

Social Enterprises in the Netherlands: Towards More Institutional Diversity?



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1 Introduction

Social purpose integration in businesses has been a long tradition in the Netherlands.¹ Practitioner reports estimate the number of Dutch social enterprises between 4000 and 6000 in 2017.² Social enterprises have emerged in the Netherlands in a variety of structures and legal forms for many years. Yet, the concept of social enterprise was introduced in the country only 10 years ago.³ While the definition of social enterprises used by the European Commission is commonly used in the Netherlands,⁴ the recent recognition of the concept has led to a lack of a common definition for social enterprises adapted to the national context, as well as to the absence of a legal framework for them.⁵ Because of that, virtually any organization can call itself a social enterprise,⁶ leading to blurriness as to which business is actually a “social” one. Similarly, lobby groups have created definitions of social enterprises that narrow them down to niche organizations (i.e., social businesses adopting a for-profit legal status), leaving aside non-profits and social cooperatives. Social enterprises in the Netherlands are thus poorly recognized and understood because of this lack of common framework at the national level.

Such a narrow approach is problematic because it does not consider the important civil-society initiatives present in the country,⁷ which makes the Dutch social economy sector look underdeveloped at first sight. In this chapter, we argue that the current state of the Dutch social economy is larger than it currently seems to be, and that if the entrepreneurial side of the large and diverse third sector were to be included in the definition, it would match the levels of its European neighbors. To this end, we define social enterprises as “hybrid organizations located between the realms of state, market and society and mixing their institutional logics,”⁸ based on Defourmy & Nyssens’ vision.⁹

We thus aim to provide an overview of the situation—both situational and legal—of Dutch social enterprises. To do so, we adopt the perspective of the EMES school of thought, and we use the framework they provide to study and understand (the various types of) social enterprise in Europe. By adopting an EMES approach, we hope to broaden the current narrow definition adopted in the Netherlands when talking about social enterprises—which, in practice, limits them to social businesses

¹Karré (2021a).

²ABN AMRO, *De noodzaak van marktontwikkeling voor sociale ondernemingen. De romantiek voorbij*, July 2017; McKinsey, *Scaling the impact of the social enterprise sector*, October 2016.

³Backer (2019).

⁴However, that definition is only partially followed as, for instance, the social cooperative is not considered a social enterprise in the Dutch context.

⁵Hogenstijn M, *Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands*, September 2021.

⁶Karré (2021a).

⁷Karré (2021b).

⁸Ibid., p. 292.

⁹Defourmy and Nyssens (2017c).

(i.e., social enterprises adopting a for-profit legal form and following dominant market logics) often concentrated in the secondary and tertiary sectors.

We also review the five legal forms that social enterprises in the Netherlands can adopt; the choice of the legal form being dependent on their business activities and the way they aim at creating impact and contributing to their societal goals. We also reflect on the new label the Dutch legislature is currently considering to bring clarity to the social enterprise definition (namely, BVm, whereby the “m” refers to “maatschappelijk,” meaning: societal¹⁰). This label would be specifically intended for social businesses with a private-limited company legal status. In the light of such a restrictive definition, we pinpoint several pitfalls, since social businesses are not the ones in most urgent need of recognition. Indeed, social organizations that adopt a cooperative, a foundation, or an association legal form are heavily overlooked by the social economy sector in the Netherlands,¹¹ while historically being its keystone.¹²

We argue that in the Netherlands there is a need for a more holistic, institutionally diverse approach to “the” social enterprise, which might also result in due time in giving social enterprises more explicit recognition than they are currently given by the legislature. To this end, we offer to revise the proposed Dutch label to include more mechanisms inherent to social enterprises. Moreover, since none of the current legal forms available are specific to social enterprises, we discuss the possibilities for Dutch social enterprises to gain in recognition by adopting external labels such as the B-Corp Certification or the Dutch Code Social Enterprises. Indeed, such labels bring assurance to external parties that these organizations are “walking the talk.”¹³ We further suggest that a combination of labels might help Dutch social enterprises to gain more recognition.

After introducing the working framework of EMES, we reflect on the place of social entrepreneurship in the Netherlands and contrast it with the EMES approach. We then introduce the existing legal forms that social enterprises can opt for. Finally, we present labels as a solution for social enterprises to gain in recognition and, to that end, introduce the B corp certification (and their legal requirements under the Dutch law) and the characteristics of the future-to-be BVm-label. We conclude by reflecting on the future of social economy in the Netherlands.

2 Social Enterprises in Europe: The EMES Approach

Social enterprises have a long tradition in Europe, with their first formation as associations dating from several centuries ago.¹⁴ To understand their variety, EMES—an academic network of researchers specialized in the study of social

¹⁰BVm = Besloten Vennootschap-maatschappelijk (Social limited-liability company)

¹¹Karré (2021a).

¹²Defourmy (2017).

¹³Christensen et al. (2020) and Schoeneborn et al. (2020).

¹⁴Defourmy (2017).

enterprises—conducted an international research project (namely, ICSEM¹⁵) on social enterprises over the past few years.¹⁶ This project has contributed to mapping out the field of social economy in Europe and providing a global framework to understand it.

