Social Enterprises, Participatory Governance, Greece, Belgium, UK

3.6.1. An overview of the developed cases concerning the participatory governance of social enterprises

This article provides a meta-synthesis and a cross-examination of findings from nine qualitative case studies regarding the participatory governance of social enterprises. The meta-synthesis comprises a cross-case comparison amongst the examined case studies and a synthesis/integration of findings concerning the element of participatory governance in tailor-made legal forms for social enterprises and its actual implementation in practice. In this article, the aggregate results of the nine qualitative case studies are presented. The qualitative case studies considered social enterprises which employed variations of legal forms operating in different sectors.

Three case studies concern three Greek social enterprises with the legal form of the social cooperative and its legal variations, namely: (i) a Koinsep of Collective and Productive purpose, i.e. Koinsep Ekati (KE) (hereafter '*Case Study 1*');³²¹ (ii) a Koinsep of Care, i.e. Koinsep Merimna Ygeias (KMY) (hereafter '*Case Study 2*');³²² and (iii) a Koinsep of Integration, i.e. Koispe Athena-Elpis (hereafter '*Case Study 3*'). *Case Study 3* concerns a social cooperative with the special legal form of Koispe. The Koispe legal form is considered a Koinsep of Integration according to the Social Entrepreneurship Law of 2011 and its later amendment of 2016.³²³

Three case studies concern three Belgian social enterprises which adopted the legal form of the cooperative with a social purpose, i.e. CVBA-VSO.³²⁴ The Belgian social enterprises include: (i) a VSO from the renewable energy sector, i.e. CORE (hereafter '*Case Study 4*'); (ii) a VSO from the financial sector, i.e. Microstart (hereafter '*Case Study 5*'); and (iii) a VSO from the social housing sector, i.e. Volkshuisvesting (hereafter '*Case Study 6*').

Three case studies concern three UK social enterprises with the legal form of the CIC and its legal variations: (i) a CIC limited by guarantee, i.e. Breadshare CIC (hereafter '*Case Study 7*'); (ii) a CIC limited by shares, i.e. GTS Solutions CIC (hereafter '*Case Study 8*'); and (iii) a public limited CIC, i.e. Stratford Community Energy PLCIC (hereafter '*Case Study 9*').

The case studies discuss various theoretical propositions concerning stakeholder participation in the governance of social enterprise. In doing so, they contribute to the improvement of existing theories concerning the participatory governance of social enterprises. The theoretical propositions are considered, and they are reflected upon

321 Argyrou et al. 2017 (n 169).

322 *ibid.*

323 A. Argyrou et al., 'Social Enterprises and the Integration of Persons with Mental Disabilities: A Case-study of Koispe Athena-Elpis' in M. Pirson et al. (eds), *Responsible Leadership: A Humanistic Perspective* (Business Expert Press 2018, forthcoming).

324 Argyrou et al. 2016b (n 85).

in the meta-synthesis of findings and results. In particular, the theoretical propositions have argued that:

- (i) the participatory governance structure suggests that, in the decision-making processes of social enterprises, stakeholders have a real voting power - through the exercise of voting rights - and not just a symbolic one;³²⁵
- (ii) the participatory governance structure is characterised by the 'internalisation' of stakeholders and their active participation in decision-making processes, which could ultimately lead to more open and democratic decision-making processes;³²⁶
- (iii) stakeholders can either participate in the organisational decision-making processes of social enterprises as formal members and co-owners of shares, or they can influence decision-making through other, informal processes;³²⁷
- (iv) membership may materialise as a coercive necessity, as opposed to actual voluntary cooperation, due to the necessity of complying with the legal and institutional framework. In this case, the formal multi-stakeholder character cannot be translated into actual participation of stakeholders in the governance of a social enterprise;³²⁸
- (v) the structure of participatory governance tends to depend on the autonomous decision of its founders within legal frameworks that often permit - explicitly or implicitly - but do not require the involvement of more than one category of stakeholder in the governance of the organisation;³²⁹
- (vi) the autonomous decisions of social enterprise founders (owners-members/principal decision-makers) tend to influence the participatory governance structure of a social enterprise to a greater extent than the law does;³³⁰
- (vii) the boards of social enterprises are more likely to exhibit a stewardship model of governance than the democratic model found in other non-profits;³³¹
- (viii) the boards of social enterprises are more likely to recruit members on the basis of expertise and skill rather than on the basis of the representative status of the stakeholders;³³²
- (ix) the governance structures of social enterprises are categorised into: (i) structures that involve the self-selection of decision-makers; (ii) structures that are associated with

325 Campi et al. (n 5); Adam (n 92); Spear (n 5); Spear and Bidet (n 141).

326 Campi et al. (n 5); Mason et al. (n 7).

327 Campi et al. (n 5); Mason et al. (n 7).

328 Campi et al. (n 5); Adam (n 115).

329 Campi et al. (n 5).

330 *ibid.*

331 Mason et al. (n 7); Low (n 6).

332 Mason et al. (n 7); Low (n 6); Spear et al. 2009 (n 4); 2014 (n 11).

- membership in organisations in which boards are directly elected by members; and (iii) structures that combine both aspects, i.e. self-selecting governance and representation;³³³
- (x) a stewardship model for social enterprises moves away from inclusive representation at the board level, regardless of their strategic utility, towards a group of managers and/or directors with a specific skill set that can more effectively manage the entire operation;³³⁴
 - (xi) governance challenges include ‘mission drift’ and/or inactive membership. These challenges emerge from the hybrid character of the social enterprise, regardless of it having used a tailor-made legal form that seeks to accommodate the hybrid features;³³⁵
 - (xii) newly introduced tailor-made legal forms for social enterprises may not have any effect in resolving the governance challenges and trade-offs that social enterprises often encounter;³³⁶
 - (xiii) governance challenges when materialising lead to a decline in the social enterprise’s legitimacy and accountability to stakeholders;³³⁷
 - (xiv) accountability and the scrutiny of stakeholders is facilitated through formal means, i.e. through the law, or through informal means, i.e. in unofficial processes developed in any given organisation.³³⁸

3.6.2. Methodology

In the meta-synthesis, the case study findings were collected, analysed, compared, and synthesised. In principle, the meta-synthesis sought to generate cross-case comparisons, causal explanations, and holistic conclusions.³³⁹ It was designed and developed following specific methodological steps:³⁴⁰

- (i) Collecting, summarising, and coding the findings of the case studies

The case study findings were the basis, i.e. the input to be analysed and investigated. However, due to the gross limitations in the developed research and results of *Case Study 9*, this case study was only partially considered in the cross-case analysis, whereas it was not considered at all in the synthesis of results.

333 Low (n 6); Spear et al. 2014 (n 11).

334 Low (n 6); Mason et al. (n 7); Spear et al. 2009 (n 4); 2014 (n 11).

335 Ebrahim et al. (n 4); Spear (n 4).

336 Ebrahim et al. (n 4); Low (n 6); Doherty et al. (n 112).

337 Ebrahim et al. (n 4); Mason et al. (n 7); Low (n 6); Spear et al. 2009 (n 4), 2014 (n 11); Doherty et al. (n 112).

338 Ebrahim et al. (n 4); Doherty et al. (n 112); Mason et al. (n 7); Spear et al. 2009 (n 4); Low (n 6).

339 *ibid.*

340 *ibid.*; see also C.H. Major and M. Savin-Baden, *An Introduction to Qualitative Research Synthesis: Managing the Information Explosion in Social Science Research* (Routledge 2010).

The replication logic in the development of the case studies provided a high level of heterogeneity in the data under investigation in the meta-synthesis, e.g. all cases examined the implementation of participatory governance by means of a replicated method and under the same theoretical and conceptual framework. Accordingly, the sections 'Case study results' and 'Discussion' in the case studies comprised the findings, i.e. 'the data' used for the comparison and cross-case analysis in the meta-synthesis. These data were collected, summarised, and coded with codes relating to the roles of participation of stakeholders, e.g. 'stakeholders as owners and members', 'stakeholders as decision-makers', 'stakeholders as controllers and supervisors', 'stakeholders as recipients of information', or 'stakeholders as consultants'. The case study findings were also coded in relation to the identified stakeholder participatory mechanisms, with codes such as 'formal participation' and/or 'formal stakeholder mechanisms', or 'informal participation' and/or 'informal stakeholder mechanisms'. The coding regarding the identified stakeholder participatory mechanisms was also supported by an analysis of the (x) data matrices provided in each case study. On an aggregate level, all the (x) data matrices were analysed by means of quasi-statistics, i.e. qualitative results translated into simple numerical results and counts with the objective of supporting the cross-case and cross-country analysis.

(ii) Cross-case comparison of the findings identified in the preliminary case studies

The cross-case comparison comprised an analysis on a cross-case level, but also on a cross-country (cross-national) level. In principle, an analysis was used based on visual displays of all the case studies' 'data'-findings using the technique of the partially ordered meta-matrix (see Tables 3.16 and 3.19) as provided by Miles and Huberman.³⁴¹ The partially ordered meta-matrix allowed for the juxtaposition of the coded findings from the different case studies that were initially placed into a mega-table, i.e. a meta-matrix. The meta-matrix was then divided into smaller tables, i.e. the partially ordered meta-matrix tables (I and II), which enabled the sorting and partition of the findings into comparable units. The comparable units demonstrated similarities and differences with respect to certain categories-variables, such as the 'roles of stakeholders in the governance', the 'outcome of in practice implementation', 'formal participation', 'the causes of the formal outcome', and the 'effects of the formal outcome' (see Tables 3.16 and 3.19). The sorting and clustering of data was conducted within each category, i.e. based on findings per-country but also on a cross-case level.

(iii) A synthetic causal explanation of the findings in relation to patterns and core themes

The synthetic process entailed the use and development of causal networks. A causal network generally allows for the development of inferences from a case level causal analysis to a cross-case causal analysis.³⁴² Miles and Huberman indicate that a 'cross-

341 M.B. Miles and A.M. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage 1994).

342 Miles and Huberman (n 341); C. Hoon, 'Meta-Synthesis of Qualitative Case Studies: An Approach to Theory Building' [2013] 16(4) *Organizational Research Methods*, 522-556.

case causal network is a comparative [case study] analysis of all cases in a sample, using variables estimated to be the most influential in accounting for the outcome criterion'.³⁴³ A causal network was developed which concerned the examined cases on a per-country level, i.e. a causal network for the cases in Belgium, Greece, and the UK (see Figures 3.6 - 3.9 and Figure 3.11). In this way, all the cases except for *Case Study 9* were mapped in a specific causal network. The partially developed causal networks in Figures 3.6 - 3.9 were then combined and assembled into one aggregate meta-causal network (see Figure 3.10). The development of the meta-causal network demonstrated and visualised the most influential case-specific variables and their causes, but also the effects of the implementation of participatory governance in the examined cases. Consequently, the isolation of causal streams that were identified in the meta-causal network led to the analysis concerning the effectiveness and the effects of participatory governance in the examined cases. The causal analysis provided a schematic visualisation of patterns identified in the sequence and relationship of certain case-specific variables as well as their effects in a way that is meaningful across the cases.³⁴⁴

3.6.3. Results and discussion

3.6.3.1. The roles of stakeholders in the examined cases: A cross-national examination

The analysis of the national tailor-made legal frameworks in Belgium, Greece, and the UK revealed that stakeholders, or certain types of stakeholders such as for instance employees, could - theoretically - acquire similar roles in the examined organisations. Hence, they could thereby exercise specific competences (powers) based on stipulated legal rules (Table 3.15). Employees, for example, could participate as members and owners of shares and accordingly fulfil the roles of decision-makers, controllers, supervisors, and consultants of the organisation, and/or as recipients of information.

Greek case studies

The empirical findings on a per-case study and per-country level (Table 3.16) indicated that in the majority of the examined Greek case studies, the role of stakeholders as members and owners of shares was not fully implemented in practice (in *Case Studies 1* and *2*, Table 3.16). In *Case Studies 1* and *2*, apart from the founding members, no stakeholder group was found to have acquired membership. Notably, the acquisition of membership and ownership of shares by a particular type of stakeholder, i.e. the employees, specifically enabled in the Koinsep legal framework, was also not fully implemented in practice in *Case Studies 1* and *2* (Table 3.16). The acquisition of membership and ownership of shares by stakeholders, including employees as well as other types of stakeholders, was only implemented in practice in *Case Study 3* (Table 3.16). The Koispe (i.e. Koinsep of Integration) legal form in *Case Study 3* provided

³⁴³ Miles and Huberman (n 341) 228.

³⁴⁴ *ibid*; see also Hoon (n 342).

Table 3.15: The role of stakeholders in theory

Roles per country	Competences on the basis of the applicable legal framework
Greece	
Members and owners of shares (cooperative shareholders) of the Koinsep (and of the Koispe)	The members and owners of cooperative shares in the Koinsep have the power to decide on all matters related to the most important issues of the Koinsep. Members participate in the general meeting, i.e. the decision-making body with the highest competence in the organisation that meets annually. In the general meeting, the governance powers are characterised by equality. Equality and democracy are expressed in the voting rules by virtue of the 'one man, one vote rule'. Only Koinsep members have the power to elect and appoint members of the managing committee and/or to be elected and appointed as members of the managing committee.
Decision-makers and appointed managers of the Koinsep and of Koispe (members of the managing committee)	The decision-makers have the power to decide on all matters related to the routine and daily management of the organisation, with the exception of those falling under the exclusive competences of the general meeting. They have the power to make decisions through voting. However, they also bear the responsibility of making decisions following principles and duties prescribed in the applicable legal framework. They also have the power to represent the organisation in transactions with third parties.
Supervisors of the Koinsep at the general meeting or as members of the supervisory committee in the Koispe/Koinsep	The supervisors of the Koinsep have the power to supervise the processes led by the managers and decision-makers. They can also request information to review and inspect all the documents that the organisation produces during the governance processes and to monitor the financial and operational position of the organisation.
Controllers of the Koinsep as members	The controllers of the Koinsep have the power to discharge the members' liabilities and/or terminate their membership at any time for good reasons that constitute a breach of duty or an inability to exercise good governance as required by the constitutional documents and the applicable legal framework.
Recipients of information and communication as members	The recipients of information and communication have the power to acquire information concerning the company's financial and social affairs.
Belgium	
Members and owners of cooperative shares in the VSO cooperative	The members and owners of the cooperative shares are the ultimate control holders. Their roles include the acquisition of membership and ownership of shares for the employees which cannot be exercised within the year of an employment relationship being terminated. They also include participation in the decision-making processes of the general meeting. They have the power to appoint and dismiss the directors and the power to modify the constitutional documents and to dissolve and liquidate the company. They can exercise voting rights subject to a 10% voting cap. Each member can exercise only a certain number of votes which cannot exceed the maximum of one tenth

Table 3.15: *Continued*

Roles per country	Competences on the basis of the applicable legal framework
Decision-makers and appointed managers	of the votes deriving from all the shares represented in the general meeting. This percentage can be reduced further to one twentieth if votes are exercised by employees who are member-shareholders. They also have the power to participate in decisions concerning the distribution of profits and dividends subject to the profit distribution constraint and the applicable cap of 6%. Finally, they have the power to appoint directors and managers.
Controllers and supervisors as members	The decision-makers have the power to decide on all matters related to the routine and daily management of the organisation. They can also produce annual social reports on how the social purpose is being carried out.
Recipients of information and communication as members	The controllers and supervisors have the power to dismiss and discharge the directors' liabilities.
	The recipients of information and communication have the power to acquire information concerning the company's financial and social affairs.
UK	
Members and owners of the CIC shares	In the private and public limited CIC, the members are the owners of the CIC shares, whereas in the CIC limited by guarantee, the members are the guarantors. The members of the CIC are the ultimate control holders. They have the power to participate at the general meeting and the power to appoint and scrutinise the directors largely. They also have the power to make decisions on financial distributions and liquidation of the company as well as on changing the AoA. They can appoint and dismiss directors, delegate powers to directors, declare dividends, approve major transactions, and change the constitution of the company. No person other than a member and/or director and/or the CIC Regulator - in exceptional circumstances - can appoint a director.
Decision-makers and appointed directors	The decision-makers have the power to decide on all matters related to the routine and daily management of the organisation. Statutory and other obligations require that management should be exercised in a way that meets the community interest test. They can also produce annual CIC reports on how the community objectives are being carried out.
Controllers and supervisors as members	The controllers have the power to supervise directors in respect to the implementation and safeguarding of the community interest objective and the involvement of the community in the CIC's activities.
Recipients of information and communication as members	Recipients of information and communication have the power to access all kinds of information relevant to the company's affairs.
Consultants	The consultants have the power to participate in consultation processes and provide advice.

for a mandatory legal obligation to classify categories of cooperative shares capable of being provided to several types of stakeholders. The cooperative shares were offered to employees and to other types of stakeholders, and they were supported by the provision of one equal vote to the processes of the general meeting.

Additionally, the appointment of employees and other types of stakeholders as decision-makers was only implemented in practice in *Case Study 3*. Here, there was a legal obligation for the management board to comprise members who represent the different classes (categories) of stakeholders elected by the general meeting.

In all the examined Greek case studies, the law excluded certain types of stakeholders from the membership, ownership of shares, and governance of the Koinsep. For example, the law excluded public institutions from the membership, ownership of shares, and governance of the Koinsep of Care, i.e. Koinsep Merimna Ygeias (in *Case Study 2*) and the Koinsep of Collective and Productive Purpose, i.e. Koinsep Ekati (in *Case Study 1*). This exclusion did not apply to the Koinsep of Integration and, accordingly, to the Koispe legal form, i.e. to the Koispe Athena-Elpis (in *Case Study 3*). Additionally, legal persons were limited by law to a certain number, i.e. to 1/3 of the total number of the members, to participate in the membership, ownership of shares, and governance of the Koinsep (in *Case Studies 1* and *2*). Moreover, certain types of stakeholders, in particular persons with mental disabilities, were excluded by law from the higher decision-making positions, i.e. in the management board of the Koispe Athena-Elpis in *Case Study 3*.

The supervising role of employees and other types of stakeholders as members who can participate in the general meeting and/or in other supervising bodies was also not implemented fully in practice by stakeholders, due to the absence of pertinent stakeholder membership in both *Case Studies 1* and *2*. The role of supervisor-stakeholder is only implemented in practice in *Case Study 3*, due to the stakeholders' participation as members in the general meeting's activities. However, in the same case study, the participation of stakeholders as members of the supervisory board was limited pursuant to legal provisions which excluded certain types of stakeholders, i.e. the persons with mental disabilities (Type A members), from the composition of the supervisory board of Koispe Athena-Elpis.

Furthermore, only in *Case Study 3* it was found that employees and other types of stakeholders act as controllers of the members in the general meeting and as appointed decision-makers in the management board in representation of certain stakeholder categories.

In all three Greek case studies, stakeholders - and particularly employees - provide advice and consultancy to decision-makers based on various informal processes. As such, they acquire a consulting role in the governance of the social enterprise. The consulting role of stakeholders was exercised with respect to: (i) technical and operational issues; (ii) decisions made by the governing bodies; and/or (iii) employment issues (see Table 3.16).

Belgian case studies

Concerning the roles of stakeholders in the Belgian social enterprises, the majority of the examined Belgian case studies (i.e. *Case Studies 5* and *6*, Table 3.16) revealed that the selected social enterprise did not implement in practice the role of stakeholders as members and owners of cooperative shares. In *Case Studies 5* and *6*, besides the founding members, no stakeholder group was found to have acquired membership. The acquisition of membership and ownership of shares was not fully implemented in practice concerning one particular type of stakeholder dictated in the VSO legal framework, i.e. employees. The same conclusion applied to other types of stakeholders (examples are provided in *Case Studies 5* and *6* concerning the beneficiaries and the clients; see Table 3.16). The exercise of membership and ownership of shares by stakeholders was only implemented in practice in the social enterprise which was examined in *Case Study 4*. In the legal form employed by this social enterprise, a classification - in the form of categories of shares - was established. For each type of stakeholders, i.e. employees, clients, and/or other types of stakeholders, another category of shares was created in the company's AoA (as was the case in the Greek *Case Study 3*).

Additionally, in *Case Study 4*, the provision of voting rights to employees and to other types of stakeholders was also included in the social enterprise's AoA. This was not the case in the other two Belgian social enterprises, i.e. in *Case Studies 5* and *6*, in which similar provisions in the social enterprises' AoA concerning the stakeholder, e.g. employee participation, were not found. In contrast, in *Case Study 6*, a legal provision excluded the participation of certain stakeholders (namely employees) in the membership and governance of Volkshuisvesting, which was included pursuant to legal rules in domestic Belgian law, i.e. the Flemish Housing Code of 1999.

