

WHITEPAPER

SUSTAINABLE BY DESIGN

**INDUSTRIAL POLICY FOR LONG-TERM
COMPETITIVENESS IN THE EU**

JULY 2024

A photograph of an industrial building with blue corrugated metal siding and yellow pillars, viewed from a low angle looking up. A white curved graphic element separates the text from the image.

FOREWORD

This Whitepaper is the outcome of a joint conference on ‘Transforming Ownership in Times of Overlapping Crisis’, held in Amsterdam on October 5-6, 2023. We thank all contributors for presenting at the conference and engaging in lively discussions. The results of the conference were presented in a lunch seminar at the European Parliament on February 14, 2024, with participants from the EP as well as members of the DG’s of the European Commission. We thank all participants at that meeting for their input.

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Marija Bartl (University of Amsterdam)

Marija Bartl is a Professor of Transnational Private Law and a Director of Amsterdam Centre for Transformative Private Law. Her research revolves around the question of law and social change.



Rutger Claassen (Utrecht University)

Rutger Claassen is Professor of Political Philosophy and Economic Ethics at the Department of Philosophy and Religious Studies of Utrecht University. His research is at the intersection of politics, economics and ethics, focusing on theoretical and normative questions about democracy, freedom, markets, and justice.



Nena van der Horst (University of Amsterdam)

Nena is a PhD candidate at the Amsterdam Center for Transformative Private Law. Her PhD studies the distribution of profit (dividend) in the framework of corporate social purpose.

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INTRODUCTION

Sustainable by Design: Industrial policy for long-term competitiveness in the EU

Marija Bartl, Rutger Claassen and Nena van der Horst

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1. INTRODUCTION

Growing resistance to the European Green Deal suggests that the top-down sustainability measures, pursued from the perspective of both economically and culturally secure social groups, are failing to garner broader social support. Yet, the pursuit of transitioning to a sustainable economy cannot be postponed - at least if we want to preserve a liveable planet for ourselves and our (grand) children. Thus, in this whitepaper we want to argue for a different - a more inclusive and bottom-up way of approaching sustainability - by fostering entities that are 'sustainable by design', that is, entities that make it their task to share prosperity, to strengthen communities and to deliver sustainability bottom up.

What is more, today, when the EU is searching ways to become more competitive, we argue that organisations that are 'sustainable by design' should become the pillar of a newly found European competitiveness. Such organisations invest more, they innovate more, they garner more trust and enjoy more resilience in times of crises. This resilience and broadly shared prosperity is what will set the EU economy apart from any of its competitors.

What kind of organisations are 'sustainable by design'? At the most general level, we use 'sustainable by design' to refer to entities that have opted for ownership structures that support (re)investment in the firm, including all its stakeholders, as well as broader society and nature and/or that democratize decision-making. Such organisations are designed in a way that avoids many problems related to mainstream company structures, in which short-termism has been established as a problem.¹ In this paper, we single out three such types of ownership and ownership structures that are 'sustainable by design':

Steward ownership organisations are governed by two principles. First, the right to decide on the purpose and management of the company is held by 'stewards' instead of shareholders. Stewards - for instance foundations - are persons who have no personal financial interest in the

company, so that they can act in the best long-term interest of the company and its mission. Second, the profits in such steward-owned firms serve the mission, meaning that they are for a large part reinvested in the company. Many successful steward-owned companies exist, including Novo Nordisk, Bosch, and Carlsberg.

Workers' ownership focuses on worker cooperatives and Employee Stock Ownership Plans (ESOP's). By making workers the owners of the organization they work for, the decision-making can be (partly or fully) decoupled from investor interests and directed toward, again, the long-term success of the company. Workers' ownership is also a response to the pressures of globalisation and a need for strategic autonomy - where workers have significant voice, moving to low standards jurisdiction in order to cut costs will become far more difficult. As an in-between form we also emphasize the importance of 'worker participation', which gives workers control rights (but not full ownership) in their companies). Worker participation is already widely applied throughout the EU as exemplified by the German co-determination system.

Collective ownership brings together a number of different forms, including public ownership (eg. public utilities or municipal housing), cooperative ownership (e.g. energy coops) or commons (common governance of shared resources, including digital or public spaces). Here ownership is not in the hands of stewards or workers, but in the hands of a group of users or citizens. This diverse set of collective ownership and governance structures can provide effective and equitable way of governing crucial infrastructures, data, energy or public spaces, leaving no one behind.

The various contributions to this whitepaper will go into greater depth with respect to each of these ownership forms and give examples. In the remainder of this introduction, we now summarize why these organisations help the EU to achieve long-term competitiveness. After that, we outline the main elements of an Industrial Policy

approach to achieve an economy that is sustainable by design.

2. LONG-TERM COMPETITIVENESS IN THE EU

Historically, Europe has had a tradition of diverse forms of ownership. Next to mainstream companies, it has foundation enterprises, cooperatives in various sectors, public ownership, and shared governance of resources. The ownership structure of these organizations creates an in-built focus on long-term prosperity and stability instead of short-term profitability. Many of such organizations are still operating, contributing to a resilient and prosperous European economy. For instance, the steward-owned company Novo Nordisk has been one of the most competitive, innovative and resilient companies in Europe and worldwide. Arguably, it achieved this status because it did not try to cut corners on investment and innovation, making itself - and the EU – more competitive in turn.

This European history also demonstrates that long term competitiveness must entail shared prosperity, environment, and community. These are not only intrinsically valuable, but also serve as basic preconditions for the successful operation of businesses. If businesses do not take into account the environment and communities in which they are situated, collectively they will undermine the very basis of their own operation. The EU has already been the first economy in the world to recognize this and to lead the way on business responsibility for environment and human rights.² In the upcoming era, we argue, having many more organizations that are “sustainable by design”, would realize a distinctively European way of harnessing competitive advantage. These organisations are resilient, support investment in (green) innovation and strengthen community and thereby strengthen the European economy geo-economically and geopolitically, via the following routes:

2.1. RESILIENT AND INNOVATIVE PROSPERITY

“Sustainability by Design” comes with a focus on the long term as opposed to short-term profitability. Hence, the sustainable ownership forms we discuss in this white-paper often show a particularly high degree of resilience, especially in times of economic crisis. Steward-owned organisations exhibit systematically higher equity ratios, which is an indicator of a less risky capital structure.³ This enables them to whither better bad times.⁴ On average, they survive considerably longer than their competitors.⁵ In addition, they fire fewer people, - not making the workers a collective problem, but rather using their own reserves and resources to maintain employment.⁶ In case of workers’ ownership, workers may be more easily ready to take equitable cuts on salaries to whiter bad times and preserve their company.⁷ This is beneficial for the crisis-resilience of the individual organisations as well as the European economy in general.

At the same time, these organisations do not just use their resources as buffers for times of crisis, but they also use them to invest in innovation. The ownership structure of steward-owned companies for instance removes incentives for short-term profit maximization. Often, they have relatively large retained earnings, which they can invest in long-term innovation.⁸ In Denmark, it was found that Danish foundation-owned companies, which make up 5 percent of the total Danish employment, make up more than 50% of the Danish private investments in research and development.⁹ For worker-owned firms, it is found that they are equally productive as mainstream firms.¹⁰

This results not only in technological, but also in social innovation, in which steward-ownership, worker-owned, and collective-owned organizations are champions, thereby contributing to solving some of the hardest problems that we are facing as a society. As an example of collective ownership, in Germany the “Miethäuser Syndikat” presents a highly successful model of community hous-

ing ownership that aims to provide long-term affordable housing to broad swaths of society.¹¹ At the same time these forms of collective cohabitation will be fundamental for dealing with the care of aging populations, in the context of increasingly scarce health and social care services.

Finally, sustainable by design also entails being “distributive by design”: these organizations often distribute the benefits they obtain more fairly over society. They have a comparative advantage there as they are usually less focused on short-term profitability. Large steward-owned companies for instance are often committed to paying tax rather than creating schemes to avoid it,¹² and often donate large amounts of their profits to charities.¹³ Worker cooperatives tend to have lower levels of wage inequality than mainstream firms.¹⁴ And where workers have more say in the running of the firm, moving production elsewhere in the world in order to cut costs will also be far more difficult. Thus, these entities ensure a more endogenous manufacturing and services provision, while benefits accrue more broadly.

2.2. COMMUNITY CONNECTION, STRATEGIC AUTONOMY AND PURPOSEFUL WORK

Organisations that are ‘sustainable by design’ tend to contribute more to local and regional communities. First of all, they tend to be geographically spread across the EU, including its less developed regions.¹⁵ At the same time, they are also well embedded in local communities, taking great responsibility for the people they work and live with. This means that such entities will also remain more committed to their locality and community even if, for instance, this means somewhat less profit in comparison with dislocating production.¹⁶ Thus we suggest that organisations that are sustainable by design are crucial for the EU’s struggle to increase its strategic autonomy, as they maintain production, knowledge and capacity local

and spread across the EU.

The community embeddedness of organisations that are sustainable by design has also more benefits for the people that are affected by it – its workers as well as the communities in which they are embedded.¹⁷ For example, such organisations often provide more purposeful work,¹⁸ which in turn is likely to positively affect workers’ health and happiness, saving costs to society. Moreover, these ownership forms often enable and foster a greater involvement of the community,¹⁹ being thus very likely a superior vehicle for all kinds of activities (including extractive ones) that require genuine local engagement and/or aim at genuine local development.

2.3. INCLUSIVE ENVIRONMENTAL SUSTAINABILITY

Finally, empowering organisations that are ‘sustainable by design’ will also strengthen environmental sustainability in bottom up, inclusive ways. As many of these companies have higher retained earnings, they first and foremost have more capacity, and willingness, to invest in environmental technologies.²⁰ In some cases, sustainable organizations are fully set up as the vehicles for investing private/individual capital into sustainable technologies and transition, such as is the case of energy cooperatives. The European Union has already recognized this fact, by providing a legal framework for ‘energy communities’.²¹

Furthermore, organisations that are ‘sustainable by design’ will often have more environmentally sustainable business models. A new study on employee ownership tentatively finds that employee ownership has a positive effect on environmental performance.²² The Commission itself has observed that social economy organisations are often leaders in circularity, as they place social mission central.²³ Empowering organizations that are sustainable by design may hence bring Europe closer to finding new and better ways of circular production, in turn increasing both its competitiveness and resilience.

3. THE INDUSTRIAL POLICY APPROACH

How can Europe support the organisations that are sustainable by design, to deliver on competitiveness, prosperity, community and environmental sustainability? Rather than imposing or mandating, we argue here that the EU should adopt an approach that relies on enabling and promoting organisations that are sustainable by design. Building on insights from the EU's modern industrial policy, the EU ought to operate on at least one and even better on two fronts in order to achieve the benefits. First, it should level the playing field between mainstream and 'sustainable by design' organisations. Second, it should promote organisations that are 'sustainable by design'.

First, companies that are sustainable by design face a number of obstacles that are due to the fact that they do not align with the 'mainstream' way of doing business. The start would be to provide such entities with a level playing field with mainstream companies. This includes most importantly the availability of suitable, ready-made legal forms and a financial and regulatory framework that takes into account the special features of a diversity of ownership structures, especially in order to ensure they have the same access to funding as other organizations. Second, the EU should also consider supporting and promoting this sector more proactively, in order to make it more attractive for people to pursue economic activities by means of organisations that are sustainable by design. This, as we have argued above, would have large benefits for EU long-term competitiveness.

The great advantage of this approach, we further contend, is that the social and political costs are low: the proposal is about enabling people rather than forcing people to do things. At the same time, the benefits can be quick and large, as we can tap into a growing movement in society. Let's now look in more detail at both components of an Industrial Policy approach for sustainable ownership.

3.1. LEVELLING THE PLAYING FIELD

3.1.1 Creating Legal Forms

Leveling the playing field starts with the availability of standardized, basic legal structures that entrepreneurs who want to adopt these models can choose from when they are starting a business or when they are considering a new ownership model for their existing business. These standardized basic structures exist as 'legal forms' or 'entity forms' (hereafter: legal forms) in the legal frameworks of member states and the European Union. Currently, the mainstream legal forms for economic activities are the private and public corporations with limited liability, with voting and profit rights allocated to shareholders. In some European countries, there are also other options, such as cooperatives or social enterprise legal forms, but these are not available everywhere, and where available marred with a myriad of problems. Moreover, there are no ready-made forms for steward-ownership or various forms of commons ownership. Adding such new legal forms would thus broaden the spectrum of possibilities for entrepreneurs.

Having such forms broadly available is important not only because this is easier and cheaper, but also because standard options signal what is normal, good and trustworthy. For example, it is no surprise that many people have still never heard of steward ownership. As long as there is no legal framework for steward ownership, it will remain an 'alternative' to the mainstream. As such, adding new legal forms can contribute to changing cultural norms about business: a steward-ownership legal form for instance would signal that it is very well possible to decouple economic activity from individual financial gain.

Certainly there are entrepreneurs who decide to go beyond the 'mainstream' and experiment with the flexibility that exists within (combinations of) legal forms. In some countries, like the Netherlands, there are relatively many options for experimentation with existing legal forms. However, in other countries, like Germany, the options

are more limited.²⁴ Even if the existing legal frameworks are flexible, designing creative legal structures within them requires extra effort, time, money and courage. It remains much easier to just ‘check the box’ at the notary than to customize your own legal structure.

Finally, legal forms are also important in showing to society which ways of doing business are desirable.

Although there are also three European legal forms (the SE, SCE and EEIG), most European companies make use of one of the legal forms of the member states. The European Union can therefore consider both to implement new legal forms on the European level, or to require or at least promote (via ‘model rules’ for instance) the adoption of new legal forms by member states.

3.1.2 Removing Regulatory Obstacles

Firms with diverse ownership structures run often into obstacles in regulation because of their ownership or governance structure, or innovative practices they aim to implement. While this regulation may be created with good purposes, intended to rain in some of the excesses of mainstream business practices, unintentionally these regulations have created difficulties for organisations that are sustainable by design.

The most pressing of those obstacles are those related to access to finance by organisations that are sustainable by design. Both in equity and debt financing, there is a need for new, customized financing models. For investment in steward-ownership, for example, equity-like debt-financing instruments need to be invented.²⁵ For ownership by the commons and cooperatives, more flexibility in bank loans to organizations that fall in-between commercial firms and individuals is required.²⁶

Financial regulation in particular is often designed for mainstream for profit business and investment, and therefore perceives alternative ownership forms as more risky - even though they will be usually less risky.²⁷ The

same is paradoxically also the case with regard to many public funding programmes, for which sustainable organisations often do not qualify. If (financial) regulation becomes better aligned with the character and needs of organisations that are sustainable by design, this would further incentivize firms and investors, as well as public actors, to develop workable forms of financing.

3.2. PROMOTING “SUSTAINABILITY BY DESIGN”

How can society more directly promote and support organisations that are sustainable by design? Again, EU industrial policy offers a suitable toolkit. First and foremost, institutional facilitations are crucial. We suggest that the EU requires member states to create national institutions (‘agencies’) for the promotion of the social economy, which would, among others, promote sustainability by design by placing this issue more prominently on the national agenda. These agencies would at the same time act as ‘one-stop-shops’ helping with regulatory obligations of those entrepreneurs willing to embark on establishing and running an organization that is sustainable by design. We also suggest that these agencies are able to create regulatory sandboxes for innovative practices in this sector.

A second avenue is by creating private and public markets for the products and services produced by organisations that are sustainable by design. We argue these sustainable organizations should be granted priority in public procurement. Public procurement represents 14% of European GDP.²⁸ Given this size, prioritizing organizations that are sustainable by design in public procurement (making it a criterion in public procurement for instance), would go a long way also in delivering on the EU’s social economy action plan, which sees public procurement as one of the main tools for promoting the social economy.²⁹

To create private markets for organizations that are sus-

tainable by design, we take inspiration from the Croatian and Slovenian solution of ‘replacement quotas’ for products originating from sustainable organisations. Another way would be to make a sustainable ownership structure a condition for engaging in particular types of practices, especially those which are potentially particularly harmful or extractive. In any case, the existence of special legal forms would make both approaches simpler to implement.³⁰

Finally, the EU could also consider using fiscal tools such as subsidies and tax benefits in order to make it more attractive to adopt a sustainable ownership form. These tools have a prominent place in the industrial policy toolkit, even though we recognize that they may be politically more of a more fraught choice.

4. CONCLUSIONS

Instead of focusing on short-term profits, European businesses can be diverse and sustainable in their ownership design, and thereby competitive in the long run. This requires diversifying the ownership forms of European businesses compared to the current monoculture of mainstream companies. The solutions are for a large part already there, but they remain still too marginal. In order to facilitate and promote these diverse, sustainable ownership forms, this whitepaper proposes several industrial policy instruments in order to level the playing field and promote sustainability by design. The various contributions in this whitepaper demonstrate the problems with the mainstream ownership forms and the obstacles faced by people, who want to use sustainable ownership forms. Moreover, many of the contributions also articulate concrete ways for using the industrial policy tools to overcome these obstacles. We provide an overview of the content of these contributions at the beginning of each of the four parts.

The industrial policy approach is not just important for the entrepreneurs who (want to) adopt this way of

pursuing economic activity. It is also vital for European business culture more broadly. Facilitating and promoting sustainable ownership models will show that another economy is possible. Business can be about more than just profit; it can also be about coming together, having a nice place to work, while contributing in a meaningful way to our communities, sustainable planet and just society.

NOTES

- 1 See the contribution in this whitepaper by Rutger Claassen and Bertram Lomfeld, ‘Towards a Corporate Ownership that is Sustainable by Design.’
- 2 This is attested by the Sustainable Finance Package as well as the recent adoption of the Corporate Sustainability Due Diligence Directive (CSDDD).
- 3 Steen Thomsen, ‘Foundation Ownership and Economic Performance’ (1996) 4 *Corporate Governance: An International Review* 212
- 4 Øyvind Bøhren and Morten G Josefsen, ‘Stakeholder Rights and Economic Performance: The Profitability of Nonprofits’ (2013) 37 *Journal of Banking & Finance* 4073.
- 5 Steen Thomsen and others, ‘Industrial Foundations as Long-Term Owners’ (2018) 26 *Corporate Governance: An International Review* 180.
- 6 Steen Thomsen and Caspar Rose, ‘Foundation Ownership and Financial Performance: Do Companies Need Owners?’ (2004) 18 *European Journal of Law and Economics* 343
- 7 Pérotin V (2016) What do we really know about workers’ co-operatives? In: Webster A, Shaw L, and Vorberg-Rugh R (eds) *Mainstreaming Co-Operation*. Manchester: Manchester University Press. DOI: 10.7765/9781526100993.00019.
- 8 Akin Gedikli, ‘The Role of Steward-ownership in Enabling Sustainable Innovation an Explorative Study’ (Master’s thesis, Eindhoven University of Technology 2022) <https://research.tue.nl/files/195281425/Master_Thesis_Akin_Gedikli.pdf> accessed 14 March 2024.
- 9 Steen Thomsen, *The Danish Industrial Foundations* (Djøf Forlag 2017) <<https://research.cbs.dk/en/publications/the-danish-industrial-foundations>> accessed 10 March 2024.
- 10 O’Boyle EH, Patel PC and Gonzalez-Mulé E (2016) Employee ownership and firm performance: a meta-analysis. *Human Resource Management Journal* 26(4): 425–448. Similarly, with respect to firms with co-determination, see the contribution in this whitepaper by Iñigo González-Ricoy, ‘Employee Ownership and Employee Participation.’
- 11 <https://www.syndikat.org/en/>
- 12 https://taxfoundation.org/data/all/eu/capital-gains-tax-rates-in-europe-2024/?hss_channel=tw-16686673&utm_content=285679543&utm_medium=social&utm_source=twitter
- 13 Examples of companies that do this include Novo Nordisk, Carlsberg, and TBI.
- 14 Magne N (2017) Wage inequality in workers’ cooperatives and conventional firms. *European Journal of Comparative Economics* 14(2): 303–329.
- 15 The European Commission suggests that ‘there are 2.8 million social economy enterprises, representing 10% of all businesses in the EU. Almost 13.6 million people – about 6.2% of the EU’s employees – work for social economy enterprises’. See Commission’s website, https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu_en.
- 16 Here again large steward-owned companies like Novo Nordisk, Carlsberg and Bosch are exemplary.
- 17 Igalla, M., Edelenbos, J. & van Meerkerk, I. Citizens in Action, What Do They Accomplish? A Systematic Literature Review of Citizen Initiatives, Their Main Characteristics, Outcomes, and Factors. *Voluntas* 30, 1176–1194 (2019). <https://doi-org.proxy.uba.uva.nl/10.1007/s11266-019-00129-0>.
- 18 Claudine Madras Gartenberg and George Serafeim, ‘Corporate Purpose in Public and Private Firms’ (2019) <<https://papers.ssrn.com/abstract=3440281>> accessed 4 February 2021.
- 19 Steen Thomsen and others, ‘Industrial Foundations as Long-Term Owners’ (2018) 26 *Corporate Governance: An International Review* 180.
- 20 For example, Bosch has invested in environmental technologies long before the competitors.
- 21 For how to further improve these energy cooperatives, see the contribution in this whitepaper by Björn Hoops, ‘Embrace the Diversity of the Energy Commons!’
- 22 Jegoo Lee, Douglas L. Kruse, and Joseph R. Blasi, ‘Shared Capitalism and Corporate Sustainability: Broad-Based Employee Share Ownership, CEO Ownership, and Corporate Environmental Performance’, in: *Business & Society* 2024. DOI: 10.1177/00076503241254532
- 23 European Commission, *A New Circular Economy Action Plan*, COM(2020) 98 final, p. 15.
- 24 E.g. in the Netherlands, there are more possibilities than in Germany for foundations to pursue commercial goals, which facilitates steward-ownership. See Sanders & Thomsen, *Enterprise Foundation handbook* (forthcoming).
- 25 <https://purpose-economy.org/content/uploads/purpose-guidebook-for-lawyers10022021.pdf>.
- 26 This follows from interviews conducted in the N-EXT-LAW project with housing cooperatives in the Netherlands. See also the discussion in this whitepaper by Tej Gonza, ‘Using the ESOP Model to Scale Broad-based Employee Ownership.’
- 27 See for example the contribution in this whitepaper by Annika Schneider ‘Obstacles towards a more widespread adoption of steward-ownership as an alternative, non-extractive ownership model for businesses.’
- 28 COM (2017) 572 final, p. 3
- 29 <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10117&furtherNews=yes#navItem-1>
- 30 On both of these proposals, see the contribution in this whitepaper by Mario Pagano, ‘Enhancing Socially Responsible Public Procurement under EU law.’

PART 1

SUSTAINABLE BY DESIGN THE CASE FOR DIVERSIFYING OWNERSHIP

INTRODUCTION

The contributions in the first part of the White Paper cut across the various ownership forms that will be the focus in parts two (steward ownership), three (worker ownership and participation) and four (collective ownership). By doing so, this initial section provides an intellectual foundation for the entire White Paper's agenda. Claassen & Lomfeld discuss the primary issue of shareholder-driven corporate ownership, and how alternative ownership forms can remedy this. Hinton takes it a step further and advocating for the transition to a not-for-profit economy. Hsieh illustrates the importance of these alternative ownership designs for one crucial sector: the digital domain. Pagano finally shows how public procurement can be properly reformed to provide an essential tool for the ownership transition.

Rutger Claassen and Bertram Lomfeld explore what kind of corporate ownership structure would be 'sustainable by design.' Their analysis starts off with the familiar critique of shareholder-driven ownership. Specifically, it leads to the risk that shareholders use the corporate structure for their financial self-interest by exploiting the interests of other corporate stakeholders, such as workers, suppliers, consumers and the environment and society at large. For an alternative, Claassen and Lomfeld first take a step back into property theory. They argue that ownership should be conceived not merely as a 'bundle of rights', but also as a 'bundle of duties.' This provides the ground for their proposal to adopt two principles of sustainable corporate ownership. The first is a principle of balanced cooperation: a company's board should ensure that profits are not generated at the cost of non-shareholding stakeholders. The second is a principle of long-term orientation: shareholders should not be able to extract profits at the expense of the long-term flourishing of the company itself. They discuss the application of these two principles to the various alternative ownership structures discussed

at greater length in this Whitepaper: steward-owned, state-owned or worker-owned companies.

As this contribution shows, the question of ownership structure is closely tied to how profits arising from ownership are dealt with. Profits are also the central problem in Jennifer Hinton's contribution. Hinton argues that for-profit motive in business is creating various issues, such as inequality, overconsumption and environmental degradation, market concentration and political capture. Using systems theory, she shows the links between these phenomena and how, through feedback loops, they reinforce each other. Because of this entangled set of problems with the for-profit drive, Hinton claims, we need to move to a not-for-profit economy. In such an economy, firms are legally bound to focus on a social purpose and cannot distribute profits to investors. She outlines various measures states could implement to facilitate the transition to a not-for-profit economy, such as providing financial incentives that would make starting a not-for-profit companies easier, and awareness campaigns. In the final part of her contribution, Hinton discusses the obstacles to a transition to a not-for-profit economy, focusing on deeply ingrained cultural beliefs in capitalism and the problem of how to overcome inequality and political capture.

Nien-hê Hsieh's contribution focuses on one class of companies: tech companies. By diving into the case of the digital sector, Hsieh's paper provides a vivid attraction of a program of ownership reform that this White Paper wants to make. His starting point is that the digital revolution, which has transformed the economy profoundly, leads to various concerns. A first concern is job displacement because of automation. Hsieh argues that instead of the usual recipes for this (job retraining, or providing an unconditional basic income), a better route is to broaden ownership across the population. This in-

cludes various forms; Hsieh mentions sovereign wealth funds, ‘baby bonds’, and foundation-owned enterprises. In this way, everyone can profit – Hsieh approvingly quotes G.K. Chesterton’s dictum: ‘Too much capitalism does not mean too many capitalists, but too few.’ Broad-based ownership could also help to mitigate the new harms of the digital economy, such as risks associated with facial recognition due to AI. Instead of the familiar recipe of government regulation, broad-based ownership would give voice to the users of technologies. Finally, Hsieh argues that some aspects of digital technology are best seen as ‘digital public goods’. Here, broad-based ownership helps to overcome inequality in access to new technologies.

Throughout the White Paper, authors call for government support for sustainable corporate ownership, and public procurement is frequently mentioned as one important lever for the government. In his contribution, Mario Pagano zooms in on this, providing an overview of public procurement in the EU legal context. He focuses on the legal interpretation of the 2014 Directive on Public Procurement, asking whether it sufficiently stimulates socially responsible public procurement. He argues this is not the case because it leaves considerable discretion for contracting authorities - which they usually do not have the capacities to act on even if the will is present. To remedy this, Pagano proposes to narrow discretion and incorporate social aspects in tenders. But going beyond this, he also proposes to widen the applicability of the currently existing regime for ‘reserved contracts’, under which social and cultural services are only given to organizations with a social mission and governance. Through these and other measures, Pagano argues, more firms with a social ownership structure could profit from public procurement, leading to a more sustainable and equitable economy.

TOWARDS A CORPORATE OWNERSHIP THAT IS SUSTAINABLE BY DESIGN

Rutger Claassen and Bertram Lomfeld

INTRODUCTION

Ownership confers extraordinary powers. This may come at the expense of non-owners. Every owner is a local monopolist of sorts: with respect to the goods in question, others cannot enjoy them or make use of them. There are good reasons for granting such powers. Ownership gives people a sense of freedom and control – think about how important it can be to own your home or some valuable personal belongings. Ownership also often encourages the productive use of resources and drives economic development. Clear ownership rights prevent endless conflicts between people about who owns what. It thus facilitates social cooperation in a complex society. However, the vulnerability of non-owners remains, especially in contexts where some people own a lot while others own very little. This is particularly true for the main topic of this contribution: corporate ownership.

Corporations own most of the productive assets in the economy. This gives them leverage over the various (‘non-owning’) stakeholders, like employees, local communities and consumers. In this contribution, we want to discuss how corporate ownership could be designed so that it does not dominate or even empower non-owners. We argue that this requires, first of all, a change in how we perceive ownership itself: as a bundle of rights but also as a bundle of duties against non-owners (section 1). Then, we identify the problem of implementing such an ownership philosophy in the corporate context. Standard business corporations are subject to an extractive tendency, where shareholders put pressure on corporate boards to prioritize their financial interests (section 2). Various

alternative ownership forms are available to limit this tendency: steward ownership, member ownership (cooperatives) and state ownership. We discuss these corporate ownership forms in light of various corporate ownership principles that are ‘sustainable by design’ (sections 3 and 4).

1. OWNERSHIP AS A BUNDLE OF RIGHTS AND DUTIES

Ownership in the Western legal tradition has come to be described as a bundle of rights. A person who is a ‘full owner’ has extensive power to do whatever they want with the things they own. In essence, the bundle of rights is made up of four types of rights.¹ First, an owner has a right to use their things as they want, choosing any particular purpose for their money, land, patents, or other holdings. This freedom to use even includes a right to destroy these things (which is necessary for some goods, e.g. when we consume food). Second, owners have a right to profit from their use and hence derive an income. Many assets can be productively deployed, and the produce can be sold or rented on the market. The owner has the privilege to receive the income. Third, owners have a right to alienate their holdings. They have the power to sell them, donate them, or even abandon them. The latter two, the rights to profit and alienate, are hugely important in a market economy. Fourth, owners have a right to exclude others from the three foregoing rights. Others have a duty to respect these ownership rights and are barred from using, alienating and profiting from the owners’ holdings. Even if a factual interference with the

owner's property is already over and could thus not be banned anymore, the right to exclude gives the owner a subsequent claim for damages.

Historically, these rights have given owners immense social, cultural, economic and political power, especially in contexts where others ('non-owners') lacked access to the same resources. But are there no limits? Indeed, some property theories say that owners can enjoy their rights but always within the limits of the law. The law may set boundaries and thereby impose duties upon owners. This way, the power imbalance between owners and non-owners can be redressed. Analogously with the 'bundle of rights', one could also think of a corresponding 'bundle of duties.' What would these duties be?

Here, we can also think of four duties. First, a duty to care demands the preservation and development of the object of property. We can think of this duty as a liability to exercise one's right to use responsibly, for example, by not harming others or not ruining an object. Second, a duty to share sets boundaries to the right to exclude. Especially if an external use by others does not conflict with the intended use of the owner, then it may be warranted to give others access to one's property (here one can think of Intellectual Property rights or apartment buildings not being used). Third, the power to alienate may be suspended by a duty to sustain, which disables unsustainable changes of legal relations. For example, the selling of a primeval forest as industrial building land may be in conflict with this duty. Fourth, a duty to distribute relativises the privilege to profit oneself by asking owners to share profits with non-owners.

