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An Introduction to Tailor-Made Legislation for Social Enterprises in the EU: A Comparison of Legal Regimes in Belgium, Greece and the UK

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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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 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

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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, 32, 33-38; JA 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 Series No. 12/03, 3-4 <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, 210, 212; Defourny (n 1) 15; C Liao, 'Limits to Corporate Reform and Alternative Legal Structures' in B Sjåfjell 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; JG Dees, 'The meaning of "Social Entrepreneurship"' (Kauffman Foundation and Stanford University 1998) 1.

aim to provide 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]

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

4 Galera and Borzaga (n 2) 212, 215.

5 Defourny and Nyssens (n 1) 33-38.

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 <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.

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 applying a special tax regime.[13] A prime example is the United Kingdom (UK) that introduced a tailor-made corporate form for social enterprises known as the Community Interest Company (the CIC).[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 RT 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 & Mary Business Law Review 672-673. Synthesis Report (n 6) 52.

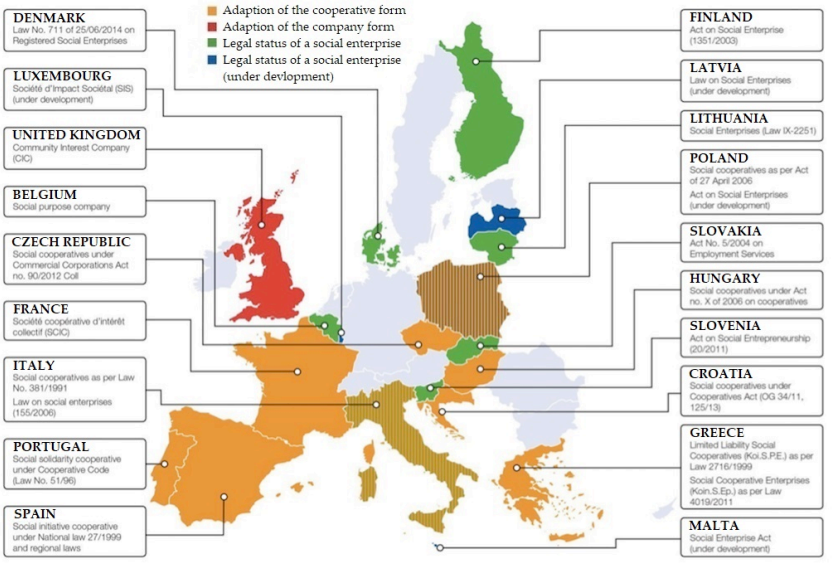
[13] Galera and Borzaga (n 2) 218-219; Haugh (n 2) 2-3; Synthesis Report (n 6) 49-50, 97.

[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 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 (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 <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

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 legal status for social enterprises) that all business organisations can adopt.[15]

In 2015, the European Commission (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 1).[16]

Figure 1. A map of special legal frameworks for social enterprises



B-Corp' <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 KJ Hopt and T von Hippel (eds) *Comparative Corporate Governance of Non-Profit Organizations* (Cambridge University Press 2010) 185-186.

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

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, 52, including the country reports of 29 countries. Figure 1 is retrieved from the Synthesis Report. It illustrates the different legal regimes applicable to social enterprises in the different countries in the EU.

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. The authors identified three prevalent sub-groups and corresponding legal forms for social enterprises. They include:

(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 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 (AoA) (see Section 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, for example). An indicative example is the *ΚοινωνικήΣυνεταιριστική 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 (plc) in the UK, i.e. the Community Interest Company (CIC).

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 by academics from the discipline of Economics, a social enterprise is a not-for-profit organisation

17 Synthesis Report (n 6) 51-52; Fici (n 2) 641.
18 Ibid at 57-58.
19 Ibid at 55-56.
20 Ibid at 56-57.

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 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:

> [F]all 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]

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21 Defourny and Nyssens (n 1) 40; Kerlin (n 1) 248-249; GA Lasprogata and MN 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.