Furthermore, the board structures identified in the Belgian case studies were hybrid structures. They combined directors selected on the basis of their skills and/or independent directors, combined with directors elected and appointed to represent particular categories of the cooperative shareholders (in *Case Studies 5* and *6*) and/or stakeholders (in *Case Study 4*). In the examined board structures, the appointment of employees or representatives of employees particularly as decision-makers and managers was only implemented in practice in *Case Study 4*. In *Case Study 4*, a provision in CORE's AoA required the board to include and represent different classes (categories) of shares provided to employees and to other types of stakeholders. The participation of employees in the board structures was not identified in the other two case studies concerning Microstart and Volkshuisvesting, i.e. in *Case Studies 5* and *6*, where no such provision was found in the applicable AoA.

In fact, the type of pertinent stakeholder, i.e. the employees, was excluded from the membership and ownership of shares in the examined social enterprise in *Case Study 6*. This case study concerned Volkshuisvesting, i.e. a social housing enterprise, in which only regulated types of institutions from the public and the private domain (e.g. the

Flemish Government and certain banks) were eligible to acquire membership and shares, and thus to participate in the governance. Accordingly, the acquisition of membership by multiple types of stakeholders, including employees, was only implemented in practice in *Case Study 4*. In conclusion, only in *Case Study 4*, employees and various other types of stakeholders were found to act as controllers of the other members and as managers and decision-makers, which was not the case in the other two examined Belgian case studies, i.e. *Case Studies 5* and *6* (Table 3.16).

Furthermore, similar to the Greek case studies, various types of stakeholders - including employees and also, for instance, clients and beneficiaries - participated and provided advice and consultancy to decision-makers in various informal processes in all the examined Belgian case studies. As such, stakeholders in those case studies had a consulting role in the governance of the social enterprises. The consulting role of stakeholders was exercised in the examined Belgian case studies with respect to: (i) technical matters; (ii) certain operational themes relating to the provided service and products; (iii) employment issues; (iv) stakeholder satisfaction; (v) strategy; and (vi) the decisions made by the governing bodies (Table 3.16).

UK case studies

In the majority of the examined UK social enterprises, the role of stakeholders as members and owners of shares was not implemented in practice. In *Case Studies 8* and *9*, besides the founding members, no stakeholder group was found to have acquired membership. For instance, the participation of the community in the membership of Stratford PLCIC was not realised in *Case Study 9*, in which the community had not yet become a member nor an owner of shares as of April 2017 (the period of conducting the research). The participation of stakeholders in the membership of the CIC was only implemented in practice in the social enterprise Breadshare examined in *Case Study 7*. However, this participation remained inactive in terms of participation in the governance of the enterprise in question. In *Case Study 7*, the inactive members of the CIC limited by guarantee never appeared in the decision-making processes of the general meeting to exercise their voting rights.

Unlike in *Case Studies 3* and *4*, the participation of stakeholders in the membership and ownership of shares based on a classification (categories of shares) for various types of stakeholders was not provided in the AoA of any of the examined UK social enterprises with share capital (i.e. in *Case Study 8* and in *Case Study 9*). Neither was the participation of stakeholders in the membership and ownership of shares stipulated in any of the applicable tailor-made laws for the CIC.

The appointment of directors and managers from the stakeholder basis was only implemented in practice in *Case Study 7*. The social enterprise Breadshare in *Case Study 7* was not obliged, pursuant to the tailor-made legal framework, to include stakeholders in membership and/or governance. However, in the social enterprise in this case study

only, the directors were selected on the basis of a hybrid system. This hybrid system required the selection of directors from a broader stakeholder basis, but not in a manner that represented certain stakeholder groups or categories of members-stakeholders, e.g. employees, in the organisation. Rather, the selection was based on the skills and the daily and active engagement of directors in Breadshare's affairs.

In fact, in the other two UK case studies (*Case Study 8*, i.e. concerning GTS Solutions, and *Case Study 9*, i.e. concerning Stratford PLCIC), the board structures comprised mainly directors who were selected according to skill and/or performance, or directors-shareholders, or directors appointed directly by the shareholders. More particularly, employees and other types of stakeholders were precluded from the governance of the examined social enterprise in *Case Study 8*, in which the decision-making power was concentrated in one person, namely the founding member-sole active shareholder and two experts-directors in law and finance.

Accordingly, considering that the participation in the membership and governance of stakeholders was not implemented in practice in any of the enterprises covered by the UK case studies, stakeholders could neither act as controllers of the members nor as directors. These two roles were crucial in safeguarding the community interest objectives of the CIC and the involvement of the community in the CIC's activities. However, similar to the Greek and Belgian case studies, in all the examined UK case studies various types of stakeholders - including but not limited to employees, i.e. clients and beneficiaries - participated and provided advice to decision-makers based on various informal processes. As such, stakeholders still had a consulting role in the governance of the examined organisations. In other words, they were stakeholders-consultants. The consulting role of stakeholders was exercised in the examined UK case studies with respect to: (i) services and products; (ii) decisions made by the governing bodies; and (iii) decisions concerning community issues, for example (Table 3.16).

All case studies

To summarise, in the majority of the examined Greek, Belgian, and UK case studies, the role of stakeholders, including employees and others as members and owners of shares, was not fully implemented in practice (seven out of nine case studies, Table 3.16). Accordingly, in the majority of the examined case studies, it was demonstrated that employees or other types of stakeholders, e.g. consumers, had no real - or only symbolic - voting power in the decision-making processes of the governing bodies in the examined social enterprises.

The role of stakeholders as members and owners of shares was implemented in practice in two examined case studies only, i.e. in *Case Studies 3* and *4* (Table 3.16), through a similar mechanism. This mechanism entailed the classification in the form of categories of shares provided to several types of stakeholders. Either this classification provided voting rights to employees and other types of stakeholders as embedded in the AoA of

Table 3.16: Partially ordered meta-matrix I

Case Studies	Roles of stakeholders in practice	What participation entails in practice	Formal outcome in practice	Actual cooperation/compliance with law in practice
Greece				
Case Study 1 (KE)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation
Case Study 2 (KMY)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation
Case Study 3 (KAE)	Owners of shares and members; decision-makers; recipients of information; consultants	Deciding on all matters related to the most important issues of the organisation; members participate in the decision-making body with the highest competence in the organisation that meets annually, i.e. the general meeting; deciding on all matters related to the routine and daily management of the organisation with the exception of those falling under the exclusive competences of the general meeting; members acquire information concerning the financial and other affairs of the enterprise; participating in informal consultation processes and providing advice	Formal participation is realised in practice	Mere compliance with law; participation as a coercive necessity
Belgium				
Case Study 4 (CORE)	Owners of shares and members; decision-makers; recipients of information; consultants; supervisors and controllers	Members are ultimate control holders; members have the power to appoint and dismiss the directors, to modify the constitutional documents, and to dissolve and liquidate the company; members can exercise voting rights subject to a 10% voting cap; each member can exercise only a certain number of votes which cannot exceed the maximum of one tenth of the votes deriving from all the shares represented in the general meeting; members decide on all matters related to the routine and daily management of the organisation;	Formal participation is realised in practice	Actual cooperation in both formal and informal participation

Table 3.16: *Continued*

Case Studies	Roles of stakeholders in practice	What participation entails in practice	Formal outcome in practice	Actual cooperation/compliance with law in practice
		members produce annual social report on how the social purpose is carried out; members can dismiss and discharge the directors' liabilities; members can acquire information concerning the company's financial and social affairs; members can participate in informal consultation processes and provide advice		
Case Study 5 (Microstart)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation
Case Study 6 (Volks-huisvesting)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation
UK				
Case Study 7 (Breadshare)	Consultants; inactive members	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice-inactive	Actual cooperation in informal participation
Case Study 8 (GTS Solutions)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation
Case Study 9 (Stratford Community)	Consultants	Participating in informal consultation processes and providing advice	Formal participation is not fully realised in practice	Actual cooperation in informal participation

the social enterprise, or such voting rights were stipulated by law. This is known as formal participation in the case studies. The provided voting rights related to the provision of either one vote in the general meeting or to a voting cap, i.e. votes up to 5% - 10% of the number of votes deriving from all the shares represented in the general meeting.

In these two case studies, i.e. *Case Studies 3* and *4* (Table 3.16), employees and other types of stakeholders were internalised as members in the governance of the organisation and acquired a voting power in the decision-making processes. The appointment of employees and other types of stakeholders as decision-makers was implemented in practice in these two examined cases, whereby the organisations' AoA or other legal obligation dictated by law required the board to represent the different classes of shareholders and members.

The appointment of stakeholders as decision-makers was implemented in practice in one more case study, i.e. *Case Study 7*. In *Case Study 7*, members of the board were selected by a broader stakeholder basis, but not in such a way that they represented certain stakeholder groups or categories of members-stakeholders in the organisation's governance.

The examined case studies in Belgium, Greece, and the UK comprised social enterprises with governance structures which can be characterised as follows: (i) independent directors appointed on the basis of their skill and performance (two out of nine case studies, i.e. in *Case Studies 8* and *9*); (ii) directors elected/appointed by members to represent certain categories of members-shareholders and/or stakeholders (three out of nine case studies, i.e. in *Case Studies 1, 2, and 3*); and (iii) hybrid structures that combined both aspects, i.e. skills and representation (four out of nine case studies, i.e. in *Case Studies 4, 5, 6, and 7*).

The membership of employees and/or the membership of other types of stakeholders was not realised in the majority of the examined case studies in all jurisdictions. Likewise, the respective roles of stakeholders, i.e. as decision-makers, controllers of the organisations, supervisors of the decision-making processes, and/or recipients of information concerning the social enterprises' affairs, were not implemented in practice either. Among the examined case studies in Belgium, Greece, and the UK, only two case studies, i.e. *Case Studies 3* and *4* (Table 3.16), allowed stakeholders to participate in supervisory bodies and/or in supervising processes of the governing bodies. As such, in their majority, the case studies demonstrated that stakeholders could not fully participate in the decision-making processes of social enterprises in a formal manner, i.e. as members and as owners of shares and, accordingly, as decision-makers, controllers, supervisors, and recipients of information. However, they could influence decision-making through informal processes developed in other organisational settings.

3.6.3.2. The level and scope of involvement of stakeholders

The case studies examined in which way stakeholder participation in the governance of social enterprises was implemented in practice, i.e. through participatory stakeholder mechanisms. The participatory stakeholder mechanisms were categorised as formal or informal, direct or indirect, and regular or ad hoc.

Formal and informal stakeholder participatory mechanisms in the governance of the examined social enterprises

The identified participatory governance mechanisms were:

- (i) Formal, i.e. binding and dictated in (tailor-made) law or included and prescribed in the binding constitutional documents of the social enterprise, such as the AoA or the SoA. Accordingly, formal participatory governance entailed the participation of stakeholders in the governance of the social enterprise based on a legal entitlement (right) either provided by law or stipulated in the constitutional documents of the social enterprise.
- (ii) Informal, i.e. comprising the development of voluntary and optional participatory mechanisms in the governance of a social enterprise. In contrast to formal participatory governance, informal participatory governance entailed the participation of stakeholders in the governance of the social enterprise in a way that was not stipulated as a legal requirement. This involved participation in membership and ownership of shares, but based on the social enterprises' decision to involve stakeholders as opposed to a legal requirement to do so.

The participation of stakeholders was then exercised either as a coercive necessity in compliance with the legal framework through membership when this was formal, or, alternatively, as actual cooperation between the stakeholder and the social enterprise through membership or without membership in an informal manner.

Participation 'as a coercive necessity in compliance with the legal framework' entails the participation of stakeholders in the membership of a social enterprise due to a legal right. However, in some of the examined case studies (in *Case Study 3*), the 'coercive' membership could not be materialised into actual participatory governance, subject to several constraints. In other words, stakeholders did not fully exercise the decision-making rights provided for them through membership. In *Case Study 3*, there was a legal limitation in the exercise of particular legal rights related to the exclusion of persons with mental disabilities (Type A members) from the higher positions of governance.

In contrast, 'membership as an actual cooperation' entails the materialisation of actual cooperation between stakeholders and decision-makers in the governance of the organisation. This cooperation is subject to no constraints and takes place in a facilitating environment. In the examined case studies, 'membership as an actual cooperation' was implemented in practice either through the stakeholders' participation in membership

and/or without the participation of stakeholders in membership (as was the case in *Case Study 4*). For instance, the participation of stakeholders in the governance of the examined social enterprises via informal processes always comprised an indication of actual cooperation between the social enterprise and the stakeholders. Indeed, this cooperation was always based on the decision of the principal decision-makers, i.e. founders, shareholders, and/or members to involve stakeholder non-members in the governance of the organisation. Unlike the situation outlined above, this decision - and the subsequent cooperation - was not coerced by the regulatory environment.

Consequently, the majority of the Greek case studies, i.e. *Case Studies 1* and *2* demonstrated that formal participation of stakeholders (including employees) was not fully exercised (Table 3.16). However, the Greek Koinsep legal framework was nevertheless enabling to the participation of one type of stakeholder - the employees - in the ownership of shares, membership, and consequently the governance of the organisation. Nonetheless, various types of stakeholders (including the employees) acquired an informal consulting role in the governance of the organisation, resulting in a form of actual cooperation between the stakeholders and the decision-makers.

Unlike *Case Studies 1* and *2*, in *Case Study 3* (Table 3.16), the formal participation of stakeholders in membership and governance resulted from a coercive necessity to comply with the legal framework. Nevertheless, this could still not fully materialise into actual participatory governance due to a legal constraint. In *Case Study 3*, this happened to a certain type of stakeholder, i.e. the mentally disabled. However, the development of informal organisational processes, which accommodated the feedback of these particular stakeholders, indicated the intention of the examined social enterprise to cooperate with stakeholders when making decisions.

In the examined Belgian case studies, the majority of social enterprises, i.e. *Case Studies 5* and *6* (Table 3.16), did not allow for the formal participation of various types of stakeholders, including employees. Nevertheless, the participation of employees was permitted and encouraged by the VSO legal framework. However, the formal participation of stakeholders (i.e. employees) in the membership, ownership of shares, and thus in the governance of the social enterprises, as underpinned by a legal entitlement, was not fully implemented in practice in the majority of the examined Belgian case studies, i.e. in *Case Studies 5* and *6* (Table 3.16). The formal participation of stakeholders was not fully implemented either, as a result of complying with the applicable legal framework. However, informal mechanisms were developed in all the examined Belgian case studies to accommodate the feedback of stakeholders in decision-making.

In fact, from the three Belgian case studies examined, only *Case Study 4* developed both formal and informal means of participation for stakeholders in their organisational structure. One example of a formal mechanism is the development of categories - a classification in the AoA of membership and ownership of shares provided for certain types of stakeholders - i.e. for students-employees and clients. This indicated

the intention of the examined organisation to generate actual cooperation between stakeholders and decision-makers.

In the majority of the UK cases studies, i.e. in *Case Studies 7* and *8* (Table 3.16), participatory governance through membership, ownership of shares, and thus participation in decision-making was not formally and fully realised in the examined social enterprises. In *Case Study 7*, in particular, although stakeholders (i.e. clients) participated in the membership, their participation in terms of exercising governance remained inactive due to their own choice. Membership was not exercised as a coercive necessity in compliance with the legal framework. The legal framework did not require, and neither did it forbid, the participation of stakeholders in the membership of the CIC organisation.

Other types of informal stakeholder mechanisms were also developed in these case studies to accommodate the feedback of community stakeholders regarding adopted decisions. The informal stakeholder mechanisms were developed in the organisational functioning of the examined social enterprises. Moreover, in *Case Study 9*, the participatory governance by community stakeholders had not yet been formally realised as of April 2017 (the time of conducting the study). The participation of the community in the ownership of shares, membership, and eventually in the governance of the organisation was one of the community objectives of the examined PLCIC (in *Case Study 9*). However, *Case Study 9* demonstrated that the young and emerging character of the organisation did not enable the realisation of this community objective. Accordingly, few but limited informal types of stakeholder mechanisms were established by the examined CIC, in *Case Study 9*, with the objective of collecting the stakeholders' feedback concerning certain decisions and organisational activities.

This cross-national perspective reveals that in the majority of the examined Belgian, Greek, and UK case studies (i.e. six out of nine case studies, see Table 3.16), the formal participation of stakeholders in the membership, ownership of shares, and thus in the governance of the social enterprise was not fully implemented in practice. In fact, among *Case Studies 3* and *4* (Table 3.16), in which the formal participation of stakeholders was implemented in practice, in *Case Study 3*, membership was materialised as a coercive necessity to comply with the legal environment. However, in *Case Study 3*, due to legal constraints, membership was not fully translated to stakeholder participation in all the levels of governance. Likewise, membership remained inactive in *Case Study 7*, and as such it was not fully translated to stakeholder participation in governance. Accordingly, membership and formal participation only materialised as an actual cooperation between stakeholders and social enterprises in *Case Study 4*. Nonetheless, the participation of stakeholders by means of informal stakeholder mechanisms in the examined case studies was always implemented in practice as an indication of actual cooperation between stakeholders and the social enterprise in question.

The examined case studies demonstrated certain formal mechanisms of participatory governance provided for in the tailor-made laws for social enterprises. Formal

mechanisms were the acquisition of membership and/or ownership of shares through a classification of shares provided to stakeholders, or similar mechanisms introduced in the constitutional documents of social enterprises. The formal stakeholder mechanisms accommodated the participation of stakeholders in the decision-making processes of social enterprises at different levels of governance. Another type of mechanism was also identified in *Case Study 2*, i.e. a public-private monitoring committee, and a similar one in *Case Study 9*, i.e. a public-private consultation for the use of land. Those stakeholder mechanisms were also categorised as formal stakeholder mechanisms prescribed into laws other than the tailor-made laws. However, they were irrelevant for this study, as this study examines formal participatory governance mechanisms prescribed and provided in tailor-made laws for social enterprises.

The examined case studies also demonstrated the existence of various informal stakeholder participatory mechanisms developed in the organisational functioning of the examined social enterprises in all the examined jurisdictions. Informal mechanisms were designed to solicit the feedback of stakeholders in an unofficial manner, which is not dictated by law or the social enterprises' constitutional documents. They comprised the broader categories of the following types of participatory mechanisms (see Table 3.17): (i) written or oral communication by email or through phone calls; (ii) participation in consultation meetings with decision-makers; (iii) technology interactions (newsletters, websites, social media); (iv) stakeholder thematic events; (v) stakeholder meetings; (vi) stakeholder committees; (vii) open governance processes for stakeholders that were also non-members; (viii) satisfaction surveys; and (ix) consultation processes for technical matters.

Direct and indirect stakeholder participatory governance mechanisms in the governance of the examined social enterprises

The identified formal and informal stakeholder mechanisms in the examined case studies was further categorised in a way that indicated the proximity of participation between the stakeholder and the examined social enterprises. Accordingly, the examined stakeholder participation mechanisms were characterised as 'direct' to the extent that they facilitated the stakeholders' physical and/or direct participation without the use of intermediaries in the participating process. In contrast, indirect stakeholder participatory mechanisms were categorised as those which facilitated stakeholder participation using intermediaries and indirect channels.

Accordingly, an aggregate analysis of the (x) data matrices of participatory stakeholder mechanisms undertaken in each case study revealed the following findings. The overall, direct participation (in Table 3.18, 93.5%) in the governance of social enterprises in Belgium, Greece, and the UK outperforms indirect participation (in Table 3.18, 6.5%) of stakeholders through mechanisms which are either formal or informal, but mainly informal. Accordingly, the stakeholder participation mechanisms were predominantly informal and direct. This was observable to the extent that the formal participation of stakeholders in the governance of the examined social enterprises - including the type of

Table 3.17: Informal stakeholder participatory mechanisms in the examined case studies

Greece	Belgium	UK
Stakeholders' (employees') meetings with the decision-makers	Participation of non-members at the board sessions	Oral communication with decision-makers
The participation of stakeholders (employees) in the processes of the board for technical matters	Stakeholder meetings (including employees) with the board members	Stakeholder thematic events (open days, educational activities, community workshops)
Working sessions between stakeholders and decision-makers	Stakeholder consultation processes concerning technical matters	Email communication
Communication including phone calls, emails and oral conversations	Stakeholder thematic events	Social media
Participation of stakeholders/non-members in the general meeting	Employees and staff meetings with the board members	Satisfaction surveys
Employee-supervisor meetings	Email, phone call and oral communication	Written and oral updates and feedback
Newsletters and interaction through the website	Newsletter and interaction through the website	Newsletter and interaction through the website
Intermediate stakeholder committees	Satisfaction survey	Stakeholder consultation processes

formal participation implemented through membership - was implemented in practice to a lesser extent in all the examined cases. Exceptions were found in *Case Studies 3* and *4*. Consequently, it is implicit that the number of direct and informal stakeholder mechanisms exceeds the number of direct and formal stakeholder mechanisms. The number of direct and informal stakeholder mechanisms also exceeds the number of indirect and informal mechanisms in the examined case studies. The aggregate analysis indicated that in all the examined case studies in all the examined jurisdictions, the number of identified informal stakeholder mechanisms (74.2% of the total number of identified stakeholder mechanisms in all the examined countries in Table 3.18) was significantly higher than the number of identified formal stakeholder mechanisms (25.8%). Additionally, the aggregate analysis revealed that the number of identified informal and direct stakeholder mechanisms (71%) was significantly higher than the number of identified formal and direct stakeholder mechanisms (22.6%), informal and indirect stakeholder mechanisms (3.2%), and formal and indirect stakeholder mechanisms (3.2%) on an aggregate as well as on a per-country level.