Each of these duties limits one or more of the owners' rights mentioned above. There is one standard caveat, however. Since laws need to be externally imposed by lawmakers, the realization of these duties in practice depends on the view of lawmakers (political will) and their capacity to make suitable rules and enforce them in practice. Owners often perceive these rules as commands

imposed on them - unwelcome limits on their freedom. This duality between the imposition force of the state sovereign and the freedom of private owners is a fundamental tension within liberal-democratic regimes. This tension is not between a so-called 'natural freedom' of the owner and a later external state intervention. Rather, the tension is part of the ownership structure itself. Both the range of the owners' rights (freedom) and their duties are legally constructed. The practical balancing between these rights and duties works well where lawmakers have the will and capacity to impose duties on owners. Still, it works less well where owners have the will and capacity to minimise or circumvent these state-imposed duties.

With this stage-setting in the general theory of ownership, let's now move to the particular context of corporate ownership.

2. THE PROBLEM OF CORPORATE OWNERSHIP

Corporations are legal persons who can act in their name in the legal system, suing and being sued, signing contracts, and owning property. They lead a separate legal existence from the flesh-and-blood persons (which the law calls 'natural persons') who make these decisions on behalf of the corporation (hereafter: 'the board of directors'). The corporation is also separate from all other persons, which gives this abstraction a real-life existence: investors, employees, suppliers, etc. In line with a long tradition, we use the term 'corporation' widely here. It refers to all incorporated legal entities: public ones (like a municipality), private non-profit ones (such as foundations and associations) and for-profit ones. The latter we call 'business corporations.'

The term 'corporate ownership' is ambiguous. It can refer to the ownership of assets (buildings, machines, patents...) by corporations. But it can also refer to the question whether the corporation is itself owned. Non-profit corporations such as associations or foundations are

non-owned. Similarly, public corporations (like the state or a municipality) are non-owned. However, from the 17th century onwards, with the colonial trading companies as the pioneers, the corporate form is also used for commercial purposes.² Such business corporations (or ‘joint-stock companies’) are a sort of association where the shareholders fulfil a role analogous to members in an association (or citizens in a town or state). Sometimes, it is said that shareholders are ‘the owners of the company’ because they have control rights: they can choose the board (government) of the corporation, dismiss it when it functions badly, and influence the main policies and strategies of the company. Also, they have economic rights - the right to get a dividend payment.³

Now, the legal design of business corporations contains an in-built risk, i.e. that the shareholders treat their company as a money machine, pushing the board to make maximal of their ownership rights (i.e. the company’s ownership rights over its assets) to generate profits, which are then extracted for the sake of the financial gain of shareholders. How does this come about? Shareholders have two unique privileges, which together lead to an asymmetry. On the one hand, their investments are shielded from liability from the company’s debts. Shares can depreciate if the company does not perform well, yet unlike an entrepreneur operating under their name, shareholders are not liable for settling debts (‘downside risk’). On the other hand, the ‘upside’ of a successful company is potentially all theirs. Shareholders can extract money from the company by getting dividends (or, equivalently, increased share prices via share buybacks). This pressure is serious because of their control of the board in combination with a threat to exit via the stock market. This legal setup (combining limited liability, shareholder control and economic rights) incentivises shareholders to pressure boards to implement strategies which maximise profits by off-loading costs and risks to third parties (stakeholders): employees (low wages, precarious labour conditions), the environment (pollution, extraction of

non-renewable natural resources), users (making them addicted to one’s products), the state (evading taxes), etc.

Companies whose shareholders and boards feel responsible for the broader society in which the company is embedded don’t engage in these strategies. Happily, there are many such companies.⁴ But large, footloose companies – both stock-listed companies and those owned by private equity – too often do.⁵ They act as if their ownership rights do not come with duties attached. So we must ask: are there corporate structures that don’t exhibit this in-built extractive design? Are there structures which are ‘sustainable by design’ by balancing within the corporate ownership structure the bundle of rights with a bundle of duties?

“Now, the legal design of business corporations contains an in-built risk, i.e. that the shareholders treat their company as a money machine, pushing the board to make maximal of their ownership rights...”

3. OWNERSHIP THAT IS SUSTAINABLE BY DESIGN

Corporate ownership that is sustainable by design, we propose, aims at two principles. To understand these principles, it is helpful to consider the corporation as a sort of commons, a nexus of a variety of stakeholders who all contribute to the long-term success of the corporation.⁶ In a first step, the corporation’s activities generate benefits of all kind for the members of the commons (work and wages, products) as well as, possibly, financial profits. In a second step to the corporation needs to decide about the destination of the profits, if there are any. Our first principle applies to the first step and the second principle applies to the second step.

- Principle of balanced cooperation (or fair distribution): the generation of profits is not accom-

plished through unfairly minimizing the benefits of non-shareholding stakeholders and/or imposing costs and risks on them (even when the law would allow). These benefits, costs and risks must be fairly distributed among all stakeholders.

- Principle of long-term orientation (or prudent extraction): the extraction of profits by shareholders is not forbidden, but it should be careful, i.e. not come at the cost of the long-term survival and flourishing of the company itself and society or nature.

The first principle prescribes that the board, as the legal representative of ‘the corporation’, acts as a mediator between the various cooperating constituencies.⁷ Hence, it must not see itself as only the exclusive servant of one of these groups (the owners, i.e. the shareholders) by putting pressure on the others (the non-owners) but see itself as giving each of these groups a fair share. Fair cooperation could include sharing use rights or distributing profits. In good times, they all flourish; in bad times, they all suffer losses. Hence, here we see the first instantiation of the idea of complementing rights in the corporate ownership structure with a ‘bundle of duties’.

“Fair cooperation could include sharing use rights or distributing profits. In good times, they all flourish; in bad times, they all suffer losses.”

The second principle is about the relation between the corporation itself on the one hand and all these groups (and society at large) on the other hand. The corporation as a commons has an interest of its own in being preserved as a corporate entity over time (call this maintaining ‘corporate integrity’). This liability to care for corporate integrity may, in particular circumstances, create tension with the concrete interests of any of the cooperating constituencies, even when, in the long run, all constituencies benefit when the corporation survives and

flourishes. Retaining profits within the company ensures that the corporation has a buffer as well as the capacity to invest in future activities and measures, ensuring sustainability compliance. A prudent extraction policy demands that the corporate constituencies do not appropriate all the gains, thus leaving the company behind as an empty shell. Therefore, handing out profits to shareholders should only be done when it doesn’t threaten these vital interests of the company (and society). This is a second step in making the owning corporation a duty-bearer: implementing a duty to care for itself (to the ultimate benefit of all who cooperate through the corporation) and sustain its social and ecological relations.

4. ALTERNATIVE OWNERSHIP FORMS

But how can these fundamental principles be hard-wired into the corporate structure? For this, we propose two applied principles:

- Principle of purpose-driven control: Control rights must be given to a party legally bound to prioritise the company’s purpose over the maximisation of profits, thus fulfilling the principle of fair distribution.
- Principle of responsible profit distribution: Company policy on the distribution of profits to shareholders (or members) must be subject to a stringent test of whether it fulfils the principle of prudent extraction.

In the remainder of this paper, various non-standard ownership forms will be discussed in depth. The three main ones are steward-owned companies, member-owned cooperatives, and state-owned companies. How are the two applied principles fulfilled in each of these non-standard corporate forms?

The principle of purpose-driven control is fulfilled in

steward-owned companies by anchoring the company's purpose into the statutes of the company and giving control rights to a set of stewards, e.g. the board of a controlling foundation that acts as such, who are mandated to act to fulfil the purpose. This is the most explicit form of anchoring purpose-driven control, giving it to a body that is not the shareholders. Whether all stakeholder groups get adequate protection in this structure depends on whether the purpose is clear enough to indicate how the various interests must be balanced or whether the stewards have the will and capacity to maintain this balance.

In both cooperatives and state-owned corporations, control rights lie with shareholders (term used here as including 'members' in cooperatives). Hence, there is a risk that such companies will be tempted to put profits first at the expense of fair treatment of other stakeholder groups. In a cooperative, this risk is mitigated for the membership group, which has shares and a membership stake. Workers' cooperatives, for example, will typically not externalise costs onto workers. However, with respect to non-worker groups (or nature), the cooperative could be tempted to act extractively. In state-owned companies, there is a similar risk, i.e. the state agency or department that exercises control rights treats the company as a cash cow for public budgets by shifting costs and risks to particular stakeholders (or natural integrity). In both cases, the risk must be mitigated by building concern for these stakeholders into the structure.

The principle of responsible shareholder pay-out policy can be anchored in the corporate structure in a straight-forward way by implementing a dividend cap. Such a cap determines that only a specific maximum percentage of profits can be handed out as dividends. The statute for Community Interest Companies in the UK has such a cap. CICs are obliged to cap dividends at 35% of profits; the other 65% of their profits must be reinvested in the company. Steward-owned companies do not necessarily work with such a hard cap. When wholly owned by

a foundation, the risk of undue pressures to pay out is mitigated by the foundation's non-profit nature. When there are also outside investors with shares – even if these do not give control rights – some pressure to pay out may ensue. Cooperatives and state-owned companies can mitigate this risk by anchoring a distribution of profits in their legal structure. For example, the prominent Basque worker cooperation Mondragon has a policy of spending 10% of profits on charity, putting 45% in the collective capital account and another 45% into the individual member accounts their workers hold at the company.⁸ State-owned companies could adopt similar policies.

“The principle of responsible shareholder pay-out policy can be anchored in the corporate structure in a straight-forward way by implementing a dividend cap.”

5. CONCLUSIONS

Let's take stock.

We have seen that standard business corporations carry an in-built risk, i.e. shareholders use companies to maximise share value at the expense of both the corporation itself and non-shareholding stakeholder groups or society and nature. This is the extractive tendency. Note that ownership power lies in the first instance with the corporation, who owns the corporate assets. However, shareholders have control rights (over the board) and economic rights (to get dividends) and hence have considerable power over the corporation. State policies are then needed to protect vulnerable stakeholder groups (non-owners) and impose duties on the corporation (owner). Where such state policies fail, non-owners are structurally exploited.

Alternative corporate ownership forms aim to hard-wire a balance between the interests of owners and non-owners into the corporate structure. This is 'sustainability by design', which, if successful, relieves pressures on states to regulate corporate behaviour to prevent exploitation.

The key to these alternative ownership forms is a change of control or economic rights: these are no longer in the hands of outside investors. Such investors often have no motive to not behave like a homo economicus, focusing on their short-term financial self-interest. In alternative ownership forms, the public as a whole (state ownership), workers or consumers (cooperative ownership) or a non-profit foundation (steward-ownership) assume the shareholder position.

“Therefore, we can say that alternative ownership forms fulfil a necessary condition towards ‘sustainability by design’ by removing the purely financial incentive of outside investors.”

But does such a change in the identity of the shareholder group automatically remove the extractive tendency from materialising? No. This is clearest for member-owned cooperatives and state-owned companies, where members can aim to exploit non-members, or the state can exploit specific citizen groups. In steward-owned companies, it depends on the nature of the purpose and how stewards protect this purpose. Therefore, we can say that alternative ownership forms fulfil a necessary condition towards ‘sustainability by design’ by removing the purely financial incentive of outside investors. This is important but not yet sufficient in itself. Additional safeguards in the legal design are needed to make the state, members or a foundation into owners who act as adequate guardians for the legitimate interests of all corporate constituencies as well as society and nature at large. When these are in place, alternative corporate ownership forms can be vital to a sustainable, non-extractive economy.

A NOT-FOR-PROFIT TRANSFORMATION FOR A FAIR AND SUSTAINABLE FUTURE

Jennifer B. Hinton

1. VISION OF A SUSTAINABLE FUTURE

Currently, the world faces multiple coalescing crises, including persistent poverty, growing inequality, climate change, and biodiversity loss. These crises are often treated as disconnected issues with diverse causes and, thus, different solutions. However, a systemic analysis reveals a common driver: the for-profit way of organising the economy.⁹

Our global economy is dominated by for-profit types of business. The for-profit (FP) business structure is a legal framework whose purpose it is to enrich private owners and investors via the distribution of the business's financial surplus (i.e., profit). This might seem like a very logical way to organise business because most of us grew up in societies where this is the norm. However, this way of structuring business is driving today's global crises through four key dynamics.

„Our global economy is dominated by for-profit types of business. The for-profit (FP) business structure is a legal framework whose purpose it is to enrich private owners and investors via the distribution of the business's financial surplus (i.e., profit).“

First, it drives overconsumption and, thus, environmental degradation (Figure 1¹⁰). In order to deliver more profit to owners, FP companies are incentivized to sell more goods. Some common profit-seeking strategies they use

to do this include advertising and planned obsolescence (wherein products are designed to become obsolete before they need to, such as in laptops, mobile phones and fast fashion).¹¹ As they sell more products and services, they make more profit for their owners, but they also use more resources and create more waste, harming the natural environment.¹²

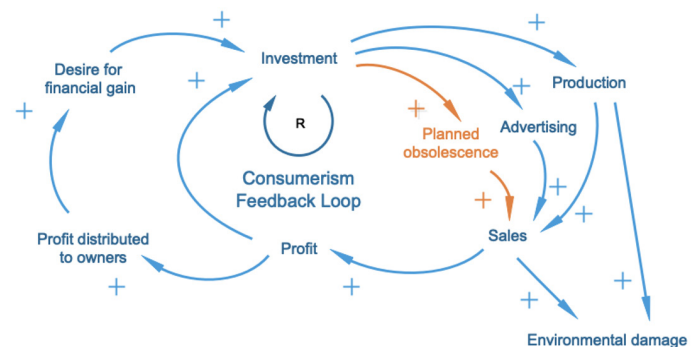


Figure 1. Consumerist dynamics of the for-profit economy (from Hinton, 2020)

Secondly, the FP economy systemically drives inequality (Figure 2). There is an inherent incentive for owners to accumulate wealth (as that is the purpose of the FP structure).¹³ In pursuing financial gain, there is also an inherent incentive for managers to keep wages as low as possible, as wages are a key cost of doing business.¹⁴ The drive for private financial gain has led to a handful of increasingly wealthy business owners, and to the wage stagnation that has characterised the global economy for the last few decades.¹⁵ In this way, the FP economy drives

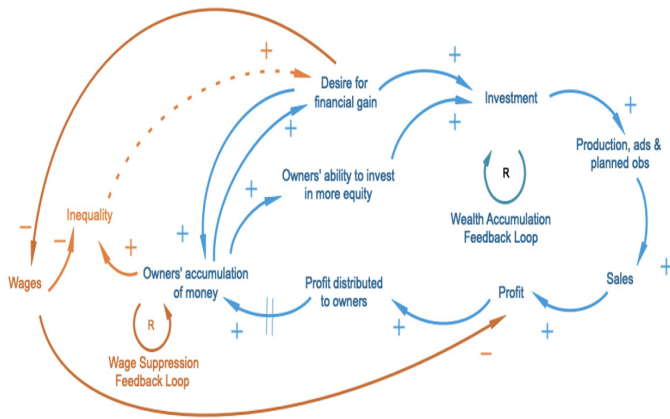


Figure 2. Inequality dynamics of the for-profit economy (from Hinton, 2020)

Thirdly, the FP economy tends to lead to market concentration. This is because investment is guided by the perceived profitability of companies and the largest companies naturally seem the most profitable, so they tend to receive the most investment.¹⁶ This, in turn, allows them to grow even larger and take a bigger share of the market, as they are able to buy up or merge with other companies, advertise everywhere to increase their visibility and sales, and benefit from economies of scale (e.g., ordering in bulk, etc.).¹⁷ This explains why a handful of companies control most of the market in virtually every sector of the global economy today.¹⁸

Most proposed solutions to these problems come in the form of taxes to redistribute the accumulated wealth, as well as regulations to protect the environment and workers and even policies to break up the market concentration. However, the FP economy also systemically drives political capture (also known as regulatory capture). In order to maintain and even grow their wealth, companies and their owners use strategies like lobbying and revolving doors in order to fight policies that would increase their costs (e.g., labour and environmental protections).¹⁹ Likewise, they use political capture strategies to encourage policies that will reduce their costs (e.g., tax cuts and regulatory loopholes) and increase their revenue (e.g., subsidies, public procurement, etc.). In other words, to the extent that actors stay true to the purpose

of the FP way of organising the economy (e.g., enriching private business owners), the FP economy systemically erodes democracy in society.

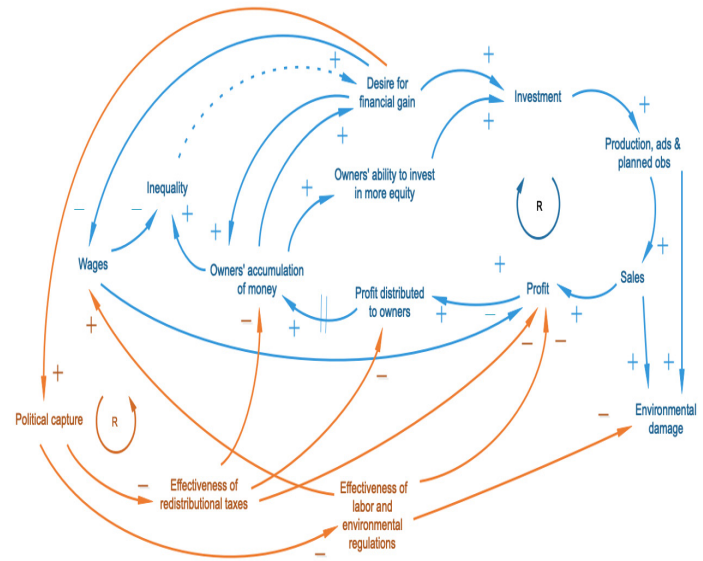


Figure 3. Political capture dynamics of the for-profit economy (from Hinton, 2020)

„Therefore, deep systemic change is needed in order to re-orient the economy towards making sure people’s needs are equitably met within ecological limits.“

For the reasons I have outlined above, the FP economy is fundamentally unsustainable, in social, economic, and environmental terms (Figure 4). For-profit companies and their owners are acting rationally in a system that defines success in terms of private financial gain.²⁰ The current economic system is set-up for the primary purpose of enriching business owners and it is fulfilling that purpose quite well. However, it is eroding the social and ecological foundations of society in order to accomplish its purpose. Therefore, deep systemic change is needed in order to re-orient the economy towards making sure

people's needs are equitably met within ecological limits.

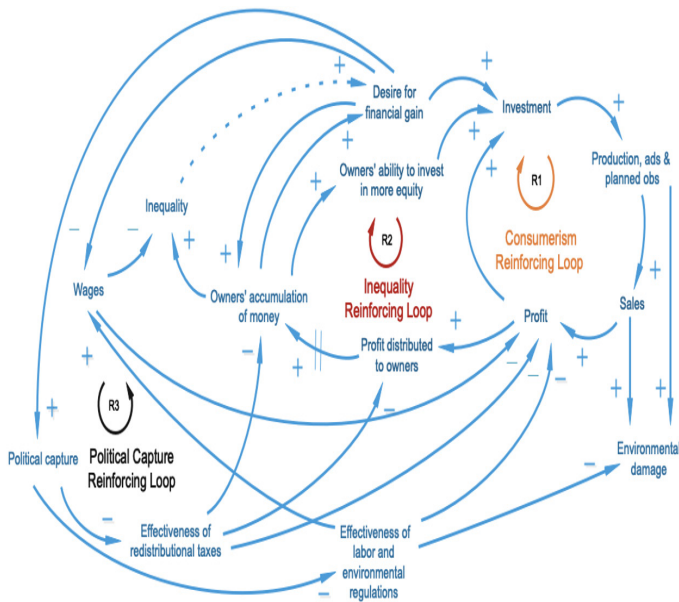


Figure 4. Unsustainable dynamics of the for-profit economy (from Hinton, 2020)

Fortunately, we do not have to start from scratch. There are existing alternatives to the FP way of organising the economy. One promising alternative is not-for-profit (NFP) business.²¹ These are firms that generate most or all of their revenue through the sale of goods and services (unlike charity-dependent not-for-profits), but they have a legally-binding social benefit purpose and all of their resources must go towards achieving social benefit (unlike FP businesses).²² Crucially, they cannot privately distribute their profit, but must instead use it to achieve their social mission. These kinds of businesses already exist around the world and in all sectors of the economy.²³ Think, for instance, of a foundation-owned bakery, an association-owned hostel, a credit union (i.e., cooperative bank), a mutual insurance company, a community-owned renewable energy enterprise, and the list goes on.²⁴ Markets composed of NFP businesses would lead to very different social and environmental dynamics, as compared to the FP markets we have now.²⁵

A not-for-profit market economy would entail higher levels of equality, as the surplus of the system would be used where it is most needed, such as to help disadvan-

taged communities and to regenerate ecosystems (Figure 5). A focus on sufficiency and wellbeing, rather than financial gain, can allow societies to meet everyone's needs within ecological limits.²⁶ As there is no pressure to deliver profit to owners, such an economy would not have to constantly grow sales.²⁷ This means that in places where we are already overconsuming, we could actually shrink our economic activity to a level of sufficiency in order to allow deprived communities to increase their consumption to a level of sufficiency.

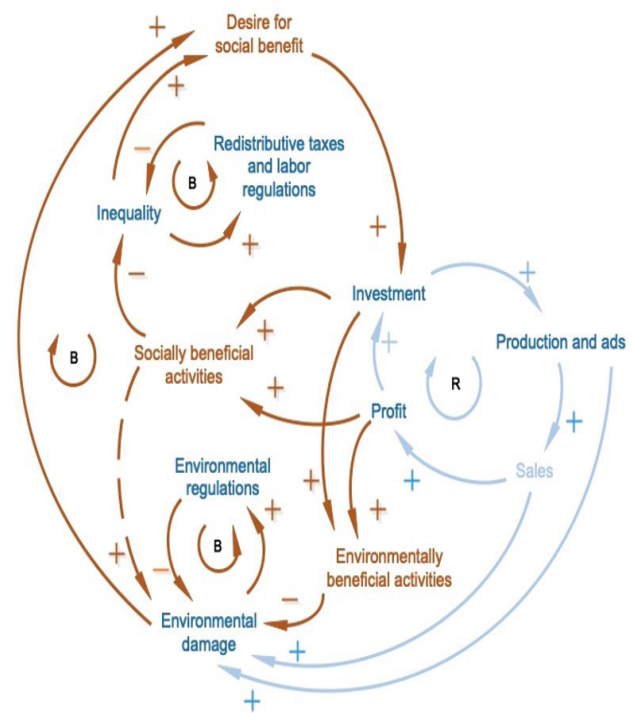


Figure 5. Balanced dynamics of a not-for-profit economy (from Hinton, 2020)

„A not-for-profit market economy would entail higher levels of equality, as the surplus of the system would be used where it is most needed, such as to help disadvantaged communities and to regenerate ecosystems“

Alongside the social safety net provided by NFP markets, governments can also be more efficient and effective at redistributing wealth and providing an additional safety

net to make sure no one's needs go unmet.²⁸ In other words, the NFP market and the government can work together to meet needs, which is in stark contrast to the way the FP market hijacks governments to make private business owners richer. The NFP way of organising the economy allows for communities to re-localise the production of goods and services, as well as to increasingly meet people's needs outside of the economy (e.g., through a shorter work week, more free time, more free public spaces, and swapping and sharing networks).²⁹ Although, the NFP way of organising the economy does not guarantee that environmental regeneration will happen, it at least allows society to decrease overconsumption and address environmental concerns in ways that the FP economy does not. It can be thought of as "necessary but not sufficient" for a fair and sustainable society.³⁰ Therefore, we need to transition from the FP economy to an NFP economy.³¹

2. THE ROLE OF TOP-DOWN POLICIES IN THIS TRANSFORMATION

How can we get from our current FP economy to a sustainable NFP economy? There are several top-down policies that can help.³² First, overarching policy goals must shift from achieving economic growth and competitive markets, to achieving high levels of public health and ecological sustainability.³³ There are already growing calls from the public for such a shift.³⁴

More specifically, there is a need to reduce the advantages that are currently given to the FP economy, especially the largest FP firms, and to shift these advantages to support the emergence of NFP businesses and markets. Governments should shift subsidies, tax benefits, public procurement, and seed-funding away from favouring FP companies to instead favour NFP companies. This can be done in stages. For instance, a first step in changing public procurement policy could be to prohibit the distribution of profit by companies that receive public procurement

contracts while under contract. This can be accompanied by a notification that the government intends to only write public procurement contracts with NFP firms within the next 5 years. Shift pensions away from the stock market and into green and social bond markets, where the money can be used to build up regenerative businesses. Lastly, in terms of shifting away from for-profit institutions, governments can charge higher environmental fees and taxes for unsustainable FP business activities (e.g., planned obsolescence, fossil fuels, etc.) and use the money generated to invest in sustainable, not-for-profit businesses in the ways described below.

„More specifically, there is a need to reduce the advantages that are currently given to the FP economy, especially the largest FP firms, and to shift these advantages to support the emergence of NFP businesses and markets.“

The state can do many things to help build up the not-for-profit economy. This starts with making it easier to start and maintain a not-for-profit business. Specific policies depend on the local context, but this includes eliminating any non-competition rules that are meant to keep NFPs out of the market, removing limits on the amount of income that NFPs can generate from business activities, and removing minimum capital requirements for starting an NFP foundation or association. Simultaneously, governments can make it harder and more expensive to start an FP business. For instance, they can charge higher taxes and fees for new FP businesses, and require increased transparency about financial flows via public annual financial reports.³⁵ These policies would guide entrepreneurs to choose NFP over FP structures, because they would be more convenient and cost-efficient, as well as better aligned with social benefit goals.

It is also important for governments to raise awareness about the possibility of starting a NFP business through public outreach campaigns. Many entrepreneurs are not

aware they can start a business using a not-for-profit incorporation structure. National and city-level governments can fund and/or operate NFP business incubators, which help entrepreneurs design and start up their business as an NFP. Combined with seed-funding, this can be a powerful catalyst for the transformation described above. Likewise, government agencies can provide guidance and consultations for FPs to shift to NFP structures, for instance using the steward ownership principles that guided Patagonia in its famous transformation.

However, as I mentioned in the previous section, it is necessary but not sufficient to shift from FP to NFP institutions. We also need to make sure NFP businesses operate in a sustainable way.³⁶ Governments can help accomplish this by requiring all businesses to publish social and environmental impact reports annually (e.g. Future Fit or Common Good Balance Sheet). These should be made publicly available and easy to access along with all companies' financial reports. Another helpful policy would encourage businesses to have a representative from all relevant stakeholder groups on the company board and to keep an open dialogue with all relevant stakeholders. This can be done via regular surveys and meetings with workers, local communities, consumers, beneficiaries, and others who might be affected by the businesses' activities. Such activities allow businesses to receive feedback from relevant stakeholders that can help them improve their social and environmental performance, while simultaneously allowing the public to directly hold companies accountable for their impacts on society. As such, these kinds of policies help maintain trust and transparency in the market. It is worth noting that these policies should not replace the government's role in holding companies accountable; but rather provide an additional layer of accountability.

The policies outlined above focus on transitioning the economy from FP institutions to sustainable NFP institutions. However, we also need policies that address the massive levels of inequality that have resulted from

the relentless pursuit of financial gain. This inequality is a threat to both social and economic stability. As such, governments need to redistribute wealth via taxes on capital gains, land, luxury consumption, and wealth. Furthermore, wealth should be redistributed via reparations from historically exploitative communities to exploited communities.

To minimise unintended negative consequences and maximise legitimacy and social cohesion, all of this should be done in a democratic way, guided by citizens' assemblies and input from diverse civil society representatives and sustainability-focused researchers. Public dialogues and town halls should be held to inform the public about these policy proposals and allow for discussion and debate about how to move forward.

3. POTENTIAL OBSTACLES AND HOW TO OVERCOME THEM

I would like to start this section by noting that I have not done any systematic research on the topic of obstacles. Therefore, this section is a collection of personal insights and speculations based on my experience discussing these issues with a wide range of people over the last ten years, mostly in Europe and the US. My understanding of obstacles comes from the questions and points of critique that most frequently come up when I present these ideas.³⁷ My understanding of societal transformations on this scale is shaped by systems analysis³⁸, institutional theory³⁹, and basic knowledge of how previous transformations have unfolded.

CULTURAL OBSTACLES: DISPELLING CAPITALIST MYTHS

In terms of the cultural obstacles, there are some foundational myths of capitalism that still have a stronghold in societies around the world. For instance, an underlying assumption that most of us have inherited from the capitalist belief system is that human nature is mostly

greedy, competitive, selfish, and acquisitive, which is why the profit motive is necessary for efficient and innovative economic activity. This assumption falls apart upon closer inspection and a look at the diversity of human behaviour in the present and throughout history. Human nature is clearly more complex than the capitalist narrative espouses.⁴⁰ It encompasses a huge spectrum, ranging all the way from genocide and serial killers to people who are willing to sacrifice themselves for the benefit of others; and everything in between those two poles of the spectrum. From this more complex and accurate understanding of human nature, we can see that human behaviour and motivations are guided and constrained by their social context.⁴¹ The FP context encourages selfish, greedy, and competitive behaviour. Whereas an NFP economy would encourage more generous, caring, and sufficiency-oriented behaviour, as so many local social contexts still do. There is abundant literature in the fields of social enterprise, ecological economics, feminist economics, behavioural economics, and institutional economics showing that entrepreneurs and businesses carry out sustainable economic activities and innovation from an ethos of care.⁴² In other words, their incentive for providing goods and services is concern for social and environmental wellbeing, rather than financial gain.

Another key assumption is that the profit motive leads to a balanced system, because business owners will reinvest in more production (resulting in more jobs and wealth for everyone) and innovations that benefit society. Yet, as explained above, the profit motive drives inequality rather than widespread wealth. Rather than socially beneficial innovation, it drives destructive innovations, such as manipulative advertising and planned obsolescence, as well as addictive social media apps, fast food, and medications. Beneficial innovations are often patented to maximise profit and, thus, kept out of the hands of people who might need them the most. Pharmaceuticals are a case in point.