EMES' outline of the European social economy sector builds on a typology developed by Defourny & Nyssens¹⁷ which distinguishes between different types of social enterprise based on the intricacies between their core interest (general, capital, or mutual) and their types of resource (non-market, market, or hybrid). In the EMES approach, a social enterprise emerges from the initiative of a group of citizens and serves the community.¹⁸ In their theoretical typology, Defourny & Nyssens identify four types of social enterprise model: (1) entrepreneurial non-profit, (2) public-sector, (3) social cooperative, and (4) social business.¹⁹ To finalize the ICSEM project, EMES scholars applied a cluster analysis to over 700 social enterprises in the world (of which 328 in Europe) to empirically test their typology.²⁰ This analysis revealed that three out of the four social enterprise models proposed in the typology did exist. First, the entrepreneurial non-profit social enterprise model is generally composed of non-profits and foundations. Despite being non-profits, these organizations adopt goals, processes, and rhetoric that are similar to business organizations.²¹ Second, although some examples of it exist (for instance the company *Stroomopwaarts*²² in the Netherlands), the public-sector social enterprise model was not confirmed by the cluster analysis. Third, the social cooperative model was confirmed but the authors acknowledge that it remains challenging to distinguish social cooperatives from traditional cooperatives. Fourth, the social business model is generally adopted by for-profit companies that combine a social mission with strong commercial logics.²³ The results from the ICSEM project provide us with a guiding star for our analysis of the Dutch social enterprises. In the following sections, we introduce the various legal forms available to social enterprises based on the understanding of social enterprises as organizations between state, market, and society²⁴—which is broader than the traditional Dutch definition that limits social enterprises to social businesses as for-profit companies.

¹⁵ICSEM = International Comparative Social Enterprise Models.

¹⁶E.g., Defourny et al. (2020) and Defourny and Nyssens (2017a).

¹⁷Defourny and Nyssens (2017b).

¹⁸Bacq and Janssen (2011), Defourny and Nyssens (2014), and Sengupta et al. (2018).

¹⁹See Defourny et al. (2021a) and Defourny and Nyssens (2017c).

²⁰Defourny et al. (2021b).

²¹Maier et al. (2016).

²²For more information about *Stroomopwaarts*: <https://www.stroomopwaarts.nl/> (accessed: 31.01.2022).

²³Defourny et al. (2021b).

²⁴Defourny and Nyssens (2017c).

3 Social Economy, Social Enterprises, and Social Entrepreneurship in the Netherlands

The Netherlands stands alone amid its neighboring countries when it comes to the social economy sector. Indeed, next to Germany, it is one of the biggest European Member State countries without a specific regulation for social economy and social enterprises.²⁵ It is interesting to note that although the Netherlands was included in the ICSEM project,²⁶ it was not part of the final cluster analysis conducted by Defourny et al.²⁷ while 19 other European countries were. Despite the lack of legal framework, the sector has evolved from a bottom-up approach, with the first businesses incorporating social goals starting to appear in the late 1800s.²⁸ This long tradition of a strong Dutch third sector²⁹ has led many to think that a legislation is not necessary for social enterprises to thrive. Moreover, after the recent decentralization of the state, municipalities were left with the responsibility of shaping the environment for social enterprises.³⁰ The cities of Amsterdam, Rotterdam, Utrecht, and The Hague are examples of municipalities that have implemented specific policies and programs for social entrepreneurship.³¹ Additionally, the City Network G40 initiative has been guiding the 40 largest municipalities of the Netherlands in organizing, fostering, and strengthening social entrepreneurship initiatives at the local level.³² Furthermore, the Dutch government has been encouraging both businesses and citizens to take up responsibilities as part of its plea for the “participation democracy.”³³ In practice, this has left citizens without any other option than to form bottom-up initiatives since, especially in many less-populated areas across the country, commercial initiatives did not develop sufficiently to fill the gaps left by the central government; this was for example the case in the care sector. The social economy sector is traditionally quite weak at the institutional level (top-down) but rather strong at the entrepreneurial level (bottom-up). Yet, the lack of framework has led many (for-profit and non-profit) organizations to reference themselves as social

²⁵For information on the German context for social enterprises, see Chapter “The Suitability of French Law to B Corp” of this book.

²⁶See Karré (2021a).

²⁷Defourny et al. (2021b).

²⁸Hogenstijn M, *Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands*, September 2021.

²⁹Karré (2021b).

³⁰Karré (2021a).

³¹PwC, *Prille kansen: de samenwerking tussen sociale ondernemingen en gemeenten in Nederland*, March 2018.

³²Aisenberg L et al., *Boosting social entrepreneurship and social enterprise development in the Netherlands: In-depth policy review*, 2019/01, 29 January 2019.