Table 3.18: Aggregate stakeholder participatory mechanisms in the examined case studies

Countries	Formal	Informal		
Greece	4	7		
Belgium	3	8		
UK	1	8		
TOTAL	8	23		
Percentage (%)	25.8	74.2		
Countries	Regular	Ad hoc		
Greece	7	4		
Belgium	8	3		
UK	7	2		
TOTAL	22	9		
Percentage (%)	70.9	29.1		
Countries	Direct	Indirect		
Greece	9	2		
Belgium	11	0		
UK	9	0		
TOTAL	29	2		
Percentage (%)	93.5	6.5		
Countries	Formal/Direct	Formal/ Indirect	Informal/Direct	Informal/Indirect
Greece	3	1	6	1
Belgium	3	0	8	0
UK	1	0	8	0
TOTAL	7	1	22	1
Percentage (%)	22.6	3.2	71	3.2
Countries	Formal/Regular	Formal/Ad hoc	Informal/Regular	Informal/Ad hoc
Greece	4	0	3	4
Belgium	3	0	5	3
UK	1	0	7	1
TOTAL	8	0	15	8
Percentage (%)	25.8	0	48.4	25.8

Regular and ad hoc stakeholder participatory governance mechanisms in the governance of the examined social enterprises

Similarly, the identified formal and informal stakeholder mechanisms were further categorised in a way that indicated a frequency of participation between the stakeholders and the examined social enterprises. Accordingly, the examined stakeholder participation mechanisms were characterised as ‘regular’ to the extent that they were exercised in

regular, continuous and timely intervals, or that they concerned predefined topics. In contrast, ad hoc stakeholder participatory mechanisms were categorised as those that were exercised whenever an issue emerged. Subsequently, an aggregate analysis of the (x) data matrices of participatory stakeholder mechanisms revealed that regular participation of stakeholders (70.9%, see Table 3.18) in the governance of the examined social enterprises in Belgium, Greece, and the UK outperformed the ad hoc participation (29.1%) of stakeholders. Ad hoc participation was exercised through mechanisms which were either formal or informal, but mainly informal. The aggregate analysis indicated that the number of identified regular stakeholder mechanisms was significantly higher than the number of identified ad hoc stakeholder mechanisms. Accordingly, it can be similarly deduced that informal and regular participation (48.4%) outperforms not only formal and regular participation (25.8%), but also informal and ad hoc (25.8%) participation. The results show that the formal participation is less implemented in practice in all the examined cases than the informal participation on an aggregate as well as on a per-country level.

Chart 3.1 and Chart 3.2 demonstrate the aggregate concentration of the participatory stakeholder mechanisms identified in the case studies' (x) data matrices towards being predominantly informal, regular, and direct. Chart 3.2 displays this in a three-dimensional way. In Chart 3.2, the variables of 'formal/informal', 'direct/indirect', and 'regular/ad hoc' are visualised in the three axes to indicate the characteristics of identified participatory stakeholder mechanisms (visualised in Chart 3.2 as balloons). Such participatory stakeholder mechanisms have acquired either a positive or a negative value (i.e. either 1 or -1) in Chart 3.2. The value is positive, i.e. equals 1, when each participatory stakeholder mechanism identified in the case studies' (x) data matrix has been found to be individually formal, direct, or regular. The value is negative, i.e. equals -1, when each participatory stakeholder mechanism identified in the case studies' (x) data matrix has been found to be individually informal, indirect, or ad hoc. The size

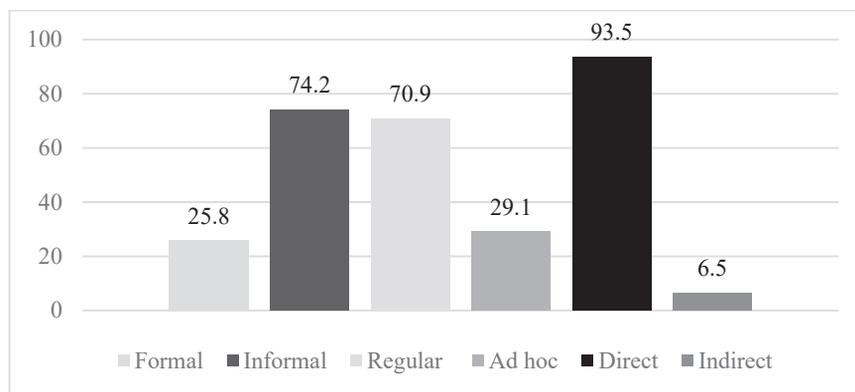


Chart 3.1: Aggregate percentage of participatory stakeholder mechanisms per formal/informal, regular/ad hoc, direct/indirect.

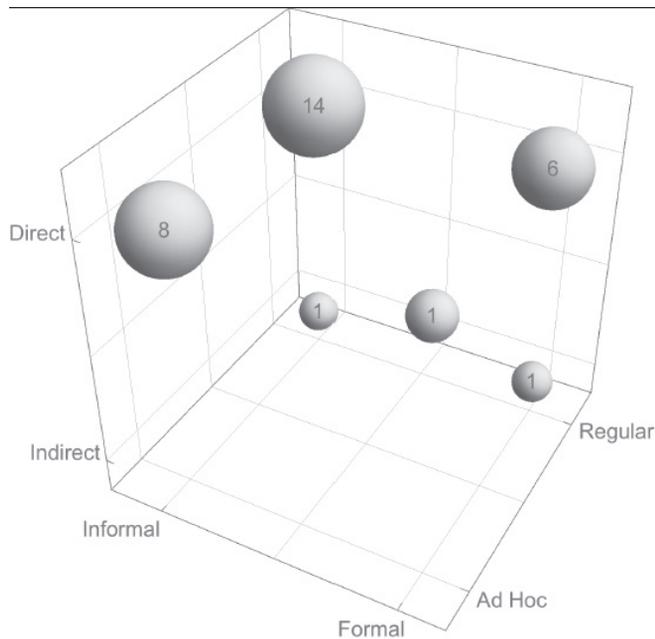


Chart 3.2: The characteristics of participatory stakeholder mechanisms identified in the case studies' (x) data matrices.

of the portrayed balloons in Chart 3.2 is also a parameter of value. It indicates the aggregate concentration of the identified participatory stakeholder mechanisms towards being predominantly informal, direct, and regular (see Balloon A with the biggest size in Chart 3.2). Chart 3.2 portrays that the examined social enterprises were found to employ 14 participatory stakeholder mechanisms which are informal, direct, and regular.

3.6.3.3. The lack of effectiveness of legally prescribed (formal) participatory governance to include stakeholders in the decision-making of social enterprises

It was noted earlier that the participation of stakeholders in the governance of the majority of the examined case studies was not fully formally realised through the exercise and implementation of a legal entitlement (right) which either permits or sometimes requires (in *Case Study 3*) participation in the membership and ownership of shares of the social enterprise. Accordingly, it could be asserted that legally prescribed (formal) participatory governance, i.e. rules dictating the participation of stakeholders in the social enterprises' membership and governance, is not fully effective in terms of its outcome.

In fact, the formal participation of stakeholders in the governance of the examined case studies tends to depend more on the decisions of the principal decision-makers who participate in representative and/or hybrid decision-making bodies. These are the

board of directors and the general meeting that comprise members, representatives of the members, and a mix of independent decision-makers. All this is done in legal frameworks which either permit or require (only in *Case Study 3*) stakeholder participation in membership, ownership of shares, and in decision-making. As such, the decisions of decision-makers regarding the participation of stakeholders in membership and governance tend to influence the participatory governance structure of a social enterprise to a greater extent than the law does. This was noted in all the case studies in which formal participatory governance was not fully implemented in practice, e.g. in the Greek *Case Studies 1* and *2*, in the Belgian *Case Studies 6* and *5*, and in all the case studies examined in the UK. Furthermore, the case studies which demonstrated that formal participation was implemented in practice through membership - either as a result of compliance with a legal framework or as an actual cooperation between stakeholders and decision-makers - were few.

The examined case studies also revealed that formal participatory governance was sometimes not implemented in practice, due to reasons other than the decisions of the principal decision-makers. For example, factors emerged that were found to influence the implementation of participatory governance, such as in *Case Studies 3* and *6*. In these two case studies, the legal frameworks were found to exclude the involvement of certain types of stakeholders in the governance of social enterprises.

The lack of effectiveness in the implementation of the legally prescribed participatory governance was identified in the majority of the examined case studies from all the selected jurisdictions, i.e. Greece, Belgium, and the UK. The coding of the empirical evidence collected in the case studies revealed that the effectiveness of the implementation in the formal participatory governance in the majority of the examined social enterprises was related to 'trust'. A pattern in the variable of trust appeared in the majority of the examined case studies, i.e. *Case Studies 1, 2, 4, 5, and 6* (Table 3.19), concerning decision-making and the relationship between stakeholders and social enterprises. Trust was found to relate to: (i) the trust of the principal decision-makers with respect to a new legal and institutional environment; (ii) the trust of stakeholders with respect to the social enterprises' success and growth; and (iii) the trust of stakeholders with respect to the governing bodies of the examined social enterprises (Table 3.19 and Figure 3.10). For instance, due to the absence of trust in the legal, regulatory, and institutional framework in *Case Study 2* (Table 3.19 and Figure 3.10), the principal decision-makers decided to make the governance model less attractive to stakeholders (including employees) and to new members, without further developing the concept of stakeholder participation. Similarly, in the same case study, stakeholders demonstrated an absence of trust in relation to the examined social enterprise's success and growth (Table 3.19 and Figure 3.10).

In *Case Study 4*, in which the formal participation of stakeholders was actually implemented in practice, a feeling of trust and respect was developed between social entrepreneurs and stakeholders. Trust was expressed by inviting stakeholders into membership

and through open communication and transparency in the circulation of information with stakeholders. In *Case Study 4*, stakeholders perceived that their formal participation through membership was a means to understand how the organisation and its legal structure could function better. As such, they showed their trust with respect to how they could contribute to the fulfilment of the social purpose by influencing the decision-making (Table 3.19 and Figure 3.11). Similarly, in *Case Study 5*, in which formal participation was not fully implemented in practice, it was demonstrated that several types of stakeholders trusted the decision-makers of the social enterprises and that they did not feel the urge to participate more in decision-making (Table 3.19, Figures 3.8 and 3.10). Nevertheless, decisions and information were communicated through intermediaries, and only to those parties that needed to be involved. This resulted in a limitation of communication.

Other than trust, emerging patterns relating to the effectiveness of the implementation of the legally prescribed participatory governance concerned the low maturity of the organisation due to the 'youth' of the tailor-made legal forms for social enterprises, i.e. newly introduced legal forms. For instance, in *Case Study 2*, stakeholders claimed that they did not participate in the membership, ownership of shares, and governance of the organisation, which was young, immature, and without concrete evidence regarding its growth and success (Table 3.19, Figures 3.6 and 3.10). Similarly, in *Case Study 4*, the development of a participatory governance structure for stakeholders that involved membership and governance was subject to the decision-makers' concerns regarding the organisation's young and evolving character (Table 3.19 and Figure 3.11).

Likewise, in *Case Studies 5* and *7*, the social enterprises' members and decision-makers believed that the increase of control through participation in membership and in governance might be a risk in a young but growing organisation (Table 3.19, Figures 3.8 - 3.10). The management of membership, control, and growth was a commonly identified concern of the principal decision-makers in *Case Studies 5* and *7* (Table 3.19, Figures 3.8 - 3.10).

The case studies also revealed the identification of more behavioural factors underlying the effectiveness of the implementation of the legally prescribed formal participatory governance. Such factors were related not only to the stakeholders, but also to the principal decision-makers and founding members of the examined social enterprises. In particular, *Case Study 3* revealed the potential for several stereotypes and biases developed among the principal decision-makers that could lead to the discrimination and exclusion from the participatory governance of certain types of stakeholders, i.e. the persons with mental disabilities (Table 3.19, Figure 3.7 and Figure 3.10). Additionally, the emotional engagement and the personal motivations of individual stakeholders also played a role in their participation. For instance, in *Case Study 3*, the emotional engagement of the mentally disabled was noted particularly in relation to entrepreneurially risky operations, which could deteriorate their role in membership and in governance. Similarly to *Case Study 3*, in *Case Studies 1, 2, 5, 6, and 8*, the

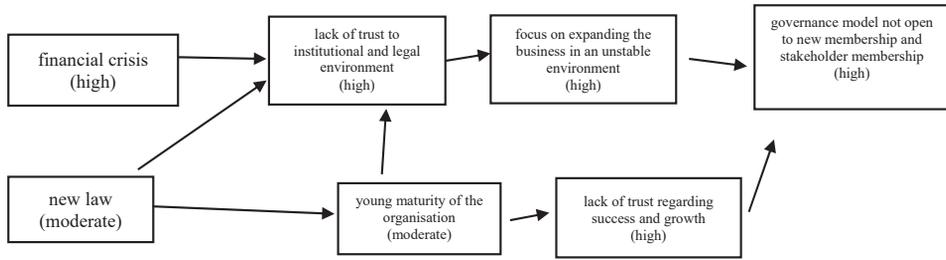


Figure 3.6: Causal network analysis of Case Studies 1 and 2.

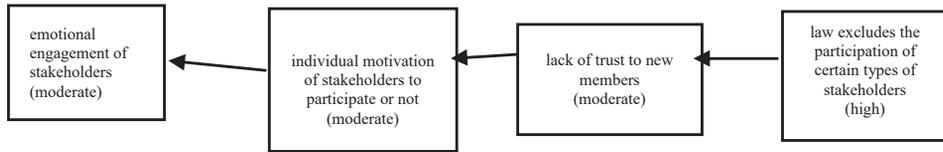


Figure 3.7: Causal network analysis of Case Study 3.

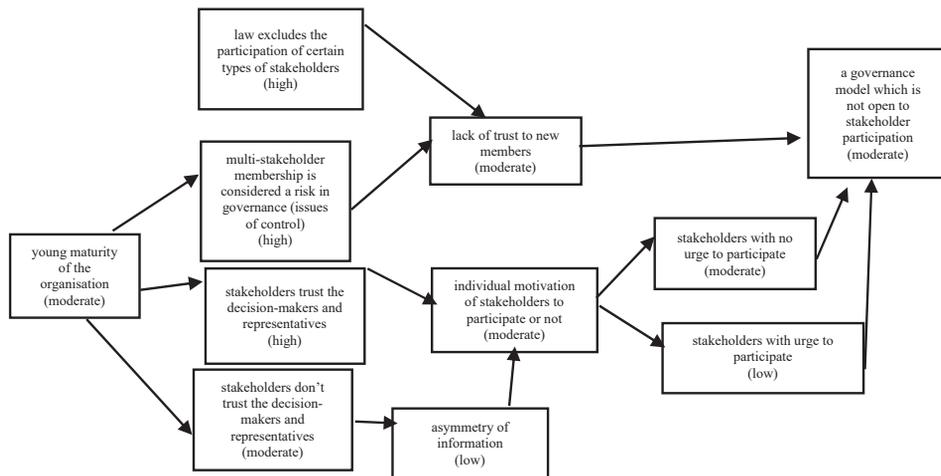


Figure 3.8: Causal network analysis of Case Studies 5 and 6.

limited urge and motivation of stakeholders to be involved in the ownership of shares and in membership was related to risks of the entrepreneurial activities or to the limited knowledge concerning participatory governance (Figure 3.10).

Another factor which related to the effectiveness of implementation of the legally prescribed formal participatory governance was the perceived ‘governance risks and challenges’ if participation in membership, ownership of shares, and decision-making was increased. In this respect, *Case Study 7* emphasised the risk of a mission drift as

Table 3.19: Partially ordered meta-matrix II

Case Studies	Outcome formal	Causes of outcome formal	Effects of outcome formal
Greece			
Case Study 1 (KE)	Formal participation is not fully realised in practice	New legislation; absence of knowledge from stakeholders and decision-makers concerning multi-membership and participatory governance; financial crisis; absence of trust in an unstable institutional and legal environment	The focus mainly concerns growth and expansion of the organisation in an unstable environment rather than the enlargement of stakeholder participation in governance.
Case Study 2 (KMY)	Formal participation is not fully realised in practice	Absence of trust towards the institutional and legal environment from the decision-makers; absence of trust in the future success of the organisation; young maturity of the organisation.	Governance model unattractive to stakeholders (particularly employees) and to new members; retain the founding members of the organisation in governance positions, aiming to gradually open the governance and ownership model to other stakeholders and employees, depending on the future growth and success of the organisation
Case Study 3 (KAE)	Formal participation is realised in practice	Multi-membership is considered a challenge by the decision-makers; personal motivation of stakeholders; emotional engagement of stakeholders; development of bias and stereotypes against stakeholders	The governance model excludes the participation of persons with mental disabilities in the higher positions of decision-making; inhibitor to the empowerment and determination of the organisation's stakeholders, i.e. persons with mental disabilities; no fair position in the organisation; exclusion, discrimination, and stigma in society; the social objective of therapeutic rehabilitation and social integration was not realised via 'on the job' treatment and professional training.

Table 3.19: *Continued*

Case Studies	Outcome formal	Causes of outcome formal	Effects of outcome formal
Belgium			
Case Study 4 (CORE)	Formal participation realised in practice	Trust and respect; open communication and participation; motivation for membership (support capital, contribution to the social purpose; new experience; new projects; new clients)	Expansion and alteration of the governance structures; development of obligations and responsibilities for the stakeholders; stakeholders' empowerment and inclusion in democratic processes; the integration of various types of stakeholders, i.e. students into organisational activities and other empowering roles; inclusion of society and community into entrepreneurship; more safeguards for the maintenance and pursuit of the social purpose; increased level of accountability, open communication, and transparency; growth and new clients
Case Study 5 (Microstart)	Formal participation is not fully realised in practice	Stakeholder participation is considered by decision-makers to be a governance risk at the start-up phase; young maturity of the organisation; trust of stakeholders to decision-makers and to representatives; the personal motivation of stakeholders and employees	A governance model which is not open to participation; stakeholders communicated their interests to intermediaries and/or trusted their representatives at the board level; personal interests and motivations of stakeholders to participate or not; an asymmetry of information between decision-makers and stakeholders.
Case Study 6 (Volkshuisvesting)	Formal participation is not fully realised in practice	Issue of trust concerning new members; law excludes the participation of employees; highly regulated area	Various stakeholders had no urge to be involved in decision-making; they were not aware of the opportunities that exist to participate in the decision-making processes.

Table 3.19 continues on next page

Table 3.19: *Continued*

Case Studies	Outcome formal	Causes of outcome formal	Effects of outcome formal
UK			
Case Study 7 (Breadshare)	Formal participation is not fully realised in practice	Absence of trust in the loss of control over the organisation; maturity of the organisation; inactive membership and mission drift; governance challenges and membership	A balance between inactive membership and the risk of a mission drift with the requirements to maintain a representative, democratic, and participatory character in governance; involving representatives from the stakeholder basis while simultaneously being governed by experts who have the knowledge and skills to run a business.
Case Study 8 (GTS Solutions)	Formal participation not realised in practice	Concentrated power to the active shareholder;	Discretion of the active shareholder to provide more of a participatory role to community stakeholders; a balance should be maintained between the decision of experts who have the knowledge and skills to run a business with the involvement of community stakeholders.
Case Study 9 (Stratford Community)	Formal participation is not fully realised in practice	Lack of maturity of the organisation	The participation of the community is not yet formally realised; maturity of the organisation.

opposed to the increase of membership and participation of stakeholders. *Case Study 8* emphasised the concentrated decision-making power to the active shareholder as opposed to the participation from stakeholders in the social enterprise’s governance (Table 3.19, Figures 3.9 and 3.10). Similarly, in *Case Study 5*, stakeholder participation was perceived by the interviewees to be related to governance risks in the start-up phase of the organisation (Table 3.19, Figures 3.8 and 3.10).