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 Nysses (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 CK Volkmann, KO 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.

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* (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. 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 of social enterprises in various countries as well as divergences and commonalities in the normative frameworks in various countries.[30]

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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' <www.emes.net/what-we-do/?no_cache=1> accessed 24 September 2017.

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; AM Peredo and M McLean, '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. 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, 1 July 2009) <http://ssrn.com/abstract=1479653> accessed

In addition to country-specific studies, some comparative evaluations of the various legal frameworks have been carried out.[31] 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]

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); 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 <ecnl.org/dindocuments/442_ECNL%20UNDP%20Social%20Economy%20Report.pdf> accessed on 24 September 2017.

31 Cafaggi and Iamiceli (n 8). T Lambooy, 'Rapport Commissie Wijffels over rechtsvorm 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) <www.steunpuntwerk.be/node/2292> accessed 24 February 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 <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.

In its 2011 communication on the 'Social Business Initiative' (the SBI Communication 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.

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 enterprises. 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]

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[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." Commission, 'Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation [SBI Communication 2011]', COM (2011) 682 final 2-3.

[37] In the SBI Communication 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

Additionally, the Commission's definition was included in the European Regulation No. 346/2013 (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' (EuSEF), the new label given to investment funds of a social character. By means of the 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, 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]

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 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.

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.

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.

3. METHODOLOGY: LEGAL VARIABLES PERTINENT TO SOCIAL ENTERPRISES

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, the authors will analyse the rules present in the three selected legal systems in order to compare the legal frameworks regarding the concept of social enterprise. They 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.

3.2. The Background Studies

The authors started their research activities by conducting a preliminary and exploratory study in which they investigated tailor-made legal frameworks for social enterprises in an international context; this was done for the UK, Belgium, Greece, South Africa, Canada and the Netherlands.[44] In the preliminary study, the authors 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 Section 1, the emerging development of policy and legislation tailor-made to social enterprises was noted at both the EU and national level.

[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 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 February 2017.

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, the authors in a following study 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 *the current* ICCLJ 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 the authors' 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 1999 regarding the company with a social purpose;[47] the legal label/legal status type of social enterprises.

(ii) provisions in the Law on the Social Economy and Social Entrepreneurship 2011 (Social Entrepreneurship Law 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 enterprises[48] and

[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) <www.europarl.europa.eu/supporting-analyses> accessed 30 April 2017.

[47] Belgian Companies Code 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, '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 2011), Official Government Gazette No. 216/30.09.2011 and

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

The authors 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 the authors 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 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:

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 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 2011(23 August 2011) <www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#480f211f-6b17-41b4-b6b7-28840447511b> accessed 24 September 2017. The Social Entrepreneurship Law 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 AM Peredo 'Chapter 1 Critical Narratives of the Origins of the Community Interest Company' (2011) in R Hull, J Gibbon, O Branzei, H Haugh (eds) *The Third Sector* (Dialogues in Critical Management Studies, Volume 1) Emerald Group Publishing Limited; 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 in the Companies (Audit, Investigations and Community Enterprise) 2004 Act and the Community Interest Company Regulations 2005 (SI 2005/1788).

50 MM 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; EL Glaeser and A Shleifer, 'Legal Origins' (2002) The Quarterly Journal of Economics, 17(4), 1193-1229; DC 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.

(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.

3.3. Comparative Legal Methodology

In the study that follows, the authors will elaborate on their research question asking how certain legal systems in the EU have regulated key elements of the 'social enterprise' concept. Indeed, in Section 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, the authors seek to identify the legal provisions in the national legal systems (company and civil law) which regulate the 'social enterprise' concept. They, 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 the objective of the authors to describe merely the relevant legislation by setting out the relevant provisions side by side. On the contrary, the authors 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)* what success they had.[52] Whilst Cabrelli and Siems

[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

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, the authors 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, the authors aim to pinpoint and analyse similarities and differences in tailor-made legal provisions that cater for the legal key characteristics of social enterprises. They also discuss the elementary legal rules, which are necessary to support the legal forms and regulate such key characteristics.[55] Even

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 RR Kraakman, P Davies, H Hansmann, G Hertig, KJ Hopt, H Kanda, and EB 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 notable Greek scholar argues that the

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

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 states 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 the authors 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 Section 1.