Democracy and the for-profit economy (e.g., capitalism)

go hand-in-hand because they both allow for individual freedoms. However, rather than complementing and supporting democracy, the evidence from the real world shows that the FP economy systemically erodes it through political capture, market concentration, and inequality.⁴³

Finally, there is the idea that capitalism (i.e., the for-profit economy) is the only viable alternative to state-planned communism. However, the existence of a plethora of different ways of organising society and the economy throughout the last 200,000 years (or more) of human history proves that there are more than two ways of organising economic activity (i.e., capitalism and state-planned communism).⁴⁴ Indeed, markets have existed and provided for people's needs since long before the advent of capitalism and for-profit institutions, and often in much better harmony with nature. Most of today's farmers' markets and flea markets are examples of markets aimed at meeting needs rather than making a profit. Profit is a means rather than an end in these venues. The NFP Economy model can be seen as an updated version of traditional markets and because it is based on existing legal structures, this model provides a clear bridge from the for-profit economy to something more viable.⁴⁵ It also complements and aligns with other non-extractive forms of economic organisation, such as most Indigenous and peasant economies.

Fortunately, there is some evidence that it is becoming harder for middle-income people to hold their belief in these myths, as their lived reality becomes less and less aligned with these stories. This is especially true among younger generations, who are more concerned and active about issues of inequality, climate change, and discrimination.⁴⁶ As an increasing number of people get pushed out of their comfort zone in the FP system by the cost-of-living crisis and growing inequality, they are likely to be more open to alternative ways of organising economic activity and distributing resources. This is evidenced in the rapid growth of things like the Wellbeing Economy Alliance, the Rethinking Economics movement, and the

degrowth movement. If enough of us replace these myths on a regular basis (i.e., in our discussions with others, in books, in articles, in social media posts and videos, in political speeches, and in social movement rhetoric) then we are creating the cultural shift that we need to see in the world.

4. ADDRESSING POLITICAL CAPTURE AND INEQUALITY

Alongside this deeper cultural transformation, a political shift is necessary. In previous intentional societal transformations (e.g., abolition of slavery, women's suffrage, India's independence, the end of apartheid in South Africa), cultural shifts have driven political shifts, guided by a shared vision of a better future.

As previously explained, the FP economy has led to high levels of inequality, market concentration, and political capture, which all present obstacles for the political changes necessary. This means that there will have to be a concerted bottom-up push for policies that increase democracy and diminish political capture. In other words, powerful social movements are necessary. They can push for the policies mentioned in the previous section. They can monitor progress towards a shared vision and hold leaders accountable for implementing the policies they demand. Imagine if the largest social movements in the world were to collaborate to raise awareness among the public and push for the policies above. This includes movements focused on workers' rights, human rights (incl. racial justice, Indigenous rights, children's and women's rights), environmental protection, economic democracy, and environmental justice, just to name a few. If they combined their efforts to push for a transformation away from the FP economy (which would further the interests of all of these movements), the results could be enormous.

It is also worth noting the dynamics of inequality and political capture lead to instability over the long-term,

as they lead to a situation in which most people become discontented with the system. The FP economy is not only unsustainable for the planet, but also for itself. In addition to eroding the biophysical foundations on which it depends, it also erodes the social and political stability on which it depends. If there are easily adoptable alternatives lying around as the coming crises unfold, then things can shift very quickly, as the masses demand specific and systemic changes in policy-making processes, policy goals, laws, and regulations. The danger here is that the most appealing option is authoritarianism – if people think a strong single-minded leader is the only feasible way forward. From my perspective, this is why authoritarianism has become an increasingly prevalent threat around the world over the last decade or so; there is a lack of concrete, desirable alternatives that address the root causes of the crises we face.

This is where the NFP Economy model and other alternative economic models for sustainability can be very powerful tools for change. They can offer another way forward, an alternative to both capitalism and authoritarianism, that people can rally around and push for. It should not be understated how common-sense a lot of the above policy shifts are. When a growing number of constituents are struggling to make ends meet, it is easy to argue that public money should not accumulate in the hands of private business owners. It is also easy to argue that subsidies, public procurement contracts, and the provisioning of basic public goods (such as education and healthcare) should not be in the hands of FP companies. Public money should go to benefit society, not to make rich people richer. That is common-sense.

Social change tends to happen at an unpredictable, non-linear rate. I like to think that we could be at the beginning of an exponential curve of social change that ushers in a new era of social and environmental consciousness and flourishing.

BROADENING OWNERSHIP FOR A RESPONSIBLE DIGITAL REVOLUTION

Nien-hê Hsieh

The digital revolution has brought many benefits to society – global connectivity, greater economic efficiency, and improvements to personal well-being. At the same time, there has been cause for concern. The digital revolution has brought with it continued erosion of privacy, algorithmic bias to critical decisions about people’s livelihood, political polarisation due to social media, and job displacement due to digital automation and generative AI. The cause for concern grows only stronger as digital technologies and the companies that develop them expand even more in scope, speed, and scale.

Policy interventions to date have focused mainly on specifying criteria for the design of digital technologies (e.g., algorithmic fairness and transparency), regulating the deployment and operation of these technologies (e.g., by enacting the General Data Protection Regulation in the European Union), and limiting the power of tech companies (e.g., through enforcement of antitrust law). This paper outlines the case for policy interventions that have received comparatively less attention. These interventions focus not on regulating these technologies and the companies that deploy them but rather on broadening the ownership of these companies and capital more generally.

The paper is organised around broadening ownership along different dimensions to respond to three concerns that have been raised around the digital revolution. The first concern is the potential for widespread job displacement and unemployment due to automation. In response, the paper outlines the case for broadening the base of individuals who benefit from ownership of capital. The second set of concerns relates to the harms asso-

ciated with digital technologies, such as facial recognition or social media. With respect to this concern, the paper explores how broadening the range of individuals who participate in the ownership and governance of companies can address this concern. The third set of concerns centres around developing and deploying digital technologies to benefit all members of society equally. Here, the paper explores ways to structure ownership of companies to broaden the range of interests served beyond maximising returns to shareholders.

1. WHO BENEFITS? JOB DISPLACEMENT AND UNEMPLOYMENT

Past technological revolutions – e.g., the transition from hunting to an agrarian society or the Industrial Revolution – have brought about immense changes in the nature and organisation of work. 60% of workers today, for example, are employed in occupations that did not exist in 1940.⁴⁷ While disruptive, these changes have also been credited with gains in productivity, new employment opportunities, and improvements in standards of living.

The digital revolution can be framed in similar terms. In the European Union, for example, it is estimated that close to a quarter of work tasks can be automated using AI.⁴⁸ In terms of economic benefits, it is estimated that “widespread adoption of generative AI would raise labour productivity growth in the US by around 1.5pp annually”, which “would roughly double the recent pace of US productivity growth, and would be about the same size as the boost that followed the emergence of prior transformative technologies like the electric motor and

personal computer.” These estimates are expected to be comparable in other developed market economies.⁴⁹

In the face of job displacement and technological change, a common approach in developed market economies has been to focus on job retraining and the provision of social benefits, such as unemployment insurance, to help individuals transition to new occupations. Given recent developments, however, calls have been made for an alternative approach that reduces reliance on labour as a source of income – namely, the provision of a universal basic income (UBI). Proposals for some form of UBI are not new. The underlying rationale has been that economic wealth ought to be widely shared.⁵⁰ What distinguishes recent calls for a UBI is the thought that advances in automation and AI will reduce the need for human labour altogether.

The proposal in this paper aims to address this concern slightly differently. If there is less work to be done because of automation and AI, this proposal starts by asking who owns the robots. Along these lines, the proposal is to broaden ownership of productive assets across all members of society. That is, rather than take the form of an income provided by the state (a UBI), the proposal involves ensuring that all members of society own non-labour, income-generating assets. Such ownership could take the form of a sovereign wealth fund that pays out a regular dividend to members of society – that is, rather than a universal basic income, a universal basic dividend (UBD). Other forms, such as broad-based asset ownership, could include so-called “baby bonds”, community land trusts, distributing large land holdings, and promoting small businesses.

“If there is less work to be done because of automation and AI, this proposal starts by asking who owns the robots.”

Why broaden ownership as opposed to other approaches, such as skills retraining or a UBI? One is the contin-

ued divergence between productivity growth and wage growth.⁵¹ There are ways to address this divergence that do not involve broadening the ownership of productive assets. One is to strengthen the bargaining power of labour. Another is to promote worker cooperatives, especially in the form of digital platform cooperatives.⁵² A third is to index the UBI in relation to the growth of corporate profits. However, proposals for broad-based asset ownership offer a more direct kind of intervention. These proposals reflect the special status that capital ownership confers on economic participants under a capitalist regime and aim to confer that status on all members of society.⁵³ As G.K. Chesterton wrote, “Too much capitalism does not mean too many capitalists, but too few.”⁵⁴

2. WHO PARTICIPATES? AVOIDING, ANTICIPATING, AND PREVENTING HARMS

Harms associated with the design and deployment of digital technologies – e.g., risks to data privacy – may not have been intentional. In others, the risk of harm may have been foreseen but considered acceptable. Alongside regulations to prevent and minimise such harms, this paper outlines the case for broadening the range of individuals involved in the ownership and governance of for-profit enterprises to address these concerns. Gender and racial bias in developing and deploying facial recognition technologies provide a helpful illustration.

In December 2023, the European Parliament and the European Council reached a provisional agreement on the Artificial Intelligence Act.⁵⁵ A key point of difference concerned the scope of the ban on the use of facial recognition technologies, with the Parliament favouring a broader ban.⁵⁶ The ban is motivated not only by privacy concerns, but also by concerns regarding the gender and racial bias demonstrated in these technologies. Existing facial recognition technologies have been shown to be significantly less accurate in identifying the faces of women and people of colour.⁵⁷ One explanation for this

bias relates to the demographics involved in developing these technologies. For example, as Jane Margolis and Allan Fisher write in *Unlocking the Clubhouse: Women in Computing*, early voice recognition systems did not recognise female voices because they were calibrated to male voices – the only voices present in the labs that developed these technologies. This and other examples, the authors write, “show how a product-design group that is not representative of its users can go wrong.”⁵⁸ This phenomenon can be extended to the images used to train AI systems, which often skew white and male. An added explanation for the gender and racial bias is that the bias may not be perceived or experienced by those with decision-making power in the deployment of facial recognition technologies.

One strategy to mitigate, anticipate, and prevent the negative impacts of technologies like facial recognition involves broadening the ownership of economic enterprises to better include and represent the users and those affected by such technologies. Broadening the representation of persons involved in making investment decisions – i.e., those providing access to capital – will likely help further anticipate and avoid harm going forward. Research has shown, for example, that women-owned startups offer higher returns than those owned by males.⁵⁹ Despite this, however, in 2023 in the United States, only 2.1% of venture capital (VC) went to companies founded solely by women.⁶⁰ In Europe for 2023, the percentage was 1.3%.⁶¹ One explanation for this disparity invokes the concept of affinity bias to suggest that men are more comfortable funding men-owned companies. In the United States, for example, it is estimated that fewer than 15% of VC investors are women.⁶²

3. WHOSE INTERESTS? PROMOTING THE PUBLIC INTEREST

For-profit business enterprises are said to promote the public interest by providing goods and services for which

people are willing to pay, thereby demonstrating their value to members of society. There are, however, limitations to relying on the profit motive in guiding economic production to benefit all of society. One limitation is that some people may be unable to pay for much-needed goods and services that would benefit them. A second limitation is that some goods are broadly public – they are essential for society but unprofitable or should be provided for even if not profitable. Third, there are profitable business models and practices that bring with them significant negative externalities for society.

In the context of the digital economy, the rise of social media platforms and the displacement of traditional news media – especially at the local level – exemplify these dynamics. Social media platforms have become integral to people’s lives – enabling communication, creating connections, empowering online communities, and enabling small businesses to market and transact online. Some functions of social media platforms come close to activities that are broadly public – for example, as a source of news. In 2023, in the United States, about half of adults got their news at least sometimes from social media, with 30% of adults reporting they regularly get their news from Facebook and 26% from YouTube.⁶³ In Europe, while television remains the most popular news source, in 2023, social media gained 11 percentage points in use over the previous year.⁶⁴ At the same time, social media has been associated with the decline in traditional local news media in the United States by attracting advertising revenue away from traditional local news media because of more sophisticated online targeting.⁶⁵ The greater success of advertising on social media, however, involves increasing user engagement, which in turn has been associated with various harms, including depression and anxiety.

One approach to overcoming some of these dynamics while maintaining the private ownership of business enterprises is to structure ownership in ways that broaden the range of interests pursued beyond that of maximising

profits for shareholders. To be certain, shareholders may harbour varied interests beyond solely maximising their investment return. However, given the corporate governance model in which managers of for-profit enterprises owe fiduciary duties to the enterprise and its shareholders to act with loyalty, honesty, and care, there are limits to how far managers can pursue broader interests at the expense of short-term profits. Accordingly, it may help to reconsider the ownership structure of enterprises more directly to address some of the limitations discussed above. For example, if the aim is to promote communication and connection across individuals without the harms associated with an advertising-based revenue model, one alternative would be the promotion of digital public goods (DPGs).⁶⁶ If the aim is to ensure traditional local news media, various ownership structures have been proposed, including non-profit, foundation-owned, and locally-owned.

4. A DIVERSITY OF OWNERSHIP STRUCTURES

This paper has aimed to outline the case of broadening ownership of economic enterprises and capital more generally in response to critical concerns about the digital revolution. In contrast to prevailing responses that aim to regulate digital technologies or the companies that deploy them, the thought is that broadening ownership can shape the impact of these technologies and companies from the outset – by broadening who benefits from these technologies by way of ownership, who participates in their development and deployment, and whose interests are served.

The range of ownership structures to broaden ownership in these ways is diverse. They include sovereign wealth funds, foundation-owned for-profit enterprises, and venture capital firms. In one sense, this should not come as a surprise if we take for granted an economic regime that

“In contrast to prevailing responses that aim to regulate digital technologies or the companies that deploy them, the thought is that broadening ownership can shape the impact of these technologies and companies from the outset”

involves the private ownership of capital and the use of markets more generally. One of the key rationales for the private ownership of capital and the use of markets – as opposed to state ownership and central planning – is that they better meet the needs of individuals by allowing for heterogeneity and the satisfaction of diverse interests. If there is a surprise, it is that these alternative ownership structures are not promoted more heavily within an economic regime that takes as a rationale heterogeneity and the satisfaction of diverse interests. Perhaps the digital revolution can change all that.

ENHANCING SOCIALLY RESPONSIBLE PUBLIC PROCUREMENT UNDER EU LAW

Mario Pagano

1. INTRODUCTION

The social economy in the EU is struggling within a regulatory framework which does not adequately enhance and support the 2,8 million operators currently active in Europe in this alternative economy. This is also well acknowledged by EU institutions. Indeed, in its Social Economy Action Plan published in December 2021, the European Commission clearly stated as follows:

“Because they are not sufficiently understood and recognised, social economy entities face difficulties developing and scaling up their activities and, thus, are held back from delivering even greater economic and social impact. They need more and better support to grow and thrive.”⁶⁷

Among the policy tools included by the Commission to help the social economy grow, EU rules on public procurement occupy a prominent position.⁶⁸ This is no surprise, especially if we consider that public procurement represents 14% of European GDP.⁶⁹ The EU executive emphasises the steps forward made and the achievements obtained regarding socially responsible public procurement (SRPP). However, much still needs to be done to channel the European economy on a non-extractive pathway and fasten the ecological transition. Indeed, in its Social Economy Action Plan, the European Commission mainly identifies raising awareness and supporting the creation of local and regional partnerships as effective solutions to strengthen the use of SRPP in Europe.⁷⁰ This implies that no legal reform of the rules on SRPP will be expected in the foreseeable future. On the contrary, I

believe the law – specifically the EU legal rules on public procurement – can still provide key incentives to social economy entities. In the present paper, I will mainly outline the existing legal gaps for SRPP under the current EU public procurement directive (PPD) and argue why amending the current regime on reserved contracts for social and other specific services under the PPD could concretely help and support social economy operators across the Union. For clarity, I acknowledge that in the present contribution, I use the terms ‘non-extractive organisations’, ‘non-profit operators’ and ‘social economy organisations/operators’ as synonyms.

2. ISSUES UNDER THE PUBLIC PROCUREMENT DIRECTIVE

The 2014 directives on public procurement and concessions have, for ten years now, introduced relevant provisions on socially responsible public procurement. The most pertinent indication of such amendment is Article 18(2) of the 2014/24 Directive on Public Procurement (PPD)⁷¹, which reads as follows:

“Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.”⁷²

Although this provision contains a clear indication of a duty (“shall take”) to adopt appropriate measures at the national level - which should thus be binding on the EU Member States - the normative character of this norm is still unclear.⁷³ First, this might relate to Article 18(2), which refers to the EU Member States rather than to contracting authorities. In support of this claim - as noticed by the European Parliament in a recent study⁷⁴ - when implementing the PPD, some EU Member States defer the obligations stemming from Article 18(2) to the actual contracting authorities when designing their calls for tenders.⁷⁵ Second, as also noticed by other commentators, Article 18(2) is only applicable in case of breach of rules that are already mandatory under international, EU or national law.⁷⁶ The breach of standards embedded in soft law measures, for instance, cannot, in principle, constitute a violation of Article 18(2) of the PPD.

Another aspect hindering the binding character of Article 18(2) refers to the discretion guaranteed to contracting authorities under Article 57(4)(a) of the PPD. Indeed, under this provision, contracting authorities may exclude (or may be required by Member States) from participation in a procurement procedure any economic operator not fulfilling several determined criteria or violating specific legal rules. Violation of Article 18(2) is included among such violations. However, as it is clear from the wording of Article 57(4), the exclusion of economic operators for breach of Article 18(2) is not mandatory as a matter of EU law. The exclusion for violating social or environmental obligations can become binding only if laid down under national law.

Along similar lines, Article 67 of the PPD sets the contract award criteria. The first paragraph of this provision immediately states that ‘contracting authorities shall base the award of public contracts on the most economically advantageous tender’. However, already the second paragraph of the same provision clarifies that.

The most economically advantageous tender from the

point of view of the contracting authority shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question [...].⁷⁷

This provision presents at least two main issues. The first one refers to Article 68 on life-cycle costing, which does not engage with social aspects.⁷⁸ Indeed, Article 68 specifies which costs (or parts of costs) related to the life cycle of a given product, service or work should be assessed by the contracting authorities when awarding a contract. These refer - inter alia - to costs relating to the acquisition, costs of use, such as consumption of energy and other resources, maintenance costs, etc. However, the advantage of dealing with such costs is that these are economically quantifiable and can thus be monetised.⁷⁹ On the contrary, most social aspects can hardly be quantified and monetised, creating a ‘social value measurement’ issue which further prevents the social economy from flourishing.⁸⁰

The second main issue embedded in this provision refers to the discretion left to the contracting authorities in deciding whether to include or not include the best price-quality ratio in the assessment of the most economically advantageous tender. This discretion allows national contracting authorities to ignore qualitative, environmental, and social aspects linked to the subject matter of the public contract in question.

“In other words, SRPP under EU law is mostly left to the discretion of the EU Member States and—more realistically—to the initiative of the individual contracting authorities.”

In other words, SRPP under EU law is mostly left to the discretion of the EU Member States and—more re-

alistically—to the initiative of the individual contracting authorities. However, as I will outline in the next section, the recognition of such discretion causes further issues, especially for social economy operators.

3. DISCRETION AND ADMINISTRATIVE CAPACITY

The PPD binds the EU Member States, which – as I have stressed above – often defer discretion (under national law) to contracting authorities as to whether to take into account social aspects in awarding their public tenders. However, social economy is a very ‘local’ type of economy.⁸¹ This is a crucial aspect if we consider that – as also emphasised by the European Parliament - local public authorities mostly lack the appropriate knowledge and skills to promote and adequately implement SRPP.⁸² In other words, knowledge about SRPP is mostly lacking where it is mainly needed. If discretion under EU Directives can be considered ‘inevitable’ and the lack of adequate administrative capacity as an everlasting impediment to effective implementation and enforcement of EU law across the Union, another pathway should be attempted. The path I suggest in the next section refers to the necessity to reform the legal regime applicable to reserved contracts under the PPD.

4. RESERVING CONTRACTS TO NON-EXTRACTIVE ENTITIES

Articles 74 and 77 outline a specific procedure for the award of contracts for social and other specific services. Indeed, under Article 77, ‘Member States may provide that contracting authorities may reserve the right for organisations to participate in procedures for the award of public contracts exclusively for those health, social and cultural services referred to in Article 74’. The latter provision holds that contracts for social and other specific services listed in Annex XIV should be awarded in accordance with Chapter I (Title III) of the PPD as far as the

value of the tender is above the threshold indicated in Article 4(d). Such a threshold for social and other specific services is 750.000 EUR.

Under Annex XIV, social and cultural services include - inter alia - health, social and related services; administrative social, educational, healthcare and cultural services; other community, social and personal services, including services furnished by trade unions, political organisations, youth associations and other membership organisation services. Article 77 further states that the organisations benefiting from the regime applicable to social and other specific services shall fulfil all of the following conditions:

- its objective is the pursuit of a public service mission linked to the delivery of the services referred to in paragraph 1;
- profits are reinvested to achieve the organisation’s objective. Where profits are distributed or redistributed, this should be based on participatory considerations;
- the structures of management or ownership of the organisation performing the contract are based on employee ownership or participatory principles or require the active participation of employees, users or stakeholders; and
- the organisation has not been awarded a contract for the services concerned by the contracting authority concerned pursuant to this Article within the past three years.

Article 77(3) further states that ‘the maximum duration of the contract shall not be longer than three years.’ These provisions already favour a non-extractive organisational model by making sure, for instance, that the operators participating in the procurement pursue one of the general interest missions included in Article 77(1), reinvest their profits, and structure their ownership model in a way that guarantees workers’ ownership or participato-

ry principles. Despite the great potential offered by the discipline on reserved contracts, national contracting authorities – as mentioned in the introduction to this paper - still do not fully exploit this potential. Much more could be done under the existing rules on public procurement to enhance the European social economy, but - as also shown with regard to Article 18(2) - some issues stem directly from the regime applicable under such provisions. For instance, the scope of application of the regime on reserved contracts for social and other specific services, as well as their mandatory timeframe.

Concerning these two main issues, indeed, the regime on reserved contracts laid down under Chapter I, Title III of the PPD is conditional on exceeding the threshold of 750.000€ established under Article 4. In the frame of the N-EXTLAW project, our fieldwork in Italy confirmed that the social economy mainly occurs at the local/municipal level, where many procurements for social and other specific services do not go beyond the Directive threshold. This entails that the safeguards provided under Article 77 - requiring that the economic operators taking part in the procurement shall fulfil specific criteria - are not mandatory for procurements below the threshold. Consequently, in such procurements - in theory - non-profit operators will compete with for-profit operators. Such non-extractive requirements could thus be strengthened, and the threshold lowered.

“Consequently, in such procurements - in theory - non-profit operators will compete with for-profit operators. Such non-extractive requirements could thus be strengthened, and the threshold lowered.”

Secondly, the Italian fieldwork has also shown that a short timeframe for undertaking specific projects or initiatives can also be an obstacle to delivering significant social value.⁸³ Indeed, many cultural and educational initiatives need time to fully deliver their social outcomes, which

are often stopped after a few years of funding. In this regard, a three-year term as the maximum duration of contracts runs against creating long-term social value in a given community. Therefore, increasing the maximum duration of contracts for social and other special services to ten years will help ensure that initiatives in these areas are independent of the changing political will of local administrations. This is because more long-term social, cultural, and educational services can survive even when a political shift within the local administration occurs. In the next section, I will now set out my concluding remarks.

5. CONCLUSION

The EU institutions have clearly emphasised the need to help and support the European social economy, which counts around 3 million economic operators across the Union. One key policy tool the European Commission identified to achieve this objective is strengthening SRPP. However, when outlining its action plan to increase the success of SRPP, the EU executive mainly refers to soft law policy measures. On the contrary, in the present paper, I argue that the law can still play a key role in enhancing opportunities for European social economy operators through public procurement. This, for instance, is in three ways, which I suggested. The first one, by limiting national contracting authorities’ discretion and make sure that these always take into account social aspects in their public procurement. Indeed, most tenders in the EU are still awarded by using the lowest price as the only award criterion, despite the possibility for public officials at the national level to also rely on other award criteria, such as the best quality-price ratio.

The second proposal suggests reforming the legal regime applicable to reserved contracts under the PPD. I argue that the threshold for social and other special services contracts should be lowered and the maximum duration of such contracts extended to ten years. This seems

justified also, considering some of the general principles of EU public procurement law, such as the principles of equal treatment and fair competition. This is because non-extractive organisations are more sustainable 'by design' than extractive and for-profit operators and should, therefore, receive adequate support by - for instance - being preferred in procurements for reserved contracts for social and other specific services.

The third proposal advanced concerns incorporating social value measurement criteria directly into the PPD. At the moment, the N-EXTLAW team is working with the Law Hub at UvA on this. Therefore, this part of the present contribution is still a work in progress.

NOTES

- 1 The canonical theory distinguishes eleven rights (A. M. Honoré, "Ownership," in *Making Law Bind. Essays Legal and Philosophical* (Oxford: Clarendon Press, 1987), 161–92; Lawrence Becker, *Property Rights*. Philosophic Foundations (London: Routledge & Kegan Paul, 1977) but these can be grouped together as different types (Bertram Lomfeld, "(De-)Liberating Property. A Political Grammar of Property Law," HSC Working Paper 2018, accessed July 3, 2024, https://hscif.org/wp-content/uploads/2018/12/Lomfeld-_property-law_2019.pdf).
- 2 See (Giuseppe Dari-Mattiaci, Oscar Geldeblom, Joost Jonker, and Enrico Perotti, "The Emergence of the Corporate Form," *The Journal of Law, Economics, and Organization* 33, no. 2 (2017): 193–236.; Ron Harris, *Going the Distance: Eurasian Trade and the Rise of the Business Corporation 1400-1700* (Princeton: Princeton University Press, 2020).).
- 3 For a critique of both the membership and ownership analogies, see (David Ciepley, "The Anglo-American Misconception of Stockholders as 'Owners' and 'Members': Its Origins and Consequences," *Journal of Institutional Economics* 16, no. 5 (2020): 623–42.). For the basics of corporate law, see (Reinier Kraakman, John Armour, and Paul Davies, *The Anatomy of Corporate Law. A Comparative and Functional Approach*, 3rd ed. (Oxford: Oxford University Press, 2017).).
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PART 2

STEWARD OWNERSHIP FOR LONG-TERM COMPETITIVENESS



INTRODUCTION

Steward-ownership is an alternative corporate structure that removes the financial gain motive from company ownership by implementing two key principles. First, control rights are held by stewards: persons without personal interest in the company's profits, which enables them to prioritize long-term goals over short-term financial gains. Second, profits are used to serve the company's purpose, meaning that they cannot be freely distributed to shareholders. Crucially, profit rights are separated from controlling influence. Steward-ownership thus provides a middle ground between traditional for-profit and not-for-profit enterprises as described by Hinton. This model discourages short-term shareholder value focus, allowing the company and its board to commit to long-term objectives. Long embraced by major firms in Denmark, Germany, and the Netherlands, steward-ownership is now attracting mission-driven startups and family businesses keen to preserve their values and missions.

This section on steward-ownership begins with Sanders, who explains steward-ownership and the enterprise foundation as a specific form of it, as a transformative business ownership model in Germany and Europe. Sanders explains the concept of steward-ownership on the basis of the capital lock - the exclusion of the possibility of distributing profits to shareholders or members with control rights. In her contribution, Sanders identifies three barriers and solutions for further facilitating steward-ownership in Europe. First, she discusses the need to create national legal frameworks. In this context, she discusses the German proposal for a steward-ownership legal form, the 'Gesellschaft mit gebundenem Vermögen', which aims to eliminate distributions to shareholders, ensuring the shareholders act as stewards for the long-term mission of the company. Second, Sanders highlights the importance of EU law on the freedom of establishment to facilitate legal forms with capital locks. Finally, she considers the

idea of a European legal framework building on the national legal frameworks for steward-ownership.

In the second contribution, Feldthusen focuses specifically on the enterprise foundation as a non-extractive business form, widely used by large companies in Denmark. In the paper, Feldthusen describes the legal structures of enterprise foundations and sets out four key features of enterprise foundations: continuity, stewardship, commitment and purpose. Feldthusen notes that outside Denmark, many European national legal frameworks do not allow for enterprise foundations. To examine whether the enterprise foundation should be promoted further on the European level, Feldthusen discusses 5 potential obstacles to the use of enterprise foundations: (1) the limitations concerning receiving additional financing; (2) the potential lack of monitoring mechanisms; (3) difficulties in changing the purpose of the enterprise; (4) maintaining the concentration of ownership over time; and (5) the level playing field with limited liability companies. Based on the Danish legal form for enterprise foundations, Feldthusen concludes that all these obstacles can be overcome and that it is possible for other EU countries to allow for enterprise foundations in their legal frameworks.

Following these academic contributions, Kaufmann provides the perspective from the German Purpose Foundation, which coined the term and has been promoting the concept of steward-ownership since 2015. Kaufmann explains that there are cultural, legal, and economic obstacles with respect to mainstreaming steward-ownership. They propose several concrete recommendations for the EU to help solve these obstacles, including education and communication, the facilitation of steward-ownership legal forms, and a review of State and European Commission funding programs for investors. **Kaufmann**

concludes that European policy-making should consider a diversity of ownership models, including steward-ownership, instead of only conventional business ownership forms.

Next, Rieback offers the indispensable perspective of an entrepreneur who has started her company in a steward-owned form, even if the concept as such did not yet exist at the time, and now runs an established and reputable cyber security company. She describes in detail the difficulties that she faced as an entrepreneur to make her company steward-owned, which again confirms the importance of a steward-ownership legal form, but also highlights the importance of an aligned financing ecosystem, especially in the start-up financing ecosystem.

The contributions by Koren and Van Breukelen & Van der Horst demonstrate the value that steward-owned enterprises create in society. Koren describes the cases of the Danish multinational Carlsberg and the Dutch scale-up Sprinkl. Carlsberg has been foundation-owned for over 130 years and has now become the fourth largest brewery in the world, which provides competitive returns to its shareholders, while also having donated over 100 million euros to scientific research. This example shows that steward-owned companies can do exceptionally well financially. Sprinkl is a social enterprise that transitioned to steward-ownership in 2023 because the founders did not just want to have a sustainable mission, but also to be sustainable at the core. Sprinkl is an example of many mission-driven entrepreneurs who want to secure their mission for the long term.