The following figures display a causal chain of case-specific variables (i.e. causal network analysis) of the examined case studies. The portrayed causal chains explain the effects and the effectiveness of the implementation of law in the governance of the examined social enterprises. They also portray the effects produced by other institutional factors on the governance of the examined social enterprises identified in the case studies.

The figures contain case-specific variables connected with arrows which formulate a causal chain of events. The single directed arrow demonstrates those case-specific variables delineated by a causal relationship. Accordingly, the case-specific variable from which the arrow starts influences the case-specific variable to which the arrow ends. The indications ‘high’, ‘moderate’, and ‘low’ demonstrate the level of influence exerted by the case-specific variable from which the arrow starts to the case-specific variable to which the arrow ends.

3.6.3.4 The effect of legally prescribed stakeholder participatory governance on the social enterprises and on stakeholders

It was noted earlier that only two out of nine case studies (*Case Studies 3 and 4*) implemented the formal participation of stakeholders in practice. In *Case Study 3*, membership was a result of coercive necessity in compliance with the legal environment. As such, membership only materialised as an actual cooperation between stakeholders and social enterprises in *Case Study 4*. On the contrary, in all the examined case studies, the informal participation of stakeholders was implemented in practice.

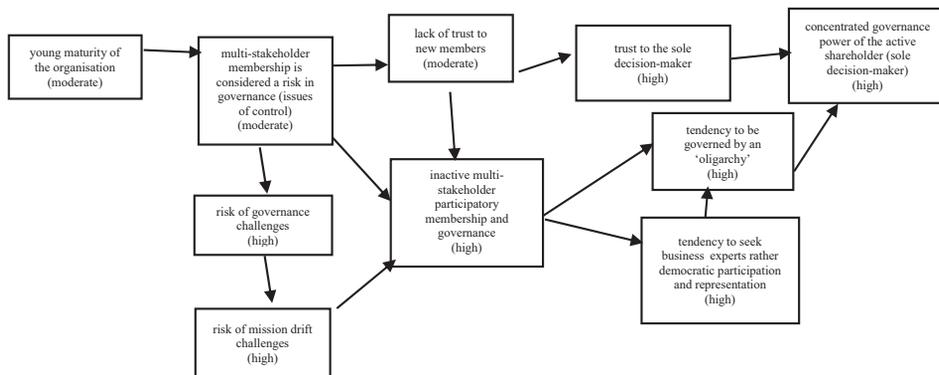


Figure 3.9: Causal network analysis of Case Studies 7 and 8.

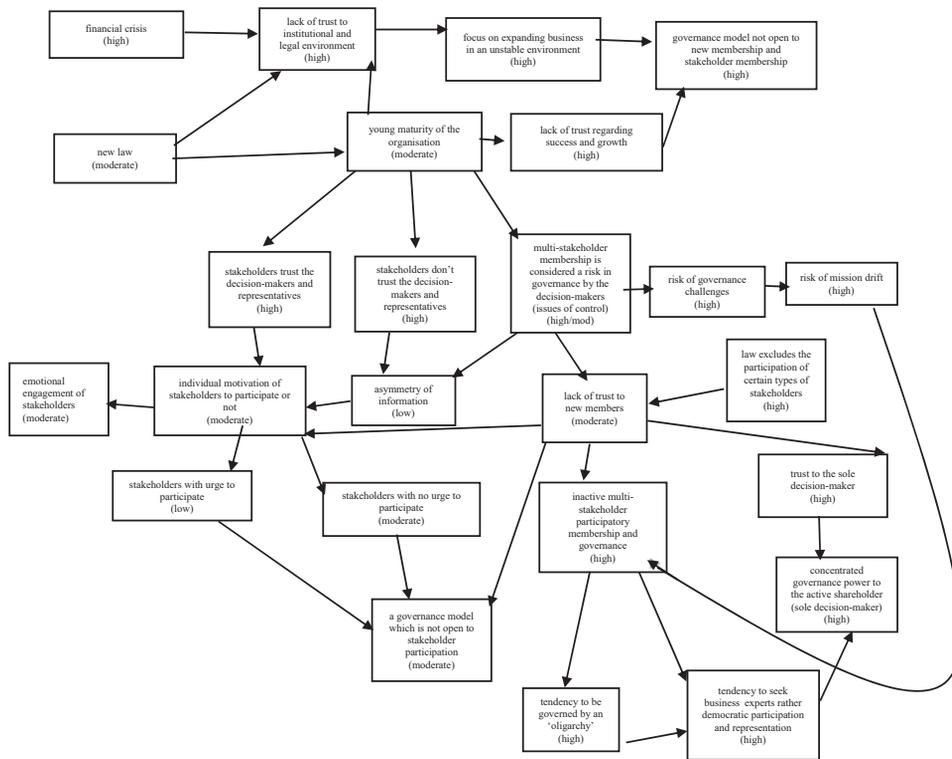


Figure 3.10: Aggregate causal network analysis of Case Studies 1-3 and 5-8.

In the case studies in which formal participation was not fully implemented in practice, the governance model of the social enterprise was open to stakeholders or to new membership, such as stakeholder membership. However, the principal decision-makers gave emphasis to expanding the business rather than including stakeholders (Figure 3.10). In fact, in these examined case studies, governance tended to be concentrated either in the hands of the principal decision-makers (that would make up an ‘oligarchy’), or in the hands of the active shareholders (Figure 3.10). Only in *Case Study 3*, membership was implemented because of necessary compliance with the legal framework, without being translated fully into the actual participation of a certain type of stakeholder in all levels of governance due to a legal constraint.

In contrast, in *Case Study 4*, in which formal participatory governance of the organisation was implemented in practice, membership and stakeholders’ participation in governance was based on trust, respect, and open communication (Figure 3.11). As such, membership was encouraged among stakeholders, including new clients and new employees, on the basis of various incentives such as: (i) support for the capital; (ii) contribution to the social purpose; and (iii) a new insight into the functioning of

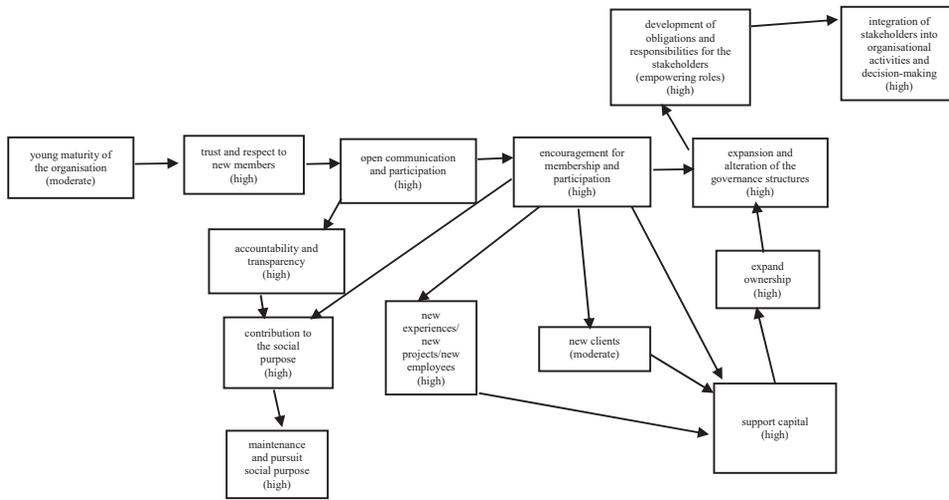


Figure 3.11: Causal network analysis of Case Study 4.

the organisation (Figure 3.11). It also resulted in the expansion of ownership of shares and the adjustment of the governance structures at the level of the general meeting or the board of directors (management board) to accommodate the stakeholders' representatives. Similarly, the development of informal stakeholder mechanisms in all the examined social enterprises resulted in the alteration of their organisational functioning to comprise direct and regular informal stakeholder mechanisms which accommodated and solicited the stakeholders' feedback.

Such formal and informal processes resulted in the development of new roles for various types of stakeholders in the organisational functioning of the examined case studies, i.e. as members, decision-makers, supervisors, consultants, controllers, and recipients of information (Figure 3.11). They also resulted in: (i) the development of new obligations and responsibilities for the stakeholders, leading to stakeholder empowerment and inclusion in organisational processes; (ii) the integration of various types of stakeholders, i.e. vulnerable societal groups, such as the disabled or students-employees, into organisational activities and other empowering roles; and (iii) the inclusion of society and community into entrepreneurship (Figure 3.11). Interaction through participation and scrutiny accommodated the introduction of community and societal values into the organisational activity. This interaction generated more safeguards for the maintenance and implementation of the social and community objectives that social enterprises were bound to fulfil.

3.6.4 Conclusions

The meta-synthesis carried out in this article demonstrated that the examined legal frameworks are conducive to stakeholder participation, i.e. they allow or require stakeholders to participate in the membership and governance of social enterprises. However, formal participatory governance was not fully implemented in practice in the examined case studies across the various jurisdictions. On the contrary, informal, direct but regular processes were developed to accommodate and solicit the stakeholders' feedback, advice, and consultancy in the social enterprises' governance and decision-making.

Accordingly, the formal participation of stakeholders in the social enterprises' governance tended to be influenced by the decisions of the principal decision-makers rather than by the compliance to a legal framework, which predominantly allows but sometimes also requires or excludes the participation of stakeholders in the social enterprises' membership and governance. In fact, when the formal participation of stakeholders was stipulated as a legal obligation, it tended to be implemented in practice because of compliance with law.

Other than the decisions of the principal decision-makers, crucial to the implementation of formal stakeholder participation was also the motivation of stakeholders to participate actually by exercising their legal rights. The factor of trust among these decision-makers and stakeholders, the level of maturity of the organisation, and the perceived governance challenges influenced both the decisions and motivations of the principal decision-makers and stakeholders.

The governance challenges finally resulted in governance structures which were limited mainly to formal stakeholder participation in the governance of the organisation. In contrast, the development of various kinds of informal and direct stakeholder participation mechanisms demonstrated that the examined social enterprises tended to cooperate actually with stakeholders on a regular basis. The stakeholder mechanisms were not provided in law, but they were internally developed in the organisational functioning of the examined social enterprises.

Chapter 4

Participatory governance in Dutch social enterprises: a survey-based approach*

* This Chapter is an article, which is not published yet: A. Argyrou, 'Stakeholder engagement in the governance of Dutch social enterprises: A research note'. I would like to express my gratitude to the following persons for providing review comments concerning several parts of the Chapter: Prof. dr. Tineke Lambooy LL.M., Prof. dr. Rob Blomme, Prof. dr. Adriaan Dorresteyn LL.M.

Abstract

In 2016, a research project was initiated in the Netherlands by academics from Nyenrode Business University and experienced business professionals from PwC NL with the objective to identify a link between stakeholder engagement and the success of social enterprises. Accordingly, a survey was sent to 390 social entrepreneurs in the Netherlands and responses were received from 52 social enterprises. As part of the survey, a special questionnaire was developed to collect empirical data regarding the extent of participation and the involvement of stakeholders in the decision-making processes of Dutch social enterprises. The questionnaire comprised Likert-type 1-6 scale questions followed by open-ended questions. A research note is developed in this article to discuss, justify and report the outcome of the data collection and data analysis. In the research note, theoretical arguments concerning the concept of stakeholder participation in the governance of social enterprises are provided and discussed. An explanation concerning the respondents involved in the research project and the methods employed for the collection and the analysis of data is also demonstrated. Finally, selected findings are presented as well as the author's personal reflections on the research outcome.

Keywords

Social enterprise, Netherlands, Stakeholder Participation, Governance, Stakeholders, Survey

4.1. Introduction

International scholarship regarding social enterprises suggests that the engagement and involvement of stakeholders in the functioning of social enterprises is a pivotal activity.¹ Stakeholder engagement is a central concept for social enterprises, as has been noted in various mapping and country studies conducted in the EU.² Stakeholder participation and engagement in the affairs of social enterprises is also considered essential to the success of social enterprises.³ Scholarship notes that the stronger the engagement with stakeholders is the higher is the chance for success of the social enterprise in a multilateral relationship in which stakeholders are simultaneously beneficiaries and contributors to the social enterprise.⁴ Stakeholder engagement is a type of strategic innovativeness exercised by social enterprises in managing the demands and the interests of various types of stakeholder categories.⁵

Social enterprises are hybrid organisations. In the literature developed according to institutional theory, social enterprises as hybrid organisations combine dual logics, i.e. a market logic and a social welfare logic that may also include ecological, environmental and human rights purposes. The dual logics result in social enterprises encountering conflicting demands - that emerge from complex and different regulatory, cultural and social environments - from various types of stakeholders.⁶ The hybrid character of

- 1 Various researchers affiliated to the EMES network defined the ideal social enterprise as an organisation, which involves multiple types of stakeholders in its organisational functioning. See J. Defourny and M. Nyssens, 'Conceptions of Social Enterprise and Social Entrepreneurship in Europe and the United States: Convergences and Divergences' [2010] 1(1) *Social Enterprise Journal*, 32, 43-47; G. Galera and C. Borzaga, 'Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation' (2009) 5(3) *Social Entrepreneurship Journal*, 210, 214; C. Borzaga and J. Defourny, *The Emergence of Social Enterprise* (Routledge 2001) 18.
- 2 European Commission, 'A Map of Social Enterprises and their Ecosystems in Europe: Synthesis Report' (2015) 49-61 available at: <<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149>> accessed 30 April 2017. See also the country-specific reports produced by Seforis available at: <www.seforis.eu/> accessed 30 April 2017. See A. Argyrou and T. Lambooy, 'An Introduction to Tailor-made Legislation for Social Enterprises in Europe: A Comparison of Legal Regimes in Belgium, Greece and the UK' [2017] 12(3) *International and Comparative Corporate Law Journal* (in press).
- 3 J.E. Austin et al., *Effective Management of Social Enterprises: Lessons from Businesses and Civil Society Organizations in Iberoamerica* (Harvard University Press 2006) 5-8 [Austin et al. 2006a]; J. Austin, H. Stevenson and J. Wei-Skillern, 'Social and Commercial Entrepreneurship: Same, Different, or Both?' [2006] 30(1) *Entrepreneurship Theory and Practice*, 15 [Austin et al. 2006b]; S.H. Alvord, D.L. Brown and C.W. Letts, 'Social Entrepreneurship and Societal Transformation: an Exploratory Study' [2004] 40(1) *Journal of Applied Behavioural Science*, 260, 274-279.
- 4 *ibid* Austin et al. 2006b (n 3).
- 5 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, 422; Alvord et al. (n 3); R. Bridgstock et al., 'Diversity Management for Innovation in Social Enterprises in the UK' [2010] 22(1) *Entrepreneurship and Regional Development*, 557-574.
- 6 *ibid* Doherty et al. (n 5) 423; A.C. Pache and F. Santos, 'When Worlds Collide: the Internal

social enterprises, which comprises both a commercial and a social character, generates internal and external tensions for the decision-making bodies of social enterprises. As such, social enterprises' decision-makers encounter dilemmas. Such dilemmas regard the prioritisation of the social enterprises' objectives, i.e. the social objectives over the financial objectives and/or vice versa, in decisions regarding the operation of social enterprises. They also regard accountability issues towards various categories of stakeholders, e.g. resource providers over beneficiaries and vice versa.⁷ Accordingly, scholarship notes that these tensions may produce certain negative results in the functioning of social enterprises. They may produce governance challenges, such as: (i) the risk of a mission drift, in which social enterprises may sacrifice their social mission in order to achieve financial sustainability;⁸ (ii) tensions and disagreements in the governance level among managers and administrators;⁹ and finally (iii) the loss of support and legitimacy from crucial stakeholders.¹⁰

Accordingly, literature has started examining how the managers and decision-makers of social enterprises can resolve these internal and external tensions to the extent that the negative results can be avoided.¹¹ For instance, as Battilana and Lee mention, 'social enterprises exhibiting different levels of integration between their social and commercial activities may require different types of engagement from the board to help them maintain their hybridity'.¹² Such a hypothesis is examined in other studies, which claim that the involvement and participation of stakeholders, as well as the

Dynamics of Organizational Responses to Conflicting Institutional Demands' [2010] 35(3) *Academy of Management Review*, 455; A.C. Pache and F. Santos, 'Embedded in Hybrid Contexts: How Individuals in Organizations Respond to Competing Institutional Logics' [2013] 39(1) *Research in the Sociology of Organizations*, 3; J. Battilana and S. Dorado, 'Building Sustainable Hybrid Organizations: the Case of Commercial Microfinance Organizations' [2010] 53(6) *Academy of Management Journal*, 1419-1440; J. Battilana and M. Lee, 'Advancing Research on Hybrid Organizing - Insights from the Study of Social Enterprises' [2014] 8(1) *Academy of Management Annals*, 397.

7 Doherty et al. (n 5) 423; S.A. Zahra et al. 'A Typology of Social Enterprise: Motives, Search Processes and Ethical Challenges' [2009] 24(5) *Journal of Business Venturing*, 519.

8 Doherty et al. (n 5); Pache and Santos (n 6); Battilana and Lee (n 6).

9 Doherty et al. (n 5); Battilana and Dorado (n 6); Zahra (n 7).

10 Doherty et al. (n 5); A. Nicholls, 'Institutionalizing Social Entrepreneurship in Regulatory Space: Reporting and Disclosure by Community Interest Companies' [2010] 35(1) *Accounting, Organizations and Society*, 394; B. Huybrechts and A. Nicholls, 'Social Entrepreneurship: Definitions, Drivers and Challenges' in C.K. Volkmann, K.O. Tokarski and K. Ernst (eds), *Social Entrepreneurship and Social Business* (Springer 2012) 31-48; A. Ebrahim, J. Battilana and J. Mair, 'The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations' [2014] 34(1) *Research in Organizational Behavior*, 81-100; C. Mason, J. Kirkbride and D. Bryde, 'From Stakeholders to Institutions: the Changing Face of Social Enterprise Governance Theory' [2007] 45(2) *Management Decision*, 284; Battilana and Lee (n 6).

11 Ebrahim et al. (n 10); J. Mair, J. Mayer and E. Lutz, 'Navigating Institutional Plurality: Organizational Governance in Hybrid Organizations' [2014] 36(6) *Organization Studies*, 713; Pache and Santos (n 6); Battilana and Lee (n 6); Battilana and Dorado (n 6).

12 Battilana and Lee (n 6) 419.

scrutiny of stakeholders over the social enterprises' boards, may provide a significant increased level of 'downward' accountability and legitimacy from the beneficiaries of social enterprises.¹³

In addition, literature demonstrates how the external resources of organisations affect the behaviour of social enterprises. It notes that it is important for social enterprises to manage and leverage issues and the scarcity of (financial) resources. In doing so, they can advance social embeddedness, relationships and ties with stakeholders in order to attract capital for opportunities and activities which pursue their social mission and objectives.¹⁴ To that end, other scholars add that engagement with stakeholders can foster stakeholder support and resources for the fulfilment of the social purpose.¹⁵ In this manner, stakeholder engagement and participation is becoming a means for social enterprises to acquire resources, support and legitimacy for activities based on the pursuit of the social purpose and accordingly for the execution of their strategies and projects.¹⁶ Stakeholder engagement, therefore, entails the involvement and participation of stakeholders in the decision-making processes of social enterprises, which support the fulfilment of their social purpose.

Empirical research demonstrates that social enterprises use stakeholder participation in their governance as a means to engage stakeholders and stakeholder representatives who have valuable resources and expertise, which are beneficial to the enterprise.¹⁷ In the management and governance research domain, building, maintaining and nurturing ties with different groups of stakeholders, as well as managing their conflicting needs, demands, and expectations in order to maintain legitimacy and access to resources, is the essence of stakeholder engagement and management.¹⁸ In other words, stakeholder management is the process of combining and balancing different interests from multiple

13 Ebrahim et al. (n 10) 93-94.

14 Doherty et al. (n 5); P.A. Dacin, M.T. Dacin and M. Matear, 'Social Entrepreneurship: Why We Don't Need a New Theory and How We Move Forward From Here' [2010] 24(3) *Academy of Management Perspectives*, 37; J. Mair and I. Marti, 'Social Entrepreneurship Research: a Source of Explanation, Prediction, and Delight' [2006] 41(1) *Journal of World Business*, 36-44.