³³Grasseni C (2018) Food Citizenship? Collective Food Procurement in European Cities. <https://www.europenowjournal.org/2018/09/04/food-citizenship/> (accessed: 28.11.2021).

enterprises since the term is more fashionable than “charity” or “foundation.”³⁴ To cope with this lack of clarity, two Dutch lobbies—Social Enterprise NL and Code Social Enterprises (*Code Sociale Ondernemingen*)—have worked on definitions to delimitate Dutch social enterprises. According to Social Enterprise NL’s definition, a social enterprise is a legal structure that provides a product or service in an entrepreneurial fashion, has multiple clients, is financially independent for at least 50% of market income, determines its own strategy, determines prices of its products and/or services on its own, and uses its profits to achieve societal objectives. In addition to this definition, Code Social Enterprises has developed five principles to assess whether an organization is a social enterprise or not.³⁵ The code is active since the end of 2018 and is based on the line of conduct “impact first,” which should be fundamental to social enterprises. The five principles relate to (1) the inclusion of the mission in the articles of incorporation, (2) stakeholder involvement, (3) a financial policy supporting “impact first,” (4) compliance to the code, and (5) transparency. Social enterprises can opt to abide by the code and officially (but not legally) enter the register of Code Social Enterprises as a social enterprise. This code had the intention to serve as an underlying guideline for collaborations between social enterprises and the Dutch government over the past few years.³⁶ Although the code provides structure to the sector, its main drawback is that it is too stringent on finance, with the need to be financially independent at minimum 50% of market income. Because of this, it does not cover all types and variations present within social enterprises, and only acknowledges those social enterprises that are also social businesses (i.e., for-profit legal structures). Other initiatives for the recognition of social entrepreneurship activities and the measure of social impact have popped up in the Netherlands, with for example the Performance Ladder Social Entrepreneurship (PSO; *Prestatieladder Socialer Ondernemen*), which acknowledges organizations inserting vulnerable people in the labor market.³⁷ However, in this chapter we do not cover such initiatives extensively since they are focused on specific aspects of social entrepreneurship, instead of dealing with social entrepreneurship at large.

Following the definitions of Social Enterprise NL and Code Social Enterprises, it appears clearly that the Netherlands distinguishes the social economy sector from the non-profit sector.³⁸ This approach is rather opposed to the perspectives of the EMES school of thought, which considers non-profits (i.e., associations, NGOs, and foundations) as the founders of, and playing a key role in, the social economy sector.³⁹

³⁴Karré (2021a).

³⁵Full Code Social Enterprises (in Dutch): https://www.codesocialeondernemingen.nl/application/files/6216/2244/6915/00._Toelatingscriteria_vastgestelde_versie_31-05-2021.pdf (accessed: 04.11.2021).

³⁶Hogenstijn M, *Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands*, September 2021.

³⁷Aisenberg L et al., *Boosting social entrepreneurship and social enterprise development in the Netherlands: In-depth policy review*, 2019/01, 29 January 2019.

³⁸Karré (2021a).

³⁹Defourmy (2017).

Non-profits indeed combine logics of mutual interest with logics of general interest when using hybrid (financial and non-financial) resources⁴⁰ and engage into entrepreneurial (and sometimes, market) risk.⁴¹ In this book chapter, we wish to give a full representation of the legal forms available to all types of social enterprise in the Netherlands. This is why we adopt the EMES lens to introduce the various Dutch legal forms for social enterprises to incorporate and go beyond the definition of social business provided by private lobbies such as Social Enterprise NL and Code Social Enterprises.⁴²

4 Legal Environment for Social Enterprises in the Netherlands⁴³

Dutch enterprises with a societal purpose have many options to incorporate as a structure. The focus on social entrepreneurship as an approach has led Dutch organizations to have a long tradition of integrating a social purpose in their businesses, already before the use of the term social enterprise became mainstream.⁴⁴ Indeed, Dutch law allows private companies limited by shares to insert in their articles of incorporation additional obligations for shareholders beyond profit maximization,⁴⁵ such as a social mission. Because of that, and due to the lack of specific legal form mentioned earlier, Dutch social enterprises can adopt any of the available legal forms for traditional organizations—and sometimes even combine some of these options.⁴⁶ We hereafter introduce each of them.

4.1 Private Limited Company: *Besloten Vennootschap*

Besloten Vennootschappen (BV) are private limited companies. It is the legal form most adopted by Dutch social enterprises.⁴⁷ BVs are relatively easy to create since

⁴⁰Defourmy and Nyssens (2017b).

⁴¹Defourmy et al. (2021b).

⁴²See also Karré (2021b); Karré (2021a).

⁴³This section has been largely inspired from the Dutch government website for government information for entrepreneurs: <https://business.gov.nl/starting-your-business/choosing-a-business-structure/business-structures-in-the-netherlands-overview/> (accessed: 31.01.2022).

⁴⁴Karré (2021a).

⁴⁵van der Sangen (2013).

⁴⁶In the context of this book chapter, we focus solely on legal corporate entities. However, Dutch social entrepreneurs can also enter business through non-corporate entities, such as through a general partnership (in Dutch: *Vennootschap Onder Firma*, VOF).

⁴⁷Karré (2021a).