The section concludes with a compelling case from the Netherlands, further illustrating the economic, social, and environmental value of steward-ownership. Interviewed by Van der Horst, Van Breukelen tells about his experiences as (now former) CEO of the Dutch construction group TBI which has been steward-owned by the TBI Foundation since 1982. He especially highlights the culture of TBI, in which long-term focus and decen-

tralized group control are core values. Moreover, within the steward-ownership structure, a strong social awareness emerged, which is demonstrated in for instance the education fund that funds part of the education of all the children of the employees, and the ‘climate train’ that funds innovative climate projects from in and outside the company. However, this does not mean the company is less financially successful than its competitors. In Van Breukelen’s words: “We are a normal company, with a special shareholder.”

STEWARD-OWNERSHIP – TRANSFORMATIVE BUSINESS OWNERSHIP IN EUROPE AND GERMANY

Anne Sanders

1. LONG-TERM ORIENTED BUSINESSES OWNERSHIP BEYOND SHAREHOLDER VALUE

Current economic, social and ecological challenges have inspired a worldwide discussion of business ownership and corporate purpose. In many legal systems, including in the US and France, legal frameworks such as the benefit corporation and the *société à mission* have been introduced, combining a beneficial purpose with the search for profit for shareholders. However, given that shareholder value maximisation and short-term orientation have been described as a significant contributors to an economy violating planetary boundaries,¹ there is growing interest in business ownership forms that are not oriented towards raising profits for business owners at all – long-term oriented business ownership beyond shareholder value - one could say. This includes, for example, social enterprises, enterprise foundations and steward ownership.

In both enterprise foundations and steward-owned businesses, no human shareholder with voting rights could expect dividends and thus exercise their influence to maximise profits for private wealth. Therefore, such businesses are non-profit under the definition developed by Henry Hansmann,² even though many businesses owned by steward-owners or foundations seek a profit on the market in order to develop their business further. Both enterprise foundations and steward owned businesses are structurally long term-oriented and could contribute towards a more diverse, long-term oriented economy and help solving succession issues challenging many SMEs

today. Therefore, sometimes both are described as forms of steward ownership.

Many such steward-owned businesses pursue just a business purpose, for example, producing good windows for customers. Others seek a purpose that is more expressly oriented towards the benefit for society. For instance, Ecosia offers an independent search engine with high data protection standards and plants trees with the profits to fight climate change. However, their contribution goes beyond their philanthropic work in changing incentives for managers and owners away from shareholder value to other goals and values, including sustainability and stakeholder orientation.³

“However, their contribution goes beyond their philanthropic work in changing incentives for managers and owners away from shareholder value to other goals and values, including sustainability and stakeholder orientation.”

2. ENTERPRISE FOUNDATIONS

Enterprise foundations – ‘foundations that own companies’ – play an essential role in many European countries, especially in Denmark and Sweden, as responsible, long-term owners of business companies.⁴ In addition, many of them contribute to society through their donations and operating philanthropy. Research shows that businesses held by enterprise foundations are successful in the long term and have a good track record of being responsible employers.⁵ Moreover, businesses held by founda-

tions rather than by private individuals could provide an interesting counterpoint in a time of growing inequality. Thus, they constitute a unique European alternative to conventional capitalist enterprises.

And yet, we still need to learn more about the legal framework for such foundations in different countries. More comparative research is necessary. Very few European countries have a codified enterprise foundation law that explicitly addresses business ownership. Moreover, the peculiarities of national foundation law – tax law not less than civil law – imply significant barriers to cross-border integration at a point in time when solutions to European and global problems have attained paramount importance. The contributions enterprise foundations can bring to European society, as well as suggestions for legal frameworks that help them achieve their full potential, have been investigated by an ELI project headed by Steen Thomsen, Michael Redbrake, and Anne Sanders.⁶

3. STEWARD OWNERSHIP

Steward ownership,⁷ in German “Verantwortungseigentum” or “Gesellschaft mit gebundenem Vermögen,” is closely connected to enterprise foundations. In fact, enterprise foundations can be described as one possible legal tool for designing steward ownership. However, steward ownership is a concept that can also be realised using other legal tools, for example, associations or companies.

“Rather than combining the pursuit of a prescribed beneficial purpose with profits for shareholders as dual purpose companies like the benefit corporation, steward owners lead and develop a business without having a right to its profits.”

The concept challenges traditional thinking of business ownership. Rather than combining the pursuit of a prescribed beneficial purpose with profits for shareholders

as dual purpose companies like the benefit corporation, steward owners lead and develop a business without having a right to its profits. A foundation has no members or shareholders who can vote on its course, and its purpose is fixed by its founder. However, steward owners have voting rights and can change the purpose of their business. Thus, steward owners have full ownership rights with respect to the administration of the business but are not accessible to take dividends or sell a business for their benefits. They may, however, receive a salary for their work for the firm. In this way, entrepreneurs wish to legally secure a long-term orientation of businesses and show their fundamental commitment to pursue purpose rather than shareholder value.

The concept may be found in the decision of Patagonia’s founder to transfer all shares to a trust and collective, making “earth the only shareholder”⁸ and in the steward ownership movement (with the purpose organisation) that is spreading from Germany.⁹

4. THE POSSIBLE BENEFITS OF A CAPITAL LOCK

The core of the concept of steward ownership (including Patagonia’s new structure) and enterprise foundations is that there are no shareholders or members with voting rights who receive money from the business just because they own shares in it. It is possible to create two classes of shares, some with voting rights and no rights to dividends and others without voting rights but possible rights to dividends. This capital or asset lock, which divides influence in the company and rights to profits which secures the business’s long-term orientation. However, it is also possible within the concept to create only shares or memberships without voting rights and use other instruments to finance the business. This capital binding does not forbid a sale of the company’s assets. Thus, this paper also mainly uses the term “capital lock”, even though “asset lock” is often used for comparable legal rules especially in

the context of social enterprises.

In recent decades, several legal forms with a partial, irreversible prohibition to pay out the company's profits as dividends have been developed in Europe for social enterprises, such as the community interest company in the United Kingdom. These different European approaches usually limit the distribution of profits to tie them to the companies' purpose.¹⁰ Steward ownership builds on this approach, even though such businesses are not necessarily social enterprises. For foundations, a permanent capital lock is part of the necessary set-up. After all, a foundation is a legal form to which assets are donated to pursue a purpose set by the founder. In the case of steward ownership, the goal of the irreversible capital lock is to ensure that business decisions are not made to create private wealth for shareholders but because of reasons connected to the business's purpose. This change in the incentive structure of both business owners and managers can be analysed as the concept's fundamental contribution to the global task of transforming business ownership towards sustainability and stakeholder orientation.¹¹ Moreover, by making the company shares uninteresting as an object of speculative investment, steward-owned businesses may remain independent, ensuring that an economy is not dominated by a few international players who buy up interesting start-ups. In a time of global political conflict and crisis, maintaining independent business ownership can be of particularly importance, especially in the case of goods and services connected to crucial infrastructure.

Steward ownership and foundation ownership mean that a business is led not for the private profit of current shareholders but for the benefit of the business itself and possibly future generations. The capital lock ensures that future generations will adhere to that principle as well. This way, steward ownership and enterprise foundations can help to solve the difficulties of many business owners to find successors for their businesses. For example, a business owner who wants the business she built to be developed further by a poor employee may be willing to

give it to him as a gift, but probably not to enable the new owner to sell it and move into a villa with the wealth built by past generations. This goal can be achieved by placing the business in steward ownership or in a foundation. This does not change the fact that every business needs to be successful in the market to survive and pay expenses including the salary of steward owners working in the business.

The capital lock may be seen as the complete opposite of the idea of shareholder primacy, which understands the corporation as a mere nexus of contracts and shareholders as the final risk bearers who may, therefore, claim the company's residual profits while consumers, contractors and employees are compensated based on contracts.¹² This concept is criticised¹³ on the basis that this picture is incomplete. Katharina Pistor for example, has argued that a company can be structured to push the risks of credits on the creditors.¹⁴ Employees and contractors bear risks as well because they need to make specific investments in the firm, for example, develop particular skills which are lost if their relationship with the company ends.¹⁵ According to Colin Mayer, the corporation should be taken seriously as a separate, potentially eternal legal person, functioning as a "commitment device" for trusting relationships in which long-term investments can be made.¹⁶ In an economy focused on short-term profit, however, it can be difficult for stakeholders to develop the necessary trust in a company to make such investments. The corporation does not provide the "firm commitment" necessary to function as a commitment device to form trusting relationships. Enterprise foundations and steward ownership with its characteristic capital lock proposes a radical solution to this challenge: There are no shareholders as claimants of the company's residual profit in a foundation. In steward ownership, there may be members and shareholders, but by locking the businesses' profits in the company, they are treated as any other stakeholder financially. Like other employees, steward owners working in the business may receive an adequate salary. They may

also sell or lease assets to the company for the market prices. However, profits are reserved for future investments and securing its long-term independence.

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Steward owners often wish to give a trustworthy promise of long-term purpose-orientation rather than shareholder value, an “irrevocable settlement of trust”, one might say. It seems that founders of enterprise foundations often pursue comparable goals. These goals seem to function as a unique signal, just as rules barring the distribution of profits are said to enhance the trustworthiness of social enterprises. Thus, the characteristic, irreversible capital lock can signal a high commitment to a purpose other than shareholder value maximization.

Such a signal can be important for different stakeholders. For young people looking for meaningful employment, working for an idea might make a considerable difference rather than the founders’ and investors’ lucrative exit. This trust might be of particular importance in the context of business models and services, which might be described as conducting infrastructural functions in a new digital world. For example, a decision to use Ecosia rather than another search engine might be inspired by the wish to keep it independent rather than making it and the value created through millions of independent users a profitable object of sale to a large international competitor. Other businesses benefiting particularly from such long-term independence may be found in newspapers and the media. One of Germany’s most respected newspapers, the *Frankfurter Allgemeine Zeitung*, is owned mainly by

a charitable company,¹⁷ while a couple of shares with voting rights are held by the current editors when they work for the newspaper. *Neue Narrative*, a journal focusing on new work, has already been founded as a steward-owned business.¹⁸

The signal of the capital lock might be of special importance in the search for new steward owners. Persons who are ready to limit themselves for the future to compensation rather than dividends must have a high degree of intensive motivation for the concept of steward ownership in general and the mission of the individual business. However, since successors do not need to buy the business, competent people from different economic backgrounds can become steward owners, making access to business ownership much more inclusive. This could be decisive to find successors for the many businesses whose owners neither want to sell nor close down.

There has yet to be empirical research on all the benefits enterprise foundations and steward ownership may bring society. However, some research on enterprise foundations already highlights the opportunities such forms of business ownership may bring. In an economy and society struggling with the goal of necessary transformation in times of overlapping crisis, these opportunities are too precious not to explore them further.

5. BARRIERS AND SOLUTIONS

1. Creating national legal frameworks

Not every country provides a satisfactory legal framework for setting up steward-owned businesses. Thus, the main barrier to exploring the full potential of steward ownership is the lack of a legal framework that is easy to use and does not require a lot of time, as well as the high expenses for legal advice and bureaucratic hassle. At the moment, entrepreneurs ready to commit to steward ownership need a lot of patience and money to buy the services of lawyers to set up the necessary structures. The case of Patagonia, which has used a kind of double-foun-

dation structure using a charitable entity and a perpetual purpose trust, has shown that setting up such a structure was extremely difficult in the US, mainly because of tax reasons.¹⁹ Setting up the structure created tax burdens, which could have been prevented by just selling the business, let alone that the family could have earned a lot of money in the sale. In Germany, foundations and company structures are used to put steward ownership into practice. However, these are not best suited for the task. Therefore, there is a campaign for such a legal framework to be introduced. This political goal was even adopted in the 2021 coalition agreement of the current German federal government. Already before the last election in 2021, a group of academics, including the author, drafted a proposal for the implementation of steward-ownership in German company law.²⁰ Now, the same group is preparing a new draft legal form in response to a request by the three German Federal Parliament (Bundestag) members responsible for the project. Interest is emerging in the Netherlands and Portugal. If the benefits of such business structures shall be explored further, legislators must introduce innovative new legal frameworks. It is hoped that such legal innovations will be tried and tested in different member states of the European Union so that legislators can learn from one another.

2. Removing potential obstacles on the European level for national innovation

The argument has been brought forward that the characteristic capital lock could violate the law of the European Union. The asset lock prohibits not only the distribution of dividends during the company's lifetime but also the distribution of residual funds at the time of dissolution and transformation into or merger with another company that is not subject to the same restrictions. If this can be unrestricted, all the benefits of trust in the long-term orientation of the ownership structure could be neither built nor maintained. The latter rule against transformation into another company without an asset

lock has raised questions at the European level, in particular, whether the asset lock is compatible with the freedom of establishment under primary law according to Articles 49 and 54 TFEU and with the requirements of the Second Company Law Directive under European company law.²¹ It is, therefore, necessary to clarify that such concerns are unfounded. Another answer may have implications for legislative projects concerning steward ownership, including foundations, as well as legal forms with asset locks developed for social enterprises.²² The uncertainty alone that such new forms may fail in the European Court of Justice may block necessary innovation on the national level. This would be a pity on both the European as well as the national level. With Patagonia and Bloomberg,²³ there might be a growing movement in the US. European legislators should first take the opportunity to provide new forms of business ownership to transform the economy and society. To make this possible, the European Union should support and encourage such national experimentation.

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3. European legal framework

After national experimentation, a European legal framework could be developed that opens tools for implementing steward ownership in different legal systems. Such a framework could be built on national experiences and make steward ownership possible in member states without a national framework. If such common grounds can be developed within the European Union, it remains to be seen. However, in the proposal for a European Cross-Border Association Directive, profit distribution rather than

commercial activity is forbidden in Article 2.²⁴ Thus, commercial activity is not necessarily connected to the distribution of dividends. On this understanding, a new legal form might be built.

Business ownership with a capital lock, such as enterprise foundations and steward ownership, can offer considerable opportunities for transforming the economy and society. To investigate such opportunities and challenges, not only legal but also empirical research is needed.

Enterprise Foundations Obstacles and Possible Solutions for the Adaptation of Enterprise Foundations

Rasmus Kristian Feldthusen

In this paper, I will first describe the non-extractive (non-profit) ownership structure of “Enterprise Foundation”. Thereafter, I will identify and discuss the obstacles to a widespread adoption of this ownership structure and how these obstacles could be overcome.²⁵

1. THE OWNERSHIP STRUCTURE: ENTERPRISE FOUNDATION

An enterprise foundation is an independent and self-governing entity without owners and residual claimants that owns and controls one or more companies. It is typically established indefinitely and may thus be regarded as a strong ‘commitment device’²⁶.

As an enterprise foundation is self-owned, it is not subject to the sometimes more short-term interests of shareholders.

Traditional ownership structures may create continuity problems in the event of any separation or buy-out of family members since every family member is subject to the main forces of life, such as love, conflict and death. This is by no means not to say that families are not able to also (through multiple generations) run and develop large and successful companies.²⁷

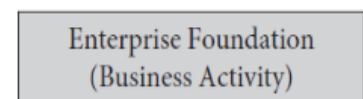
An enterprise foundation model may foster social responsibility and ethical ideally suited to qualify as an impact or purpose organization. This adds to the legitimacy of the business and the alignment of the stakeholders, thereby increasing the business’s reputation .

Thus, the key features of an enterprise foundation are continuity, stewardship, commitment, and purpose, of-

ten combined with philanthropic distributions consisting of the business’s surplus, which the enterprise receives as dividends.

For educational purposes I have below illustrated the different main structures of enterprise foundations regarding their business activity.²⁸

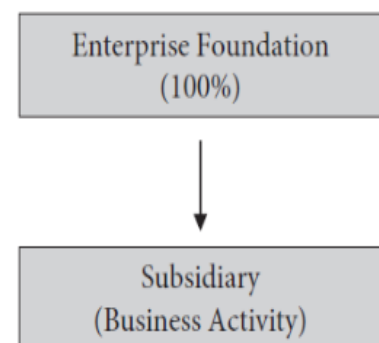
Figure 1. Structure #1



Source: Produced by the author.

In figure 2 below, the foundation owns the shares in the business, which is organized in a subsidiary.

Figure 2. Structure #2

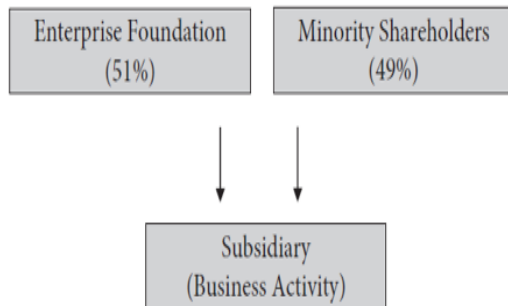


Source: Produced by the author.

Figure 3 below shows an enterprise foundation that does not own all the shares in the subsidiary. As further discus-

sed below, an enterprise foundation may choose to dilute its ownership to raise capital for the business, but in these cases, it remains the controlling owner through multiple voting shares.

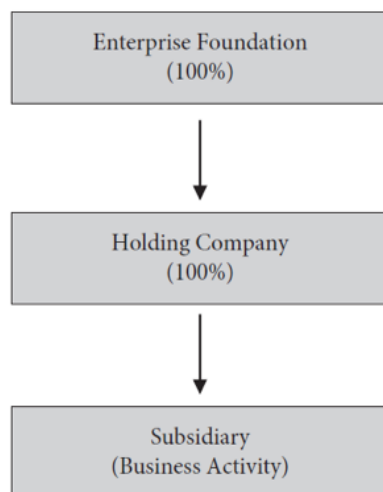
Figure 3. Structure #3



Source: Produced by the author.

Figure 4 illustrates how enterprise foundations may choose to interpose a holding company between itself and the subsidiary.

Figure 4. Structure #4



Source: Produced by the author.

Nordic countries such as Denmark, Norway and Sweden allow for enterprise foundations and in especially Denmark, they play a very important role as long-term controlling owners of some of Denmark's biggest companies but also as providers of public benefit through their distributions.

The largest of the Danish enterprise foundations control, through a majority of voting rights, a very large proportion of the dominant companies in Denmark, such as Carlsberg, Danfoss, Mærsk, Novo, Grundfos, J. Lauritzen, Lundbeck, and Rambøll.

In 2021 the Danish enterprise foundations decided on grants worth app. € 1,78 billion in (mainly) charitable distributions.²⁹

In 2022, the founder of Patagonia, Yvon Chouinard, donated the entire share capital in his company Patagonia to two entities. One is the Holdfast Collective which, pursuant to IRC section 501(c)4, is a non-profit social welfare organization and the other is a purpose trust (The Patagonia Purpose Trust). The Holdfast Collective received 98 pct. of all the shares (all of these being non-voting shares), which entitles it to all the profits of the Patagonia company. The Patagonia Purpose Trust received 2 pct. of all the shares (all of these containing the voting rights). The Holdfast Collective thus receives all the dividends from Patagonia to fight climate change. The purpose trust, on the other hand, utilizes its voting rights to control Patagonia and influence strategy etc.

The Patagonia structure is functionally similar to an enterprise foundation; however, an enterprise foundation eliminates the need for two separate entities. An enterprise foundation coexists with public benefit/philanthropic aims and company control .

2. OBSTACLES AND POSSIBLE SOLUTIONS TO A WIDESPREAD ADOPTION OF NEW NON-EXTRACTIVE OWNERSHIP STRUCTURES

As a matter of culture, history and dogmatics the legal entity »foundation« is, in some jurisdictions, considered to only be allowed for pursuing public benefit purposes. Some jurisdictions may, however, allow a foundation to have a family purpose, i.e. benefiting a particular family,

for example, that of the founder. This is, for example, the case of Germany, which allows for foundations to pursue a public benefit purpose (*gemeinnützige Zweck*) and a family purpose (*privatnützige Zweck*) but can't be self-serving (*Verbot der Selbstzweckstiftung*) but must benefit third parties. The purpose of owning a business is thus not considered to benefit third parties.

Allowing a foundation to have as (one of) its purpose(s) to own a business is thus, in some jurisdictions considered an abuse of the foundation as an organization type. The reasoning behind this view is that other legal entities exist which are designed for this purpose, and business activities should be reserved for these entities.

The above reasoning does not address whether a foundation may be (better) suitable for such a purpose but is rather based on a doctrinal view on foundations. It can be argued that the legal traits of a foundation, especially its long-term perspective, may not only benefit the underlying business and its employees but also the surrounding society, and act as a counterweight to the short-termism that may characterize the business landscape.

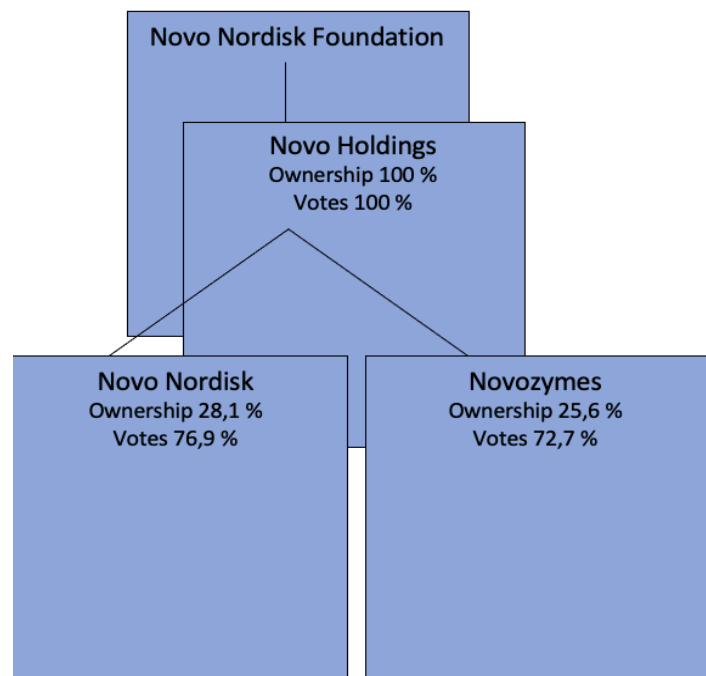
The following will identify and discuss the main obstacles to using foundations as company owners and how these obstacles may be overcome.

3. AN ENTERPRISE FOUNDATION MAY BE LIMITED IN RECEIVING ADDITIONAL FUNDING

An enterprise is established by means of a donation, *inter vivos* by means of a gift, or *mortis causa*, by means of an inheritance. Once an enterprise foundation is created, it is an independent entity, with no one outside the foundation having an ownership claim against its capital. The foundation is furthermore a non-profit or non-extractive structure subject to a prohibition on the distribution of profits, the 'non-distribution constraint'.³⁰ As a consequence, it is unlikely that an enterprise foun-

dation can attract further funds after being created as this would have to be by means of additional donations as opposed to a company, where an investor, in exchange, will receive a share representing his or her investment.

This obstacle has in Denmark, been overcome by allowing the enterprise foundation to dilute its ownership in the underlying business. This has been done on the premise that the enterprise foundation maintains its control over the company, which is done by way of issuing multiple voting shares. The enterprise foundation will thus stay as the controlling owner of the business. This can be illustrated with the example of the Novo Nordisk Foundation, which is the controlling shareholder of the pharmaceutical company Novo Nordisk A/S, which currently is the world's 14th most valuable company by market capitalization.³¹



Source: Produced by the author.

As can be seen from the figure above The Novo Nordisk Foundation has a 28,1 pct. ownership of the capital in Novo Nordisk A/S and 76,9 pct. of the votes in Novo Nordisk A/S.

Allowing multiple voting shares is crucial for the success

and proliferation of enterprise foundations in Denmark. This enables the enterprise foundations to remain controlling shareholders while still being able to attract additional capital to their companies.

Danish company law provides protection of minority (voting) shareholders against abuse of control by majority (voting) shareholders. Any shareholder, regardless of the size of a shareholder's capital and/or votes, including voteless shares, is entitled to table a motion for the agenda of the General Meeting of the company. Also, any shareholder is entitled to participate in the General Meeting of the company and has the right to speak and ask questions to the company's board of directors on any matter on the agenda. This right applies regardless of whether the shareholder only holds one share and even if that share does not provide the holder with a vote.

4. SELF-OWNED ENTITIES AND MONITORING MECHANISMS

The enterprise foundation is a self-owned entity and, as such, does not have shareholders, members etc., which can exercise their rights on a general assembly and monitor the board of directors in the foundation. As a consequence, one could argue that the directors of the enterprise foundation may be less inclined to create value as would a board of directors in a company towards the shareholders. This pertains to the agency theory developed in economic theory. The agency theory, however, does not explain why a rational homo economicus in pursuit of maximization of profit would donate his or her company to a foundation. Furthermore, agency theory cannot explain why directors of the board of a foundation – without the existence of shareholders – may still perform their duties diligently and with great effort in order to pursue the best interests of the foundation and its underlying company.

In this context, it is worth to consider that problems as to who is to monitor a board of directors also exist in

companies with dispersed ownership, as often is the case with listed companies. Just as a foundation is self-owned one could – put in a popular way – say that a company owned by “everybody” is owned by nobody. Enterprise foundations can, as a controlling shareholder, monitor its listed companies, while the remainder of the ownership may be distributed among a smaller or larger amount of shareholders .

The absence of shareholders in enterprise foundations should not be underestimated, and it is thus a crucial point of attention which requires legislative measures, which could be phrased as how to solve the lack of monitoring mechanisms in self-owned entities?

Firstly, the solution to the absence of shareholders in foundations is, in several jurisdictions , the interposing of governmental or regional supervisory authority, alternatively, a special jurisdiction of the courts. Such authorities will usually only have legality supervision authority, i.e. control whether the board of directors are acting within the boundaries of the by-laws and legislation, including intervening if the board of directors' remuneration is excessive and having the authority to remove directors of the board in more grave instances. Such authorities will not have the authority to second-guess the business decisions of the board of directors, but the board of directors are instead subject to possible liability on business matters pursuant to the business judgment rule.

Secondly, transparency and publicity are effective tools in disciplining the board of directors to act responsibly. Publicity regarding the individual remuneration of the foundation's management will incentivize the board of directors to not have excessive remuneration, for example, journalists, stakeholders, etc. Eventually, the supervisory authorities will take an interest in the matter. The same goes for publicity of transactions with related parties, whether at arms' length or not.

Thirdly, the absence of shareholders implies that the board of directors can't be elected by these. Instead, di-

rectors are appointed either by cooptation and/or by appointment of a third party. Cooptation as a means to appoint the board of directors has an inherent risk of the board becoming too close-knit and insular to new ideas, perspectives etc. This is, first and foremost, a question of drafting the governance rules in the bylaws of the enterprise foundation carefully. However, this is also an important question which has to be addressed by the legislator, and there is a balance here to be struck between contract autonomy and the society's interest in necessary rules on corporate governance. In Denmark, it is a requirement that at least one-third of the board members are independent and that the founder, the founder's spouse or domestic partner, or individuals connected to the aforementioned persons by blood relationship in a direct line or in a collateral line as close as siblings, cannot constitute the majority of the board without the consent of the supervisory authority. Furthermore, the Danish Law on Enterprise Foundations section 37 has more detailed governance rules:

“Section 37. An enterprise foundation is managed by a board, which, in addition to the board members elected according to Section 64, paragraph 1, sentence 1, must consist of at least 3 members.

Subparagraph 2: The board may appoint an executive management, which can consist of one or more directors. The board and the executive management together constitute the management.

Subparagraph 3: The majority of the board members must not be employed as directors in the foundation. A director cannot serve as the chairman or vice-chairman of the board.

Subparagraph 4: The management or a similar body, and members of the management or a similar body in the foundation's subsidiaries

and in a company that is not a subsidiary but in which the foundation and its subsidiaries exert significant influence on the operational and financial management of the company, must not appoint members to the foundation's board.

Subparagraph 5: The chairman or a vice-chairman of the board must not be a director in a subsidiary or in a company that is not a subsidiary but in which the foundation and its subsidiaries exert significant influence on the operational and financial management, unless the regulatory authority grants exceptional approval.”

In addition, a Committee on Foundation Governance has, pursuant to The Danish Law on Enterprise Foundations section 60, issued a set of Recommendations on Foundation Governance on a comply-or-explain basis.³² These recommendations deal with, among other things, the composition and organization of the board of directors.³³

5. DIFFICULTIES IN CHANGING THE PURPOSE OF THE ENTERPRISE FOUNDATION

It lies at the heart of a foundation that its purpose is difficult to amend due to mainly the donative element and the foundation not having any owners. This is a foundation's strength and the main reason it is a long-term entity, as it can and must stay its course in pursuing its purpose. However, it can be argued that this view is better suited to passive wealth management and distribution of net profits to worthy causes rather than owning a business. A business, on the other hand, is subject to an ever-changing environment and must be able to quickly adapt in order to exploit business opportunities and abandon others. On these grounds, the core of an enterprise foundation may be seen as creating an obstacle to the company's well-being . If this instead had been a

limited company, the shareholders could themselves take the necessary steps.

In Denmark, however, the bylaws of enterprise foundations are amended on average every five years or so.³⁴ A lenient interpretation of the Enterprise Foundation Law as pertains to business purposes and pragmatism on behalf of the Danish foundation supervisory authorities have, in conjunction, been able to address the needs of a changing economic and/or competitive environment by allowing the necessary amendments to the enterprise foundations' business purposes, thus allowing an enterprise foundation to, for example, dilute its economic ownership in a company and thus admitting additional shareholders, while maintaining a controlling shareholding. This solution is achieved by distinguishing between business purposes on one side and other purposes on the other side.³⁵

6. MAINTAINING CONCENTRATION OF OWNERSHIP OVER TIME

As an organization type, the enterprise foundation is suitable for maintaining a concentration of ownership over time to – for example – a business, and thus – theoretically – perpetually owning and controlling a company. An enterprise foundation is thus not subject to the same threats of having a concentration of ownership as is the case, for example, when a physical business owner dies, and his or her shares are distributed to the heirs. Such threats to the ownership of a company are not beneficial to the business or society. It is well known that the existence and prospects of any business are at risk at a generational change and increasingly so with each subsequent change of owners.

Donating the shares to an enterprise foundation is, however, not equivalent to in perpetuity concentrating all ownership in the foundation. The brewery Carlsberg has, for example, been controlled by the Carlsberg Foundation since 1st of October 1888, or over 145 years. However, over time the Carlsberg Foundation has diluted its

ownership so that as of 1st of December 2022, the foundation owns 29,21 pct. of the capital and 76,18 pct. of the votes in the company. Other large Danish enterprise foundations have also, over the years, diluted their ownership of their companies but maintained their control through a majority of voting shares. In other words, an enterprise foundation is more likely to, over time, maintain its control over the company together with a not insignificant ownership share.