15 Austin et al. 2006a (n 3).

16 Doherty et al. (n 5); Mair and Marti (n 14); R. Dart, 'The Legitimacy of Social Enterprise' [2004] 14(4) *Nonprofit Management and Leadership*, 411.

17 H. Di Domenico, H. Haugh and P. Tracey, 'Social Bricolage: Theorizing Social Value Creation in Social Enterprise' [2010] 34(4) *Entrepreneurship Theory and Practice*, 681-703; Austin et al. 2006a (n 3); J. Larner and C. Mason, 'Beyond Box-ticking: a Study of Stakeholder Involvement in Social Enterprise Governance' [2014] 14(2) *Corporate Governance*, 181; A. Argyrou et al., 'An Empirical Investigation of Supportive Legal Frameworks for Social Enterprises in Belgium: A Cross-sectoral Comparison of Case Studies for Social Enterprises from the Social Housing, Finance and Energy Sector Perspective' in V. Mauerhofer (ed), *Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues* (Springer 2016) 151-185 [Argyrou et al. 2006b].

18 Doherty et al. (n 5); B. Huybrechts, S. Mertens and J. Rijpens, 'Explaining Stakeholder Involvement in Social Enterprise Governance Through Resources and Legitimacy' in J. Defourny, L. Hulgård and V. Pestoff (eds), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective* (Routledge 2014).

stakeholders in the management and administration of the social enterprise and thus in decision-making and governance.¹⁹ It entails: (i) the identification of stakeholders; (ii) the understanding of their expectations, aspirations, resources, perceptions, and attitudes toward the organisation and its activities; and finally (iii) their engagement in the pursuit of the organisation's social purpose, while simultaneously meeting their needs.²⁰

From a corporate governance perspective, various studies seek to identify the most appropriate theoretical foundation for the governance model of social enterprises, i.e. a democratic model, a stakeholder model, a stewardship-partnership model etc.²¹ They do so to identify a governance foundation, which can address all the governance issues and challenges that occur due to social enterprises' hybridity and complexity in structures, processes and environments.²²

In social enterprises without share capital, such as - for example - foundations and charities, literature notes that various types of stakeholder groups (but not shareholders) may have legitimate tangible or intangible stakes in the organisation. It is then common, in these types of organisations that stakeholders are often democratically represented in the decision-making processes of the organisation.²³ The democratic representation of stakeholders is also common phenomenon in cooperative organisations.²⁴ Such stakeholder groups may be members, beneficiaries, clients, and financiers, for example. The involvement of various stakeholders and stakeholder representatives in the decision-making processes of social enterprises results in different perspectives being applied in decisions. It also safeguards a balance between the different interests of the different stakeholder types at the board level.²⁵

19 Doherty et al. (n 5); C. Borzaga and L. Solari, 'Management Challenges for Social Enterprises' in C. Borzaga and J. Defourny (eds), *The Emergence of Social Enterprise* (Routledge 2001).

20 Austin et al. 2006a (n 3).

21 C. Low, 'A Framework for the Governance of Social Enterprises' [2006] 33(5/6) *International Journal of Social Economics*, 376-385; Mason et al. (n 10); C. Conforth, 'Introduction: The Changing Context of Governance—Emerging Issues and Paradoxes' in C. Conforth (ed), *The Governance of Public and Non-profit Organizations* (Routledge 2003).

22 Low (n 21); Mason et al. (n 10); Larner and Mason (n 17); C. Mason and B. Doherty, 'A Fair Trade-off? Paradoxes in the Governance of Fair-trade Social Enterprises' [2016] 136(3) *Journal of Business Ethics*, 451-469.

23 R. Spear, C. Cornforth and M. Aiken, 'The Governance Challenges of Social Enterprises: Evidence from a UK Empirical Study' [2009] 80(2) *Annals of Public and Cooperative Economics*, 247-273.

24 A. Argyrou, T. Lambooy, R.J. Blomme and H. Kievit, 'Unravelling the Participation of Stakeholders in the Governance Models of Social Enterprises in Greece' [2017] 17(4) *Corporate Governance: The international journal of business in society*, 661-677 [Argyrou et al. 2017]. 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*, 491-511 [Argyrou et al. 2016a].

25 *ibid.*

Literature also considers emergent and contemporary types of social enterprises, which belong to the tailor-made legal forms for social enterprises. Such legal forms are designed either with or without share capital.²⁶ The involvement of stakeholders in the decision-making processes of this type of social enterprise may result in the legitimate participation of stakeholders on the basis of ownership of shares and membership.²⁷ As such, several types of stakeholders that belong to the external environment of social enterprises are therefore ‘internalised’ into the decision-making processes as members, co-owners of shares, and decision-makers of the social enterprise.²⁸ Such a process results in the development of a more sophisticated participation strategy that it may be perceived by society as more accountable and legitimate.²⁹

Stakeholder participation and involvement in the governance of social enterprises based on empirical evidence can be achieved through various stakeholder participation mechanisms. Such mechanisms provide to stakeholders access to various formal/informal, direct/indirect, and regular/ad hoc means of involvement through: (i) ownership of shares and membership; (ii) the governing bodies, i.e. the board of directors; (iii) voting, consultation processes, monitoring and evaluation processes (membership, advisory groups etc.); (iv) direct participation or indirect representation in the decision-making processes of annual meetings; (v) stakeholder feedback mechanisms; (vi) complaint and response mechanisms; and finally (vii) social media platforms.³⁰ Accordingly, these stakeholder mechanisms may be: (i) formal or informal, by having a binding legal basis in legislation or in the constitutional documents of the social enterprises, i.e. their AoA and SoA for instance; (ii) direct or indirect, by allowing or not allowing stakeholders to physically participate in the decision-making processes of social enterprises, or through representation; and (iii) regular/ad hoc, by taking place on a routine basis or otherwise.³¹

The possibility of participation of stakeholders formally (through voting) in the decision-making processes of social enterprises was addressed in an empirical quantitative research carried out by Campi et al., who examined stakeholder participation in work integration social enterprises (hereafter ‘WISE’) from multiple jurisdictions.³² In this

26 *ibid.*

27 *ibid.*; see also Argyrou et al. 2016b (n 17).

28 *ibid.*

29 *ibid.* See also Lambooy and A. Argyrou, ‘Improving the Legal Environment for Social Entrepreneurship in Europe’ [2014] 11(2) *European Company Law*, 71-76; Colenbrander et al. ‘Inclusive Governance in Social Enterprises in the Netherlands - A Case Study’ [2017] 88(4) *Annals of Public and Cooperative Economics*, 543-566; Larner and Mason (n 17); Mason et al. (n 10).

30 Argyrou et al. 2016a, 2017 (n 24); Argyrou et al. 2016b (n 17); Colenbrander et al. 2017 (n 29); Larner and Mason (n 17); Ebrahim et al. (n 10).

31 Argyrou et al. 2016a, 2017 (n 24); Argyrou et al. 2016b (n 17); Colenbrander et al. (n 29).

32 S. Campi, J. Defourny and O. Grégoire, ‘Work Integration Social Enterprises: Are they Multiple-goal and Multi-stakeholder Organizations?’ in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006).

study, the authors hypothesised that stakeholder participation in the governance of WISE is however characterised by a high level of informality.³³

Qualitative case studies elaborate on the implementation of the element of participatory governance in countries where the national legal framework offers a legal form tailor-made to social enterprises.³⁴ These studies demonstrate how the roles and the legal rights of various stakeholders work in practice. However, they indicate that the formal stakeholder participation in the governance and functioning of social enterprises, which is prescribed in legal provisions of tailor-made legal frameworks for social enterprises may not be always fully implemented in practice.³⁵ On the contrary, there are informal mechanisms, which are developed to a great extent by social enterprises to facilitate stakeholder participation.³⁶ These organisational processes are developed to enhance the social enterprises' accountability and legitimacy towards stakeholders. They are also developed to facilitate the maintenance of the social objectives of the social enterprises and they are embedded in the social enterprises' organisational functioning and governance structure to extend the contribution of stakeholders in the social enterprises' decision-making processes.³⁷

In countries where the national legal framework does not provide for legislation which is tailor-made to social enterprises, such as in the Netherlands, for instance, there are no tailor-made legal forms to safeguard stakeholder participation in the governance and decision-making processes of Dutch social enterprises.³⁸ Neither stakeholders can acquire certain roles in the social enterprises' decision-making processes in pursuance of the social purpose. Accordingly, the objective of this article is to explore the perceived level and extent of stakeholder participation in the governance of Dutch social enterprises, which do not employ a specific tailor-made legal form.

4.2. The Nyenrode - PwC Social Enterprise Survey of 2016

The study presented in this article constitutes only a part of a larger study, i.e. the Nyenrode - PwC Social Enterprise Study conducted in 2016 by a research team that comprised a group of academic scholars and experienced practitioners in the Netherlands.³⁹ The research group devised a partnership to implement an exploratory

33 *ibid.*

34 Argyrou et al. 2016a, 2017 (n 24); Argyrou et al. 2016b (n 17); Colenbrander et al. (n 29).

35 *ibid.*

36 *ibid.*

37 *ibid.*; Ebrahim et al. (n 10).

38 A. Argyrou, P.A. Anthoni and T. Lambooy, 'Legal Forms for Social Enterprises in the Dutch Legal Framework: An Empirical Analysis of Social Entrepreneurs' Attitudes on the Needs of Social Enterprises in the Netherlands' [2017] 12(3) *International and Comparative Corporate Law Journal*, 1-46.

39 The research group comprised academic scholars from Nyenrode Business University as well as business professionals from PwC NL. Other than me, academic scholars from Nyenrode Business

research design, i.e. the Nyenrode - PwC Social Enterprise Survey of 2016 (hereafter ‘the Survey’) with the objective to produce knowledge that will advance the social enterprise sector in the Netherlands. The exploratory research sought to identify whether a link exists between the success of Dutch social enterprises and stakeholder involvement in Dutch social enterprises.⁴⁰ This article discusses only part of the findings of the larger research project, which concern in particular stakeholder participation in the governance of Dutch social enterprises. These findings are illustrative and exploratory. They encourage a more in-depth and qualitative study concerning stakeholder participation in the governance of Dutch social enterprises, which do not employ tailor-made legal forms.

4.3. Methodology

4.3.1. The development of the survey sample

The Survey examined a population of Dutch social enterprises understood as such following the Commission’s definition for a social enterprise in the SBI Communication of 2011.⁴¹ In addition, the examined population of Dutch social enterprises was selected on the basis of certain criteria, which regarded: (i) if the selected social enterprise is a member of the Social Enterprises NL platform organisation; (ii) if the level of maturity of the selected social enterprise exceeds the three years of existence; (iii) if the social enterprise has the intention of pursuing a social impact and using the profit to achieve a social objective (even if the social enterprise is not making a profit yet); and finally (iv) if the social enterprise is financially independent from the government. As such, the Survey did not examine: (i) social enterprises that satisfy definitions for the social enterprise other than the Commission’s definition in the SBI Communication of 2011; (ii) non-existing social enterprises hampered by various barriers or organisations looking to transition into becoming social enterprises; and (iii) young start-ups.⁴²

In the Survey, the application of the social enterprise definition and the use of the foregoing selection criteria resulted in a survey sample of 390 Dutch social enterprises

University were Prof. dr. Tineke Lambooy, Prof. dr. Rob Blomme, dr. Henk Kievit, Ms. Monique de Ritter. The business professionals from PwC NL involved in the research project were Mrs. Sandra Hazenberg, Mrs. Priscilla de Graef, Mr. Daan Stroosnier, Mr. Berend Alberts, Ms. Inge Tanke, Ms. Mila Harmelink.

- 40 PwC Report 2016; PwC NL, ‘Successful Social Enterprises Navigate the Complexity of Collaboration’ (Amsterdam 2016) [PwC Report 2016] available at: <www.pwc.nl/nl/publicaties/successful-social-enterprises-navigate-the-complexity-of-collabo.html> accessed 30 April 2017.
- 41 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. P.H. Rossi, J.D. Wright and A.B. Anderson, *Handbook of Survey Research* (Academic Press 1983) 150-153.
- 42 Rossi et al. (n 41) 156-157.

Table 4.1: The characteristics of the Nyenrode - PwC Social Enterprise Survey of 2016⁴³

Characteristics	Nyenrode - PwC Social Enterprise Survey of 2016
Geographic spread	Several locations combined in the Netherlands
Sample limitations	Some limitations were applied based on the social enterprise definition provided in the SBI Communication of 2011. The selection criteria regarded the participation at the platform organisation Social Enterprise NL and the maturity of the organisation. The survey sample comprised only existing social enterprises in the Netherlands which means that non-existing or in transition social enterprises were not examined.
Sample size	390 social enterprises were invited to respond to the electronic questionnaire
Sample execution	Cooperation (response) rate 13.33%, i.e. 52 social enterprises responded to the questionnaire, which is a low response rate but it is sufficient to satisfy the exploratory purpose of the study

that were invited to respond to the survey questions. The respondents completed the survey electronically following an (online) email invitation. Of the 390 invited Dutch social enterprises, only 13.33% responded to the survey. This meant only 52 social enterprises successfully completed the survey questions. Obviously, 13.33% was a considerably low response rate that could not be used for providing survey results that are generalisable or representative of the entire social enterprise population in the Netherlands. However, the responses of 52 Dutch social enterprises were sufficient to provide background insightful information, which can be used for exploratory purposes in the research concerning stakeholder participation in the governance of social enterprises that do not employ a tailor-made legal form.

4.3.2. The content of the survey questions

It was mentioned above that the examination of the topic of stakeholder participation in the governance of Dutch social enterprises constituted only a small part of the broader Survey, which was designed to examine and identify a probable correlation between the engagement and participation of stakeholders in Dutch social enterprise with their success. Accordingly, the Survey comprised several sections with questions other than those related only to stakeholder participation in the governance of the examined Dutch social enterprises. An example is the introductory section of the Survey, which asked for general and demographic information concerning the respondents and the examined social enterprise, e.g. the name of the respondent, the position and the working experience of the respondent, the name of the social enterprise, the location of the social enterprise, the size of the social enterprise, etc. The collected information

43 *ibid* 155.

from these parts of the questionnaire will only be used arbitrarily in this article to clarify the elements of analysis.

A special section of questions in the Survey, entitled ‘Inclusive Governance’, corresponded directly to the issue of stakeholder participation in the governance of Dutch social enterprises. In particular, it examined: (i) the perceived level of participation and involvement of various stakeholder categories in the decision-making processes of social enterprises; (ii) the perceived extent of various kinds of input (i.e. formal/informal, direct/indirect, and regular/ad hoc) collected and embedded in the decision-making processes of Dutch social enterprises from different categories of stakeholders; and (iii) the perceived level of transparency of social enterprises towards different stakeholder groups and regarding decisions that were made (see Annex II).

The questionnaire comprised five Likert scale questions (closed questions). In the Likert scale, 1 corresponded to the response ‘not at all’ and 5 corresponded to the response ‘a lot’, whereas 6 corresponded to the response ‘the stakeholder group is not consulted for decision-making’. It also included an open space after each question for a digression/explanation by the respondent. The open space was used to mitigate any unintended bias imposed to the responses of the survey participants. The social enterprises were asked the following five Likert scale questions:

- (i) Question 1: To what extent is input from different stakeholder groups used in decision-making processes?
- (ii) Question 2: To what extent is the organisation transparent and honest towards different stakeholder groups about the content and outcome of decisions?
- (iii) Question 3: To what extent the collected input from stakeholders is formal or informal?
- (iv) Question 4: To what extent the collected input is gathered on a regular basis, or it is ad hoc?
- (v) Question 5: To what extent the input is collected directly, or it is collected in an indirect way?

For the purpose of the special ‘Inclusive Governance’ questionnaire, definitions were provided regarding the terms ‘stakeholders’, ‘stakeholder engagement’, and ‘formal/informal’, ‘direct/indirect’ and ‘regular/ad hoc’ input. Those included:

- (i) stakeholders: anyone (individual or organisation) impacted by, or impacting, the organisation;
- (ii) formal input: input requirement, which has a basis in legislation or in a social enterprise’s constitutional documents of the social enterprise or input solicited in an informal manner.
- (iii) direct input: input solicited directly from the stakeholder when the stakeholder is physically present and directly contacted, or input solicited indirectly through representation and/or intermediaries; and

- (iv) regular input: input solicited at regular intervals or concerning predefined topics or at ad hoc intervals, when input is solicited whenever an issue emerges.

In Question 1, the respondents from the participating social enterprises were first asked to identify their stakeholders from a list of stakeholder groups offered in the Survey. Subsequently, they were requested to provide responses to Questions 2-5 addressing and considering each of those stakeholder groups. The various groups of stakeholders provided in the Survey, were determined using the ‘ecosystems approach’, which displayed the full extent of the complex environment of social enterprises and their interacting relationship with various stakeholders.⁴⁴

In addition, it needs to be clarified that literature on the matter was also consulted to define each of those stakeholder groups and to resolve issues in relation to overlapping categories of stakeholder groups in the respondents’ minds.⁴⁵ An example is the categories ‘clients’ and ‘beneficiaries’ of social enterprises, which cannot be easily distinguished in the social enterprise practice.⁴⁶ In the Survey the category ‘beneficiaries’ was defined similarly with the category ‘client’.⁴⁷ However, the literature on the matter clarifies that the paying customers (clients) may not be the ultimate beneficiaries of the services and products provided by social enterprises and/or in some other cases the ultimate beneficiaries may not even interact with the social enterprise at all.⁴⁸ An indicative example is the Dutch social enterprise Taxi Electric, which serves for the most part and directly paying clients but it benefits ultimately the environment, the health of many citizens and the long-term unemployed individuals in Amsterdam.⁴⁹ Accordingly, the Survey considered and employed additional stakeholder groups, i.e. high end-beneficiaries of the examined social enterprise, e.g. ‘the community’ and the ‘society’ (see Table 4.2).

4.3.3. The analysis of the collected data

The collected data from the five questions comprised numerical data collected by the Likert scale questions. Those were analysed using descriptive statistics, i.e. an analysis of the basic features of the provided numerical responses by way of using the ‘mode’ function. In the Likert scale data analysis, the mode function within Microsoft Excel was used. The mode function indicated the most frequent response per stakeholder

44 P.N. Bloom and J.G. Dees, ‘Cultivate Your Ecosystem’ (2008) 6(1) *Stanford Social Innovation Review*, 49-50.

45 F. Santos, A.C. Pache and C. Birkholz, ‘Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises’ [2015] 57(3) *California Management Review*, 36-58; M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006) 29-49.

46 *ibid.*

47 Bloom and Dees (n 44).

48 *ibid.*

49 Taxi Electric, ‘Home page’ available at: <www.taxielectric.nl/> accessed 15 June 2017.

Table 4.2: Stakeholder groups in the ecosystem of social enterprises⁵⁰

Customers, clients, beneficiaries (CUM)	These are the stakeholders that the organisation provides value for - who the organisation targets with its products/services.
Co-creators or strategic alliance partners (STR)	These are the stakeholders that play a crucial part in the business model - without these stakeholders, there is no product/service.
Employees (EMP)	The workforce, including their representation, e.g. in a labour union, or internal committee.
Suppliers and resource providers (SUP)	Providers of resources (financial, human, knowledge, networking, and technological resources), and any brokers or intermediaries that channel these resources.
Competitors (COM)	Organisations that compete for customers or resources.
Opposing interest groups (OPP)	Stakeholders that oppose the organisation's goals, or contribute to the problems that the social entrepreneur is addressing.
Affected or influential bystanders (AFF)	Stakeholders who have no direct impact, but who are affected by the organisation's activities or who could influence their success.
Shareholders and investors (SHR)	Owners of the organisation who usually have little involvement in the day-to-day business of the organisation (in their role of shareholder).
Networking organisations and platforms (NET)	Organisations that bring together individuals and organisations that share common goals or interests, such as industry networks, regional networks (e.g. chamber of commerce) or labour market networks.
NGO's and civil society (NGO)	Not-for-profit organisations or associations aimed at a specific societal goal.
Government (GOV)	The government (on different levels), as an organisational entity, and individual lawmakers and civil servants.
Community and society (COMM)	The broader community in which the organisation operates and addresses with its services, e.g. the city or country where the activities are performed.

group (see Table 4.3). Table 4.3 shows that for Question 1, if the most frequent response (Mode) is lesser than 3 points ($r < 3$), then the input from stakeholders is not used in the decision-making process. A response, which is equivalent to 3 points ($r = 3$) represents a neutral response. On the contrary, if the most frequent response is greater than 3 points ($3 < r$) then the input from the stakeholders is used a lot in decision-making. Similarly, in Question 2, if the most frequent response (Mode) is lesser than 3 points ($r < 3$), then the social enterprise is not transparent with the stakeholder group in question. A response, which is equivalent to 3 points ($r = 3$), represents a neutral response, whereas if the most frequent response is greater than 3 points ($r > 3$) then the social enterprise is transparent with the stakeholder group in question.