0.01€ is needed as a starting capital. They are shareholder-owned organizations, and the equity is divided in shares between shareholders. BVs thus implement a shareholder supremacy governance regime, which means that the voting rights are equal to the share in capital of each shareholder. To oversee the day-to-day business, BVs must have one or more directors with limited private liability. A supervisory board may be appointed. It is worth noting that, in a BV, major shareholders (individuals owning at least 5% of shares) and directors have a “substantial interest,” meaning that they must pay both income and dividend taxes. Paying a salary to a director is thus a rather expensive option. Instead, most directors pay themselves through dividends. Dutch social enterprises can pick a BV form as it is easy to incorporate into and is the one of the most recognized forms for social businesses. Fairphone, a company producing ethical phones, is incorporated as a BV. The BV is the most popular form of company in the Netherlands, across all sectors (social enterprise or traditional business) with a total of 413,775 BVs incorporated at the end of 2021.⁴⁸

4.2 Public Limited Company: *Naamloze Vennootschap*

Naamloze Vennootschappen (NVs) are public limited companies. They create capital by issuing shares and require a starting capital of €45,000. NVs tend to be large companies with several directors. They are shareholder-owned structures with a shareholder supremacy governance regime. Shareholders appoint a supervisory board. Since they are public limited companies, NVs can be listed on the stock market and trade shares, provided they respect some conditions. Indeed, to be listed on the stock exchange, the organization needs to have been active for five years minimum, the total value of the shares must be more than €5 million, and the equity has to equal a minimum of €5 million. Additionally, the NV needs to have been profitable for at least three years in the past five years. A main advantage of the NV (compared to the BV) is that directors hold no personal liability and that shareholders’ liability is restricted to the amount of their investment. A social enterprise could be interested in incorporating as a NV if it aims to grow substantially and undertakes activities that require large sums of fundings. An example of a social business set up as a NV is Triodos Bank, which promotes sustainable development by offering customers sustainable financial products.

Despite the possibility for social enterprises to adopt the NV form, this legal form might be the furthest away from what is usually expected from social enterprises. Indeed, while social enterprises use market mechanisms to achieve a social mission,⁴⁹ they are traditionally expected to reinvest most of their surpluses into the

⁴⁸ Source: Central Bureau voor de Statistiek: <https://opendata.cbs.nl/#/CBS/nl/dataset/81588NED/line> (accessed: 05.11.2021).

⁴⁹ Saebi et al. (2019), Santos (2012) and Wry and York (2017).

organization, the social mission, and/or the community.⁵⁰ In that context, a social enterprise incorporating as a public limited company can be perceived as experiencing mission drift. Mission drift occurs when there is a deviation, by the social enterprise, from the social mission to pursue financial goals.⁵¹ The well-known case of Compartamos, a microfinance institution that performed an initial public offering in the late 2000s, has shown the dangers of mixing social entrepreneurship and stock exchange.⁵² In the EMES typology, social enterprises incorporated as BVs or NVs correspond to the social business model since they adopt a for-profit legal form and mix a social mission together with commercial goals.⁵³ At the end of 2021, there are 1085 NVs incorporated in the Netherlands,⁵⁴ all sectors taken together.

4.3 Cooperatives

The cooperative is another legal form that social enterprises can adopt. While incorporating as a cooperative signals a sense of belonging to social economy in some European countries (e.g., Belgium, France, and Italy), Dutch cooperatives are often not associated with social economy. Indeed, in the Dutch context, the cooperative principles—such as those defined by the International Cooperative Alliance⁵⁵—are not restricted to that particular legal form and can also be implemented under other legal forms,⁵⁶ sometimes leading to the need to distinguish cooperatives in a legal sense from cooperatives in a cultural sense.⁵⁷ Nonetheless, incorporating as a cooperative still signals the will to abide by the cooperative principles. These principles posit that besides an economic motive to benefit their members, cooperatives should—as a principle—also pursue non-economic interests such as societal, community, or ideological interests, making them suitable legal structures for social enterprises. Although these principles have been modified over the years, since their first version in 1844,⁵⁸ they have been used as a way to offer guidance to cooperatives internationally to model their governance and practice in a particular way, considering the well-being of both its members and society. In the Netherlands, a cooperative is an “association with a company” (*vereniging met een*

⁵⁰Doherty et al. (2014).

⁵¹Armendáriz and Szafarz (2011) and Ebrahim et al. (2014).

⁵²Ashta and Hudon (2012) and Hudon and Périlleux (2013).

⁵³Defourmy et al. (2021b).

⁵⁴Source: Central Bureau voor de Statistiek: <https://opendata.cbs.nl/#/CBS/nl/dataset/81588NED/line> (accessed: 05.11.2021).

⁵⁵International Cooperative Alliance (2021) Cooperative identity, values & principles | ICA. <https://www.ica.coop/en/whats-co-op/co-operative-identity-values-principles> (accessed: 16.12.2021).

⁵⁶van der Sangen (2013).

⁵⁷E.g., Bokhorst et al. (2015).

⁵⁸Birchall (1994).

bedrijf). Because of that, cooperatives are often seen as traditional businesses, despite being member-owned organizations in which members work as a collective. An example of a Dutch social cooperative is Schoongewoon: A cleaning worker cooperative.