Additionally, an important criterion that the authors 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

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 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 SA Kintis, *Law of Cooperatives: Introduction - General Part* (Sakkoulas Publishing, 2004).

[56] Nonetheless, they 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.

maturity in the legal system, i.e. introduced in a special law.[58] Hence, jurisdictions that are in the process of developing new legislation and legal forms for social enterprises were not selected for the comparative examination, as was the case for Latvia, Luxembourg, Malta and Poland (see Figure 1). Finally, the decisive criterion for the selection of the legal systems was the personal competences of the authors. In particular, the choice of legal systems to be compared was shaped by the authors' legal and linguistic knowledge and experience.[59] Their linguistic knowledge is limited to English, Greek and Dutch/Flemish and their legal knowledge and experience is mainly limited to Dutch law and Greek law. This means that the authors were able to appraise the legal provisions and literature regarding the legal systems of Belgium, Greece and the UK, effectively and with confidence.

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 provided by the Commission for social enterprises: *(i)* social purpose; *(ii)* governance; *(iii)* accountability/responsibility; and finally *(iv)* financial structure (see Section 1). The legal variables are explained in greater detail in the sections that follow. Additionally, the authors 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. The authors then compare the findings regarding the substance of these rules to chart the state of development of social enterprises in each national legal context.

4. THE SOCIAL PURPOSE IN THE BELGIAN, GREEK, AND UK SOCIAL ENTERPRISE LAW

This section 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 Section 1). Below, the authors will examine whether social enterprises that use each of the three tailor-made legal forms, i.e.

[58] Ibid at 297.

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

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, which 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 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 AoA, Memoranda or Statutes of Association (SoA) for example.

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 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]

[60] These are the partnership (*Vennootschap Onder Firma*-VOF), the limited partnership *(Gewone Commanditaire Vennootschap-GCV)*, the private limited liability company *(Besloten Vennootschap met Beperkte Aansprakelijkheid-BVBA)*, the limited liability cooperative *(Coöperatieve Vennootschap met Beperkte Aansprakelijkheid-CVBA)*, the unlimited liability cooperative (*Coöperatieve Vennootschap met Onbeperkte Aansprakelijkheid*-CVOA), the public limited liability company (*Naamloze vennootschap*-NV), the partnership limited by shares (*Commanditaire Vennootschap op Aandelen*-CVA) and the economic interest groups (EIG). See Belgian Companies Code 1999, arts 2(2) and 661. See also the authors' elaborations in A Argyrou, T Lambooy, R Blomme, H Kievit, G Kruseman and DH 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 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.

Acquiring the VSO status is subject to fulfilling certain cumulative legal requirements contained in Article 661 of the Belgian Companies Code 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 owner and member, or 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 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 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

62 Belgian Companies Code 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.

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 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 Section 7; Belgian Companies Code 1999.

66 Ibid art 661(1) and (2).

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 (CECOP) also notes that the social purpose "results from constitutive elements foreseen by the legislation and which must appear in the statutes".[69] However, it is implicit that even though the Belgian Companies Code 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]

4.2. The Greek Social Cooperative Enterprise (Koinsep)

The social purpose of the Greek Koinsep is stipulated in the Social Entrepreneurship Law 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 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]

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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 February 2017; L Stolle, 'De vennootschap met sociaal oogmerk: juridisch en fiscaal statuut, modellen, statuten en wetteksten' (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.