⁵⁰ *ibid.*

The data analysis was also supported by a basic visualisation and portrayal of the collected data in tables, which allowed the coding and categorisation of all the digressions, thoughts and perceptions identified in the responses provided in the open space following the Likert scale questions. Using the coding and categorisation techniques, patterns and commonly occurring data-categories were identified in the responses. These were later organised in tables, which enumerated the frequency of each code encountered in the data.

4.4. Survey results and discussion

4.4.1. *The extent of input used from different stakeholder groups in the decision-making processes of the Dutch social enterprises*

The data revealed (Table 4.3) that input from different stakeholder groups is considered fairly in the decision-making processes of the participating Dutch social enterprises. The stakeholder input considered in the social enterprises' decision-making processes originates from the following key stakeholder groups, namely employees, co-creators and strategic alliance partners, shareholders, and customers (Chart 4.1 and Table 4.3).

The consideration of input from employees in the decision-making processes of Dutch social enterprises appears to be highly regarded. However, this consideration may come as a result of the Dutch Works Council Act of 1971, which requires the establishment and involvement in decision-making of works councils and/or employee representative bodies. Works councils and/or employee representative bodies are mandatorily established and their input is considered in organisations exceeding 50 employees. They are optionally established and considered in organisations employing 10-50 employees, whereas they are not applicable in organisations employing less than 10 employees.⁵¹ The latter organisations can establish and consider the input of staff meetings only on a voluntary basis. The latter organisations can also establish representative bodies - basically - on a voluntary basis.⁵² In absence of such a body, the employer has to meet twice a year with the employees for information and consultation on matters regarding the enterprise.⁵³

The social enterprise population in the Survey comprised: (i) organisations employing 10-50 employees (46.2%); (ii) organisations employing less than 10 employees (42.3%); and (iii) organisations employing more than 50 employees (11.5%). It appears then

51 Arts. 2(2) and 5(2) in Dutch Works Council Act of 1971 (Wet op de Ondernemingsraden 1971) and amendments. See also the information provided by the Dutch Government concerning the application of the Works Council Act of 1971 available at: <www.answersforbusiness.nl/regulation/works-council-staff-representation> accessed 30 April 2017.

52 See, however, art. 35(c)(2) of the Dutch Works Council Act of 1971 which prescribes that establishing a representative body is mandatory when it is required by the majority of the employees.

53 Art. 35(b) of the Dutch Works Council Act of 1971.

Table 4.3: Most frequent responses per stakeholder group

Research Questions	CUS	STR	EMP	SUP	COM	OPP	AFF	SHR	NET	NGO	GOV	COMM
Q1: Stakeholder input used in decision-making 1= not at all, 5= a lot, 6= stakeholder group is not consulted for decision-making	4	5	5	3	1	1	4	5	3	1	3	3
Q2: Transparency regarding decisions made with stakeholders 1= not at all, 5= a lot, 6= stakeholder group is not consulted for decision-making	4	5	5	3	6	6	6	5	4	6	6	6
Q3: Formalised/Informal input per stakeholder category 1= formalised, 5= informal, 6= stakeholder group is not consulted for decision-making	5	5	5	5	6	6	5	6	5	6	6	6
Q4: Regular/Ad hoc input per stakeholder category 1= regular, 5= ad hoc, 6= stakeholder group is not consulted for decision-making	5	5	5	5	6	6	6	6	5	6	6	6
Q5: Direct/Indirect (Representation) input per stakeholder category 1= direct, 5=indirect, 6= stakeholder group is not consulted for decision-making	1	1	1	1	6	6	6	6	6	6	6	6

that the majority of the examined social enterprises were not consequently obliged to comply with the requirements of the Dutch Works Council Act of 1971 concerning establishing and considering the input of works councils and/or employee representative bodies. As such, it seems that the highly regarded consideration of input from employees in the examined social enterprises may not be directly influenced largely by at least the mandatory provisions of the Dutch Works Council Act of 1971.

Additionally, social entrepreneurs in micro and small organisations often have overlapping roles as founders, directors and employees. Hypothetically, this should allow for a high rate of consideration of employee input in decision-making. However, this was not the case concerning the answers provided in this survey. Only 9% of the survey's respondents were employed by the corresponding social enterprise, whereas the majority of respondents, i.e. 73% consisted of social entrepreneurs who were either founders and/or directors and who were not employed by the represented social enterprise organisation.

The survey's findings acquired a clear meaning when considering international scholarship. It is noted in scholarship that employees and other human capital operating in social enterprises is attracted and motivated by the fulfilment of the social enterprises' objectives. Employees are motivated to the extent that they are satisfied by contributing to society and to the pursuit of the social purpose rather by pecuniary incentives and rewards.⁵⁴ From this perspective, scholarship notes that social entrepreneurs - while seeking to strike a balance in the pursuit of the social purpose through commercial activities - develop a social network that will provide them the most important (human) resources for their social enterprise's growth.⁵⁵ Consequently, employed staff and volunteers are regarded as one of the most important (human) resources for social enterprises. The staff's expertise in combination with the staff's alignment to the pursuit of a common social objective is what makes the employees of social enterprise indispensable parts of the social enterprises' growth and decision-making.

Other than the employees' input, the consideration of the input provided by co-creators and strategic partners in decision-making also has a rational explanation. Co-creation with strategic partners provides an advantage to social enterprises to acquire strategically access to scarce resources, while integrating target groups of, e.g. beneficiaries into the design, production and/or the distribution of a service or a product.⁵⁶ Both aspects promote the legitimacy and the sustainability of the social enterprise.⁵⁷ Furthermore, it is

54 Doherty et al. (n 5); Battilana and Dorado (n 6); Austin et al. 2006a (n 3); C. Borzaga and E. Tortia, 'Worker Motivations, Job Satisfaction, and Loyalty in Public and Nonprofit Social Services' [2006] 35(2) *Nonprofit and Voluntary Sector Quarterly*, 225-248.

55 Austin et al. 2006a (n 3).

56 S. Müller, 'Business Models in Social Entrepreneurship' in C.K. Volkmann, K.O. Tokarski and K. Ernst (eds), *Social Entrepreneurship and Social Business: An Introduction and Discussion with Case Studies* (Springer 2012) 105-131.

57 *ibid.*

also possible to explain why the input provided by shareholders and investors is so highly regarded in decision-making processes. A justification rests on the legal form applied by the majority of the examined social enterprises. The examined social enterprises were organisations with a share capital and which employ - most predominantly - the legal form of the BV. As was noted earlier, social enterprises strive to acquire and maintain resources through relational ties with stakeholders and through relational ties with shareholders. That is referred to as 'upward accountability' in contrast to 'downward accountability' of social enterprises to clients and beneficiaries.

The 'customers' stakeholder group is a key stakeholder group whose input is deemed important in the social enterprises' decision-making processes. The customers who may be or may not be the social enterprises' beneficiaries,⁵⁸ constitute the mainstream commercial source of capital and legitimacy for social enterprises.⁵⁹ The feedback of customers, where there is a strong relationship between the customers and the social enterprise, may leverage social enterprises to access more resources and capital.⁶⁰

The data also revealed that the decision-making processes of social enterprises do not contain any use of input from adversary groups, such as competitors and opposing interest groups (Chart 4.3). Interestingly, this is not what scholarship notes, i.e. that social enterprises may 'encourage or enable complementary or even competitor organisations to grow further the shared social mission, rather than to be primarily concerned about capturing greater market share for one's own organization'.⁶¹ Such an effect is not reflected in the responses of the survey's examined organisations.

For other types of stakeholder groups, such as suppliers, networks, the government and the community, the majority of the respondent social enterprises in the Survey had a neutral position regarding the input of these entities. That was also confirmed in the analysis of the responses that were received through open-ended answers, which revealed that the input considered in decision-making processes originates mainly from customers, employees, strategic partners, and shareholders (Table 4.4). The input of stakeholders is mainly collected in the form of oral consultation processes with stakeholders, meetings, complaint mechanisms, ratings, and feedback mechanisms (Table 4.4). The responding Dutch social enterprises 'give a voice' to various stakeholder groups, 'listen a lot' and pay 'much attention' to 'solicited' and 'unsolicited feedback' and 'different input' received by stakeholders to the extent that results in a 'co-creation' process in decision-making (Table 4.4).

58 Bloom and Dees (n 44).

59 Doherty et al. (n 5); Mair and Marti (n 14).

60 *ibid.*

61 Austin et al. 2006b (n 3) 8.

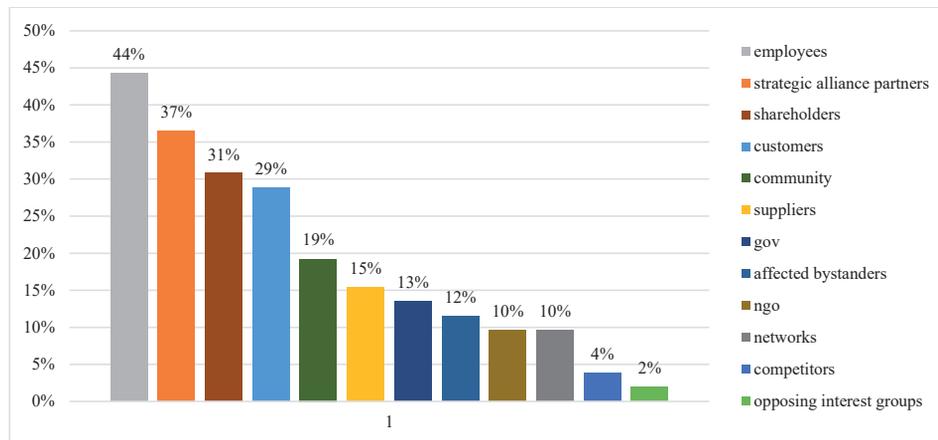


Chart 4.1: The perceived extent of input used 'a lot' in decision-making processes per stakeholder group.

Table 4.4: Codes in responses concerning perceived input from stakeholders

	Input from a certain stakeholder group	Frequency	Process to receive stakeholder input	Frequency
Codes	Customers	10	Input-voice	7
	Employees	7	Listen	4
	Strategic partners and co-creators	3	Feedback	2
			Complaints	1
	Shareholders	2	Meeting	1
	Suppliers	2	Contact	1
	Community	1	Attention	1
Co-creation			1	

4.4.2. The extent of transparency concerning the content and outcome of decisions

The Survey data revealed (Table 4.3) that the examined social enterprises are transparent regarding their decisions with the key stakeholder groups, such as employees, co-creators -strategic alliance partners, shareholders and customers. However, they are not transparent at all with the adversary categories of opposing interest groups and competitors. That was also confirmed by digressions provided in the open responses. Chart 4.2 shows the level of transparency per stakeholder group.

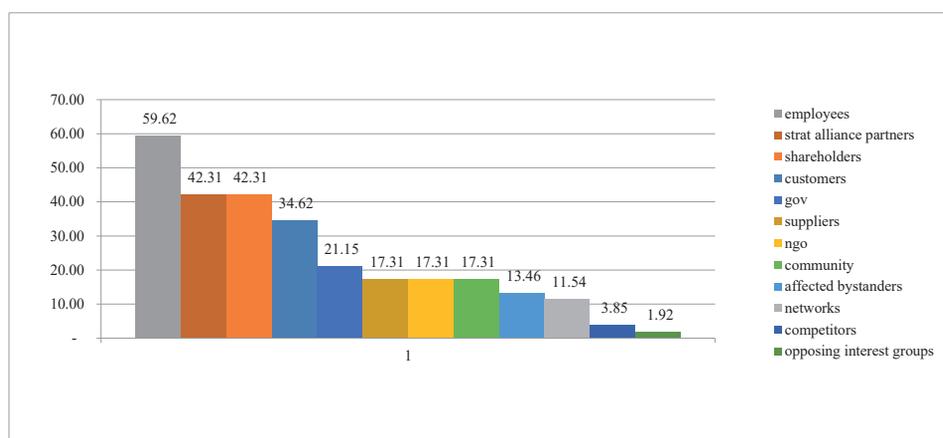


Chart 4.2: The perceived level of transparency per stakeholder group.

Transparency is important for the examined social enterprises and it materialises in various types and under certain limitations (Table 4.5). The examined Dutch social enterprises claim that they ‘are cautious’, ‘transparent’ and ‘open’ with ‘no secrets’ towards stakeholders, they feel ‘responsible’ and they ‘share’ feedback ‘honestly’ with them. Transparency will not be offered with regard to commercially sensitive information, e.g. concerning elements of the business model that might be interesting for competitors. A concerned respondent mentioned ‘We are very easy to copy so we cannot be very transparent in view of the risk of competition that can easily grow as information is transparent’ or the transparency is limited ‘to the extent of which the stakeholder is involved’ or ‘to those stakeholder groups that the social enterprise regards as important’. The perceived level of honesty and transparency is achieved through various means amongst others, i.e. blog posts, publicity, through website, publicity in writing through reports or email communication, open communication, after request or via immediate feedback schemes, social media, customer surveys, market analysis for customers and newsletters (Table 4.5).

4.4.3. The extent of formal, direct and regular collected input from stakeholders

4.4.3.1. Formal vs. informal

The Survey data (Charts 4.3 and 4.5) revealed that the input considered in the decision-making processes from different stakeholder groups is mainly informal rather than formal. Such finding is in accordance with similar empirical results identified in literature.⁶² The stakeholder input was found to be predominantly informal to the extent that it does not occur as having a basis in mandatory legal requirements nor is it imposed

⁶² Campi et al. (n 32).

Table 4.5: Codes in responses concerning perceived transparency and honesty towards stakeholders

Codes	Limitations to transparency	Freq	Type of transparency	Freq	Means	Freq	Stakeholder group	Freq
	Risk of copying	1	We share	6	Feedback	4	Customers	3
	Extent of stakeholder involvement	1	We give information	2	Report	2	Employee	2
	Need for transparency	1	We are open	3	Social media	3	Shareholder	1
	Outside the team	2	We say honestly	1	Website	4		
	No channel of communication	1	We show	1	Blog	1		
	If they ask	1	We are transparent	6	Oral consultation	1		
	Focus on mission rather transparency	1	We release details	1	Newsletter	1		
	Relevant parties	1			Information	2	Strategic partners and co-creators	1
	Important parties	1			Cooperation	1		
	Persons able to handle publicity	1			Communication	3	Community	1
			No secrets	1	Surveys	1		
			We are responsible and cautious	2	Presentations	1		

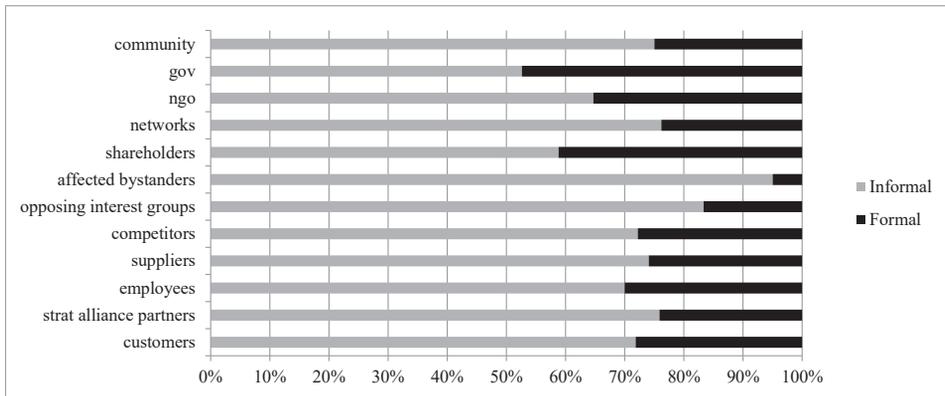


Chart 4.3: The extent of perceived formal/informal input per stakeholder group.

in the social enterprises' constitutional documents, such as the AoA and/or document of incorporation, memoranda and SoA, e.g. through membership requirements or provisions regarding the composition of the board (Chart 4.3). More formalised is the input and communication with the government and public organisations, which tend to rely on formal communication due to archival requirements and bureaucracy. The input collected by shareholders prescribed in the constitutional documents of a number of the participating social enterprises with share capital also tends to be more formalised. The foregoing findings are similarly reflected in the responses received by open-ended answers. The formal input materialises through the statutes of association and the like constitutional documents that may introduce new bodies, such as advisory groups and committees and formal shareholder meetings for the social enterprises with a share capital. The formal input also materialises through public policy, laws and regulations, which may impose regulated meetings and interactions (Table 4.6) between certain types of stakeholders and the social enterprises.

4.4.3.2. Ad hoc vs. regular

The input collected from various stakeholder groups is mainly ad hoc rather than regular (Chart 4.4). The data demonstrated that there is an impulse for social enterprises to receive feedback that is more regular and to communicate more often with groups of stakeholders that they consider frequently in their decision-making processes. Such stakeholder groups are - for instance - the employees who are integral parts of their organisational settings and their customers who are the addressees of their products and services and the mainstream resource of capital. A high rate of regularity is also observed in the feedback and communication with awareness raising and civil society organisations, such as NGOs, as well as with the government and shareholders. A similar finding was reflected in the open-ended answers received by the respondents

Table 4.6: *Continued*

	Stakeholder group with ad hoc input	Freq	Stakeholder group with regular input	Freq	Type of ad hoc input	Freq	Type of regular input	Freq
			Employees	1	Social media	1	Evaluation forms	1
							Advisory board meetings	1
							Funders meetings	1
							Customer satisfaction surveys	1
							Thematic afternoons	1
							Regional consultation	1
							Shareholder meetings	1
							Sharing input	1
	Stakeholder group with direct input		Stakeholder group with indirect input		Basis-type of direct input		Basis-type of indirect input	
Codes	Employees	2	Customers	1	Direct contact	1	At a distance	1
	Government	1	Co-creators	1	One by one	1	Single representative	1
	Customers	1			Direct influence	1	Use of intermediates	1
	Shareholders	1					Multiple representations	1

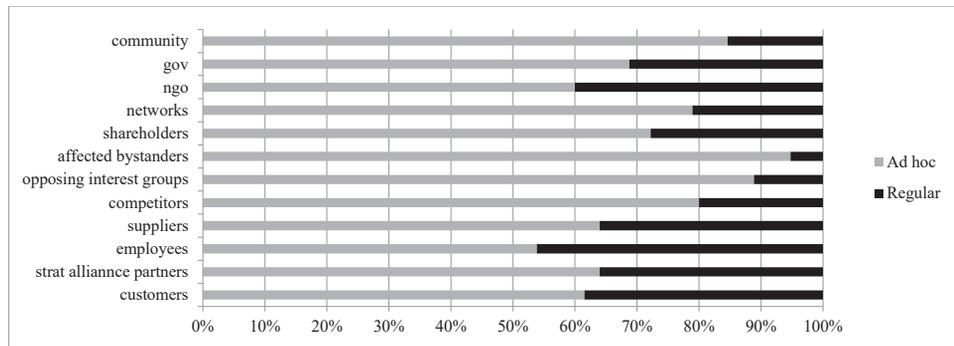


Chart 4.4: The extent of perceived regular/ad hoc input per stakeholder group.

who indicated the types of regular and ad hoc processes that they use to interact with their stakeholders, such as consultation processes, team meetings, targeted information interrogations, surveys, evaluation forms, meetings, thematic events, social media contacts, and conversation clubs (Table 4.6).

4.4.3.3. Direct vs. indirect

Finally, the input received by stakeholders is predominantly direct rather than indirect. The input is direct especially in respect to key stakeholders, including employees, strategic partners, customers, suppliers and shareholders, whose input social enterprises regard as the most important in decision-making processes (Chart 4.4). The input received by the government is also direct. Both findings are reflected in the open-ended answers of the participants (Table 4.6). However, the perceived level of direct input received by the community and the society is very low. Direct input is received through direct contact and direct influence on a one-by-one basis (Table 4.6). Indirect input is collected at a distance or using a single or multiple representatives and/or intermediaries (Table 4.6).