Cooperatives are relatively easy to set up in the Netherlands since members can enter or exit the organization without jeopardizing the cooperative's existence. No starting capital is needed, and members can or cannot be legally answerable. A cooperative can exist with a sole partner, although generally more are involved. A Dutch cooperative must have two governing bodies: a board of directors and a general assembly, which appoints and dismisses board members. The board is in charge of entering into agreements with and for the cooperative's members. In the traditional definition of a cooperative, all members have equal voting rights, meaning that they follow the rule of "one person, one vote." This rule is in line with the International Cooperative Alliance principle of democratic governance.⁵⁹ However, the Netherlands offers some specificities when it comes to voting rights of cooperative members.

First, if mentioned in the articles of incorporation, Dutch cooperatives can extend their business activities to non-members.⁶⁰ This specificity is convenient for cooperative banks for instance⁶¹ since, in doing so, they can also serve non-member customers. In this case, cooperatives can also open voting rights to their non-members, to a maximum of 50% of the total voting rights at the general assembly. Hence, both members and non-members can vote. The integration of such stakeholders who are not members of the cooperative can play a role in guarding the societal goals of the organization. Indeed, their possibility to hold up to 50% of the total voting rights can act as a safeguard against mission drift since non-member stakeholders come in with a "fresh eye." Second, although the default governance rule is "one person, one vote," the cooperative's articles of association can provide otherwise. Overall, Dutch cooperatives tend to implement very flexible governance mechanisms leading also to the existence of what are often referred to as "pseudo-cooperatives": Enterprises that merely use the flexibility of the cooperative law but do not adhere to the principles of the cooperative.

Cooperatives can (but do not have to) redistribute profit in proportion to the work that a member has performed for the organization (and not in proportion of the capital held). However, it is worth noting that member capital cannot be traded nor distributed as dividends [not clear].⁶²

In the Netherlands, there are two types of cooperative: the business cooperative and the entrepreneurs' cooperative. On the one hand, a business cooperative aims to support its members in the business aspects of their activities (e.g., a dairy farmers'

⁵⁹International Cooperative Alliance (2021) Cooperative identity, values & principles | ICA. <https://www.ica.coop/en/whats-co-op/co-operative-identity-values-principles> (accessed: 16.12.2021).

⁶⁰Hansmann (2000).

⁶¹van der Sangen (2013).

⁶²Ibid.

cooperative). On the other hand, an entrepreneurs' cooperative helps individual entrepreneurs to temporarily work together on certain projects and undertake tasks they could not have tackled on their own.

A subtype of cooperative is the mutual insurance (*onderlinge waarborgmaatschappij*). Since there are no specific legal forms for mutual insurances in the Netherlands, they must incorporate as cooperatives. In a mutual insurance, members make rules and save in common to benefit from it when needed.⁶³ Social enterprises incorporated as cooperatives and mutual insurances are regarded in the EMES typology as social cooperatives.⁶⁴ The total number of cooperatives in the Netherlands (including mutuals) at the end of 2021 is 3285.⁶⁵

4.4 Foundations

Foundations (*stichting* in Dutch) are non-profit legal entities that receive income through donations, loans, subsidies, and legacies. They do not have members, only beneficiaries. A social enterprise could have an interest in incorporating as a foundation since it enables them to receive donations from philanthropic entities. Patronage is tax deductible, which is an incentive to donate to foundations. No minimum capital is required to set up a foundation in the Netherlands. Foundations pursue social and/or non-profit causes and are usually not business themselves. However, in case a foundation is set up as a business—which is possible by combining the legal forms of a foundation and a BV—then it needs to reinvest all its profits in the mission and purpose. Such a setting was adopted by the circular and secondhand “kringloop”-shops (“kringloop” referring to their re-use of the goods on offer in the shop). Since the company works closely with vulnerable people, it was expected to adopt a foundation status. It then combined that status with a BV to manage its business operations. The purpose served by a foundation is not necessarily charitable; for instance, it can be a hospital, a museum, or a professional football club. In terms of governance, a foundation has a board of directors (which may be monitored by a supervisory board) but does not have shareholders nor members.

When wanting to set up a Non-Governmental Organization (NGO), it is primarily required to incorporate it as a foundation. NGOs must pursue a societal, social, or scientific mission at a national or international scale. NGOs differ from traditional foundations in that they do not make a profit and are intrinsically committed to societal purposes. NGOs generally work mostly with volunteers and receive income through donations. In that sense, they are highly dependent on donors and volunteer

⁶³Talonen (2016).

⁶⁴Defourny and Nyssens (2017c).