69 CECOP (n 30) 6.

70 Belgian Companies Code 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 2011 and arts 14(1) and (2)(a) 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,

(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]

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 (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]

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 sick. See ibid arts 1(5) and 2(2)(β) of the Greek Social Entrepreneurship Law 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 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 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 2011. However, in the latest amendment of the Social Entrepreneurship Law 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 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. Registration therefore 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

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

The Companies Act 2004 (2004 Act) introduced the Community Interest Company (CIC), which is a tailor-made legal form for social enterprises in the UK.[76] The 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 2006 (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 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 (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]

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 per cent of its profits to be distributed to its employees.

76 See Part 2 of the 2004 Act (c.27); FB Palmer, *Palmer's Company Law* (Vol. 1, Sweet and Maxwell, 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 2004, para 191; Community Interest Companies final Regulatory Impact Assessment, para 2.5 included in the CIC Regulations Explanatory Memorandum 2005 <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 2005. It requires also 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.

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 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" (the CIC test).[82] The CIC test is an obligation that the 2004 Act imposes upon every CIC. The CIC Regulator (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

80 CIC Regulations Explanatory Memorandum 2005, para 2.7; Explanatory Notes to the 2004 Act, para 190.

81 See A Dunn, CA 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 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 CIC Regulations 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 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 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 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.

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]

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 2005 provide a list of activities, which *cannot* be considered eligible community-based activities, namely political activities.[88] 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 2005 do provide for an exception in the case of political activities that 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 2005 is provided for the term "community". The term "community" has been defined in both the

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, 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' (n 85) 5-6; CIC Regulator Office, 'Chapter 4' (n 83) 17-19.

88 The 2004 Act, s 35(6); CIC Regulations 2005, regs 3-6; CIC Regulations 2005, Explanatory Memorandum, para 2.2. The 2004 Act and the CIC Regulations 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 88) 12; Palmer (n 76) para 2.037.

Table 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 (*ex post facto*)	Registry scrutiny (*ex ante and ab initio*)	Regulator scrutiny (*ex ante and ab initio*)

Regulation 5(a) and (b) of the CIC Regulations 2005 and in Section 35(5) of the 2004 Act. According to Regulation 5 of the CIC Regulations 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 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]

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 1). The purpose is determined mainly by non-financial and non-economic elements (Table 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 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.

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91 The 2004 Act, s 35(5) states: "'Community'" includes a section of the community (whether in the United Kingdom 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 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.

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

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 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 measurable social impact adopted in the objectives of social enterprises as introduced by the SBI Communication 2011, still 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. In Article 661 of the Belgian Companies Code 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 care or the promotion of social cohesion for example. 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 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 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

[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.

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.

5. PARTICIPATORY GOVERNANCE IN THE BELGIAN, GREEK, AND UK SOCIAL ENTERPRISE LAW

This section 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. The 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]

5.1. The Belgian Company with a Social Purpose (VSO)

The Belgian Companies Code 1999 contains only few specific provisions regarding the governance of organisations with a VSO status.[99]

[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 2011 (n 36) 2.
[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 1999, arts 661 and 2(2); Cafaggi and Iamiceli (n 8) 43.

Governance provisions pertinent to social enterprises in the Belgian Companies Code 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 five per cent 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 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

100 Ibid art 664.
101 Ibid art 661(4).
102 Coates and Van Opstal (n 67) 38.
103 Belgian Companies Code 1999, art 661(7). This capacity will automatically expire one year after the employment relationship has been terminated.

to employees. Accordingly, the provision of ownership of shares and membership rights to employees is subject to various legal requirements.[104]

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 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]

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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 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 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 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 consequently to the Koinsep according to the Law on the Social Entrepreneurship Law 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."

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]

110 Art 5 of the Social Entrepreneurship Law 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, among 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; *(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 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.

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 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 2011 does not impose any explicit restriction in either respect.[120]

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115 Social Entrepreneurship Law 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.

116 Social Entrepreneurship Law 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 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 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 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.