4.5. Conclusions

The research presented in this article was a limited part of a broader exploratory research initiative, which examined the correlation of stakeholder engagement in the governance of Dutch social enterprises with the success of the social enterprises. Regardless of the low response rate the survey illustrated insightful findings concerning stakeholder participation in the governance of Dutch social enterprises, which do not employ tailor-made legal forms. The research was limited to the examination of the organisations that fell within the scope of the selected definition for social enterprises. It means that the social enterprises that did not satisfy the selected definition for 'social enterprises' and/

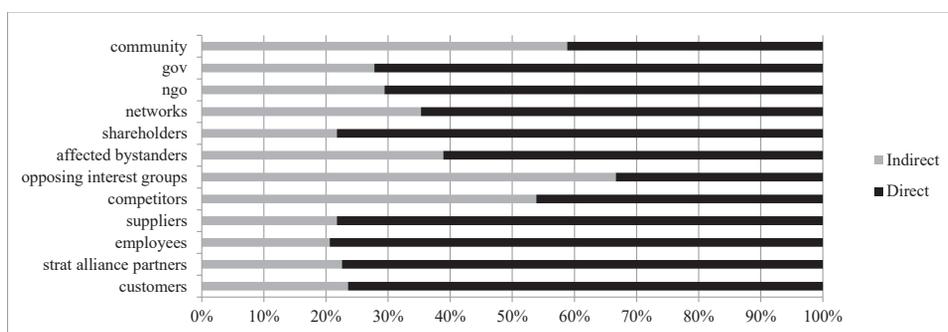


Chart 4.5: The extent of perceived direct/indirect input per stakeholder group.

or other organisations, such as non-existing social enterprises or enterprises, which are in a transition to become social enterprises, were not selected or included in the research sample. Accordingly, the research presented in this article encourages future research on the participation and involvement of stakeholders in social enterprises that did not satisfy the selected definition for 'social enterprises'. As such, other definitions for the concept of social enterprise could be considered, as could other non-existing social enterprises that are hampered by barriers (i.e. legal, market etc.), and/or enterprises which are in a transition to become social enterprises. Moreover, the research presented in this article is limited to the responses provided by respondents who are predominantly social entrepreneurs and/or directors and/or founders of the selected social enterprises. It means that in the context of this research the participation and involvement of stakeholders in the governance of Dutch social enterprises was examined on the basis of the preceptions of social entrepreneurs, directors and/or founders. However, literature⁶³ and the results of this research encourage scholars to conduct further in-depth qualitative research on stakeholder participation in the governance of Dutch social enterprises. The qualitative research should not only be conducted from the perspective of managers or social entrepreneurs. It should also examine in an in-depth manner the perceptions, motivations and drivers of stakeholders to participate in the governance of social enterprises, with the aim of developing a better understanding of the relationships between decision-makers and different stakeholder groups.

63 *ibid.*

Chapter 5

Summary, conclusions, and recommendations

5.1. Summary

This doctoral thesis provides a general understanding of the role of law in promoting stakeholder participation in social enterprises. The foregoing assignment is not only based on theoretical grounds; it is also based on empirically derived evidence in various examined jurisdictions. In addition, this doctoral thesis is a socio-legal research study which considers duly the limitations and methodological rules applied in empirical legal research. The content of this doctoral thesis is dependent on quality evaluation processes and validity assessments.

In Chapter 2, this doctoral thesis introduces and compares three tailor-made legal forms for social enterprises and their participatory governance structures, i.e. the VSO in Belgium, the Koinsep in Greece, and the CIC in the UK. Subsequently, it examines how the identified tailor-made national legal provisions concerning stakeholder participation are implemented in practice by nine social enterprises which employ the legal forms of the VSO, the Koinsep, and the CIC. The examination is accomplished by a comparison and a meta-synthesis of findings from nine qualitative case studies.

The doctoral thesis also extends the discussion concerning participatory governance structures in the Netherlands by discussing survey data collected from Dutch social enterprises regarding the participation and involvement of stakeholders in the governance of Dutch social enterprises.

5.2. General conclusions

This doctoral thesis provides an answer to the main research question by examining how the element of participatory governance in tailor-made legal forms, which is a key characteristic for social enterprises in domestic European jurisdictions, works in practice.

Initially, Chapter 2 demonstrates that scholarly attempts focus on the pursuit of a common definition for the social enterprise concept. However, in this doctoral thesis, the Commission's definition for the social enterprise is used as the basis of examining stakeholder participation in the governance of social enterprises. The Commission's definition outlines key characteristics of social enterprises in the EU, which are identified in the VSO, Koinsep, and the CIC legal forms, also including the key characteristic examined in this doctoral thesis, i.e. the participatory governance.

In Chapter 2, this doctoral thesis demonstrates that on the basis of the different understandings of the social enterprise, the majority of EU countries have developed national laws which are tailor-made to social enterprises. Due to varying understandings of social enterprises, the national laws are rather varied. Still, in essence, they provide for legal frameworks, i.e. tailor-made legal forms for social enterprises, that can be classified into three categories. These include: (i) the legal label/legal status; (ii) the cooperative legal form; and (iii) the company legal form.

Based on the above classification, Chapter 2 examines and compares three tailor-made legal forms for social enterprises which are examples of each one of the aforementioned categories, i.e. the legal forms of the VSO in Belgium, the Koinsep in Greece, and the CIC in the UK. In this way, Chapter 2 contributes to the scholarship which examines the introduction of the social enterprise concept into law.¹

The comparison in Chapter 2 indicates similarities and differences between the rules provided in the tailor-made legal forms. Similarities and differences are identified concerning the key characteristics of tailor-made legal forms. One of those is - amongst others - stakeholder participation in the governance of social enterprises prescribed, which is empirically examined in this doctoral thesis. In this way, Chapter 2 also contributes to comparative studies of tailor-made legal forms for social enterprises in the EU.²

5.2.1. Similarities in the key characteristic of participatory governance

The identified similarities in the key legal characteristic of participatory governance underscore the existence of a similar substantive core in the legal provisions of the compared legal forms for social enterprises. The identified substantive core is in line with the elements defining the participatory governance of the social enterprise provided in the Commission's definition.

At the similar substantive core of the legal nature of a social enterprise, there are certain participatory governance arrangements. Stakeholder participatory governance features in the roles and rights of various types of stakeholders in the decision-making processes. Although the various types of participation of stakeholders in the decision-

1 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) 25-86; A. Fici, 'Recognition and Legal Forms of Social Enterprise in Europe: A Critical Analysis from a Comparative Law Perspective' [2016] 27(5) *European Business Law Review*, 639-667; G. Galera C. Borzaga, 'Social Enterprise: An International Overview of its Conceptual Evolution and Legal Implementation' [2009] 5(3) *Social Entrepreneurship Journal*, 210-228. T. Lambooy, 'Leadership, Entrepreneurship and Stewardship in Corporate Law' (Inaugural Lecture of Prof. Tineke Lambooy, Nyenrode Business University, 21 September 2016) available at:

<www.nyenrode.nl/FacultyResearch/research/Documents/Inaugurallectures/Tineke_Lambooy_Inaugural_Lecture.pdf> accessed 30 April 2017. 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).

2 Cafaggi and Iamiceli (n 1); Galera and Borzaga (n 1); Fici (n 1); R.T. Esposito, 'The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation' [2013] 4(2) *William and Mary Business Law Review*, 639-714. 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*, 247-263.

making processes are constituted differently in the examined tailor-made legal forms, the legislatively prescribed participation commonly allows for the formal participation of stakeholders in these decision-making processes.

5.2.2. Differences in the key characteristic of participatory governance

The essence of participatory governance differs in the three examined tailor-made legal forms. Participatory governance is prescribed by the provision of multi-stakeholder ownership of shares and/or membership, which leads to multi-stakeholder governance, e.g. in the Greek Koinsep and the Belgian VSO. Alternatively, it is prescribed by the encouragement of consultation with various types of stakeholders alongside the company's decision-making processes, e.g. in the CIC. In addition, the rules regarding the correlation between ownership of shares and control and the exercise of voting rights (number of votes) by stakeholders also varies in the three examined tailor-made legal forms. In the Belgian VSO and the Greek Koinsep, where multi-stakeholder ownership of shares and multi-stakeholder governance is permitted, no strong correlation between the ownership of shares and the vote in decision-making processes was found in law. For instance, either the decision-making processes were based on equality and democratic decision-making with the application of the rule of 'one man, one vote' (e.g. in the Greek Koinsep), or they were subject to a voting cap, which eliminated the number of votes of the participants in the decision-making processes (e.g. in the Belgian VSO).

5.2.3. Stakeholder participation in practice

Chapter 3 examines and compares empirically the governance structures of the three tailor-made legal forms examined in Chapter 2, i.e. the Belgian VSO, the Greek Koinsep, and the CIC in the UK. It examines how the element of participatory governance is implemented in practice through nine qualitative case studies of social enterprises which employ these legal forms. In this way, Chapter 3 contributes to theory developed in organisational studies which examine the issue of stakeholder participation in social enterprises.³

3 S. Campi, J. Defourny and O. Grégoire, 'Work Integration Social Enterprises: Are they Multiple-goal and Multi-stakeholder Organizations?' in M. Nyssens (ed), *Social Enterprise: At the Crossroads of Market, Public Policies and Civil Society* (Routledge 2006). C. Conforth, 'Introduction: The Changing Context of Governance-Emerging Issues and Paradoxes' in C. Conforth (ed), *The Governance of Public and Non-profit Organizations* (Routledge 2003); C. Conforth, 'The Governance of Cooperatives and Mutual Associations: A Paradox Perspective' [2004] 75(1) *Annals of Public and Cooperative Economics*, 11-32. R. Spear, 'Governance in Democratic Member-Based Organisations' [2004] 75(1) *Annals of Public and Cooperative Economics*, 33-59; R. Spear and E. Bidet, 'Social Enterprise for Work Integration in 12 European Countries: A Descriptive Analysis' [2005] 76(2) *Annals of Public and Cooperative Economics*, 195-231; R. Spear, C. Cornforth and M. Aiken, 'The Governance Challenges of Social Enterprises: Evidence from a UK Empirical Study' [2009] 80(2) *Annals of Public and Cooperative Economics*, 247-273; R. Spear, C. Cornforth and M. Aiken, 'Major Perspectives on Governance of Social Enterprise' in J. Defourny, L. Hulgård, V.

5.2.3.1. The functioning of participatory governance

Chapter 3 concludes that participatory governance structures outlined in tailor-made legal forms can stimulate the participation of stakeholders in decision-making through certain rights that stakeholder can acquire. These are: (i) ownership of shares and membership rights; (ii) decision and voting rights; (iii) consultation rights; and/or (iv) rights to information. Additionally, such stakeholder rights entail the development of stakeholder participatory mechanisms which may be formal (secured by law or the constitutional documents of a social enterprise, i.e. formal participatory governance) or informal (introduced in the organisational functioning and practice of the social enterprise, i.e. informal participatory governance). They may also be direct (the stakeholder is physically present in the decision-making process, for instance, i.e. direct participatory governance) or indirect (the stakeholder is represented in the decision-making bodies through intermediaries, i.e. indirect participatory governance), and regular (at regular intervals or concerning predefined topics, i.e. regular participatory governance) or ad hoc (whenever an issue emerges, i.e. ad hoc participatory governance).

Chapter 3 also concludes that the examined tailor-made legal forms generally allow, or in certain instances only require (e.g. in *Case Study 3*), various types of stakeholders, i.e. employees to participate in the ownership of shares, membership, and eventually in the governance of social enterprises. In few occasions, the legal forms exclude the participation of certain types of stakeholders in the social enterprises' membership and governance (e.g. in *Case Studies 2, 3, and 6*). Such exclusion concerns different types of stakeholders in the examined case studies, e.g. certain legal persons, persons with mental disabilities, or employees.

5.2.3.2 The effect and the effectiveness of participatory governance

The empirical findings of the case studies in Chapter 3 indicate that the governance as prescribed by tailor-made law, i.e. the formal participatory governance, is not always fully implemented in its practice. The findings show that informal, direct but regular processes have been more frequently developed in the organisational governance and

Pestoff (eds), *Social Enterprise and the Third Sector: Changing European Landscapes in a Comparative Perspective* (Routledge 2014) 133-156; H. Spitzack and E.G. Hansen, 'Stakeholder Governance - How do Stakeholders Influence Corporate Decision-making?' [2010] 10(4) *Corporate Governance: The International Journal of Business in Society*, 378-391. H. Spitzack, E.G. Hansen, D. Grayson, 'Joint Management-Stakeholder Committees - A New Path to Stakeholder Governance?' [2011] 11(5) *Corporate Governance: The International Journal of Business in Society*, 560-568. C. Mason, J. Kirkbride and D. Bryde, 'From Stakeholders to Institutions: The Changing Face of Social Enterprise Governance Theory' [2007] 45(2) *Management Decision*, 284-301; A. Ebrahim, J. Battilana and J. Mair, 'The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations' [2014] 34(1) *Research in Organizational Behavior*, 81-100; J. Battilana and M. Lee, 'Advancing Research on Hybrid Organizing - Insights from the Study of Social Enterprises' [2014] 8(1) *Academy of Management Annals*, 397-441. S. Adam, 'Social Economy, Work Integration and Social Exclusion: The Experience of Koispe in Greece' (DPhil Thesis, University of Thrace 2012).

functioning of social enterprises to accommodate and solicit stakeholder feedback, advice, and consultancy in decision-making.

The empirical findings also lead me to conclude that the participatory governance structure of social enterprises does not always comprise a voting power for certain types of stakeholders, i.e. employees in the decision-making processes, that stakeholders can acquire through the exercise of voting rights. As such, the participation of stakeholders might be a symbolic one rather a real one. Neither is participatory governance structure always characterised by the 'internalisation' of certain types of stakeholders into membership and their active participation in various levels of decision-making processes.

At the board level, the empirical findings demonstrate that the boards of social enterprises are likely to exhibit various governance models in their structure, i.e. a stewardship model of governance, a democratic and representative model of governance, or a combination of both. Accordingly, the boards of social enterprises recruit members on the basis of expertise and skill, or on the basis of the representative status of the stakeholders, or a combination of both. Indeed, when the boards of social enterprises exhibit a stewardship model for social enterprises, they move away from inclusive representation at the board level, using managers and/or directors with a specific skill set that can more effectively manage the social enterprise. Consequently, the governance structures of social enterprises could indeed be divided into: (i) board structures that involve the self-selection of decision-makers; (ii) board structures that are associated with membership in organisations in which boards are directly elected by members; and (iii) board structures that combine both aspects, i.e. self-selecting governance and representation of membership.

At the general meeting level, the acquisition of stakeholder membership may materialise as a coercive necessity, due to the necessity of complying with the legal and institutional framework, or it may also materialise as an actual voluntary cooperation between the principal decision-makers and stakeholders based on their decision to involve stakeholders. In both cases, the formal multi-stakeholder character can be translated into actual participation of stakeholders in the governance of a social enterprise, depending on the decisions of the principal decision-makers and the motivations of individual stakeholders to actually participate.

The structure of participatory governance tends to depend on the autonomous decision of the principal decision-makers within legal frameworks that often permit, require, or exclude the involvement of one or more categories of stakeholder in the governance of social enterprises. The implementation of the formal participation of stakeholders in the governance of the examined social enterprises tends to be influenced by the decisions of the principal decision-makers. The principal decision-makers decide to develop governance structures which do not include stakeholders in the ownership and membership and thus in the governance of the social enterprises.

This finding is reflected in the majority of the case studies, i.e. *Case Studies 1-2, 5-6*, and in *Case Study 8*. In these case studies, the application of the formal participatory governance does not tend to be influenced by compliance to the tailor-made legal provisions, which allow/permit but do not require stakeholder participation. An exception is found in *Case Study 4*. In *Case Study 4*, although the tailor-made legal framework allows/permits but does not require the participation of one stakeholder type, i.e. the employees, formal participatory governance is fully applied in practice for various types of stakeholders in all the decision-making levels of the examined social enterprise. Additionally, in *Case Study 3*, the formal participation of a certain type of stakeholder is stipulated as a legal obligation/requirement, and it tends to be applied in practice in compliance with the law. In *Case Study 7*, although a formal participation of stakeholders in the membership of the organisation is applied, the participation of stakeholders in the governance remains inactive.

Other than the decisions of the principal decision-makers, the motivations of individual stakeholders to actually participate - by exercising their rights - are found to be crucial to the implementation of formal stakeholder participation. Both the decisions and the motivations of the principal decision-makers and stakeholders are influenced by: (i) the factor of trust between the principal decision-makers and stakeholders, but also the principal decision-makers' trust with respect to the legal and institutional environment and the stakeholders' trust concerning the growth and viability of the social enterprise; (ii) the level of maturity of the organisation, i.e. the 'youth' of the tailor-made legal forms for social enterprises, which are newly introduced legal forms; and (iii) behavioural factors related to the personal motivations and individual urges of stakeholders to participate, e.g. emotional engagement, personal responsibility, and level of commitment; (iv) several trade-offs and governance challenges that social enterprises encounter in their daily practice and operations. These are tensions and dilemmas encountered by the decision-making bodies of social enterprises due to their hybrid character, regardless of the tailor-made legal form. They result in compromises and the struggle of the social enterprises' decision-makers to achieve a balance between their social and commercial outcomes. For instance, it was shown that social enterprises should strive to achieve a balance in maintaining stakeholder membership and legitimacy while avoiding a mission drift if the control of the organisation were to change to include stakeholders with more commercially driven interests. These factors influence the governance structures of those of the examined social enterprises, which do not apply in full formal stakeholder participation.

Meanwhile, the development of various kinds of informal and direct stakeholder participation mechanisms demonstrates that the examined social enterprises tend to cooperate actually with stakeholders. The informal cooperation takes place on a regular basis by means of participatory stakeholder mechanisms, which are not provided for in law but which are internally developed in the social enterprises' organisational functioning to accommodate stakeholder feedback in decision-making. They comprise the broader

commonly occurring categories of the following types of participatory mechanisms: (i) written or oral communication (by email or through phone calls); (ii) participation in consultation meetings with decision-makers; (iii) technology interactions (newsletters, websites, social media); (iv) stakeholder thematic events; (v) stakeholder meetings; (vi) stakeholder committees; (vii) open governance processes for stakeholders who are non-members; (viii) satisfaction surveys; and (ix) consultation processes (often for technical matters).

5.2.3.3. Participatory governance in the Netherlands

In Chapter 4, the research is extended for illustrative purposes to the Netherlands, a country which does not provide for legal tailor-made participatory governance structures for social enterprises. Survey-based research on Dutch social enterprises demonstrates that the input from key stakeholder groups is considered fairly in the decision-making processes of the participating social enterprises. This input is also particularly informal, direct, and ad hoc, i.e. it does not have a regular or structural character. Informal cooperation takes place by means of commonly occurring types of participatory stakeholder mechanisms, such as: (i) stakeholder consultation processes; (ii) technology interactions (newsletters, websites, and social media); (iii) stakeholder thematic events; and (iv) evaluation forms and satisfaction surveys. However, these results are only exploratory and encourage scholars to conduct further in-depth qualitative research on stakeholder participation in the governance of Dutch social enterprises to examine in an in-depth manner the perceptions, motivations, and drivers of various types of stakeholders to participate in the governance of social enterprises.⁴ The findings from a qualitative study on stakeholder participation in the Dutch social enterprises may then be compared with the findings of the meta-synthesis developed in this doctoral thesis to unravel similarities and differences in the participatory governance of social enterprises which either employ or do not employ tailor-made legal forms.

5.3. Recommendations

In this sub-section, certain recommendations are provided according to the findings presented above. These recommendations address national and EU legislators as well as policy-makers.

It is recommended that a tailor-made legal framework for social enterprises in the EU could be further contemplated and could make use of the similar characteristics presented in Chapter 2 concerning stakeholder participation in the governance of social enterprises. The similarities and differences in the participatory governance exhibited in the VSO, Koinsep, and the CIC legal forms may also prove useful in refining and

⁴ See accordingly Colenbrander et al., 'Inclusive Governance in Social Enterprises in the Netherlands - A Case Study' [2017] 88(4) *Annals of Public and Cooperative Economics*, 543-566.

improving the Commission's operational definition which is applicable to social enterprises in the EU.