7. LEVEL PLAYING FIELD

It is a fundamental principle in Danish law that there must exist a level playing field between running or owning a business in a limited company and an enterprise foundation. For that reason, Denmark has a separate piece of legislation on enterprise foundations where the starting point is that the same rules should apply to enterprise foundations as they do to limited companies. Of course,, the exact rules can't always apply due to the difference in legal structure etc., but this principle ensures that an enterprise foundation – as far as possible - is subject to the same rules of the game and sometimes even stricter rules.

An example of ensuring a level playing field is that the Danish rules on co-determination also apply to enterprise foundations. Pursuant to Danish law, employees have a right to elect company or group representatives to the board of directors of an enterprise foundation. These rules apply correspondingly to enterprise foundations and their subsidiaries with some modifications. The rationale behind applying these rules also to enterprise foundations is that electing to conduct business by means of an enterprise foundation should not deprive employees of their right to co-determination.

The right to co-determination applies where the persons are employed in the foundation itself (foundation representation) and where they are employed in the enterprise foundation's subsidiaries (group representation).

Furthermore, and as a point of departure, Danish law taxes enterprise foundations in the same way as corporations. This means that enterprise foundations are taxed at the same tax rate as companies (currently 22%), and on the same types of income, capital gains etc., as companies.

However, foundations enjoy greater access to deducting costs and may deduct charitable distributions from their income. A foundation may also set aside income for later charitable distributions with a deduction if the aforementioned is used for actual distribution within a maximum of five years.

The rationale behind the tax legislation is thus that foundations, which make charitable distributions, should be able to reduce their taxes by the amount of the distributions. However, the reality is that foundations, or rather their subsidiaries, still pay taxes on their income. Foundations are, pursuant to Danish law, not able to be jointly taxed with their subsidiaries. If the foundation owns at least 10% of the share capital, the enterprise foundation, however receives dividends from its subsidiary tax-free. However, any charitable distributions must first be offset against tax-free dividends from its subsidiary.

8. CLOSING REMARKS

Enterprise foundations offer a unique combination of being a long-term owner of companies and a provider of public benefit through the foundations' donations. Allowing these ownership structures to be used in other countries than mainly the Nordic countries require revisiting the obstacles which exist in many European jurisdictions and assessing whether these are necessary or instead could be overcome. The experience from Denmark and the other Nordic countries shows that these obstacles can indeed be overcome and, therefore, that it is possible for other EU member states to elect to adapt their rules to allow for enterprise foundations.

OBSTACLES TOWARDS A MORE WIDESPREAD ADOPTION OF STEWARD-OWNERSHIP AS AN ALTERNATIVE, NON-EXTRACTIVE OWNERSHIP MODEL FOR BUSINESSES

Maike Kaufmann

Steward-ownership is a model based on long traditions of entrepreneurship that has re-emerged in the face of the challenges of the 21st century. While it was first legally implemented by traditional larger companies like Hamburger Sparkasse (1827), Carlsberg (1887), Zeiss (1889) or Novo Nordisk (1923), it is nowadays pursued as a well-aligned corporate ownership model by small and medium sized businesses, family businesses, start-ups as well as social enterprises. It represents traditional values of entrepreneurship like long-term engagement, stewardship, independence, and orientation towards solving problems for customers, society and planet and at the same time, it frees entrepreneurial potential for reacting to challenges of the 21st century.

Even though steward-ownership is a proven innovation in practice and is more and more sought after, there are still large obstacles towards a more widespread adoption, ranging from cultural, legal, economic, and political challenges. In the following, these obstacles are outlined, and solutions are discussed.

1. CULTURAL OBSTACLE: LACK OF INFORMATION, STORIES AND NARRATIVES

A large cultural obstacle for adopting alternative ownership models such as steward-ownership for businesses is the lack of information, stories and narratives about the plurality of concepts such as entrepreneurship, companies, economy and corporate ownership. Mainstream discussion about entrepreneurship and the role of companies is still largely based on a one-dimensional understanding of what a company is and what entrepreneurs are, focus-

ing a lot on a company as a financial asset belonging to its shareholders, and entrepreneurs as somehow selfish or egoistically motivated actors primarily striving to maximize profit distribution and/or shareholder value. This is also reflected in the celebrated success stories most often found in media and politics: startups that have grown to unicorns (often without relation to actual value creation, long-term development and profitability), high equity financing rounds, large company exits or IPOs with a high valuation, entrepreneurs becoming millionaires or billionaires via speculating with company assets. However, these stories and the narratives behind them only reflect a very small part of entrepreneurship in practice and the motivation and actions behind it, with the large number of family-owned businesses and impact-oriented businesses examples exemplifying other forms of entrepreneurship that is more purpose and long-term oriented.

“A more plural understanding of success, entrepreneurship and the role of businesses in society is necessary to foster an inclusive entrepreneurial culture in which different types of entrepreneurs and companies can flourish.”

A more plural understanding of success, entrepreneurship and the role of businesses in society is necessary to foster an inclusive entrepreneurial culture in which different types of entrepreneurs and companies can flourish. In particular, corporate ownership models in which striving for private wealth and profit distribution is not the primary motivation need to re-emerge in narratives.

Stories of entrepreneurs successful in a different sense need to be told – entrepreneurs and businesses that are operating based on a long-term purpose and vision, have managed to remain autonomous and independent from outside control, that are solving problems for their stakeholders, that have found alternative ways distributing power as well as incentives in companies – and the conventional narratives around success and entrepreneurship challenged and new, more pluralistic ones formed.

This is also connected to alternative models of ownership. Similar to the predominant narratives around entrepreneurship and companies, a predominant form of understanding corporate ownership is looking at it as one concept, mostly interpreting ownership as asset ownership with economic rights to the value created in the company. But legally speaking, ownership is as a bundle of different rights that can also be detached and distributed separately: (1) voting rights, (2) economic rights and the (3) the right to pass on or destroy the company. In most conventional ownership structures in corporations, these three rights are clustered together. This structurally results in the company being, from a purely legal point of view, a personal financial asset of the owners over which they can fully dispose which they can fully access and control. The owner holding voting rights and making decisions over the future of the company is the same person that benefits financially from the company's valuation. An investor who might mainly be interested in the economic rights can, by purchasing ownership shares of the company, automatically take on voting rights as well, resulting in unclear roles and responsibilities as entrepreneurs, investors and other shareholders are all legally fulfilling the same role: shareholders/owners of the company, holding all three rights of ownership over the company.

In steward-ownership, the three ownership rights are separated and redistributed individually, asking the questions: Who should hold voting rights and with it the final instance of control? Who should have access to the value created in the company and why? Following the

two principles of steward-ownership, purpose-orientation (value created in the company legally serves the company's purpose and development) and self-determination (voting rights are not speculatively sold or automatically inherited but remain with people connected to the company), the ownership rights are distributed in a way that money and power are separated in the long run: Entrepreneurs take on control – voting rights – over the company and actively steer the company's future but cannot extract value from the organization or receive profit distributions. For their efforts working in the company, they receive adequate financial compensation (wages if employed). Economic rights either remain in the company or they are – in a limited way – given to investors to cover capital costs. This way, the people making decisions over the company are not legal asset owners of the company incentivised by shareholder value and potential dividends but are making decisions for the benefit of the company's purpose and stakeholders.

“This way, the people making decisions over the company are not legal asset owners of the company incentivised by shareholder value and potential dividends but are making decisions for the benefit of the company's purpose and stakeholders.”

Steward-ownership is closely connected to traditional entrepreneurial values of family businesses as well as indigenous concepts of ownership. This change of paradigm behind the understanding of (corporate) ownership is one that needs to become part of narratives and entrepreneurial cultures if alternative, non-extractive ownership models such as steward-ownership are to become more accessible. It legally enshrines the long-termism and stewardship values present in family-owned businesses independent of (but not excluding) succession within a family.

Steward-ownership is a suitable alternative ownership

model to many different types of companies such as 1) family businesses without successors in the family that want to know the stewardship model carried on beyond the genetic family; 2) startups and businesses oriented towards solving problems for people and planet that want to ensure that this focus prevails over shareholder value interests in the long run and also want to promise this to their stakeholders; 3) companies which are pursuing alternative, less hierarchical forms of work and management (“new work”) and which are looking for coherent forms of ownership models to suit their approach.

Next to the meta perspective on alternative concepts of entrepreneurship and ownership, another cultural obstacle is the lack of information about steward-ownership as a corporate ownership model. Entrepreneurs and other actors often are not aware that it exists as an option. Education and communication efforts are needed to bridge this gap of knowledge and make steward-ownership one of many different options to choose from.

MEASURES TO OVERCOME:

Targeted education and information efforts for entrepreneurs and other relevant stakeholders as well as for actors in policy and state institutions on a European, national and municipal level.

Review of communication materials on entrepreneurship, ownership and companies, to account for the plurality of entrepreneurial models in practice.

2. LEGAL OBSTACLE: COMPLEXITY OF LEGAL IMPLEMENTATION

The narratives around entrepreneurship and ownership addressed above have also become the basis of corporate law – the legal coding of companies. Most legal forms today, Europe-wide but also globally, are coding companies as financial assets of their shareholders (see also Code of Capital by Katharina Pistor). In most legal forms, legal

ownership of a company is automatically associated with profit distribution rights and the right to participate in the economic value of the company (shareholder value). Thus, the existing legal frameworks underpin a single understanding of corporate ownership structures and leave little room for legally coding ownership as stewardship.

Exercising and legally coding ownership as only holding voting rights, with no financial rights (rights to participate in value created in company and profit distribution), is not possible in some European jurisdictions. But being able to do so is the legal basis for implementing long-term oriented and ownership models such as steward-ownership. The member states should actively make these models possible and the European Union should support these efforts or, at least, not create any obstacles.

Concretely regarding the legal implementation of steward-ownership, companies are often faced with difficulties. The capital lock, meaning that value created in the company and profits cannot be extracted by the shareholders but remain to serve the purpose and further development of the company in the long run, is particularly difficult to implement with legal security over generations. Similarly, the principle of self-determination, meaning that voting rights over companies cannot be speculatively sold or automatically inherited, creates a legally secure way of handing control over the company to the next generation for nominal value necessary. To do so, a legal security of the upholding of the capital lock in the long run becomes necessary. These are integral parts of steward-ownership which necessitate new designs of legal forms.

In most countries today, it is only through complex and costly legal constructions that other forms of corporate ownership like steward-ownership can be implemented. In these, non-entrepreneurial and complex legal forms, like foundations or trusts, are combined with entrepreneurial legal forms to implement this ownership model in a legally secure manner. This legal complexity and

the lack of suitable legal infrastructure for implementing steward-ownership makes the adoption of steward-ownership for entrepreneurs too complex, bureaucratic, and expensive. For example, in Germany only an estimate of ~5% of companies are large enough to afford their own foundation-ownership structures to implement steward-ownership. In a representative study by the Institut für Demoskopie Allensbach, the foundation-ownership structure for steward-ownership was only a (potential) option for 21% of the medium-sized businesses, steward-ownership as a concept was an option for 42% of the questioned businesses, with a new legal form for steward-ownership supported by 72%.³⁶

There are very few jurisdictions in which steward-ownership can be implemented without complex models with several legal entities. One example is the Swedish Aktiebolag med särskild vinstutdelningsbegränsning, which has a 100% capital lock so that value cannot be extracted by shareholders. Another is the Danish Enterprise Foundation law, which allows for foundation-ownership models to focus on entrepreneurial activities, not primarily on foundation activities. While both of these examples are still too restrictive for many types of entrepreneurial activities and particularly as foundation models are not accessible for small- and medium-sized companies, they nevertheless show the necessity of the establishment of new legal forms for steward-ownership that legally secure a non-reversible capital lock – either as a European legal form or on a national level.

“they nevertheless show the necessity of the establishment of new legal forms for steward-ownership that legally secure a non-reversible capital lock – either as a European legal form or on a national level.”

In Germany, the establishment of a new legal form for steward-ownership is currently part of the coalition agreement of the German government (2021) and is dis-

cussed in politics and public. This type of social innovation and legal framework for long-term-oriented entrepreneurship needs to be supported across Europe, by the European Union and by the national government. If a German legal form for steward-ownership is established, it will provide a valuable blueprint and lessons learned for other jurisdictions.

MEASURES TO OVERCOME:

Establishment of a new legal form for steward-ownership Europe-wide and/or on national levels.

Clear support by the European Union of governments and institutions working for the establishment of a new legal form for steward-ownership with a non-reversible capital lock that holds even in the case of cross-border transformation.

Clear support by European Union and member states for the option to legally code corporate ownership as holding only voting rights and not distribution/economic rights.

3. ECONOMIC OBSTACLE: LACK OF ALIGNED CAPITAL

An economic obstacle is the lack of investment capital aligned with the principles of steward-ownership. Investments in steward-owned companies are possible but are challenging dominating narratives and conventional practices in venture capital and private equity. Conventional equity in which the investors receive shares with voting rights for their investments and receive a potentially unlimited return by selling the company shares is not the quality of financing that steward-owned companies as well as many other companies want and need. Instead, investments in steward-ownership are structured according to the principles of steward-ownership, securing that the final instance of control – the majority of the voting rights – remain with the stewards/entrepreneurs in the long run; and that the return for investors

is risk-adequate, but not unlimited. Returns are capped in some way to ensure that the company can potentially pay back the investment and become independent in the long run. This means that dividends or other forms of financial compensation can be paid out, but only up to a certain cap which can be defined through a total amount, a payout duration or other mechanisms. Steward-ownership aligned financing can for example be structured using redeemable non-voting equity or equity-like debt-based financing instruments like subordinated loans, silent participation, profit sharing agreements or revenue-based financing.

“Steward-ownership aligned financing can for example be structured using redeemable non-voting equity or equity-like debt-based financing instruments like subordinated loans, silent participation, profit sharing agreements or revenue-based financing.”

Increasingly, entrepreneurs are seeking this type of capital and more and more investors are interested and willing to finance in a steward-ownership aligned way. However, they are faced with cultural, legal and political challenges. Many investors and investment managers are not aware that other forms of financing exist, they lack information, inspiration and education on alternative forms of financing and how to use them. At the same time, they are often restricted by their own fund structures and regulations, which only allow them to finance using conventional shares with voting rights.

In particular, investment funds and private investors/business angels particularly in the field of venture capital are very dependent on receiving state funding, which is often supported by the European Union. However, the conditions for receiving support are often still based on paradigms around investor risks and returns that are only applicable to equity-based financing. For example, the German INVEST program can only support business

angels that take on full risks (within limited liability) and potentials of a company. While equity-like debt can be structured in a way that mirrors the risks and chances of equity, the policy regulations are unclear whether this suffices, so steward-owned companies financed with equity-like debts are excluded. Other programs can only support funds with a certain quantity of capital held in shares – here as well there is no regard for alternative financing instruments. This disincentivises investors to invest in alternative and less extractive ways. At the same time, investors focusing exclusively on investing in steward-owned businesses are excluded from state support, thus indirectly disadvantaging steward-owned businesses.

At the same time, institutions directly funding businesses from member states or the European Union are also faced with a lack of information and cultural understanding of steward-owned businesses and the financing instruments used to invest in them. Also, some state funding programs are only open to funds using conventional equity. This directly excludes many businesses, in particular ones using alternative ownership structures.

Another economic obstacle for many steward-owned businesses that are financed with equity-like debt-based instruments is that following European Commission guidelines, equity-like debt (even when it is structured as economic equity) is listed in the balance sheet as debt. This leads to the classification of businesses as a ‘firm in difficulty’ and ‘overindebted’ even when they have merely taken on venture capital in the form of equity-like debt. This excludes them from many state funding programs and also provides difficulties in dealings with suppliers and customers.

MEASURES TO OVERCOME:

Exchange rounds with parties concerned to understand better the complex economic obstacles and the role of the European Commission and member states faced by steward-owned businesses and their investors.

Targeted education and information efforts for entrepreneurs, investors, fund managers and other relevant stakeholders on steward-ownership aligned financing, according financing instruments and fund structures.

Information, inspiration and education efforts for employees in institutional funds by member states and European Union on steward-ownership aligned financing, according financing instruments and fund structures.

Review and adaptation of State and European Commission funding programs for investors as well as direct funding support of entrepreneurs with regards to their openness for alternative financing instruments and steward-owned businesses as well as for supporting investors funding steward-owned businesses.

Re-classification of equity-like debt-based instruments as equity in the balance sheet.

4. CONCLUSION

It has been shown that there are still many obstacles to a more diverse landscape of companies and their ownership structures. Some of them are a result of a lack of information of these models in politics. More generally, it seems that the majority of policy making in the European Commission, and also in its member states, is mainly targeting companies with conventional ownership structures, often excluding businesses with alternative ownership models such as steward-ownership. Particularly in the context of the European Union's outspoken support of businesses that further social innovations and more long-term orientation in businesses, policy making that also takes the plurality of ownership and business models into account is necessary. While steward-ownership and other forms of ownership should not be privileged, policy making should provide a level playing field. The establishment of a new legal form for steward-ownership in Germany could provide a great first step for policy changes towards legal forms supporting more long-term oriented and purpose-driven businesses.

NON-EXTRACTIVE ENTREPRENEURSHIP IN PRACTICE

Melanie Rieback

1. ABOUT RADICALLY OPEN SECURITY³⁷

I am running a ‘not for profit’ cybersecurity company called Radically Open Security. Next May, we will reach our ten year anniversary. We have about 50 staff members and are thus a medium-sized player on the Dutch cybersecurity market. Our core business is security audits and penetration tests of various kinds (web, mobile, HW/embedded/IoT, crypto/protocol, blockchain), phishing and social engineering, physical intrusion, and security trainings/workshops. We have had around 150 customers so far, including Google, Mozilla, the European Commission, COVID apps, the Dutch energy grid, supermarkets, banks, insurance companies, telcos, software vendors, and core Internet providers. Moreover, universities have hired us in to pretend that we are students and asked us to change their grades. We have a fun job!

2. A NON-EXTRACTIVE ENTERPRISE STRUCTURE

In principle, we are a pretty normal cybersecurity company. We perform the same kinds of jobs that any other cybersecurity company on the market would provide. But there’s one big important difference: our ownership structure. Our company is structured to make it financially non-extractive. At the very beginning of the company, I made the unconventional decision to give the shares in my company away to a foundation. The foundation has three board members, of which I am also one. So there is a double hat situation, which is not ideal: I am one of the board members of the foundation, and I am also the director of the company. We are currently in

the middle of a restructuring of the company, in which we are hoping to solve that. The restructuring involves multiple changes. First, an expansion of the board of the foundation from three to five people. Second, I want to give out multiple golden shares. Third, we are going to add an employee council with veto rights. And finally, we will create a new special class of shares with veto rights attached to it, that I can hold even when I’m no longer working in the company.

The reason for the restructuring is that I want to lock in the non-extractive structure of the company for the future. When I first set up my company’s foundation structure 9 years ago, there was little knowledge about topics such as golden shares, so I did not even know who to give the golden shares to. Now, there is much more thinking about steward ownership going on, which is why I am taking these steps right now. One of the reasons I am also doing this, is because I am thinking about my succession plan. I don’t think I am going to be at Radically Open Security forever, and I really want to lock things down in the structure, so that for example the company cannot be sold by future company directors. I did not give that company away for €1, for no reason, so I don’t want people to be able to find ways to subvert this.

Next to the foundation-structure, we also have an unconventional business model, which uses a fiscal construction from the Dutch church. It’s called a ‘fiscaal fondsenwervende instelling’, a fiscal fundraising institution. This construction is usually used by churches that want to create a commercial spin off. The spin-off earns money by carrying out a commercial activity, and the profits are

distributed to the church with a tax benefit. We decided we would make our “commercial spin-off” a cyber security company and our so-called “church”, the NLnet Foundation (<https://nlnet.nl>), which is an Internet related foundation that gives subsidies to open source projects, digital rights initiatives, and anything for a better open Internet. NLnet are about 30 years old, far older than Radically Open Security itself is.

Over the first eight book years, we donated around €750.000 to NLnet. What I’m not donating to NLnet is reinvested into the growth and stability of the company, which is how we have been able to grow to 50 people. And I’m constantly reinvesting in the company: we have a project management team, an IT/infrastructure team, a finance department, and hardware expenditures such as servers in our datacenter. This is necessary to keep the whole thing running. I also have business model related projects, like my non-extractive startup incubator Non-profit Ventures. It’s nice because it’s a self-reinforcing loop, because the bigger the company gets, the more resources I also have to put into social impact projects.

We take a ‘Post Growth’ approach to business. In our view, growth is an organic by-product of a happy ecosystem, it’s not an objective. If people ask me: ‘where are you going to be in 5 to 10 years?’, the only answer I can give is “I don’t care”. What I do care about is that my ecosystem is happy: I care that my staff are happy, my customers are happy, and that society is happy with us. But I don’t care about the number of customers, our revenue numbers, or the number of employees we have. If the economy shrinks and we have fewer people, it’s totally fine. I just want us to have a nice comfortable “lifestyle business” with happy customers.

3. BENEFITS OF A NON-EXTRACTIVE ENTERPRISE STRUCTURE

As a business, having a not-for-profit structure gives you a competitive advantage on the market. A lot of people

think: ‘if you are non-commercial, why would customers trust you?’ But it is precisely because we are non-commercial that people trust us, because they know that our only purpose for being here is to serve society. Not extracting profits makes (potential) customers a lot less suspicious of your motives. It also means that we are able to put all of our cash and assets into delivering the best possible products and services for our customers.

“But it is precisely because we are non-commercial that people trust us, because they know that our only purpose for being here is to serve society.”

On top of that, the people our business model attracts to the company are idealistic, motivated, and extremely bright and intelligent. We don’t get customers like Google and the European Commission for no reason; our quality is very good.

4. RECOMMENDATION 1: A NON-EXTRACTIVE CORPORATE FORM

One of the obstacles for ROS to set up this non-extractive ownership structure is that there is no non-extractive business entity form. As entrepreneurs, we try to implement non-extraction, meaning that we try to make sure that no financial value can be extracted from the company, now or in the future. Moreover, we also want to ensure that this non-extractive structure cannot be changed over time. The reason for this is that we need to protect a company from its founders: once money is present, even impact-minded founders can develop mission drift.

Normal business forms are extractive, and the non-extractive legal forms such as foundations are not very suitable for commercial businesses. For example, the tax framework for foundations is generally not designed for commercial businesses. If a foundation makes a certain amount of revenue, the tax authorities will get suspicious. Another problem is procurement. Basically, our customers would never take us seriously as a foundation.

In order to get through procurement, they need to know details of our structure. Radically Open Security in essence is a normal ‘BV’ (Dutch private limited company), and that is precisely the reason why we are being taken seriously on the market. If we were a foundation, I don’t believe that we would make it through anywhere near the amount of procurement as we do now.

Therefore, we try to customize our own legal structure through our statute text, golden shares, and combining legal forms like companies and foundations. But this is confusing, expensive, and there are still loopholes.

There is thus a need for a non-extractive business entity form. The main principles of a non-extractive corporate form should be:

1. No exits. Mergers/acquisitions and IPOs are the most prominent way of pulling financial value out of companies. The primary business model of investment funds is the speculative buying and selling of shares. Selling products and services is thus not the main business model; sometimes the business is even loss making. This is disconnected from the real economy, and it also incentivizes businesses to make profits look higher on paper than they actually are, which can lead to externalization of costs onto society and onto the planet. Therefore, I think these mergers and acquisitions and IPOs create perverse incentives. In order to eliminate the possibility of company sales, companies should apply steward ownership. Steward ownership puts control with persons that do not have an interest in the financial value of the company, and ensures that these control rights cannot be sold. In addition, golden shares can also function as a “poison pill” veto share. These can block statute changes and sale of the company.

2. Eliminate dividends. In his book “Building Social Business” Nobel Prize winning economist Muhammad Yunus promoted the concept of Social Business, which he defines as “dividend-free compa-

nies for solving human problems”.³⁸

How can we develop such non-extractive legal form? In order to do this, we need to think like a hacker. We need to give the legal structures a good “penetration test”, and it must be an iterative process. It would be a good idea to experiment with non-extractiveness in our real businesses, see how it breaks, fix it, and iterate.

5. RECOMMENDATION 2: NEED FOR A LESS EXTRACTIVE FINANCIAL SYSTEM

The second problem for non-extractive entrepreneurship is the investment system. The problem with ‘Impact Investment’ for social enterprises is the fee structure of impact investment funds. Generally, 90% of startups fail and 90% of “unicorns” are bleeding money. To cover these costs, impact investment funds generally use the standard ‘2/20’ fee structure: 2% is the fee for fund managers, and the 20% is “carried interest”. So when a portfolio company has an exit, the fund managers get 20% of it. This 20% “carry” embeds the growth imperative into startups. This growth imperative leads to a system in which unicorns are incentivized to grab a large part of the market share as quickly as possible, with the hope of shutting everybody else out and thus solidifying their market position in a way that they can demolish the competition. For companies with actual solid business models, it is very difficult to compete against these kind of cash-bleeding, externally funded companies. With their external investments, they can subsidize the prices of their products and services, for the sake of customer acquisition. They deform the entire market because they get the customers used to things that are cheaper than a solid business model could actually provide. And they’re just doing this for the sake of cementing market share and getting them a monopoly position. An example is the 15 minute delivery industry, but it is also happening in the cybersecurity industry. Radically Open Security has to compete against the Silicon Valley companies. They

are paying salaries of in some cases 200 or 300,000 USD a year. I can't compete with that, and they are only able to pay out these salaries because of their external investment. The vast majority of these companies are making money because of the selling of shares. Their cybersecurity services are not profitable. I have to worry about being profitable whereas they don't.

“The problem with ‘Impact Investment’ for social enterprises is the fee structure of impact investment funds.”

Next to that, the 2% management fee is also very extractive, particularly for large funds (\$1 billion or larger). This level of financial extraction creates “the 1%” and it is not even justified: 85% of VCs have historically failed to even keep pace with the stock market.

Limited partners – the customers of investment funds – who are usually institutional investors, get the short end of the stick here. 65% of the capital in US-based VCs comes from pension funds. Which means that cash-losing hypergrowth startups are funded with the pensions of everyday citizens.

A non-extractive start-up system would consist in the basis of investment funds that are steward-owned themselves and have golden shares. And the second thing is that if we want to enable (impact) investors to cultivate an ecosystem of startups focused on long term social value, then we have to eliminate the 20% carried interest from the investment fund's compensation structure. Moreover, the 2% management fee would need to be changed into the cost of running the business, assuming middle class salaries and a pension for all staff involved. For the rest, the returns are recycled back into the fund, so that it can optimally do what it needs to be doing, which in this particular case would be to incubate and fund impact companies. With this model, you are not necessarily preventing the limited partners from getting returns. But what you are doing is that you're stopping the leakage of cash to fund managers. This makes the

system less risky, which is actually attractive for limited partners like pension funds. But this requires overcoming cultural barriers, particularly with the institutional investors, because for them this is unknown, and they perceive anything that is new as being risky. There is also a role here for the financial supervisory authorities.

6. CONCLUSION

To conclude: our businesses and our financial markets are broken and they desperately need fixing. To create a functional economy that supports local ecosystems and common people, non-extractive business and finance are our best hope.

STEWARD-OWNERSHIP AS A TOOL FOR SUSTAINABLE COMPANIES AND THE FURTHER DEVELOPMENT OF THE EUROPEAN SOCIAL MARKET ECONOMY

Gijsbert Koren

In times of overlapping crises, entrepreneurs, investors and policy makers are seeking alternatives to traditional

In times of overlapping crises, entrepreneurs, investors and policy makers are seeking alternatives to traditional shareholder ownership.

Steward-ownership is such an alternative ownership form for companies that want to honor their mission, values and independence. Steward-owned companies are structured according to two principles:

1. Self-determination: power over these companies can never be sold or automatically inherited, but is rather handed over from one generation of capable and value-aligned stewards to the next;
2. Purpose-orientation: value created in the organization cannot be privately accessed by its shareholders. Profits are either reinvested in the company, used to cover capital costs, to benefit stakeholders, or they are donated. This doesn't mean investors, founders, team members and other stakeholders are not compensated for their contribution.

In steward-owned businesses, the two principles of steward-ownership are legally enshrined in the bylaws of the company. This fundamentally changes incentives, power dynamics and the basis of decision-making in the company and provides a legal basis for purpose-driven companies.

Case studies form Sprinklr, a steward-owned scale-up and Carlsberg, an over 130 years old steward-owned multina-

tional, show steward-owned businesses are creating value for shareholders and stakeholders alike.

1. CASE STUDY: SPRINKLR, A STEWARD-OWNED SCALE-UP ON A MISSION

Dutch scale-up Sprinklr sells organically grown plants and strives for a world without pesticides on our plants - a world in which organic growing is the norm. Sprinklr's mission is to restore biodiversity. Pesticides are disastrous for biodiversity and unhealthy for people. As more and more people are aware of this, Sprinklr is growing year on year.

After bumpy startup years, Sprinklr is now a healthy company that employs around 25 people. In 2022, founders Suzanne van Straaten and Liedewij Loorbach realised that they were now the main owners of a company that was becoming increasingly valuable. It felt unnatural to them to be owners instead of employees like the rest of the team. Van Straaten and Loorbach sat atop a potential goldmine. The greater the financial value of the business became, the less they could condone the fact that this goldmine was theirs.