⁶⁵Source: Central Bureau voor de Statistiek: <https://opendata.cbs.nl/#/CBS/nl/dataset/81588NED/line> (accessed: 05.11.2021).

work. Another difference with traditional foundations is that NGOs are eligible for subsidies from the Dutch government, provided they are recognized as public benefit organizations (in Dutch: ANBI (*Algemeen nut beogende instellingen*)). The most important condition for an NGO to be recognized as a public benefit organization is that it dedicates at least 90% of its activities to the public benefit.⁶⁶

4.5 Associations

In the Netherlands, the association legal form (*vereniging* in Dutch) is mostly used to organize social activities such as sports and cultural clubs; they are generally active at a local scale and no starting capital is required. Although an association's main objective is not to make a profit, it can make one. In such cases, profits must be entirely reinvested in the development of the association. Profit redistribution to members is forbidden and income is generally collected through members' contributions via donations and fundraisers. Just like for foundations, the donations system enables funders to deduct tax and can be an incentive to fund social enterprises that are incorporated as associations. Moreover, both the legal forms of foundation and association signal a strong focus on purpose rather than on profit. The total number of associations, NGOs, and foundations at the end of 2021 was 41,725.⁶⁷ In the EMES typology, all these three forms are entrepreneurial non-profits. Indeed, associations, NGOs, and foundations all adopt a non-profit legal form and use profits in the sole interest of their social purpose.⁶⁸

There are two types of association in the Netherlands: the association with full legal capacity (*volledige rechtsbevoegdheid*) and the association with limited legal capacity (*bepaalde rechtsbevoegdheid*). On the one hand, the association with full legal capacity has rights and duties similar to those of a natural person. There is no personal liability in this type of association. It is the only form of association eligible for governmental subsidies. On the other hand, in associations with limited legal capacity, both the organization and the members are legally answerable. Like foundations, Dutch associations can apply to be recognized as public benefit organizations.

The Netherlands thus offers several options for social enterprises to incorporate, both as for-profit and non-profit. Dutch social entrepreneurs additionally have the option to combine some of these legal forms, with the most common combination being between a (non-profit) foundation and a (for-profit) BV. Generally speaking,

⁶⁶Tax Administration (2021) What conditions must be met by an ANBI? https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/conditions_pbos/ (accessed: 26.11.2021).

⁶⁷Source: Central Bureau voor de Statistiek: <https://opendata.cbs.nl/#/CBS/nl/dataset/81588NED/line> (accessed: 05.11.2021).

⁶⁸Defourmy et al. (2021b).

the current lack of a common definition for social enterprises is at the advantage of non-profits. Indeed, in the current context, social enterprises can incorporate under any of the legal forms presented above, non-profit organizations can thus also introduce and signal themselves as social enterprises, although the national trend is to acknowledge social businesses only. However, this lack of recognition of non-profit organizations as social enterprises is also a pitfall since not all social enterprises receive the attention they should from the government. The on-going discussion on a new governmental label (see Sect. 5.2) reflects this lack of attention to the whole picture. Such a lack of recognition can lead to two problems. First, non-social businesses (but social enterprises nonetheless) fail to be recognized as social enterprises by peers or funding institutions, leading them to be potentially excluded from (funding) opportunities aimed at social enterprises.⁶⁹ Second, the scarcity of governmental financing programs for social enterprises,⁷⁰ forces these organizations to compete with more profit-oriented, and often robust, companies to get governmental funding.

5 Labelling Purpose-Driven Companies?

To cope with the pitfalls associated with the lack of domestic recognition, social enterprises can seek external recognition, for instance through labels and certifications. While recognized—but private—labels exist internationally (e.g., certified B Corporations) and nationally (e.g., Code Social Enterprises), the Dutch government has also been working on a new label for social enterprises. In this section, we elaborate on the place of certified B Corporations (B corps) in the Netherlands and present reflections on the new-to-be governmental label for Dutch social enterprises.

5.1 *Certified B Corporations in the Netherlands*

Since the lack of a common definition of social enterprises—besides the recent one developed by Social Enterprise NL and Code Social Enterprises—social entrepreneurship is often identified in traditional businesses that implement some social components, such as advanced corporate social responsibility (CSR) (i.e., CSR going beyond national legal requirements). To go further than that, and be

⁶⁹ Serres C (2021) Social Ventures and the Commons. Unpublished doctoral dissertation, Université libre de Bruxelles; Serres et al. (2022).

⁷⁰ Aisenberg L et al., *Boosting social entrepreneurship and social enterprise development in the Netherlands: In-depth policy review*, 2019/01, 29 January 2019.

recognized for it, social enterprises can apply to become B corps. By 15th February 2022, 208 Dutch companies are registered at B Lab as B corps.⁷¹

The status of B corp is a label, which means that any type of corporation can apply for it. The label was originally created in the United States (US) by the non-profit B Lab, which also instigated the creation of the benefit corporation legal form in the US. The certification recognizes businesses with high social and environmental impacts, that “do well by doing good.”⁷² Additionally, it emphasizes the need to have a stakeholder-oriented governance approach, rather than a shareholder one. The B corp certification has become a world-known label and “stamp of approval” for companies to display their CSR- and value-oriented practices.⁷³

To assess whether candidate firms deserve the certification, each of them takes the B Lab Impact Assessment on its internal and external practices. Every three years, a benchmark is made by B Lab to determine practice standards in different industries. Standards are developed and measured by actors from businesses and academia. For an organization to be considered for certification, it needs to score minimum 80/200; 80 being considered as the average B impact score in the industry.⁷⁴ B Lab thus considers an organization worth of the B corp certification only if equal or above that standard. Items measured are for example governance, workers, community, environment, and customers. This list is not exhaustive as over 50 variations of the assessment exist depending on company’s size, industry, and geographic situation. B corps must rerun the B Lab Impact Assessment every three years. Taking the assessment costs €250. Moreover, to benefit from this private certification, companies must pay an annual fee based on annual sales, ranging from €1000 to €50,000 in Europe.⁷⁵

It is important to keep in mind that B corps can be classic profit maximizing firms as long as they are above the standards set by B Lab. However, social enterprises can also be B corps and join this growing, recognized, international network.