This doctoral thesis also recommends that more emphasis is given to developing a framework of legal provisions which facilitates stakeholder participation and which safeguards the maintenance of stakeholders' interests in decision-making processes. Such a legal framework should, however not be exclusively based on the provision of membership and ownership of shares or the provision of voting rights to stakeholders stipulated - for instance - as a classification (categories) of shares for several types of stakeholders. It should include the entire spectrum of options. These are: (i) ownership of shares and membership rights; (ii) decision and voting rights; (iii) consultation rights; and/or (iv) rights to information. All these rights can be provided to stakeholders. Accordingly, these rights might be developed as stakeholder participatory mechanisms, which are then formal, direct/indirect, and regular/ad hoc. Such a recommendation is also in line with other scholarly findings, which necessitates the consideration of 'a governance structure that (also) awards rights and powers to social enterprise beneficiaries who are not shareholders (or to their representatives), so that they might push managers to efficiently and effectively achieve the social mission of the organisation.'⁵

Adding to the aforementioned potential regulatory framework, several institutional factors that are worthy of consideration were identified in this doctoral thesis to affect stakeholder participation, i.e. trust, maturity of the organisation, the motivations of individual stakeholders, and the trade-offs and governance challenges that social enterprises often encounter. It is therefore recommended that those factors are considered as well. For instance, trust could be built if a certain level of accountability, transparency of information, communication, and scrutiny is preserved over the decision-making processes between the principal decision-makers of social enterprises and the stakeholders. Accordingly, tailor-made law could accommodate provisions which introduce legal obligations concerning the reporting to stakeholders and their access to company information. Concrete legal obligations will require social enterprises to indicate how stakeholder participation and engagement are achieved. Such obligations can be found in Regulation 26(1)(b) of the CIC Regulations of 2005 in the UK and in Article 661(6) of the Belgian Companies Code of 1999. Additionally, obligations relating to stakeholder consultation, communication, the establishment of an advisory process prior to decision-making, and scrutinising stakeholder mechanisms that follow-up decision-making could be also formalised in hard law. As such, future research could examine how the formal and informal participation of stakeholders in the governance of social enterprise from various jurisdictions contribute to issues of accountability and to the level of transparency of the decision-makers towards stakeholders.

It is also recommended that the maturity of the social enterprise should be considered in formalising the stakeholder governance of social enterprises stipulated in tailor-

5 Fici (n 1).

made law. This is especially the case for those social enterprises which employ tailor-made legal forms. These have recently been introduced into their legal systems. Such legal forms and corresponding organisations are predominantly young and growing. In particular, it should be considered that young and/or start-up social enterprises might have governance processes which are less organised and standardised, or which are in the process of being gradually organised and standardised. It may also be important for the legislator to consider that these young social enterprises may be more interested in sustaining and maintaining their business in the start-up phase rather than in emphasising the participatory character of their governance. To that end, the introduction of facilities for social enterprises in the start-up phase may enable the promotion of stakeholder participation in governance as well as the trust between decision-makers and stakeholders. Consequently, provisions could be introduced which strike a balance between the need for stakeholders to participate more actively in the decision-making processes of social enterprises and the dependency of social enterprises on adequate financial and other incentives. In this regard, future research can examine how formal stakeholder participation in the governance of social enterprises can become more effective and efficient.

Furthermore, it is recommended that the motivations of stakeholders should be considered when regulating and formalising stakeholder participation in tailor-made law for social enterprises. Academic studies should investigate and acknowledge such motivations in a more in-depth manner. To illustrate, this doctoral thesis encourages further research to examine the intention of stakeholders to participate in the governance of social enterprises and to develop a better understanding of the drivers of stakeholders to participate or to abstain from participation in the decision-making processes of social enterprises. A better understanding and further explanations are also needed concerning the relationship between certain stakeholder groups and principal decision-makers. For instance, certain stakeholder groups may be more (or less) inclined to participate in the decision-making of a social enterprise, depending on the extent of their stakes. Legislators of tailor-made law for social enterprises should consider the aforementioned relationships and distinguish stakeholder participation based on stakeholder groups.

Finally, the governance challenges and daily trade-offs of social enterprises should be considered, as they result in the struggle of the social enterprises' decision-makers to make appropriate decisions. For instance, transparency and accountability of social enterprises towards their stakeholders concerning decisions might be limited to competition challenges and to the greater trade-off which social enterprises often deal with and which relates to 'sacrificing social value creation for economic value capture'. Accordingly, the trade-offs and governance challenges of social enterprises should be further researched and considered by legislators and policy-makers of tailor-made law for social enterprises.

This sub-section demonstrated recommendations that the legislators and policy-makers should consider in accordance with the conclusions of this doctoral thesis. These issues

should be considered in national and EU legislation in the development of tailor-made social enterprise laws which promote stakeholder participation in the governance of social enterprises.

Abstract

Abstract (English)

This dissertation comprises a comparative socio-legal study of three tailor-made legal forms in Greece, Belgium and the UK that promote social enterprises, and contribute to their legitimisation and recognition. The research is extended to the Netherlands, which does not provide for a special legal form for social enterprises.

The first part of the dissertation includes a comparison of the tailor-made legal forms that structure a social enterprise in the three selected jurisdictions. The three legal forms entail: (i) the company type; (ii) the cooperative type; and (iii) the legal label. In the three jurisdictions, the legal forms adhere to a similar substantive core, i.e. they have similar key characteristics. One of them is stakeholder participation. All three examined legal forms commonly allow for the formal participation of stakeholders in the decision-making processes.

In the second part, it is explored to what extent participatory governance structures prescribed in tailor-made laws stimulate the participation of stakeholders in decision-making in practice. One finding is that they contribute to the pursuit and scrutiny of the social enterprise's social purpose. Three case studies per jurisdiction have been conducted to test the implementation of participatory governance structures in practice. The empirical evidence demonstrates that the formally prescribed participatory governance is not always fully implemented in practice. Instead, informal, direct but regular processes are more frequently developed in the governance of social enterprises.

Short description in Dutch

Dit proefschrift bestaat uit een rechtsvergelijkend en sociologisch onderzoek betreffende drie bijzondere rechtsvormen, die speciaal zijn ontworpen om social enterprises in Griekenland, België en het Verenigd Koninkrijk te ondersteunen, te legitimeren en herkenbaar te maken. Het onderzoek omvat tevens Nederland, welke jurisdictie geen speciale rechtsvorm kent voor social enterprises.

Eerst wordt een rechtsvergelijking uitgevoerd tussen drie rechtsvormen, die speciaal voor social enterprises zijn ontwikkeld in Griekenland, België en het Verenigd Koninkrijk, respectievelijk: (i) de coöperatieve vorm; (ii) een juridisch label en (iii) de vennootschapsvorm. Deze wetgeving reguleert de belangrijkste kenmerken van social enterprises. Een daarvan is dat belanghebbenden participeren in de besluitvorming van de sociale onderneming, omdat dat kan bijdragen aan het behalen van het maatschappelijke doel. De rechtsvergelijking laat zien dat de regels betreffende dit onderwerp in de kern met elkaar overeenkomen.

Daarnaast wordt in dit proefschrift onderzocht of de regels ten aanzien van de participatie van belanghebbenden in het besluitvormingsproces van de sociale onderneming daadwerkelijk van invloed is op de participatie van belanghebbenden in de praktijk. Dat

wordt onderzocht in drie case studies per jurisdictie. De resultaten van dit empirisch onderzoek laten zien dat de deelname aan de besluitvorming door stakeholders niet altijd volledig wordt geïmplementeerd in de praktijk, omdat voornamelijk informele, directe en standaard consultatieprocessen worden gebruikt in de governance van social enterprises.

Annex I

The following semi-structured questionnaires were developed to extract information concerning the participatory governance of the social enterprises examined in the case studies in Chapter 3. The questions were used as a starting point for an in-depth long discussion (average 1.5 hour per interview) regarding the participatory governance of the examined social enterprises.

Questionnaire 1: addressing a shareholder/member

General information concerning the interviewee

1. What is your name?
2. What is your position at the organisation?
3. What is your professional background?

General information concerning the organisations

4. Can you provide general information concerning the formation and the establishment of the organisation?
5. Why was the organisation formed?
6. Who are the founders? Please state their names, professional background and their current positions.
7. Can you provide general information concerning the organisation's number of employees and size?

Provision of goods and services

8. Can you describe the goods and services that the organisation provides?
9. How do the provided goods and services benefit society?
10. How do the provided goods and services benefit the realisation of the social purpose?

Social purpose

11. Can you describe the organisation's social purpose?
12. How is the organisation's social purpose achieved?

Governance, management and administration

13. How the organisation is managed? Does the organisation have any members? What factors determine the provision of membership to members?
14. How are decisions made at the general meeting level?
15. By which body is the organisation represented and governed?

16. Are stakeholders and third-parties included in the decision-making process? If yes how? If no why?
17. Do you involve the employees in the organisation's governance and decision-making? If yes how? If no why?

Accountability and responsibility

18. How are the members accountable to the other members and to third parties?
19. Are there any reporting requirements for the organisation? Financial, social or both?
20. How these requirements are realised in the organisation?

Financial incentives

21. How is the organisation financed?
22. How and where are the profits of the organisations invested?
23. Is the organisation's profit distributed to their members?

Employee and stakeholder participation

24. Are shares provided to employees?
25. What kinds of right are provided to the employees when acquiring the shares?
26. Can employees participate in the decision-making processes of the general meeting of members? (If yes please explain in detail the circumstances under which employee participation is allowed; if not please explain why.)
27. Are shares provided to other categories of stakeholders? To persons affected by the organisation's activities? To community?
28. Are stakeholders included anyhow in the decision-making process of the general meeting of members? (If yes, please explain in detail the circumstances under which stakeholder participation is allowed and how this takes place; if not please explain why.)
29. How does the voting rule [10% cap-rule/one man, one vote/one share one vote] with regard to the exercise of the voting rights work in practice?
30. Is the rule applied in every session of the general meeting of members?

Limitations in the acquisition of shares by employees

31. Are there limitations in the acquisition of shares by employees in the organisation?
32. Can employees who have not completed a working year in the organisation acquire shares?
33. Are they involved in the organisation's decision-making process?
34. Can employees whose employment agreement has been terminated maintain their shares?

35. If yes, under which terms?
36. If not, how can the membership be dissolved?
37. Are policies included concerning the participation of employees and stakeholders in decision-making in the articles of association of the organisation?

Questionnaire 2: addressing a board member

General information concerning the interviewee

1. What is your name?
2. What is your position at the organisation?
3. What is your professional background?

General information concerning the organisations

4. Can you provide general information concerning the formation and the establishment of the organisation?
5. Why was the organisation formed?
6. Who are the founders? Please state their names, professional background and their current positions.
7. Can you provide general information concerning the organisation's number of employees and size?

Provision of goods and services

8. Can you describe the goods and services that the organisation provides?
9. How do the provided goods and services benefit society?
10. How do the provided goods and services benefit the realisation of the social purpose?

Social purpose

11. Can you describe the organisation's social purpose?
12. How is the organisation's social purpose achieved?

Governance, management and administration

13. How the organisation is managed?
14. How are decisions made at the board level?
15. By whom is the organisation represented and governed? Please describe the composition of the board of directors.
16. Are stakeholders and third -parties included in the decision-making process? If yes how? If no why?

17. Do you involve the employees in the organisation's governance and decision-making?

Accountability and responsibility

18. How are the members accountable to the other members and to third parties?
 19. Are there any reporting requirements for the organisation?
 20. Are these requirements financial, social or both?
 21. How these requirements are realised in the organisation?

Financial incentives

22. How is the organisation financed?
 23. How and where are the profits of the organisations invested?
 24. Is the organisation's profit distributed to their members?

Employee and stakeholder participation

25. Are shares provided to employees?
 26. What kinds of rights are provided to the employees when acquiring the shares?
 27. Can employees participate in the decision-making processes of the board of directors? Can they be appointed as Board members or appoint a board member? (If yes please explain in detail the circumstances under which employee participation is allowed; if not please explain why.)
 28. Are shares provided to other categories of stakeholders? To persons affected by the organisation's activities? To community?
 29. Are stakeholders included anyhow in the decision-making process of the board? (If yes, please explain in detail the circumstances under which stakeholder participation is allowed and how this takes place; if not please explain why.)

Limitations in the acquisition of shares by employees (in Belgium)

30. Are there limitations in the acquisition of shares by employees in the organisation?
 31. Can employees who have not completed a working year in the organisation acquire shares?
 32. Are they involved in the organisation's decision-making process?
 33. Can employees whose employment agreement has been terminated maintain their shares?
 34. If yes, under which terms?
 35. If not, how can the membership be dissolved?
 36. Are policies included concerning the participation of employees and stakeholders in decision-making in the articles of association of the organisation?

Questionnaire 3: addressing an employee

General Information about the respondent

1. What is your name?
2. What is your position at the organisation?
3. Are you a full-time or part-time employee?
4. What is your professional background?

Employee participation and stakeholder involvement

5. Have you ever purchased shares from the organisation that you work for? If yes, why?/ If no, why not?
6. As a shareholder, can you participate in the decision-making processes of the organisation, i.e. in sessions at general meeting of members or at the board of directors?
7. If you do not have shares, have you ever participated or provided consultation in any decision-making process of the organisation? Under which circumstances? Please describe your role in the decision-making process.

Exercise of voting rights

8. Does the voting rule [10% cap rule/one man, one vote/one share one vote] apply to the exercise of your votes?
9. Does the rule apply in every decision-making process of the general meeting of members?

Social reporting

10. Have you ever been involved in the writing of the social report?
11. Do you have access to the organisation's information?

Limitations in the acquisition of shares by employees (in Belgium)

12. Are there any limitations for you in the acquisition of the shares?
13. Can employees who have not completed a working year in the organisation acquire shares?
14. Are you involved in the organisation's decision-making process?
15. Can employees whose employment agreement has been terminated maintain their shares and membership? If yes, in which terms? If not, how can the membership be dissolved?

Questionnaire 4: addressing a stakeholder

General Information about the respondent

1. What is your name?
2. What is your position at the organisation?
3. What is your professional background?

Employee participation and stakeholder involvement

4. Have you ever purchased shares of the organisation that you work for? If yes, why?/ If no, why not?
5. As a shareholder, can you participate in the decision-making processes of the organisation, i.e. in sessions at general meeting of members or at the board of directors?
6. If you do not have shares, have you ever participated or provided consultation in any decision-making process of the organisation? Under which circumstances? Please describe your role in the decision-making process.

Exercise of voting rights

7. Does the voting rule [10% cap rule/one man, one vote/one share one vote] apply to the exercise of your votes?
8. Does the rule apply in every decision-making process of the general meeting of members?

Social reporting

9. Have you ever been involved in the writing of the social report?
10. Do you have access to the organisation's information?

Table I: Case study numeric presentation of governance and employee structure

Case studies	Number at the time when research was conducted
GREECE	
KE (Koinsep Ekati)	Interviews conducted in 2013
Number of members of the general meeting	8
Number of members of the managing committee	3
Number of employees	5 (non-members)
Overlap employees, general meeting members, managing committee members	There was an overlap between members of the general meeting and members of the managing committee (three out of eight)
KMY (Koinsep Merimna Ygeias)	Interviews conducted in 2014
Number of members of the general meeting	8
Number of members of the managing committee	6
Number of employees	21 (non-members)
Overlap employees, general meeting members, managing committee members	There was an overlap between members of the general meeting and members of the managing committee (six out of eight). There was also an overlap between one member of the general meeting (i.e. the president) being also member of the managing committee and employee for some time only
KAE (Koispe Athena-Elpis)	Interviews conducted in 2014
Number of members of the general meeting	125 in total 60 Type A members 45 Type B members 20 Type C members
Number of members of the management board	7 in total 2 Type A members-representatives 5 Type B and C members-representatives
Number of members of the supervisory board	3 Type B and C members-representatives
Number of employees	35
Overlap employees, general meeting members, managing committee members	18 out of 35 employees are also Type A members of the general meeting, i.e. 18 out of 60 Type A members are also employees

Table I: *Continued*

Case studies	Number at the time when research was conducted
BELGIUM	
CORE(CVBA-SO)	
Number of members of the general meeting	Interviews conducted in 2014-2015 41 in total 4 Type A members 5 Type B members 32 Type C members
Number of members of the board of directors	14 in total 4 Type A members-representatives 3 Type B members-representatives 3 Type C members-representatives
Number of employees	12 students-‘employees’ (volunteers)
Overlap employees, general meeting members, managing committee members	12 out of 12 students-‘employees’ (volunteers) were Type C members.
Microstart (CVBA-SO) and Microstart (VZW)	
Number of members of the general meeting	Interviews conducted in 2014-2015 3 founding members
Number of members of the board of directors	7 Microstart (CVBA-SO) 6 Microstart (VZW)
Overlap employees, general meeting members, managing committee members	No overlap of members and employees
Volkshuisvesting (CVBA-SO)	
Number of members of the general meeting	Interviews conducted in 2014-2015 72 in total 23 members-shareholders from the public domain 49 members-shareholders from the private domain
Number of members of the management committee	7
Number of members of the board of directors	13
Number of employees	16
Overlap employees, general meeting members, managing committee members	No overlap of members and employees

Table I continues on next page

Table I: *Continued*

Case studies	Number at the time when research was conducted
UK	
Breadshare CIC	
Number of members of the general meeting	Interviews conducted in 2015-2016 Approximately 50 inactive members and at least 10 active were identified
Number of members of the board of directors	4
Number of employees	15
Overlap employees, general meeting members, managing committee members	board members and members of the general meeting overlap with employees
GTS Solutions CIC	
Number of members of the general meeting	Interviews conducted in 2015-2016 1 active shareholder and 1 inactive shareholder
Number of members of board of directors	3
Number of employees	25 full-time employees 14 part-time employees 100 employees with zero hour contracts
Overlap employees, general meeting members, managing committee members	No overlap of members and employees
Stratford PLCIC	
Number of members of the general meeting	Research conducted in 2017 1
Number of members of board of directors	3
Number of employees	3
Overlap employees, general members, managing committee members	Overlap between directors and employees

Annex II

The following survey questionnaire was built to extract information concerning the participatory governance of social enterprises in the Netherlands. The results are discussed in Chapter 4.

Section inclusive governance

31. To what extent is input from different stakeholder groups used in decision-making processes? Per stakeholder group, scale 1 to 5; 1 = not at all, 5 = a lot

1. Customers
2. Co-creators or Strategic Alliance Partners
3. Employees
4. Suppliers
5. Competitors
6. Opposing interest groups
7. Affected or influential bystanders
8. Shareholders
9. Networking organisations
10. NGO's
11. Government
12. Community

[comment text box] 'please describe in what way...'

32. To what extent is the organisation transparent and honest towards different stakeholder groups about the content and outcome of decisions? Per stakeholder group, scale 1 to 5, N/A; 1 = not at all, 5 = a lot, 6=N/A if the stakeholder group is not applicable

1. Customers
2. Co-creators or Strategic Alliance Partners
3. Employees
4. Suppliers
5. Competitors
6. Opposing interest groups
7. Affected or influential bystanders
8. Shareholders
9. Networking organisations
10. NGO's
11. Government
12. Community

[comment text box] 'please describe in what way...'

33. When gathering input from different stakeholder groups for decision-making; to what extent is input formalised (it has a basis in legislation or in a social enterprise's constitutional documents) or is the participation mechanism more informal? Per stakeholder group, scale 1 to 5, N/A; 1 = formalised, 5 = informal, 6=N/A if the stakeholder group is not consulted for decision-making

1. Customers
2. Co-creators or Strategic Alliance Partners
3. Employees
4. Suppliers
5. Competitors
6. Opposing interest groups
7. Affected or influential bystanders
8. Shareholders
9. Networking organisations
10. NGO's
11. Government
12. Community

[comment text box] 'please describe in what way...'

34. When gathering input from different stakeholder groups for decision-making; to what extent is input gathered on a regular basis, or is the participation mechanism more ad hoc? Per stakeholder group, scale 1 to 5, N/A; 1 = a regular basis, 5 = ad hoc, 6=N/A if the stakeholder group is not consulted for decision-making

1. Customers
2. Co-creators or Strategic Alliance Partners
3. Employees
4. Suppliers
5. Competitors
6. Opposing interest groups
7. Affected or influential bystanders
8. Shareholders
9. Networking organisations
10. NGO's
11. Government
12. Community

[comment text box] 'please describe in what way...'

35. When gathering input from different stakeholder groups for decision-making; to what extent do stakeholders participate directly, or is their input more indirect (e.g. through representation)? Per stakeholder group, scale 1 to 5, N/A; 1 = direct 5 = indirect, 6=N/A if the stakeholder group is not consulted for decision-making

1. Customers
2. Co-creators or Strategic Alliance Partners
3. Employees
4. Suppliers
5. Competitors
6. Opposing interest groups
7. Affected or influential bystanders
8. Shareholders
9. Networking organisations
10. NGO's
11. Government
12. Community

[comment text box] 'please describe in what way...'

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