When the entrepreneurs came across steward-ownership, everything suddenly fell into place. Van Straaten: "We wanted not only to sell a sustainable product, but also to be a sustainable company at its core. All the sustainability issues out there at the moment stem from capitalist structures. It's just about extraction: extracting raw materials from the planet, extracting as much money as possible from companies for the benefit of shareholders without

paying the social costs. We wanted to capture our drive for sustainability in our corporate structure as well. That's how we ended up with steward-ownership. Created value does not drain away but stays within the company and can be deployed for the benefit of the mission.”³⁹

In early 2023, the company publicly announced that it transitioned to steward-ownership. Both founders and investors transferred voting rights to Sprinklr Impact Foundation and agreed upon a structured exit. Both founders and investors receive a return on investment and the company has a right to buy them out at a predefined price. After that, Sprinklr Impact Foundation will be the only shareholder⁴⁰ with the purpose to be a good owner and contribute to restoring biodiversity.⁴¹

2. CASE STUDY: CARLSBERG, CREATING VALUE FOR SHAREHOLDERS AND SOCIETY

Carlsberg is partly owned by the Carlsberg Foundation (owning around 76% of voting rights⁴²) and partly listed on the Copenhagen stock exchange. The Carlsberg Foundation has two roles: It's on the one hand an active shareholder with a controlling interest in Carlsberg and on the other hand supporting scientific research within the natural sciences, social sciences and humanities.⁴³ As an active shareholder, Carlsberg Foundation is supporting the continuity and development of the company with a long-term outlook. As a philanthropic foundation, Carlsberg Foundation uses part of the dividend payments it receives to donate to society. In 2022, Carlsberg Foundation donated over 100 million euro.⁴⁴ Since 1878, it supports the Danish Museum of National History. During the COVID years, Carlsberg Foundation donated millions to COVID related projects: from research to supporting museums and youth projects in getting through this challenging time.

Many institutional investors are shareholders in Carlsberg, providing them with a very competitive returns.

Carlsberg's profit margin has been around 15 percent over the past four years (2018 to 2022), and over the past 20 years Carlsberg's share price has risen twice as much as competitors Heineken and AB InBev.⁴⁵ So a company that is not under shareholder pressure to make more profit at all costs, can perform exceptionally well financially, including for shareholders. In the more than 130 years that the Carlsberg Foundation has been the shareholder trustee, Carlsberg has grown to become the fourth-largest brewery in the world.⁴⁶ Both Carlsberg and competitors Heineken and AB InBev aim to be completely carbon neutral in 2040,⁴⁷ with Carlsberg currently having the best ESG risk rating.⁴⁸

The exceptional performance of Carlsberg exists alongside the motivation of Carlsberg employees to contribute to something that's bigger than shareholder value. Cees 't Hart (CEO of Carlsberg from 2015 to 2023): “To get out of bed and work hard for an investor's third Ferrari... That's not so motivating.”⁴⁹ Carlsberg, Sprinklr and hundreds of other steward-owned companies in Europe challenge the belief that shareholder value maximization should be the primary goal of companies. There is a different path, a path that is at this point far from mainstream. Looking at the motivations of a large number of entrepreneurs⁵⁰, it might be a new norm for companies that want to make a positive impact on the world around us.

3. STEWARD-OWNERSHIP AS A TOOL FOR THE EUROPEAN SOCIAL MARKET ECONOMY

“If alternative ownership forms are not sufficiently widespread and visible as success stories, most entrepreneurs will not consider them as options for their own business.”

Entrepreneurs are free to choose the ownership form they want for their company. At the same time, societies re-

produce the types of ownership models that are available to people. Practical availability and affordability are relevant, but mental availability might be even more important. If alternative ownership forms are not sufficiently widespread and visible as success stories, most entrepreneurs will not consider them as options for their own business. And finally, ideological availability is essential as well: alternative ownership forms need to be seen as respectable, even laudable, ways of doing business. Steward-ownership could become a more widely available ownership form in all of these dimensions.⁵¹ Both entrepreneurs exploring steward-ownership and existing steward-owned enterprises, perceive it as a challenge that steward-ownership is still relatively unknown.⁵² It is time for the European Union to facilitate entrepreneurs that want to adopt steward-ownership and contribute to the further development of the European Social Market Economy. Steward-ownership is an essential puzzle piece, if we want the European Social Market Economy to become a worthy alternative to the shareholder value maximization model and state capitalism.

PERSPECTIVES FROM A STEWARD-OWNED COMPANY

An interview with Bart van Breukelen, CEO of TBI Holdings B.V.

Interviewee: Bart van Breukelen

Bart van Breukelen (62) was born in Utrecht and also grew up in that city. He studied architecture at TU Eindhoven, specialising in Architecture and Urban Planning. After working as an architect for several years, he continued his career in project development. He held management positions at AM, Blauwhoed Eurowoningen, Johan Matser Projectontwikkeling and Synchroon (a subsidiary of TBI Holdings B.V.). He was also Chairman of the board of NEPROM, the association of Dutch project developers. He joined the Board of Directors of TBI Holdings B.V. at the beginning of 2018 and has held the role of Chairman since 2019.

Interviewer: Nena van der Horst

Nena van der Horst works as a PhD candidate at the University of Amsterdam in the Amsterdam Centre for Transformative Private Law, on the ERC-funded project 'Law as a Vehicle for Social Change: Mainstreaming Non-Extractive Economic Practices' lead by PI Prof. Marija Bartl. In this project she is writing a PhD thesis on the relation between distribution of profit and corporate purpose. Nena has a background in private law and economics. She obtained both her master's degree in Dutch law and her master's degree in Economics at the Radboud University in Nijmegen. She teaches various company law courses at the University of Amsterdam.

1. ABOUT TBI AS A STEWARD-OWNED COMPANY

Nena: You are CEO of TBI Holdings. Can you tell us

something about the company?

Bart: TBI stands for Technology, Building/Construction and Infrastructure. TBI is holding company of 20 companies that are active in the field of housing, non-residential construction, project development, infrastructure and with the realisation of technical installations. This makes TBI one of the top 5 construction companies in the Netherlands.

Nena: But TBI differs from other construction companies because it is owned by a foundation. This also makes TBI a steward owned company. Can you explain how the structure of TBI Holdings looks like?

Bart: All the shares in TBI Holdings are owned by the 'Stichting TBI' (TBI Foundation). Stichting TBI receives dividend from TBI Holdings. Former TBI directors are on the board of the foundation. In this role they pursue the two statutory goals of the foundation, which the dividends are used for: first the continuity of TBI Holdings, and secondly the support of cultural, scientific, educational and social activities.

Stichting TBI also exercises the control over the company TBI. This means that there is a yearly shareholder meeting between the board of TBI, the supervisory board and the TBI foundation, in which a set of topics are discussed for instance with regard to the dividend. In exercising this control, the foundation is not interested in short-term profit maximization. As a consequence, we can for example give our subsidiary companies that are in financial difficulties or suffer from difficult markets time to recover, instead of immediately divesting them.

Nena: What is the historical background of this structure?

Bart: TBI originates from the former Dutch company OGEM, that originally was active in oil and gas in Indonesia, but from around 1960's developed into a rapidly growing construction and trade group. In the early 1980's, OGEM was threatened with bankruptcy. OGEM board member Lense Koopmans then developed a new structure in which the viable parts of OGEM remained active under the new name TBI, and established TBI foundation as the shareholder of TBI.

2. TBI'S ORGANIZATIONAL CULTURE

Nena: Do you see the steward ownership structure reflected in the culture of TBI?

Bart: I can't say for sure whether it's because of the structure but I do think a few things stand out within the culture of TBI. The first is the principle of decentralized entrepreneurship. Our 20 subsidiaries all get a lot of freedom to determine their own business model, strategy, and policies. We as a holding company only set out some broad lines and we supervise the enterprises through our supervisory board model. This principle of decentralized entrepreneurship ensures that employees in our companies experience responsibility and freedom, which they value.

Another core value in our decision-making is the continuity of the enterprise on the long term. We are less concerned with short-term financial results, and much more with the enterprise's sustainable continuity on the long term. I think that our steward ownership structure makes this much easier. We do not have shareholders with an interest in short-term profits.

Nena: How does this work exactly in practice? Does it mean that you don't have any pressure on financial results anymore in the company?

Bart: No, we still do care about financial results. We are

a normal company, just with a special structure and culture. For us it is also important to be a healthy company with good results, both financial and social. In that sense we are not much different than our competitors. We also have yearly and quarterly financial reports. If one of our companies is underperforming, we do expect them to implement changes in order to show better results in the future. However, we do give them time to do that. We understand that such changes take time and maybe are not realistic within the next quarter. Especially in the construction sector, which is very cyclical. We are able to have this long-term mindset because our shareholder – the foundation – does not put a lot of pressure on short-term profits, but has a focus on the continuity and health of the company on the long term.

3. SOCIAL AWARENESS

Nena: And what does all of this mean for the way in which TBI acts in society?

Bart: I would say that TBI has a strong social awareness. You see this first of all in the goals we set for ourselves. Although there are big differences between our subsidiary companies based on the market they operate in, many of our companies have strong social purposes and business models. For example, one of our companies has recently developed a more sustainable concrete, which has a huge impact on the environment. Another one of our companies is currently in the process of becoming the first Dutch B-Corp certified construction company, which proves that they are working on a more sustainable, inclusive economy.

Moreover, since recently we have our 'Climate Train'. The climate train is a community for climate pioneers, but it also funds innovative climate projects by TBI companies, but also by not-for-profit organizations outside of TBI.

But the social awareness is not just visible in our business models or purposes. It is also ingrained in the whole company. TBI acts in society as a stable, responsible corporate

citizen. For example, we fund a part of the education of the children of all our employees with our 'Education Fund' that already exists over 30 years.

These initiatives are unique in the construction sector. I do think that being steward-owned makes it easier to undertake such initiatives. Namely, all these initiatives decrease the profits of the company on the short term, which is less problematic if your shareholders do not put pressure on the company for short-term profit maximization.

“These initiatives are unique in the construction sector. I do think that being steward-owned makes it easier to undertake such initiatives. Namely, all these initiatives decrease the profits of the company on the short term, which is less problematic if your shareholders do not put pressure on the company for short-term profit maximization.”

Nena: Do employees also share this social awareness?

Bart: In the culture you can clearly see that employees are proud of the company and its structure, and also committed on the long term. Many people have worked at TBI for a very long time. Many of them express they like working for TBI or they come work at TBI exactly because of the steward ownership structure and because of the societal awareness of TBI.

Mainstreaming steward ownership

Nena: What do you think we can do to mainstream steward ownership?

Bart: I do think that it is important that directors of companies listen to what their employees find important. We see that especially many of our younger employees find it very important that we make progress on sustainability. So, if owners of companies are thinking about the future of their company, I think they need to realize that it is important for their employees that they take into

account consider the societal impact of your company on the long term.

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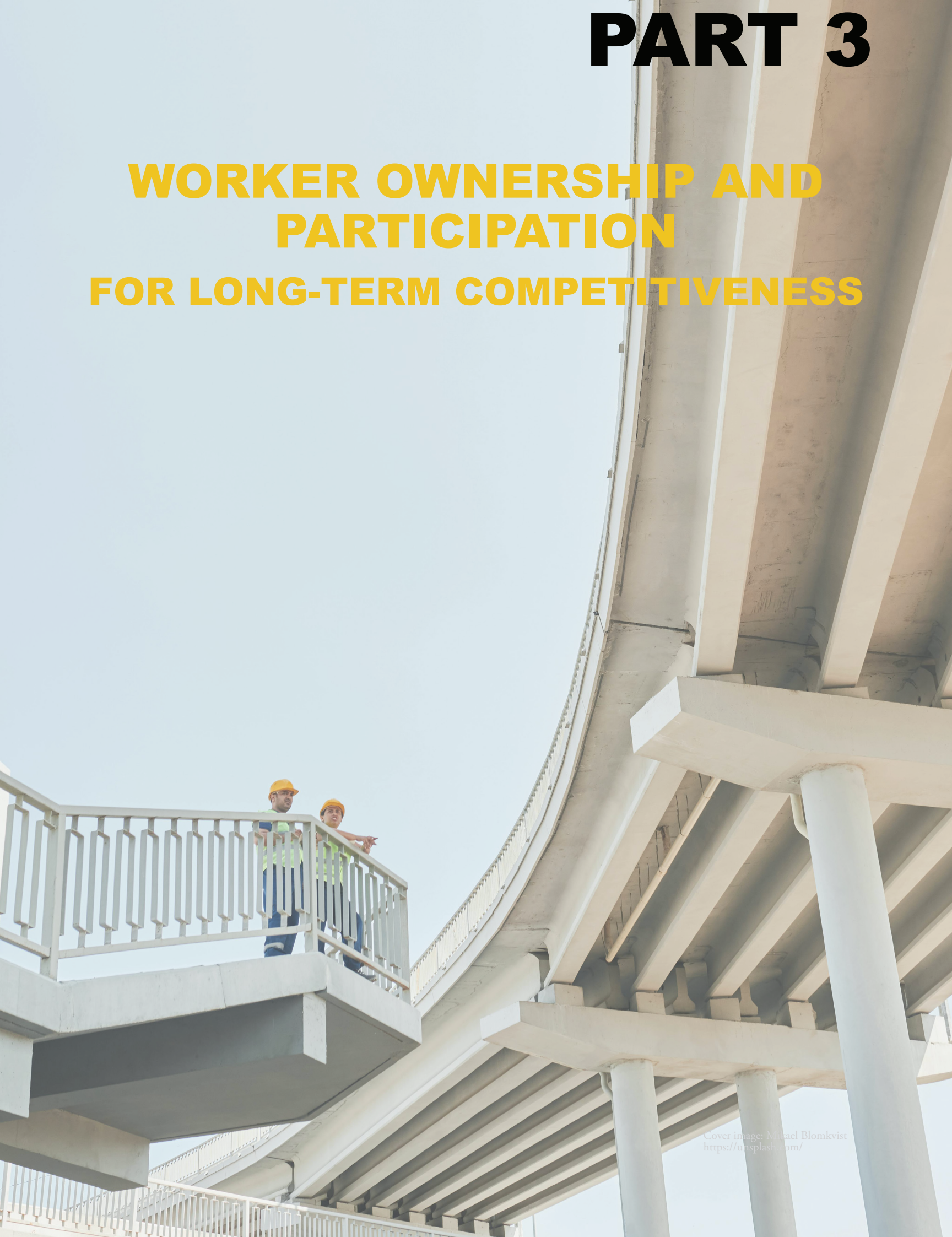
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PART 3

WORKER OWNERSHIP AND PARTICIPATION FOR LONG-TERM COMPETITIVENESS



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INTRODUCTION

Workers have a unique relationship with their companies. Unlike shareholders, customers, suppliers or other stakeholders, workers are the only ones who spend most of their waking hours devoting their physical and mental energy to the company. Given this significant investment, some companies may find it advantageous to give workers control and/or ownership. In this part, we use the term ‘worker participation’ to refer to workers having control in the management of their company. Control can be by workers alone, by workers together with shareholders (as in the German co-determination system), or by workers, shareholders and third parties. We refer to ‘worker ownership’ as any company arrangement in which workers, in addition to having control, also have rights to the company’s profits. In such cases, workers occupy a position similar to shareholders in standard business corporations.

Iñigo González-Ricoy kicks off this part with a contribution that compares the merits of both worker participation and worker ownership. He first discusses the empirical literature on existing forms of worker participation and concludes the effects so far have proven modest. Firms with board-level representation of workers do not do much better than other firms in terms of economic indicators (productivity, revenues, etc.) or worker well-being. One important reason may be that workers have never had a majority of the votes in companies, ultimately ceding power to shareholders. Another reason may be that shareholders have more authority, given their power to sell off and depress stock prices, even in firms with voting parity between shareholders and workers. Next, González-Ricoy turns to worker ownership, which is found in worker cooperatives and through the adoption of employee stock ownership plans. Here empirical effects on economic performance and employee well-being are more favorable if various other conditions

are met. One of them, strikingly, is worker participation in decision-making. Hence González-Ricoy concludes that worker ownership and worker participation best operate in tandem.

This opens up the question of how to stimulate worker ownership and participation throughout the economy. Tej Gonzá’s contribution focuses on worker ownership. He first analyses why there are so few worker cooperatives in today’s economies, pointing to the problems of scaling up and getting these companies adequately financed. To overcome these problems, he outlines an ingenious proposal for a ‘democratic ESOP.’ Gonzá notes that Employee Stock Ownership Plans (ESOPs) are flourishing in countries like the UK and the US. Building on these successes, his plan presents a mechanism for gradually converting a regular firm to an employee-owned firm by using a special purpose cooperative. This cooperative buys up shares of the firm (either new ones or outstanding ones) on behalf of workers by leveraged finance. The cooperative receives payments from the company’s profits, which it uses to pay off its debts. Over time, this cooperative comes to own all the shares, and workers hold an individual capital account at this cooperative. This structure, Gonzá argues, solves the practical problems which have held back the growth of worker cooperatives in the past.

The final three contributions in this part focus on worker participation. Lisa Herzog addresses this theme from the angle of accountability in large and complex organizations. Such organizations can suffer from malfunctioning because of their complexity, where responsibility gets lost in long chains of command. Market discipline (the mechanism of ‘exit’), Herzog argues, is not enough to address these problems. Worker participation, as a mechanism of ‘voice’, is an important additional corrective. She

points to ‘Montanmitbestimmung’ (with true parity between shareholders and workers) in Germany, as well as worker cooperatives, as real-life examples of implementing workplace democracy. Whatever the exact forms chosen, Herzog argues two design principles must be met. First, representative and participatory elements of participation both need to be present. Second, she calls for communication and joint decision-making between different groups, going beyond workers alone. Finally, she pleads for taking organizational culture seriously – formal mechanisms cannot work if the informal culture doesn’t support a democratic ethos.

Sara Lafuente focuses on concrete barriers to strengthen worker participation in the European Union, leveraging her experience at the European Trade Union Institute (ETUI). She proposes a comprehensive agenda consisting of three avenues. First is the need to increase coverage. EU and national legislation could do more to enhance worker participation. Lafuente supports the call by the European Trade Union Confederation (ETUC) for a holistic EU directive in which workers rights to information, consultation and representation would be anchored. Second, where workers’ rights already exist, they could be strengthened by closing down escape routes. One example is the use of the European company form by large German companies to escape co-determination laws. Another example is in the coordination and sharing of information between workers on boards and worker councils on the one hand and other workers on the other. Too often, resources are lacking, or confidentiality is imposed, hindering such coordination. Finally, a third area of reform is in the monitoring and enforcement of company obligations across the EU.

The final contribution in this part is by Dylan Paauwe, written from a practitioner’s perspective at ‘The Free Market’ (vrijemarkt.org), a platform selling sustainable products from ‘free companies’, i.e. companies in which workers are in control. In his contribution, he outlines a Framework for Founders’ and Workers’ Control, which

consists of ten key principles. These principles provide workers direct control over the companies they work in, with voting rights distributed in proportion to hours worked. A special role should be given to founders, Paauwe argues, which needs to be protected against a majority of workers who joined at a later stage. Therefore, he proposes some special rights for founders, such as 10% of all voting shares on top of their working hours-based shares. In his final pages, Paauwe argues worker control would not just be good for workers but also help create companies that are more environmentally sustainable, gearing the economy away from companies driven only by the financial self-interest of shareholders.

EMPLOYEE OWNERSHIP AND EMPLOYEE PARTICIPATION

Iñigo González-Ricoy

As employee ownership expands across European firms, it also grows less democratic. For example, 95 per cent of large European companies now have employee ownership plans, and the share of stock owned by employees has risen from 2,66 per cent in 2007 to 3,26 per cent in 2022. But the lion's share of such stock is now owned by top executive employees, with 9,600 top executives owning as much stock as 6,8 million ordinary employee-owners. Moreover, the number of ordinary employee owners has decreased in Europe by roughly one million since 2011, when it peaked.¹

Policy proposals to reverse these trends abound, including EU-wide broad-based employee ownership plans, specialised offices to offer legal and financial support, and tax incentives.² These are often justified due to the societal effects of employee ownership on economic inequality and macroeconomic stability. A less explored route to justify such policies, which I here inspect, is how employee participation in firms' ownership may further the aims of employee participation in firms' governance. The latter has attracted renewed interest, with the European Parliament recently calling on the Commission and member states to foster employee representation in corporate boards.³ But the empirical evidence suggests that the effects of board-level employee representation on firm performance and worker well-being are modest. Employee representation schemes may be more effectively served when paired with employee ownership schemes, whose benefits for companies and workers are more significant.

In this contribution, I first examine the various reasons to warrant employee participation in corporate boards.

Next, I review the available empirical evidence about its effects on firm performance and workers' well-being. Finally, I discuss the reasons to warrant employee ownership schemes and review the existing evidence on their impact. I close with a summary and some policy implications.

1. WHY EMPLOYEE PARTICIPATION?

Employee participation in firms' governance can take various forms, including at the board level through employee representatives, at the shop-floor level through works councils, and through several information and consultation mechanisms. Board-level employee representation, on which I focus here, is well established in several European countries, most notably Germany, where codetermination laws require that the supervisory board of all firms with more than 500 employees and of all firms with more than 2,000 employees have one-third and one-half of their seats, respectively, appointed by their workforces. This employee participation scheme has recently attracted renewed interest among lawmakers, unions, and scholars in the Americas, Australasia, and Europe.

The reasons offered to favour board-level employee representation are of two broad kinds. Consequentialist reasons lean on the beneficial consequences that employee participation may yield for companies' performance and workers' well-being.⁴ For example, employees' participation on corporate boards may make them more committed to their companies and more willing to share information about their jobs, which may reduce inefficiencies and increase productivity and innovation. And board-level representation may also improve employees' well-being

by forcing top managers, insofar as they are appointed by and accountable to a board partly composed of employee representatives, to track employees' interests in corporate policies ranging from pay and promotions to overtime and relocations boosting job satisfaction as a result.

Other reasons are non-consequentialist, including reasons of democratic legitimacy, which stem from the kind of hierarchy that characterises the employment relationship.⁵ By entering an employment contract, workers submit to an employer's authority to direct and supervise them as to what they are to do and where, when, and with whom they are to do it for half of their waking time. Moreover, unlike complete contracts in which the parties know the material details of the relationship before entering it, employment contracts are largely incomplete, so employers can swiftly redeploy their employees as contingencies unfold. There is nothing objectionable as such in working under this kind of incompletely specified authority, for its flexibility often yields efficiency gains that stand to benefit everyone.⁶ But the absence of mechanisms to channel employees' voices about how such authority is to be exerted involves a deficiency of democratic legitimacy, which is especially hard to square in democratic societies in which such mechanisms exist where authority is exerted, from parliament to city halls.

In summary, while some views justify board-level employee representation to correct the legitimacy deficit that unaccountable workplace subordination involves, over and above its consequences, others justify it precisely because of the beneficial consequences it may yield for companies and workers. What does the existing empirical evidence reveal regarding these alleged consequences?

2. THE EFFECTS OF BOARD-LEVEL EMPLOYEE REPRESENTATION

A fortunate outcome of the renewed interest in board-level employee representation is the growing empirical analyses of its effects. Such recent analyses have largely discredited

past views of the harmful effects that board representation could have.⁷ For example, Jensen and Meckling famously predicted in the 1970s that, under codetermination, "workers will begin ... transforming the assets of the firm into consumption or personal assets ... It will become difficult for the firm to obtain capital in the private capital markets [resulting in] a significant reduction in the country's capital stock, increased unemployment, reduced labour income, and an overall reduction in output and welfare."⁸ None of these predictions has aged well, though. Surveying recent econometric analyses of existing codetermination schemes, Simon Jäger and colleagues find no adverse effect on productivity, capital intensity, firm survival, labour productivity, revenue, and profitability.⁹ In brief, there are no reasons related to efficiency to be wary about expanding employees' board representation.

The flip side of these findings, however, is that board-level representation does not yield substantial benefits either—and not just for companies, whose performance seems to be neither harmed nor boosted by it. The effects on employees' well-being, albeit more mixed, appear to be modest at best, as recent studies of German, Finnish, and Norwegian codetermined companies suggest.¹⁰ One crucial and well-established exception is that workers in codetermined companies are consistently less likely to be dismissed, in particular during recessions, when these companies destroy fewer jobs than conventional ones. But other measures of worker welfare, such as voluntary separations, which is often used as a revealed-preference catch-all proxy for employees' satisfaction with an employer, and rent-sharing, seem not to be improved by board representation.

To be clear, none of this entails that board-level employee representation is unwarranted. It may be warranted on non-consequentialist grounds, like those of democratic legitimacy mentioned above. It may likewise be warranted on some consequentialist grounds, such as its remarkable and well-established benefits on job security. Moreover, given that board-level employee representation has

no adverse effects on companies and workers, the case can be made that the burden of proof is on those who favour that employees be excluded from corporate boards. But the modest or nonexistent impact of employee representation on companies' performance and workers' well-being—other than their job security—is certainly sobering.

What are the reasons for this modest impact? These are sometimes unrelated to how companies' governance is designed. For example, a corporate culture in which informal employee consultation and involvement are widespread or an institutional ecology in which policies affecting employees' welfare, like wages and safety conditions, are set through centralised collective bargaining may make board representation redundant. Other reasons, by contrast, point to issues of governance design, such as the limited formal authority that employees mainly wield under most codetermination laws. The fact that boards with parity (that is, 50 per cent) employee representation destroy significantly fewer jobs in response to recessions than those with minority employee representation suggests that how much formal authority employees have does matter.¹¹

“But the modest impact of board representation may also stem from the limited de facto authority that, even in firms with parity employee representation, workers wield relative to capital investors, whose economic position often translates into greater bargaining power.”

But the modest impact of board representation may also stem from the limited de facto authority that, even in firms with parity employee representation, workers wield relative to capital investors, whose economic position often translates into greater bargaining power. If, for example, codetermined companies were to adopt policies that could seriously undermine shareholders' interests, these would be able to sell their stock en masse, causing a marked decline in stock price. This sell-off could lead,

in turn, to reputational damage, signalling a lack of confidence in the firm's prospects and inducing skilled staff to find a job elsewhere and suppliers and purchasers to avoid contracting with the company. Employee representatives in codetermined companies have reason, in sum, to be wary about using their formal authority in ways that could undermine capital suppliers' interests.¹² As a board employee representative in the Finnish shipbuilding industry remarks regarding shareholders' superior de facto authority, “When you have money and power, then you make the final decisions. It's good to keep that in mind.”¹³ Insofar as ownership structures affect how de facto authority ends up being allocated, it pays to ask whether expanding employee ownership should be added to the toolbox to foster the aims of employee representation, which we will inspect next.

3. EMPLOYEE OWNERSHIP AND ITS EFFECTS

Broad-based employee ownership comprises schemes as diverse as (i) worker-owned cooperatives, where all or most workers share in the ownership of the firm and have ultimate control over its decisions on a one-person-one-vote rule; (ii) employee stock ownership plans, through which employees own shares through a collective trust funded by the company; and (iii) employee stock purchase plans, which allow individual employees to buy stock at a discount.¹⁴ These forms of worker ownership have attracted renewed interest and are often championed on grounds similar to those on which board-level employee representation is championed. For example, in calling on the Commission to encourage member states and EU companies to develop employee ownership schemes, the European Parliament points to its potential benefits for workers and companies.¹⁵

As with employee participation, the consequences of employee ownership on companies' performance and workers' well-being are not its only possible grounds. Some point to further consequences, like increases in account-

ing transparency and macroeconomic stability. Others point to non-consequentialist considerations, such as how ownership may secure the free agency of those holding it. Ronald Reagan, for example, famously promoted employee ownership during his presidency as “a path that befits a free people.”¹⁶ But the potential benefits of employee ownership schemes for companies’ performance and workers’ well-being are the principal grounds on which these schemes are championed. And the empirical evidence suggests that such benefits exist on both counts.

Start with the effects of employee ownership on companies’ performance. A meta-analysis of available studies, which includes 102 samples covering 56,984 firms, finds a positive association between employee ownership and firm performance, with no differences by firm size and percentage of ownership and between publicly held firms and privately held ones.¹⁷ Other literature reviews find similar results.¹⁸ They also suggest that these benefits largely stem from more significant worker commitment due to workers’ increased financial stake in the firm, and which board representation by itself seems not to prompt or not enough to improve companies’ performance. Broad-based employee ownership is positively linked, then, to widely studied determinants of firm performance, such as employees’ greater willingness to supply effort, invest in firm-specific human capital, and share relevant information with managers, as well as with lower levels of absenteeism and turnover and lower supervision costs due to better peer monitoring.

“Broad-based employee ownership is positively linked, then, to widely studied determinants of firm performance, such as employees’ greater willingness to supply effort, invest in firm-specific human capital, and share relevant information with managers, as well as with lower levels of absenteeism and turnover and lower supervision costs due to better peer monitoring.”

The effects on workers’ well-being are also noticeable. Employee ownership is positively associated not just with greater job security, as board-level employee representation is, but also with higher pay and benefits, better treatment of staff by managers, and more training opportunities.¹⁹ Job satisfaction is also higher among employee-owners, with the possible exception of worker cooperatives, where some studies find lower job satisfaction, perhaps due to higher worker expectations or more stress.²⁰

One important caveat is that employee owners’ higher satisfaction seems notably conditional on low supervision, high-performance work practices and, most relevantly, employee participation in corporate decisions. Indeed, in the absence of mechanisms to participate in corporate decisions, employee-owners may be less satisfied than nonowner employees, research on employee ownership suggests.²¹ But setting aside worker cooperatives, where all or most workers can participate in the company’s governance on a one-person-one-vote basis, the degree of influence over corporate governance that employees in companies with employee ownership schemes have is often negligible. Therefore, just as employee participation in companies’ governance alone seems unable to improve workers’ well-being effectively, the same seems true of employee participation in companies’ ownership alone. The benefits of employee ownership schemes are extensive when they go hand-in-hand with schemes to further employee involvement in companies’ governance, such as those offered by employee participation at the board and shop-floor levels.

4. SUMMARY AND POLICY IMPLICATIONS

Recent calls for broader employee representation in corporate boards appeal to its benefits for companies and workers. Unfortunately, the empirical evidence suggests that such benefits are only modest. While employee representation does not harm companies’ performance and employees’ well-being, it does not improve them much

either. To be sure, we still have reason to favour board-level employee representation on non-consequentialist grounds, such as those of democratic legitimacy, and due to its benefits on job security, which are remarkable and well established. But the aimed benefits of employee representation for companies and workers may be more effectively served when coupled with broad-based employee ownership, whose benefits for companies and workers seem more significant.