With the development of the certification, B Lab has worked towards more legitimacy, accountability, and conformance for the label. To this end, certified B corps are now required to amend their articles of incorporation to reflect the criteria highlighted by the certification. Companies with less than 50 employees are required to amend their articles of incorporation prior certification, while companies with more than 50 employees are granted 90 days after obtaining the certification to make the changes. These legal amendments are crucial to the certification as the latter can be revoked in case of non-compliance. Moreover, in countries with designated legal

⁷¹ Certified B Corporation (2022) Certified B Corporation. <https://bcorporation.eu> (accessed: 15.02.2022).

⁷² Tietz et al. (2018), p. 209.

⁷³ Cao et al. (2017) and Honeyman and Jana (2019).

⁷⁴ Gehman and Grimes (2017).

⁷⁵ Certified B Corporation (2022) Certified B Corporation. <https://bcorporation.eu> (accessed: 15.02.2022).

frameworks for social enterprises (i.e., benefit corporation), B corps are expected to reincorporate under that dedicated legal structure.⁷⁶

5.1.1 Becoming a B Corp for BVs and NVs

Since there is no dedicated legal form for social enterprises in the Netherlands yet, private companies (BVs and NVs) wishing to become B corps can do so by amending their articles of incorporation—if they do not already include all the necessary elements. They need to reflect a triple bottom-line approach, meaning that the company’s mission must reflect a societal purpose. Additionally, the articles of incorporation must specify that stakeholder interests must be considered in decision-making, leading to a non-shareholder supremacy governance system. The Certified B-Corporation website indicates that the following changes must be implemented for BVs and NVs to become B corps in the Netherlands. Changes apply to both legal forms:

1. *Amendment to the company object: “One of the goals of the Company is, through its operations and activities, to have a significantly positive impact on society and the environment in general.”*
2. *Amendment to the articles of association in the chapter regarding Directors: “In making their decisions, the directors shall also consider the social, economic, legal or other consequences of the conduct of the Company’s business with respect to (i) the employees, subsidiaries and suppliers (ii) the interests of the customers of the Company and its subsidiaries, (iii) the communities and society in which the Company, its subsidiaries and suppliers conduct their business, (iv) the local and global environment and (v) the short and long-term interests of the Company.”⁷⁷*

5.1.2 Becoming a B Corp for Other Legal Forms

Since the certification targets corporations, very little information is available on the possibilities for other Dutch legal forms to be certified and the implications certification would have on their articles of incorporation. However, since foundations and associations are non-profit organizations, it is very likely they cannot be certified. Moreover, such a certification might not be beneficial since it is not only costly but also targets companies that evolve in ecosystems than are intrinsically different from the ones in which non-profits evolve. Indeed, Dutch foundations and associations

⁷⁶Ibid.

⁷⁷Our own translation. Source: https://bcorporation.eu/certification/legal-requirements?field_lr_country_tid_selective=30&field_lr_corporate_structure_tid_selective=20&field_lr_state_tid_selective=14&field_lr_publicly_traded_owned_value_selective=0 (Certified Benefit Corporation website, accessed: 05.11.2021).

can apply for the public benefit organization status, which is far more beneficial for them in the Dutch system. Hence, seeking a certification like the B corp one might not even be on their radar.

As for cooperatives, although they are considered as private limited companies in the Netherlands,⁷⁸ their possibilities to become B corps are also uncertain. Obtaining such a label could prove useful to distinguish traditional, business-oriented cooperatives from socially oriented ones (as studied by EMES scholars), which are social enterprises but not recognized as such in the current legal system. It is however interesting to note that cooperatives could also apply for Code Social Enterprises registry.