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]

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 Koinsep's activities with good faith; *(ii)* to cooperate in the operation of the Koinsep; and/or *(iii)* to refrain from actions that might 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, which 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.

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

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 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 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.

manage is devolved to the board of directors and only limited powers are provided to the members/shareholders in the Annual General Meeting (the general meeting).[127]

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.

The rules regarding membership of a company are set out in Section 112(1) of the 2006 Act that 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

127 Palmer (n 76) paras 1.225, 2.041.

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 and 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) to (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

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 per cent of those who are present and intend to vote.[135]

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 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]

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.
136 Ibid ss 154 (1) and (2). Dorresteijn et al. (n 129) 196, para 6.71.
137 Hannigan (n 79) 114.
138 2006 Act, s 12(3); Hannigan (n 79) 140. Dorresteijn 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 2005, regs 7-8; CIC Regulations 2005 Sch 1; Sch 2 or 3.

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 Section 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. What is more, the CIC Regulations 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 Section 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]

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 (Table 2). Accordingly, multi-stakeholder governance is fostered in Greek and Belgian legislation (Table 2). Consequently, employees are allowed to become owners of

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 Behaviour, 92; CIC Regulations 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 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.

Table 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 per cent voting cap	One man one vote rule	• simple majority • absolute majority

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 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 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). 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). 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 ten per cent, 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]

6. ACCOUNTABILITY AND RESPONSIBILITY IN THE BELGIAN, GREEK, AND UK SOCIAL ENTERPRISE LAW

This section 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 Section 1). 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

[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.

enterprises, and the content of such duties and requirements. The current 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.

6.1. The Belgian Company with a Social Purpose (VSO)

Article 661(6) of the Belgian Companies Code 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] 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 1999 and the AoA of the VSO.[148] In particular, Article 663 of the Belgian Companies Code 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

[145] Belgian Companies Code 1999, art 661(6). It is unclear from the wording of the Belgian provision 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* (Antwerpen 1995: Maklu 1996) 37-70 at 63 referring to the explanatory notes: Report Vandenberghe/Stroobant/Laverge, Parliamentary documents senate, 1993-1994 nr.1086/2 at 308.

[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 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 <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 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.

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 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]

6.2. The Greek Social Cooperative Enterprise (Koinsep)

In the Social Entrepreneurship Law 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

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 1999, art 663.

151 Ibid art 663.

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

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]

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 it 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 2005 provides for the minimum information that the CIC report must contain. The information includes: [162]

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155 An example is the breach of provisions providing favourable benefits to the Koinsep (in art 10 of the Social Entrepreneurship Law 2011). Ibid art 11(7) of the Social Entrepreneurship Law 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).

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 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 2005, reg 26; Explanatory Note to the 2004 Act, para 221. Additionally, the Regulator provides online simplified and detailed CIC report templates <www.gov.uk/government/publications/form-cic34-community-interest-company-report> accessed

(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 the Regulator's investigation capacity.[166] Although neither the 2004 Act nor the CIC Regulations 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 Section 5)[174].

24 September 2016.

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

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

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

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 2005, reg 26(1)(b).

(iii) Information regarding the transfer of assets other than for full consideration, for example donations to other bodies (see Section 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]

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 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 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

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

Table 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 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

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 Section 4); *(ii)* the Registry in Greece during the exercise of *ad hoc* audits and registration (see Section 4); *(iii)* the Regulator in the UK following the requirements regarding the CIC test and 'default conditions' (see Section 4).

7. FINANCIAL STRUCTURE IN THE BELGIAN, GREEK, AND UK SOCIAL ENTERPRISE LAW

This section examines the final legal variable of financial structure and incentives. The introductory section 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 Centre 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 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 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.