But, as noted initially, employee ownership remains marginal in the EU, especially relative to the US and the UK. A range of policies are available to spread information about its variants and to help overcome existing institutional barriers to its adoption. Some include fiscal and financial policies, like direct tax incentives to employers and employees, exemptions from capital gains taxes to owners selling their company to an employee ownership plan, prioritising firms with broad-based ownership plans in state procurement, or government guarantees for loans to employee ownership plans.²² Other policies to foster employee ownership are not fiscal or financial. They include, among others, the creation of an EU-wide office to support and review national employee ownership plans and disseminate information about them, the creation of an expert group to draft a code of conduct for employee ownership to be voluntarily adopted by companies, and, most notably, the unification of existing national plans under a unified European regulatory framework, including a single European employee stock ownership legal framework.²³

USING THE ESOP MODEL TO SCALE BROAD-BASED EMPLOYEE OWNERSHIP

Tej Gonza

1. AN INTRODUCTION TO DEMOCRATIC OWNERSHIP

“If our best chance for a global household of justice is the democratisation of the economy, this would require radical changes in the way we form, accumulate, and distribute capital.”²⁴

In the last fifty years, we have witnessed a significant decoupling of the added value increases produced in our economies from real wages.²⁵ Economic inequality is on the rise, and while re-distributive policies do not seem to be very effective in tackling this challenge²⁶, pre-distribution appears to be a much more effective policy.²⁷ Europe is not immune to inequality trends, with recent reports on wealth inequality painting a worrying picture for European economic cohesion. However, while many point to income disparities and home ownership to explain wealth inequalities,²⁸ we often forget about one of the leading causes of inequality: inequality in capital ownership.²⁹

What are alternative strategies for tackling economic inequality? How can the market economy be nudged into a more socially, environmentally, and economically sustainable direction so that income and wealth would be more equally distributed on the market even before redistribution occurs?

An economic policy that promotes employee-owned businesses would decrease economic inequalities by re-distributing the sources of income and wealth³⁰ and would decrease economic insecurity by improving job and income stability³¹. Workplace democracy counters top-down authority in conventional firms, which negatively affects

mental health, satisfaction, and productivity.³² In a broader sense, employee ownership decreases the problem of negative externalities, leading to a more responsible and sustainable presence of businesses in local communities.³³ To achieve the desired socio-economic outcomes by promoting employee ownership, it is crucial to avoid whitewashing and define clear standards of what is “meaningful” employee ownership but also to ensure that the models are substantially scaled in the economy.³⁴

„An economic policy that promotes employee-owned businesses would decrease economic inequalities by re-distributing the sources of income and wealth and would decrease economic insecurity by improving job and income stability.“

Any progressive socio-economic agenda is threatened by the whitewashing trends, which may be directed towards the actual causes of the socio-economic problems but are washed down and lose the effectiveness in achieving a structural change that would address the causes of the issues.³⁵ This seems to be recently happening with the employee ownership sector, where the largest private equity industry, including Blackstone and KKR, has recognized the potential to improve business by adopting broad-based employee ownership, which may undermine the more structural approaches to employee ownership policy. When discussing broad-based financial participation and changing the patterns of capital ownership in the market economy, one way to avoid whitewashing is to talk about democratic ownership. Democratic ownership in an economic firm implies that a group with an active

ve role in a given economic firm assumes the ownership rights derived from economic production.³⁶ A worker cooperative represents a legal entity that most commonly establishes democratic ownership³⁷; however, new models and mechanisms to grow democratic ownership in the economies have been adopted in different countries in the last decades.³⁸

The second relevant factor to social impact is the question of scale. Democratic ownership, most commonly achieved through worker cooperatives, has faced challenges in achieving scale. Some European countries like France, Italy, and Spain offer substantial supportive infrastructure for the development of cooperatives, including dedicated expertise, capital access, robust regulatory framework, tax incentives, and easy access to technical expertise; however, even in those countries, worker cooperatives still employ only a minor share of workers in labour markets. Some other international models, like the ESOP in the US and the EOT in the UK, have been much more effective in scaling democratic ownership. Why is that?

This policy paper summarises the main challenges in scaling democratic ownership through traditional cooperative conversions. It proposes an alternative cooperative model based on leveraged financing and gradual conversion of conventional firms. The first section outlines the challenges to achieving the scale of democratic ownership, the second section follows with a technical description of the alternative mechanism, and the conclusion closes the discussion with a short outline of the opportunities underlying the proposal in this paper.

2. CURRENT CHALLENGES TO THE SCALE OF DEMOCRATIC OWNERSHIP

Looking at worker cooperatives, the numbers are disappointing, especially considering the long, more than 200-year-old European tradition of worker cooperatives. In the European SME sector, which employs around 100

million people, worker cooperatives are a minor part, employing around 1% of the working population, with the average size of a worker cooperative hardly exceeding ten employees.³⁹ The most prominent worker cooperative complex in Europe is Mondragon Group, which employs, under one cooperative federation, close to 80.000 worker-members in democratic workplaces. In the US, the situation with worker cooperatives is even more disappointing - there are around 1000 worker cooperatives employing around 10.000 worker members in the US.⁴⁰

There are different paths to creating worker cooperatives, but most commonly, worker cooperatives are established ex nihilo or through cooperative conversions of existing companies. The historical problem of scaling worker cooperatives through ex-nihilo creation, starting from scratch, has been particularly challenging due to several factors unique to the nature of the cooperative organisational form. Worker cooperatives must overcome significant obstacles to their growth and adoption compared to traditional firms. These challenges include limited awareness and education about the cooperative model, risk aversion and uncertainty among potential members, the need for strong entrepreneurial skills and experience, difficulties in building collaborative networks, navigating complex legal and regulatory requirements, and accessing specialised training and ongoing support.⁴¹ Finally, there is access to capital; financial institutions and investors may hesitate to fund unproven cooperative startups, preferring more conventional businesses with predictable structures.⁴²

A more effective path to spreading democratic ownership is a cooperative conversion of existing businesses into a democratic firm. While there are some great examples of cooperative conversions in France⁴³, Italy⁴⁴, and Spain⁴⁵, those cases are mostly limited to savings jobs of failing companies, while the mechanism of a 100% cooperative conversion additionally limits the broader application of that approach. One of the inherent challenges to total cooperative conversions is the combination of the low we-

alth of workers engaged in the buyout and the lack of opportunities to raise external capital. While equity capital is not a possibility, even access to debt capital is difficult; based on the recent research sponsored by the European Investment Bank and European Commission⁴⁶, private capital markets are generally sceptical of debt financing, which does not give them control to ensure their return. At the same time, commercial banks are highly regulated in their lending facilities, especially in their view of collateral needed for a loan, and also have a lack of understanding of the cooperative model. Debt is difficult to get; capital is insufficient to provide collateral for bank loans, and cooperatives rely heavily on government support. The financial complexities of the conversion process can deter potential cooperative members from participating. Access to capital remains a significant issue for cooperative conversions since the relationship between democratic ownership and external equity is difficult and complicated, while out of the question in full cooperative conversions of economic firms, which must rely on debt finance and provide government-financed support.⁴⁷

Navigating the legal, financial, and operational aspects of converting a functioning business enterprise into a worker cooperative discourages the adoption of cooperative conversions in private markets. We argued that one important challenge is risk and return on investment. How do we ensure that sellers of the conventional business are reimbursed? Secondly, traditional businesses often have a hierarchical structure that can make it challenging to transition to a fully democratic firm, where decision-making and economic rights are democratically distributed among the workers. How can we ensure the transition from a conventional organisation of work to a democratic organisation of work? Thirdly, full conversion requires that the operating company's assets provide collateral for the debt capital, which should cover full conversion, discouraging private lenders from engaging in similar transactions. How do we provide better debt financing opportunities? In the literature, some have proposed that

the solution to the challenges of full conversions to democratic ownership is gradual conversion to democratic ownership through financial leverage.⁴⁸

„Navigating the legal, financial, and operational aspects of converting a functioning business enterprise into a worker cooperative discourages the adoption of cooperative conversions in private markets.“

3. LEVERAGING DEMOCRATIC OWNERSHIP THROUGH A COOPERATIVE ESOP

The main challenges seem to be related to financing (underlying assets are not sufficient collateral for a full conversion), risk involved in the process (the risk of default is much greater with full conversions), organisational compatibility (are employees ready to become 100% owners in a short period?), and legal complexities (it is challenging and may be costly to restructure the whole operating company into a new legal entity). How do we address these challenges? We argue that the answer lies in gradualism and financial leverage.

Leverage and gradualism address some of the central scaling challenges cooperatives have historically faced. This becomes clear when we compare the numbers of traditional cooperative models with models of broad-based employee ownership that are flourishing in the US and the UK; the numbers are incomparable despite the sophisticated institutional support to the cooperative conversions in some of the EU countries, such as Italy, France, and Spain. Based on the most recent numbers, 6,533 ESOPs were providing \$2,1 trillion in wealth for the 14,7 million employee-owners in the US in 2021⁴⁹, which is close to 10% of the private workforce in the US. Most ESOP firms are SMEs, where workers hold between 30% and 100% of stock through a special purpose trust, anchoring ownership rights with the current generation of workers.⁵⁰ The UK followed the US lead in 2014 when

they passed special legislation providing tax incentives to owners and businesses to promote broad-based employee buyouts. Today, almost 2000 new employee-owned firms in the UK employ 200.000 workers, with 420 transactions conducted in 2023 alone.⁵¹ It is most telling that the EOT conversion has been the second most popular option for existing owners in the SME sector in the UK, just after the private equity buyout, which took the first place as the most common choice for founder's exit.

What separates the ESOP model of employee buyout from the cooperative conversions? The ESOP model is based on leveraged financing, facilitated through a special purpose vehicle, allowing for a gradual conversion of a conventionally owned company into an employee-owned company. This vehicle buys shares of the underlying company (newly issued shares, treasury shares, or outstanding shares) by promising to devote part of the future profits to finance the purchase. It also ensures flexibility in how many shares are purchased at once, which helps to bridge the problem of capital access. Below, we explain this in more detail.

„The ESOP model is based on leveraged financing, facilitated through a special purpose vehicle, allowing for a gradual conversion of a conventionally owned company into an employee-owned company.“

The gradual leveraged approach inherent to cooperative ESOP helps to address the financing problem; leverage provides a source of capital, which may come at a low cost if supported by tax incentives.⁵² Additionally, banks may be more willing to provide debt capital since the operating company's assets are sufficient collateral for a partial buyout. A gradual approach through a particular purpose vehicle decreases legal complexity and set-up costs of conversion because the operating company is not converted itself; the trust becomes a new owner that builds its share in the ownership through time in

the name of employees. The gradual approach also allows the people in the organisation to adapt to the new roles in the firm through training and educational programs on ownership culture (Rosen 2019). Finally, the gradual approach may convince more business owners unwilling to lose full control over the company in one transaction, which would happen in a cooperative conversion.

We maintain that the best opportunity to scale democratic ownership in Europe lies in adopting and democratising the UK, the US, and the Canadian ESOP models in the European context. To scale democratic ownership, it is vital to consider and learn from past mistakes and create structures that deal with the anticipated challenges, such as dilution or concentration of employee ownership, transaction costs, democratic degeneration, operational inefficiencies, etc.⁵³ Based on the recent debates about the structures of leveraged buyout models, we propose the model of a cooperative ESOP^{54, 55}.

4. EXPLAINING THE COOPERATIVE ESOP MODEL

A cooperative ESOP is a mechanism for gradual buyouts of conventional companies through a special purpose cooperative, which I refer to as the “employee ownership cooperative” (EOC). It holds shares in the name of employees. The EOC may purchase any share of the stock (0%-100%) at the agreed price either directly from a shareholder or as an emission of new shares by the company. The acquisition is financed entirely by leverage; the seller may agree to a seller's credit option so that they are paid out in time, or there may be an external lender providing debt capital to the EOC. After the acquisition debt is repaid, the ownership rights (proportional to the stock held by the cooperative) are now anchored with the workers in the EOC. Membership in the EOC is conditioned by employment in the firm, which means that once a new worker joins the company, they get automatically included in the membership and start receiving

capital value on their accounts. When workers leave the company, they are automatically excluded from the ESOP cooperative membership and paid off for the value accumulated on their accounts during their employment. At the cooperative level, workers vote democratically to elect their representatives and set their strategies; the cooperative vote is proportionally represented in the governance of the operating company.

Figure 1 below shows the initial transaction, where a seller transfers a portion of their company shares to an EOC, receiving a guarantee from the company that contributions will be made to the EOC to compensate the seller for the shares transferred fully. Next, the value of the shares is assessed, and the EOC issues a guaranteed note to the seller, which acknowledges the debt owed to the seller equivalent to the value of the shares. The shares are then transferred to the EOC, held collectively in a suspense account and yet to be distributed to individual employees.

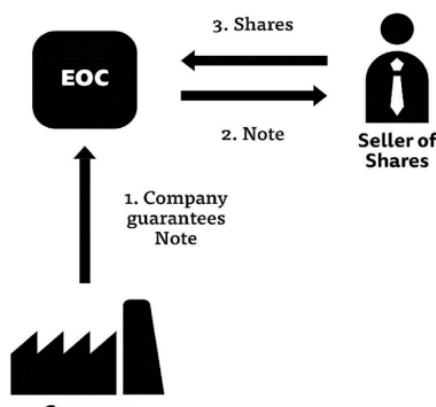


Figure 1 – Initial transaction.⁵⁶

In the next phase, contributions by the operating company channelled through the EOC are paying off the acquisition debt, with the shares or a capital value being allocated to the members of the EOC (i.e., workers of the underlying company). The company regularly contributes cash to the EOC, either monthly or annually.⁵⁷

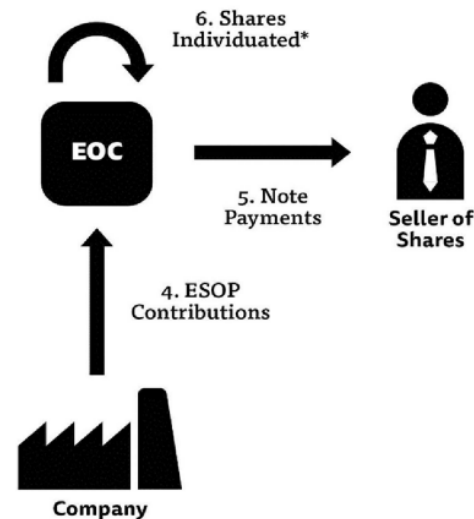


Figure 2 – Payments to the seller⁵⁸

The EOC uses the cash received from the company to make payments on the note issued to the seller of the shares. As payments are made on the note, an equivalent value of shares is removed from the suspense account and distributed among the individual capital accounts of employees, usually based on their salary. This allocation is depicted in illustrations showing shares grouped by the year they are distributed, which is relevant for subsequent procedures, including rollovers.

The Cooperative ESOP model also introduces an additional improvement over the US ESOP model called the roll-over system. This system, as illustrated in Figure 3, aims to balance equity among workers by using ESOP contributions to address the oldest shares in the accounts, redistributing them equitably among all active employee accounts. Figure 3 below illustrates the mechanism of the rollover. Even after the note to the seller is fully paid, ESOP contributions continue regularly. At this stage, all shares have been allocated to individual capital accounts (ICAs) from the suspense account, with no shares left unallocated. The EOC ensures liquidity through consistent cash flow from the company. This liquidity is used to repurchase shares from employees based on a first-in-first-out (FIFO) method. Once shares are repurchased from employees (whether workers remain with the company or not), these shares are redistributed to the accounts of

current, active members (all the current workers of the underlying company). Former employees who have left the company do not receive new shares but are gradually paid out. New employees joining the company also receive shares, integrating them into the system. This roll-over system ensures that equity in the company is more evenly distributed among current employees over time, enhancing fairness and retention by aligning interests closely with company performance.

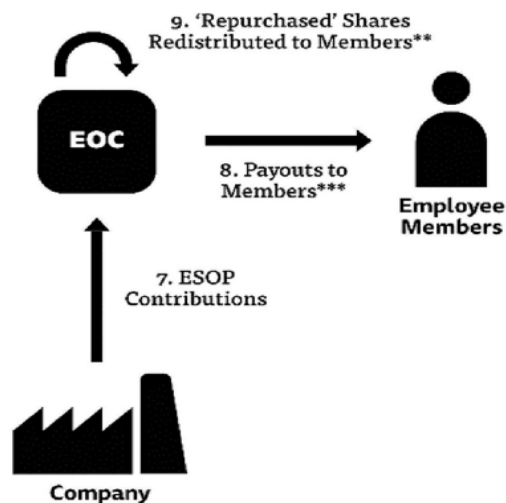


Figure 3 – The roll-over system⁵⁹

5. CONCLUDING REMARKS: THE POTENTIAL FOR SCALE

The vision of democratic ownership assigns ownership rights to the group of people that has an active role in the economic firm – the workers, the managers, the entrepreneurs, the salespeople, and the accountants. We may need to accept a compromise in the name of the scale and, at least initially, deviate from the democratic ideals by accepting non-ideal models of democratic ownership, where only a share of the ownership rights may be assigned to the workers, while the rest may remain a tradable commodity like in a conventional corporation. The ESOP model in the US and the UK is a strong model, where the majority, if not all, the workers are generally part of the ownership and where maximal differences in profits and capital value among the workers are regulated well; however, the legal default behind the ESOP mo-

del is a non-participatory governance structure, which takes the voice from the workers and gives it, in full, to a trustee, who is often delegated by the management of the company. Therefore, we proposed to democratize the ESOP concept before engaging in policy support in the EU and described the technical details of the cooperative ESOP in the preceding section.

ESOP can enable the scale, but what are the opportunities to realise it? In the EU space, the succession challenge is the most prominent opportunity to scale the democratic vision of ownership in the European economy. In the US, ESOPs are called “ultimate succession tools”.⁶⁰ In the UK, the ESOP buyout has been the second most popular choice for retiring business owners, right after the private equity buyouts and in front of the family succession.⁶¹ In the EU, 99% of all businesses are small and medium-sized enterprises, employing almost 70% of the total workforce in the private sector or 155 million people and contributing to half of the added value of the EU, coming close to 2.000.000 million EUR.⁶² Out of those, 450.000 firms with 2 million workers are transferred to new owners annually because of the retirement of founders or other owners. At the same time, a third of these are threatened because there is no suitable successor or because the planning of the succession was not timely. This means that every year, 150.000 SMEs, 600.000 jobs, and 7.741 million EUR of added value are threatened because owners do not have suitable tools for ensuring the continuity of ownership in the businesses they set up. Supported by national regulatory frameworks and appropriate fiscal incentives, the cooperative ESOP can provide a tool for addressing the succession problem, which would help greatly to scale democratic ownership in the European economy.

Democratic ownership does not have to be destined to the economic margins. A gradual, pragmatic, and leveraged approach to employee buyouts would have a solid positive spillover effect over the economic, political, social, and environmental conditions of the EU.

WORKER PARTICIPATION AND NEW ACCOUNTABILITY STRUCTURES

Lisa Herzog

1. THE NEW DEBATE ABOUT WORKPLACE DEMOCRACY

In the face of massive inequality and the hollowing out of workers' rights, the debate about workplace democracy has picked up speed again.⁶³ A simple argument is this: bosses exercise power over workers; power without accountability creates risks of abuse, so this power needs to be held accountable. In a democracy, holding power accountable happens through democratic procedures such as elections and deliberation, the legal system and, to some extent, naming and shaming in public discourse. All of this can, in principle, also happen within workplaces. Defenders argue that shifting more power to workers would also bring advantages in distributive fairness and citizens' democratic skills.⁶⁴ In this contribution, I focus on how worker participation can be understood as part of a broader quest for accountability structures, which I consider crucial for overcoming the current exploitative and extractive structures of many corporations.

I understand "worker participation" broadly as a toolbox of institutional solutions. A rough distinction can be drawn between representative forms, e.g., elected forms of interest representation on corporate boards, and participatory forms, e.g., democratic decision-making in teams on the shopfloor.⁶⁵ Different formats can be combined to fit the needs of various organisations with different tasks and structures. What is crucial, of course, is that workers can really participate in decision-making and that power is shared – this delineates "worker participation" from many existing forms of window-dressing.

One line of discussion about workplace democracy

is the relation to worker ownership. If one thinks that only ownership gives true power over organisations, one should opt for models where workers are also owners, the classic being the cooperative.⁶⁶ However, ownership must be understood – along the lines of Honoré's famous work⁶⁷ – as a bundle of rights that can be designed differently. The link between ownership and organisational power is already rather indirect in the case of corporations because, as is well known, shareholders (who are not the owners of the corporation)⁶⁸ delegate decision-making power to hired managers. This is why I do not see worker ownership as the only possible model of workplace democracy and prefer to discuss it in the broader terms of "power" and "accountability."

2. THE CHALLENGE OF ACCOUNTABILITY IN COMPLEX ORGANISATIONS

Complex organisations create many well-known challenges for accountability, which can lead to numerous forms of moral failure.⁶⁹ Such organisations typically contain long chains of delegation. The true power often does not sit where the organisational chart locates it. Not all information that would be relevant for true accountability gets shared. Formal structures and informal culture interact in complex ways. These challenges also make it very difficult for shareholders to hold corporations to account. This leads to well-known problems such as the diffusion of responsibility, complicity in dubious practices, or the difficult-to-detect "black sheep" who grasp informal power for their benefit.

It is, thus, a key question how such behemoths can be

held to account in ways that make sure that the rights, interests, and dignity of all stakeholders – as well as the “interest”, for lack of a better word, of the natural environment – are protected. To do that, the typical moral risks of organisations need to be taken seriously, and the rights and interests of other groups need to be protected against malfunctioning and against forms of misdemeanour that can be defined as malfunctioning. (A bigger question, which I cannot enter for reasons of space, is what the good functioning of such organisations would consist of, which is likely to differ from organisation to organisation – but certain forms of harm done to others cannot be part of their good functioning. Nor is it plausible that making a profit, per se, is a form of “good functioning.” My focus here, however, is on preventing the malfunctioning of organisations in ways that violate basic moral norms).

A big obstacle towards more democratic accountability structures – apart from the sheer power of those benefiting from the status quo – is the widespread assumption that markets would be sufficient for holding companies accountable. Markets, it is often said, help protect individuals’ interests by providing an “exit”⁷⁰: they can allow them to move out of the sphere of influence of one company and choose another. But this argument is less convincing than it may sound. For one thing, if an individual is structurally dependent on, say, having employment, then having the choice between different employers may not help a lot. For one thing, the transaction costs of moving to another one can be high; for another, the conditions there may be just as bad.⁷¹ This is not only a matter of markets not being competitive⁷² but also of competitive markets ending up in equilibria that imply power imbalances. To be sure, governments can take specific steps to facilitate exit – e.g., by financially supporting individuals who want to train for another job, or by providing an unconditional basic income – or to shift the conditions for all transactions – e.g., by introducing a minimum wage that requires all companies to

offer decent pay. But often, even if the power imbalance is somewhat reduced, markets do not create sufficient accountability.

Accountability also requires mechanisms of “voice”⁷³: the possibility of calling out bad behaviour, making it known to others, and ultimately having a say in decision-making together with others. Workplace democracy is part of the answer in its different forms. However, depending on an organisation’s industry, size, function, and location, other groups might also need a “voice.” For example, in healthcare organisations, patients are an essential group of stakeholders; in universities, not only employees but also students need to have a voice (and notice that having a voice is very different from “being turned into a consumer”). Moreover, specific background structures can contribute to the success or failure of voice within organisations. For example, the existence of a free and independent press that is willing to act as a watchdog on organisations, listen to whistleblowers, and make abuses public is often crucial – not only when it is involved but also when its mere presence has an impact on the balance of power between different groups.

“Nonetheless, I take it that employees deserve a special role in such accountability structures for two reasons.”

Nonetheless, I take it that employees deserve a special role in such accountability structures for two reasons. The first is that they stand under the direct power of organisations and thus need protection. The second is that their knowledge and involvement are crucial for genuinely understanding organisations and, thus, holding the powerful accountable. The representatives of outsider groups can be misled or deceived much more easily if they face the management of a powerful organisation on their own. Their position can be strengthened if they can form alliances with workers (though, of course, worker representatives may not always be willing to do that). Also, when it comes to the search for solutions to prob-

lems, workers' involvement is vital to drawing on their insider knowledge.⁷⁴ Hence, even though I see it as part of a broader quest for better, more democratic accountability structures of large organisations, I see worker participation as a condition without which the latter's success will be unlikely.

3. ACCOUNTABILITY AND INSTITUTIONAL CHANGE

Why focus so much on accountability? And how does this contribute to moving towards non-extractive models of ownership? Without convincing models for the accountability of large organisations, the camp that wants to leave corporations as they are, accountable to "markets" alone, has an important rhetorical advantage in public and political debates. After all, it is true that large organisations can threaten individuals' liberty, dignity, and interests. And there is also the lesser but still problematic risk that they can become inefficient, slow, and immune to change. This holds for public organisations just as much as for private ones. Still, in the current political climate, suspicion is raised, particularly against organisations that, in any way, are "non-private" in their ownership structures. Without convincing models of accountability, it is easy to conjure a spectre of totalitarian bureaucracy against such organisations.

"Without convincing models for the accountability of large organisations, the camp that wants to leave corporations as they are, accountable to "markets" alone, has an important rhetorical advantage in public and political debates."

Those who want to argue for alternative models of organisations – including new ownership structures – can overcome this obstacle if they have a convincing account of how such new organisations are held accountable. Many design questions need to be answered. If many interests

are involved, and they all get represented in the decision-making process, doesn't this create too many veto points? How can organisations remain sufficiently "governable" and continue fulfilling their legitimate societal functions? What combination of bottom-up and top-down, decentralised and centralised, and decision-making do different kinds of organisations need? How do formal and informal institutions (culture) interact, and how can formal structures support a cooperative culture?

I see the current debate about workplace democracy – and the experiments with new democratic models – in the context of this larger question: how can large organisations be governed in ways that rein in their power and yet allow them to fulfil their functions? Attention to this question is not as a fetishisation of "efficiency" but motivated by an awareness that large organisations do raise serious governance questions and have well-known tendencies to degenerate over time, even in cases where their goals are morally acceptable. But our societies do need large, complex organisations, whether to cure patients or to build wind parks, and they need them to work without unnecessarily wasting natural resources and energy, including human energy.

Some forms of workplace democracy have worked well and could thus be implemented directly in the whole EU. For example, the historical experience of the German "Montanmitbestimmung" could be the standard form for large corporations. In contrast to the standard forms of co-determination in Germany, in which the side of capital always has the decisive vote, this model gave employee representatives true equality with employer representatives. Many criticisms of co-determination – compared to worker ownership – do not consider this possibility, which involves a genuine shift in the power relations. Still, it could be a decisive way forward.

It is also clear that cooperatives can be a successful model, as shown in the famous case of Mondragon.⁷⁵ EU policies could support cooperatives in all countries by facil-

itating the legal steps for setting them up and – maybe even more importantly – by facilitating the transition of companies, especially small and medium enterprises, to worker ownership. Beyond these tried-and-tested models, we need experimentation with new forms: the legal framework should enable companies to try out different models, such as different chambers for other constituencies⁷⁶ or the use of lottocratic (i.e., randomly selected but representative) assemblies of employees.⁷⁷

Two design principles are vital for ensuring that all stakeholders’ interests and rights are protected and that organisations can draw on their knowledge and insight.

- 1) The first is to combine representative and participatory elements: this makes sure that representatives do not become another “elite” at a distance from the average worker, and it keeps the dialogue between employees in different roles open; it also creates opportunities for recruiting new representatives among those who show interest and ability in participatory formats.
- 2) The second principle is to allow for communication channels and joint decision-making of groups with potentially shared interests and vulnerabilities. For example, in many organisations, clients and employees have overlapping but conflicting interests, which makes them vulnerable to being played out against each other. Honest dialogue and the joint search for solutions are more likely to lead to outcomes that both sides can live with than separate consultations by management. This also reduces the risk of workers of one organisation outsourcing costs, risks, or harms to other parts of society. Nonetheless, to address the latter problem, one needs to look not only at structures within workplaces but also at the broader framework within which companies and other organisations have to operate.

This leads to a broader question, which I can here only

touch in passing: the interplay between reforms at the level of company structures (property rights, governance structures, accountability practices, etc.) and reforms at the level of the broader legal and regulatory framework. If the latter sets incentives for exploitative and extractive behaviour, then companies with more democratic internal structures always have to swim against the competitive tide. Arguably, it should be precisely the other way round: no company, however internally structured, should have the right to use exploitative or extractive practices, but those who avoid doing so and are internally democratically structured should be given advantages that reflect the positive externalities they can be expected to create. This could be tax advantages or prioritisation in public procurement, for example. This could create pressure for other companies to also consider conversion towards democratic structures. It could also potentially lead to a shift in public perception: it would decrease the legitimacy of purely extractive, non-democratic organisations and thus change the perception of what a “normal” company looks like.

There is, however, one open challenge for such new accountability structures. As empirical research has shown time and again, in organisations, culture matters: the same set of formal structures, tasked with the same functions under roughly the same conditions – e.g., two branches of the same organisation in two neighbouring cities – can develop very different cultures, depending on the individuals that fill their roles and the personal relations that develop between them.⁷⁸ This introduces a degree of contingency in all claims about which formal structure will succeed (let alone: “best” succeed) in achieving certain functional goals while protecting the dignity and interests of all concerned individuals and the natural environment. Some organisations may not be formally democratic but have an egalitarian ethos in which individuals feel safe to raise their voices and in which attention is paid to environmental values. Others may have democratic representation, but they are at a great

distance from workers and rubber-stamp every proposal by the management. Or there may be democratic structures – including, for the sake of argument, ownership structures, e.g., in a cooperative – and yet individuals fail to build an atmosphere of trust in which their collaboration would go smoothly.

What this contingency in organisational life implies – apart from the need for more research and experimentation to understand better what influences organisational culture – is that even if we could set up organisational structures that were far better, normatively speaking, than what we currently see, there are good reasons to insist on safety mechanisms outside of organisations, in particular the rule of law with its mechanism for interest protection and conflict resolution. It can also be an argument for keeping up some space for “exit”, even in a system that would give employees a “voice” in all organisations. One might even venture the guess that the better these “external” checks on organisations function, the more likely their internal mechanisms of voice function better, allowing deep disagreement to be resolved by departure instead of eternal infighting and providing independent arbitrators for conflicts. Worker participation and the quest for better accountability structures need to be part of a broader program of rethinking our economic system and bringing it better in line with our democratic values and the planetary boundaries – and creating accountability for respecting all of these.

THE TRANSFORMATIVE POTENTIAL OF WORKER PARTICIPATION

Sara Lafuente

1. INTRODUCTION

Under contemporary global capitalism, workers and their representatives do not always want to own or run a company. What they more frequently express is a desire to have an influential voice in their working lives. Greater workers' control involves increased power at different levels, from greater autonomy over assigned tasks to information, consultation, participation, collective representation in the workplace and true channels for effective co-decision and negotiation, including the possibility to veto operational, strategic or financial, company decisions that sooner or later will affect jobs and working conditions.