5.2 The Introduction of a New Label for Social Businesses: The BVm (Social Limited-Liability Company)

To complement national and international labels and certifications, and to provide public, national recognition, the Dutch government is currently in consultation to create a new legal vehicle for social enterprises: the BVm (in Dutch: *Besloten Vennootschap-maatschappelijk*, whereby the m stands for *maatschappelijk*, meaning “societal”). According to the draft bill presented in 2021, a BVm must offer a product and/or a service, inscribe a social mission in their articles of incorporation and prioritize that mission over profit making, reinvest most of its profits into the mission (with a suggestion of at least 50%), and limit profit distribution to shareholders.⁷⁹ In line with the definition brought forward by Social Enterprise NL and Code Social Enterprises, the BVm must be built with an “impact first” approach. Additionally, BVms are expected to be in contact with their stakeholders and be transparent regarding social value creation on their website, as well as to be independent in their strategy building.⁸⁰ BVms are further required to publish an annual social report.⁸¹

It is crucial to understand that the BVm is not a new legal form per se but rather a label attached to the private limited company (BV) legal form. The BVm is thus in no means a Dutch equivalent of the US benefit corporation. To become a BVm, a social enterprise must first incorporate as a BV. Social enterprises incorporated under other legal forms (i.e., NVs, cooperatives, and foundations) cannot become BVms, unless they first reincorporate as BVs. Then, once a BV meets the conditions stated above, it can apply to receive the “BVm” label. The company’s compliance with BVm features is then checked by a civil-law notary. However, this check is

⁷⁸ van der Sangen (2013).

⁷⁹ Hogenstijn M, *Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands*, September 2021.

⁸⁰ Keijzer M (2020) Brief van de staatssecretaris van Economische Zaken en Klimaat.

⁸¹ Driessen and De Moor (2021).

done only once, when the status of BVm is obtained. There are no follow-up checks made afterwards, so a BVm could potentially still have the label but not behave as one anymore. This is a pitfall already denounced by several law and social entrepreneurship scholars.⁸²

The bill as currently written presents other limitations. First, there is no clear advantage for a social enterprise to adopt the BVm form. Indeed, the label does not grant them any tax or other financial advantages.⁸³ Second, there is no mandatory implementation of an asset lock,⁸⁴ meaning that in case of dissolution of the social enterprise the assets can be redistributed to shareholders. Third, the proposal remains sketchy about compliance in terms of transparency and participative governance, opening doors for potential greenwashing.⁸⁵ Yet this could be corrected if the requirements for the BVm would also incorporate the ones set by Code Social Enterprises. Moreover, it could be a requirement for BVms to apply for the B corp certification. By adopting such a combination, strong pre-requisites would be required from an organization to obtain the BVm label. Moreover, the compulsory application to the B corp certification would enable a regular control of BVms' social orientation since they would have to take the assessment every three years. Additionally, such a scheme would grant the organizations more recognition at the national level. In any event, in February 2022 the law had not passed yet and changes could still be implemented.

6 Conclusion: The Future of Social Economy in the Netherlands

In this chapter, we reviewed the state of social economy in the Netherlands, using the perspective of the EMES school of thought to analyze the Dutch situation. Such an analysis has pointed out the singularities of the Dutch system compared to its European neighbors. We also have seen the different possibilities for social enterprises to incorporate in the Netherlands. Since there is no specific regulation for social enterprises so far, the latter can incorporate under five different legal forms—namely, private limited company (BV), public limited company (NV), cooperative, foundation, and association. Yet, cooperatives and non-profit organizations (i.e., foundations and associations) are traditionally not seen as social enterprises.⁸⁶ The Netherlands has thus been implementing a narrow definition of the concept of social enterprise and has been focusing on for-profit legal forms. In doing so, the legislature

⁸²E.g., *ibid.*

⁸³Hogenstijn M, *Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands*, September 2021.

⁸⁴Driessen and De Moor (2021).

⁸⁵*Ibid.*

⁸⁶Karré (2021a).

disregarded instruments already incorporated in other legal forms to work for the common good. Examples of such instruments are democratic governance mechanisms and stakeholder governance models—which are at the heart of legal forms such as cooperatives but also non-profits—asset locks, and limits on profit distribution.

With the introduction of the BVm, the Netherlands hopes to bring clarity in the definition of social entrepreneurship and social enterprises. Yet, the current state of the bill remains too vague so far, and the focus too narrow. All social enterprises that are incorporated under another form than the BV will officially be dismissed as such. A challenge thus remains in recognizing social enterprises beyond their legal form, especially when they have their roots in non-profit rather than for-profits set-ups. We agree that the creation of a label for more recognition of social enterprises is a necessity, but we deplore its narrowness on commercial orientation. Yet, time remains for government officials to revise the bill and focus on new possibilities that the BVm could offer.

Should the bill not pass, it will remain challenging for social cooperatives to distinguish themselves from traditional ones. The adoption of a label—such as B-Corp and/or Code Social Enterprises—could be a solution for these social cooperatives to gain recognition.⁸⁷ Yet, the B-Corp label itself does not control for the mechanisms that are traditionally inherent to social enterprises. Indeed, for instance the certification does not impose an asset lock nor a limit on profit distribution. This last criterion, however, is included in the BVm law project. The adoption of a triple label (i.e., B-Corp, Code Social Enterprises, and BVm, although administratively heavy) would provide all types of social enterprise in the Netherlands with the appropriate mechanisms, controls, and recognition they deserve. We realize this solution implies that there would be a mix of public and private normative requirements, but there is no reason to exclude this approach, at least at a first stage and until an appropriate set of hard law rules are in place. We thus urge the Dutch government to reconsider the BVm proposition and revise it to broaden it to other legal forms, as suggested by the EMES school of thought.

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⁸⁷Defourmy et al. (2021b).

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