7.1. The Belgian Company with a Social Purpose (VSO)

7.1.1. Profit distribution constraints: 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

[178] Golubović 2012 (n 30) 5.
[179] SBI Communication 2011 (n 36) 2.

indirect pecuniary benefit to the owners of shares and members of the enterprise as a matter of principle (see Section 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 to the owners of shares and members. In particular, Article 661(3) of the Belgian Companies Code 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 six per cent 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]

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

[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 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 per cent was fixed by Royal Decree dated the 10 November 1996 (Published in Belgian Official Journal 7 December 1996); See also Belgian Companies Code 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 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 vereffeningsprocedure

regarding liquidation included in the Belgian Companies Code 1999 remain the same. The Belgian Companies Code 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 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]

7.2. The Greek Social Cooperative Enterprise (Koinsep)

7.2.1. Profit distribution constraints: 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 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 per cent of the profits must be reinvested for the generation of new employment positions; *(ii)* 35 per cent is equally distributed to the employees in the form of remuneration for their productivity; and *(iii)* five per cent is allocated to reinvestment in the enterprise's reserves.[187]

betreft, Blemish 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].

184 Belgian Companies Code 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 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 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 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 2011 and art 21(2) of the Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions.

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]

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]

7.2.3. *Financing of resources*

Article 8 of the Social Entrepreneurship Law 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

188 Ibid art 7(1) and (2) of the Social Entrepreneurship Law 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.

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 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 Section 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 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.

are jointly financed by the EU and the Greek state and implemented by the Greek Manpower Employment Organization (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 Koinsep is entitled to bequests and donations. However, the legal and institutional framework to clarify the financing opportunities for Koinseps from donations and bequests has not been developed.[195]

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

7.3.1. Profit distribution constraints: 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 Act[196] and the CIC Regulations 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]

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 its Institutions and Other Provisions.

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

196 2004 Act, ss 30 and 31. The explanatory notes also explain 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 2005, Part 6, regs 17-25.

198 The asset-lock scheme is justified 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).

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 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 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 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

200 CIC Regulations 2005, Sch 1, Sch 2, Sch 3; McLaughlin (n 78) 51.
201 2004 Act, s 30.
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 2005, reg 22(1)(a)-(c).

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 per cent of the CIC's distributable profits.[209] It is noteworthy that the CIC Regulations 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 debenture[211] or any debt issued by any CIC. Such debenture includes for example mortgage debenture or CIC issued bonds. As of 1 October 2014 this is a fixed rate of 20 per cent, 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]

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 2005 also contain detailed provisions on

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 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 2005, reg 17(3) to (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 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 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 2005, reg 22(4)(7); CIC Regulator Office, 'Chapter 6' (n 211) 8.

213 2004 Act, s 31.

214 Ibid.

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 1986, if there are residual assets remaining after the satisfaction of the company's liabilities to its creditors.[216] If there are remaining residual assets 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]

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]

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215 CIC Regulations 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 2005, reg 23(1)(a); Palmer (n 76) paras 1.225 and 2.040.

217 CIC Regulations 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 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 2005, reg 23(6)(a), (b) and (c).

219 W Spiess-Knafl and AK Achleitner, 'Financing of Social Entrepreneurship', in CK Volkmann, KO 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

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 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]

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' <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 7.3. This means that they have very limited access to equity capital and they will 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. See Nicholls (n 49) 394, 396.

Table 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 per cent of the company's total volume of assets.	• 60 per cent of profits is to be reinvested in accordance with the purpose for the creation of new employment positions • 35 per cent is to be provided as a productivity award to employees • 5 per cent is to be retained in the reserves	• 35 per cent of the distributable profits (aggregate dividend cap) can be distributed to shareholders • exempt dividend • 20 per cent 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 Koinsep 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

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, the authors note that the tailor-made laws for the legal forms of the social enterprise contain asset-lock schemes and distribution-limitation provisions (Table 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 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 but allows the limited distribution of profits subject to a regulated cap. The regulated cap is currently fixed at 6 per cent 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 per cent 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

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

caps, and among others, i.e. an aggregate dividend cap, currently set at 35 per cent. 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 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 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.

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.

8.1. 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.

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.