However, workers can control little, if anything, if they face management individually. To balance their unequal position at work, they must organise and have formalised channels to represent and voice their collective interests vis-à-vis management. Could worker involvement and participation in firms' governance, as a stand-alone measure, induce radical and meaningful change and progressive reforms in the current organisation of economic activity without transforming ownership structures? What are the economic, legal and cultural obstacles standing in the way of institutionalising worker participation, and how could these be overcome?

The paper addresses these questions, starting with a brief conceptual overview of worker participation. It then examines the transformative potential of workers' indirect participation in capitalist firms, presents some main obstacles encountered, and concludes with some policy recommendations.

2. SETTING THE SCENE OF WORKERS' PARTICIPATION INSTITUTIONS

All the rich historical debates and institutional forms of worker control in European countries cannot be addressed in detail here. However, we should recall that worker participation is a multidimensional concept that developed historically around two main approaches based on more or less radical, pluralistic, or unitarist perspectives of industrial relations. An approach focussed on 'direct' participation, such as in the self-management and worker cooperatives movement, but also, from a very different angle, the human relations and sociotechnical schools in organisation and management studies.⁷⁹ A second approach conceived workers' participation as 'indirect': workers' collective voice was represented via elected or appointed representatives in their firms. This approach translated into, on the one hand, a more 'conflictual' model where independent trade unions were to ensure workers' control over company policy, primarily through collective bargaining, and on the other, a 'co-determined' model of participation based on the institutionalisation of works councils and worker representation in (supervisory) boards and company's governance.⁸⁰

The latter two participatory models are, in fact, not pure or clear-cut. They evolved and led to diverse and compatible institutional mixes at the country level. However, they illustrate how workers' 'indirect' participation came to orient industrial relations systems, their institutions, and union practices in European countries after WWII. We will thus focus on these in the paper.

3. THE TRANSFORMATIVE POTENTIAL OF INDIRECT WORKER PARTICIPATION

Understanding worker participation as workers' control implies redistributing political and economic power towards workers: in a capitalist economy, labour suffers from a structural power imbalance vis-à-vis capital, so the rights and institutions enhancing workers' position need to be constantly updated and safeguarded by law, and exercised and claimed by workers and their unions through collective action. Even when ownership is not fully shared, control and decision-making can still be shared with affected stakeholders⁸¹, especially with workers, who invest their labour in the political entity that is the firm⁸². Corporate governance structures should integrate democratic procedures, conform to the rule of law, and ensure checks and balances to prevent authoritarianism in the firm and ensure the recognition of workers as 'industrial citizens'.

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Although worker participation may seem a reformist proposal, when participation rights exist and are effectively used in their different forms, they can, in today's capitalism, have meaningful, transformative effects on the lives of many. Due to space limits, I will here only select a few of these effects based on literature and empirical research.

First, workplace participation can have a fundamental educational role and contribute to a more democratic so-

ciety in the political sphere.⁸³ When citizens practice participation at work, they learn to exercise and gain trust in democracy. Employees in jobs with greater autonomy, voice, and influence are more active politically and more likely to vote and take part in politics, as they see themselves as being more able to have an influence.⁸⁴ Conversely, negative individual experiences of voice at work can negatively affect political participation beyond the workplace.⁸⁵ Democracy at work and political democracy seem mutually reinforcing.

Second, a strong formal representation and organisation of workers in works councils, health and safety committees, boards, and trade unions can, through information, consultation, participation and negotiation rights, improve transparency, accountability and compliance of companies with labour and other standards set in legislation or collective bargaining.⁸⁶ Even beyond traditional topics such as working time, pay or job protection, trade unions nowadays represent workers and negotiate on an enlarged range of issues at different levels (from local to global), including environmental and sustainability issues, remote work, occupational health and safety, psychosocial risks, right to disconnect, digital tools or algorithms, gender equality, family conciliation and diversity or GDPR, often setting new rights and certainties for workers.⁸⁷

Third, by negotiating wages and economic policies, trade unions are essential in economic redistribution towards more equal societies.⁸⁸ Greater collective bargaining coverage has been linked with reduced levels of inequality and wage differences⁸⁹, including the gender pay gap, but not exclusively, as income equality affects other dimensions of life. For instance, several studies conducted in the German context of codetermination find positive links between board-level employee representation, combined with other worker voice institutions, and improved job protection in restructurings, long-term strategic orientation, more 'reasonable' retribution of the top management, sustainability or social peace⁹⁰, even productivity

or competitiveness. It is consensual that board-level employee representation has no adverse economic effects⁹¹, while European works councils can positively impact corporate sustainability.⁹²

This does not mean that workplace participation can be a stand-alone measure. If the goal is to rebalance power in the economy for the sake of workers, several levels of policy intervention must be combined. The list includes strong social protection (e.g. job guarantee measures), inclusive labour market regulations, redistributive policies and measures against inequality, measures countering the fragmentation of worker collectives and the concentration of capital, and measures supporting workers' and unions' rights and resources. It is essential to think about how these rights and measures can be coordinated, reinforce each other and build congruent policies to pursue the same goal: to increase labour power resources and labour capacity to act and coordinate across different levels, from the workplace to the whole economy.

4. KEY OBSTACLES AND PROPOSED SOLUTIONS

Aside from the structural economic imbalance between labour and capital in our contemporary financial capitalism, the dominant ideology conveyed by the neoliberal theory of the firm⁹³ has been a significant obstacle to more substantial and better workplace democracy. Its ideological imprint in business schools, the ruling classes and far beyond is pervasive, not only in Anglosaxon countries but also in the EU. In its view, the exclusive mission of a firm is to make profits for its owners, i.e. their shareholders, which legitimises their control over the firm. Workers are relegated to mere (human) resources, and their labour investment and governing rights are not recognised. Neoliberal ideology normalises the individualisation of industrial relations, trade union busting and the circumvention of workers' rights and information, consultation and participation, which are considered a bur-

den. This reflects the dominant beliefs behind corporate laws and managerial practice and pollutes social policy. During the 1990s-2000s, the EU worker participation discourse got aligned with competitiveness, productivity and workers' direct involvement, disconnecting it from larger socio-economic and democratic projects for Europe, and reflecting a more global neoliberal twist. Since adopting the European Pillar of Social Rights in 2017, the EU may have shifted towards a more social-oriented discourse.⁹⁴ However, it remains uncertain whether this will translate into consistent and long-term effective social policies or if neoliberal approaches will return and prevail in the current economic and political context.⁹⁵ The effectiveness of worker participation crucially depends on dominant ideologies underlying law and policy production, both in the economic and social realms, and the new EU legislature and other upcoming elections in 2024 will tell about the political prospects for worker participation – with (far) right-wing forces on the rise, they do not seem very promising.

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Yet, should we want to support worker participation transformative effects, in that case, several concrete obstacles stand out, and actions could be taken at different policy levels concerning scope, strengthening existing rights and enforcement. The list is not exhaustive, but these need to be addressed, and workplace democracy needs to be itself considered a crosscutting and transnational issue involving economic and social policy if it is to be preserved as a social value.

4.1. Extension and coverage

National and EU legislation can contribute to the spread of worker participation institutions, especially (strong) board-level employee representation and information and consultation rights, to ensure their presence and proper functioning across all EU Member States, which is far from obvious. For years, The ETUC has called for a holistic EU Directive to set an overarching framework for workers' information, consultation and board-level employee representation rights⁹⁶. It proposed, among other things, an incremental number of worker representatives on the board according to the company's size (escalator logic), irrespective of the country of registry. The proposal is restricted to the European Company (or *Societas Europaea*, also SE) form⁹⁷ and EU company law instruments, but it could undoubtedly extend to multinationals covered by the European Works Council (EWC) Directive. This would extend participation rights across the EU, enlarge the scope of companies covered, and reinforce a congruent articulation between information, consultation and participation rights, which is essential for their effective functioning.

Fortunately, the European Commission must evaluate Directive (EU) 2019/2121 on cross-border conversions, mergers and divisions by 1 February 2027, and that includes assessing whether employee participation rights are duly protected in the current framework and if there is a 'need to introduce a harmonised framework on board-level employee representation in EU law, accompanied, where appropriate, by a legislative proposal', so the issue of extension can be addressed in that context.

4.2. Reinforcing rights

Where worker participation already exists, rights and resources need to be reinforced so that representatives can better conduct their functions.

The first measure is to prevent escape routes for employers. The dominant ideology described, combined with

the freedom for corporations to move across borders and piecemealed national legislation with different loopholes in coverage, encourages employers to find ways out from existing worker participation obligations too easily. For example, the European Company framework was often used by large (German) companies to prevent or diminish more substantial codetermination rights set in their national law⁹⁸, despite the fact that the *Societas Europaea* (SE) Directive 2001/86/EC was precisely intended to prevent such abuse. Experts suggested including general non-regression clause elements to anticipate fraud or protect participation rights during a reasonable period after establishing an SE.⁹⁹

But corporate groups use corporate engineering or transfer their seat to countries with no (or weaker) participation rights, too. Currently, a company can avoid negotiating on worker involvement if it is established as an SE holding without employees, even if it hires thousands of them at a later stage (as illustrated in the recent EU Court of Justice Case C-706/22 *Konzernbetriebsrat der Olympus SE & Co. GH v Vorstand der Olympus Holding SE*). Foundations or partnerships also fall out of the legal scope of worker participation laws. Legislation should adapt and cover problematic situations or else effectively prevent the use of escape routes with appropriate sanctions.

Labour, corporate and tax laws combined could prevent corporations to find escape routes from codetermination and could also extend coverage across value chains and other complex corporate situations, including subcontracting and other legal constructs fragmenting workforces. Effective workplace democracy could be part of the award criteria that public authorities require from companies in their public procurement procedures, especially after the EU Corporate Sustainability Due Diligence Directive was approved on 24 April 2024. This point could be emphasised in the transpositions of the Directive, combined with sanctions and monitoring.

Secondly, a major challenge is to secure effective coordination and communication. Whether worker representatives are involved in social dialogue and have a formal access to key corporate information via their role in a board, works council or another body, if management does not disclose the information, shares it too late, or prevents them from communicating among themselves, with unions or experts, their role becomes superfluous. Their co-responsibility can become a trap if they do not count on sufficient means and resources. To promote mutual trust on participation, legislation should prevent managerial abuses of confidentiality¹⁰⁰, and reinforce resources such as access to experts and training for worker representatives.

Worker representatives need coordination to reinforce their impact. Legislation can contribute to this by granting the right to joint preparatory meetings, an exclusion of confidentiality obligations between worker representatives sitting on the board and in a works council of the same company, also by involving (European) works councils in the appointment of representatives to the board, and by allowing them to cumulate mandates in different bodies. This can ensure better coordination and follow-up of issues. An observer seat for board-level employee representatives in the (European) works councils meetings or vice-versa would also help this purpose.¹⁰¹

Reinforcing worker participation requires reinforcing its transnational dimension as well. A significant challenge is that unions, worker representatives and industrial relations are too much attached to their national frames. Still, worker representatives increasingly need to think and act transnationally to fulfil their functions in a global context. This takes human and financial efforts, networking, surmounting language barriers, and deploying means of coordination that worker representatives usually do not have, unlike global business. Trade unions can partly improve their policies, but legislation is crucial to create incentives and resources for them. For instance, the EU Court of Justice in Case C-677/20 IG Metall and

ver.di v SAP SE clarified that the board seats reserved to unions according to German law must prevail in a German transformed SEs, but they must be shared with all unions and workers in the SE. No guidelines exist on how transnational mandates should be granted with transparency, which creates a lot of democratic uncertainty.

Finally, workplace participation can only benefit from a more considerable social regulation beyond the company level. In that sense, although it remains to be seen how it will be transposed and implemented, the Directive (EU) 2022/2041 on adequate minimum wages is expected to reactivate collective bargaining in EU Member States¹⁰², which may provide additional coverage and practical strength to worker participation.

4.3. Monitoring and enforcement

An obstacle requiring serious improvement relates to the means for monitoring compliance and enforcement. The lack of proper official registries or obligations for corporate groups to declare relevant information for worker participation rights and transparency (e.g. information on several employees per country, essential for verifying if the thresholds are reached to trigger negotiations and obligations on board-level employee representation or EWCs) has been repeatedly identified as a problem.¹⁰³ Standard EU rules are needed and should be effectively enforced at the national level so that corporate situations such as cross-border mergers, divisions, conversions, or SE establishments affecting a specific magnitude of employees across the EU can be registered at a centralised level.

Securing inspection capacities, easier access to justice for representatives, and credible sanctions are all elements supporting enforcement. For instance, following the recommendations of European trade unions and the European Parliament, the revision of the European Works Council's Recast Directive 2009/38/EC addressed these goals. Similar solutions could be considered in any legis-

lation on worker participation rights.

5. CONCLUSION

Workers' collective voice in company governance is an essential means to counterbalance the power of management and capital investors where ownership remains shareholder-based, but also in any corporate form and work organisation, such as foundations, forms based on steward-ownership, publicly-owned enterprises, and even cooperatives. An influential worker collective voice in companies' government can positively transform workers' lives, the economy and society as a whole. If Europe wants to keep local knowledge and ownership and wants to safeguard a democratic political culture, then countering the many obstacles referred to here by extending and strengthening workers' voices at all levels, from the workplace to the boards, from the local to the global, will be crucial to advancing those goals.

FOUNDER & WORKER'S CONTROL FOR JUSTICE, FREEDOM & SUSTAINABILITY

Dylan Paauwe

French factory workers are re-vamping local and organic tea production. Greek idealists returned to the olive groves of their ancestors, producing for a free and fair future. Brazilian agricultural workers are transforming abandoned land into a sustainable foundation for new democratic communities. Dutch cleaners who paid themselves five extra monthly paychecks last year! Indigenous inhabitants of the Amazon produce cocoa and chocolate in harmony with nature, making a living on their terms while focussing on women's rights. And then there's us, De Vrije Markt ('The Free Market'), trying to promote it all by selling from free companies like this. Why? Because we love people. Because we love the planet. And because of that, we love freedom and justice.¹⁰⁴

Putting work under the control of those who do it has profoundly helped mitigate environmental degradation and increasing inequality while simultaneously improving people's freedom. Workers have a direct, personal interest in a safe workplace, a healthy environment for their families and friends, and businesses that can last and support their communities for the long run. Workers' control embeds businesses in living communities, tying companies to the different people within them, with their converging and diverging concerns, needs, hopes, and dreams.

And, of course, workers have a direct personal interest in being paid fairly. The current rise in inequality seems primarily driven by two factors. On the one hand, there is an apparent increase in the amount of value going towards capital instead of wages.¹⁰⁵ On the other, there is an increase in the disparity between high-level management

wages and wages on the work floor.¹⁰⁶ Putting work and its results under the control of those who do the job will likely result in a more equal distribution of wealth. Some wealth inequality will remain, with the active consent of those who created the wealth. This is because people do want to reward others for doing something hard, something unique. After all, they have taken on the burden of raising large families or because they need more for other reasons. In short, through workers' control, the world becomes more just and sustainable, without the continuous need for government intervention with often paradoxical results.

Workers' control is just as much about freedom: the freedom to arrange how you survive and thrive according to your values. This desire is often at the heart of people's dreams of owning a successful business. But, for various reasons, this is currently not within most people's reach. As a result, they need to sell their labour to others to survive or, at least, thrive. Because of this, a lot of politics revolves around two questions: is it better to sell oneself to private business owners or the state? And should the state curb the power of business owners or let them do what they want? But no matter the answer, workers are obliged to follow others' commands. Only workers' control can bring economic freedom to the vast majority of people because only then will we not have to obey commands. Or, at least, we'll have a voice in creating the ones we follow.

1. TOWARDS A NEW FRAMEWORK

But while there are already many great examples of workers' control, some serious obstacles prevent it from being adopted far and wide. First of all, the available business models are seriously flawed. In general, control over companies is given to people based on property rights unrelated to any work done inside the company. Alternative arrangements like steward ownership and enterprise foundations replace property-based control with - hopefully - kind and principled aristocracies. However, they are still unrelated to the work that is the lifeblood of our economy.

The worker-cooperative model presents another alternative. Run by worker-members who have one vote each, this is a step in the right direction. But even where all workers are members, there is a big problem. If, for instance, you have two working members who work 5 hours a week and one working member who works 80 hours a week, this means that those two people can tell the other what to do. Even though the latter puts in 8 times more of his time than the other two combined. This may be why there are very few worker cooperatives in which all workers are members: temporary and part-time workers usually have no voting rights, resulting in second-class citizenship in the workplace.

An essential issue in workers' control is maximising freedom: can you decide freely over what you do with your life? In ideal workplaces, it is possible to find a harmonious consensus between the desires of the various workers. And wherever this is possible without spending too much time in meetings, that's a worthy goal. Voting, in essence, is a form of rapid conflict resolution: not everybody agrees, so how do we move forward? Where we can't find harmonious consensus, it makes sense for the majority to decide. This is simply because the alternative is that the minority chooses to, or no decision is made, which is a decision in itself. Of course, for many reasons, it is good to limit the power of the majority to respect the auton-

omy of minorities and individuals. This is why at 'De Vrije Markt', we have explicitly decided against micro-managing. What matters is the end result of a given task; the basic necessary tasks needed to keep the company alive have been divided more or less equally with the consent of each worker involved, and additional tasks are either coined by the worker who wants to do them or is put to the group to see if someone would like to do them. In this regard, many useful analogies can be made between political and economic democracy.

“An essential issue in workers' control is maximising freedom: can you decide freely over what you do with your life? In ideal workplaces, it is possible to find a harmonious consensus between the desires of the various workers.”

But in at least one crucial aspect, our economic lives are fundamentally different than our political ones. Since people spend their lives governed by political systems, “one person – one vote” makes sense in that context. But almost everyone spends some time away from work. It could be suggested that voting rights should be based on individual productivity, but in most modern workplaces, this is difficult or even impossible to measure accurately. Hours worked are more practical. The theoretical danger of companies ruled by people who spend 80 hours a week sitting behind their desks looking at their phones is countered by both the “invisible hand” of market forces and democratic control over hiring and firing. To put it bluntly, in the context of 'De Vrije Markt', if we don't do certain things, the company fails, and if we see that a colleague is consistently underperforming, we start by having an open but ultimately threatening conversation. And there is an implicit understanding that the more time you put in, the more we should listen to what you have to say. To summarise, I would propose a new framework for workers' control to start with:

1. Ensure the greatest possible autonomy for each worker.
2. Base voting rights on the hours worked in a reasonable period (no longer than the previous five years).

Striving for consensus with the option of reverting to majority decision-making has been a clear alternative for tyranny throughout history. Also, today, almost everybody has at least some experience with this inside their families, groups of friends or romantic relationships. The mutual informed consent of all workers involved that is embedded in worker-controlled decision-making structures provides a stark contrast to what is considered the norm in business: intensely hierarchical decision-making structures which restrict information to a small corporate elite and tend to suppress criticism from the workplace with (the threat of) being fired or otherwise diminished in the capacity to secure for oneself the means to live. Specifically, of central importance here is having well-facilitated meetings open to all workers where all issues can be respectfully and openly discussed. At 'De Vrije Markt' we have meetings like this every month, and we can also communicate through a WhatsApp group between these meetings.

Of course, checking with everyone else is not always possible or desirable whenever a decision is made. There are various options to solve this. Under the right conditions, you can simply say: do what you think is right, and if others have a problem with it, they can bring it up immediately or at the next meeting. This flexible, informal leadership is how we do it in our company. The happy result is that, over time, we spend less and less time in meetings as we internalise each others' opinions and act creatively within their scope. Many other worker-controlled companies are organised more like democratic republics. In addition to the mentioned directly democratic meetings, formal leaders are appointed by these meetings. By election, lottery, or simply rotating among the workforce. In some cases, people are hired specifically as managers to

do important organisational work and fulfil managerial roles. They, of course, also have a voice in the democratic meetings. In all cases, such leaders can be evaluated, if necessary, reprimanded or even removed from their positions. At 'De Vrije Markt', we appoint a "booster" every month, whose task is to remind people of the tasks they have agreed to do. This brings me to the following points to continue the proposed new framework:

3. The business is run through direct democratic meetings and workers' initiatives within the boundaries set by these meetings.
4. These meetings can decide to appoint and, if so, evaluate and remove temporary leaders who work alongside the direct democratic meetings

Another obstacle is a need for more appreciation within the worker-cooperative context for a special type of organisational work: starting businesses. Currently, there are very few incentives to start worker-controlled businesses and many apparent objections. There is no guarantee of success in starting a business; it is more complicated than joining an existing one, and it usually takes substantial investments of time and money. So why would anybody do that and then just hand it over to workers who show up later? Risking that these new-found colleagues, having an equal say to the founder(s), turn the company in a very different direction? Reduce the founders' working hours and wages, perhaps even fire them? At 'De Vrije Markt', this is unlikely because of informal reasons: we are a small company, and the colleagues are friends, having known each other for a long time, with social dynamics being such that it is unlikely that anyone would be able to gather a majority to push the founder (myself) out. Still, if we were to grow a lot and extend freedom and voice to all new workers as well, which is what we would want, this situation might change. Now, basing voting rights on hours worked already tends to initially provide extra protection for hard-working founders. However, in the long run, we need to guarantee some

additional, non-transferrable rights for them:

5. Guaranteed employment and a decent wage for founders inside the company they started.
6. 10% of the total share of votes (for all founders combined), on top of those gained from hours worked.
7. The right to always withdraw their investments (plus inflation).
8. If other organisations/businesses are founders, they choose a worker to represent them and lose founders' rights after thirty years.
9. To balance this, workers retain the right to unionise, go on strike, etc.

The reader may have noticed that none of these 9 points touches on ownership or property. This is because our concept of property rights relies heavily on Roman Law's notion of property, making it intimately tied up with an exploitative and environmentally destructive society which collapsed at least in part because of that.¹⁰⁷ This is precisely what we are trying to move away from and prevent with this white paper. Ownership is currently split equally among all workers at 'De Vrije Markt' to ensure equal control. But if it were possible to de-couple ownership from control, there would be room for much more creativity, as we see with steward-ownership and enterprise foundation, while maintaining free and equal workers' control. Ownership then becomes secondary to control. From this perspective, I would end my proposal for "Founder & Workers' Control" as follows:

10. The company's ownership is decided by the direct democratic meetings open to all company workers.

2. TOWARDS THE WIDESPREAD ADOPTION OF FOUNDER & WORKERS' CONTROL

There are further substantial cultural, economic and po-

litical obstacles. First, we must change the cultural misconception that "someone has to be the boss." We can do this by pointing at the existing examples of companies that operate without bosses. Relatedly, we need to market products and services that are under workers' control as being under workers' control. But the problem is not just ideological. The idea that "someone has to be the boss" also results from negative experiences in situations with no clear command structure and nobody takes the initiative. So, in addition to setting up an EU-wide legal framework along the lines suggested above, EU politicians and institutions could support the spread of workers' control by at least mentioning it as an option in their official communications by supporting the creation of a worker-controlled brand like already exists for "Made in Italy," "Made in Germany" and the many types of "Appellation d'Origine Contrôlée"; and by funding educational programmes which combine the best practices of worker-controlled companies.

Moreover, as we move towards a broadly defined workers' and founders' control that includes management work, another group comes into focus: non-working shareholders. As the old saying goes, for every euro someone gets [s]he did not work for, someone does not get a euro [s]he did work for. It is there that we will eventually find our biggest obstacles. There is not a government today, and hardly any political party or trade union, that would not uphold shareholders' ownership rights against a workers' claim. The exceptions to this rule are few and far between and always seem to involve a combination of strong social movements, economic crises and business failure.

But there lies a central issue underlying rampant inequality and environmental degradation. Shareholders are often far away from the realities that produce their wealth. Unsurprisingly, they tend to show little interest in these realities. Sure, some might be ideologically motivated for sustainability, fairness and some level of workers' freedom. Nevertheless, where workers' interests also go in this direction, shareholders' interests tend to

be only financial. So, of course, they tend to put in place and reward upper management, which extracts the most financial value from the workforce in the shortest time. Workers, their communities and environments carry the costs for producing this value, often with tragic results. Even if it all leads to business failure, shareholders with clever investment strategies will never personally pay the bill.

In short, we must end shareholders' control over management for justice, freedom and sustainability. And make management accountable to workers first, which includes management workers themselves. A movement in this direction will likely lead to a confrontation with those shareholders who are not ideologically motivated to give up their control. Moreover, it is valuable to note that movements for workers' control have in the past been derailed by mistaking small business owners and managers as a "class enemy." Combined with power-hungry politicians on all sides, this has made for a somewhat toxic mix. To move forward, instead of re-hashing past trauma against the mantra that there is no better alternative, we need careful thought and experimentation.

“Both in the long and short term, EU politicians from across the political spectrum can come together to put workers and their work, and by extension, the general population, central in economic policy.”

In any case, much can and should be done before any possible political-economic stand-off. The way forward is primarily a path of least resistance. It is opening the way for a balanced workers' control: rooting workers' power in the amount of work done, acknowledging the necessary role of organisational workers, highlighting the crucial role of foundational work and reaching out to owners and managers who are open to changing their businesses and those who might want to found this new type of

workplace—organising as many workplaces as possible in a truly free and just way. Then, pointing at all these examples, we can show that there is no need for a boss and that there is a better alternative. One that logically proceeds from justice and freedom in the workplace, through the direct personal interests of the workers in control of these businesses, to a sustainable future for all.

Both in the long and short term, EU politicians from across the political spectrum can come together to put workers and their work, and by extension, the general population, central in economic policy. There is no national or European sovereignty when global shareholder elites control the economic ground we walk upon. There cannot even be a broader internationalist cooperation among nations if it isn't built on nations and populations in control of their own working lives. There is no hope for our natural environments if we keep sucking them dry for shareholders' financial gains. There is no hope for economic justice if those who control the economy have no material interest in justice. There is no hope for freedom and democracy if a small minority can boss the majority around. So whether you're a nationalist, believe wholeheartedly in the European project or are internationalist, whether you identify as independent, green, red or blue - workers' control works for you.

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PART 4

COLLECTIVE OWNERSHIP FOR LONG-TERM COMPETITIVENESS



INTRODUCTION

The last category of entities designated here as ‘sustainable by design’ come grouped under collective ownership. This group includes two broad classes of entities: on the one hand, public ownership, which makes public governance and public interest the central axis for governing resources. Some examples discussed below are Public utilities, municipal housing, and state (co)owned companies. On the other hand, collective ownership may also entail a more bottom-up, citizen-driven ‘common(s)’ managing of collective and public resources. Commons initiatives today prominently include energy communities, discussed extensively here, but they can be found in a much broader array of activities, from digital ‘open access’ initiatives to housing cooperatives. The contributors to this chapter each develop in their own ways reasons and conditions under which collective ownership and governance may be considered ‘sustainable by design’.

The Chapter starts with a paper by Toon Meelen and Jasper Sluis, who discuss the role of public ownership and public-owned enterprises as a potential vehicle toward sustainability. They argue that the promise of public ownership to address climate emergency is unmistakable: if we intend to transition on time, there is no way around public ownership. However, to use public ownership as a catalyst for transition, EU policymakers need to heed the following: First, the quality of the rule of law in a country is fundamental for ensuring that the public-owned enterprises are genuinely actors oriented toward the general good. EU institutions should also strengthen the quality of corporate governance via a pan-European corporate governance code for public-owned enterprises. Second, whether public ownership is a superior alternative to other forms of ownership depends on a particular sector, region and context. Hence, a more nuanced debate about public ownership must occur in the EU and nationally. Finally, in a particularly European twist, the EU policy-

makers also need to pay attention to differential interests among national governments ‘as shareholders’ and thus explore and support forms of multinational and European public ownership.

Ralf Hoffrogge, in his contribution, articulates both the dramatic consequences of the privatisation of public housing in Berlin during 1990 - 2011, as well as the social mobilisation to counter it. The Berliners’ fight to re-municipalise 250,000 social housing units - taking it away from private equity and financial capital and bringing it back to collective ownership and governance - is ongoing. They are currently working toward a new socialisation referendum - this time around paired with a law that articulates financially-light transition of ownership back to municipal hands and a democratic way of governing that housing stock - with expected positive affordability impacts on the rest of privately owned housing stock. Given the degree of housing crisis across Europe, driven by the cheap liquidity pumped into markets by the European Central Bank post-2008 crisis, this re-municipalisation effort could inspire other cities aiming to address substantial housing crises.

Björn Hoops takes us beyond public ownership, focusing specifically on commons and energy commons. Energy commons are not a new phenomenon - in some countries, they have a long tradition. They adopt various legal forms and governance structures, from simple associations to cooperatives to limited partnerships and limited liability companies. Recent European directives that aim to enable and stimulate citizens’ ownership of energy via ‘energy communities’ that are inclusive, citizen-driven and democratically governed may be able to provide a healthy set-up for countries that do not have energy commons thus far. Yet they may cause trouble in countries with a developed energy commons sector, such

as Germany, the Netherlands or Denmark. Where the Directive sets standards regarding the internal organisation, purpose, membership, effective control and the use of profits, these standards may go against the sector's practice, potentially leading to a difficult adjustment. To limit that effect, based on empirical research, Hoops suggests several adjustments to the Directives and/or their implementation.

Deborah Tappi continues the exploration of energy commons, arguing that the energy commons are fundamental to delivering the energy transition and just energy systems at the same time. To reap the potential benefits, however, governments need to (help) remove a number of obstacles - economic-cultural, legal-technical and, of course, financial. To make this step, however, the government has to first and foremost understand and embrace a more holistic value created by energy commons. Energy commons prioritize equitable access, democratic decision-making, and community well-being, all of which contribute to a more resilient and sustainable energy system. Yet these non-monetary benefits are often undervalued or disregarded in the current legal framework, placing energy commons - as well as commons in general - at a disadvantage.

Sophie Bloemen concludes the section by giving us a broader understanding of what commons are and serve while also zooming in on, in particular, how the public sector may strengthen commons via Community Wealth Building (CWB). CWB is an economic development model that aims to transform local economies based on communities having direct ownership and control of their assets, intending to address wealth inequality, fostering broadly shared economic prosperity and ecological sustainability. Many cities are experimenting with this model, not only in the USA and UK, where CWB originated but also in continental Europe - including Amsterdam. CWB rests on five pillars: pluralist ownership, public spending into local commons economy, fair work, harnessing finance for regional development and finally,

socially just use of public land and property. It provides a practical set of tools to transform local economies toward commons-based shared prosperity.

Government ownership for Sustainability Transitions: Empirical Insights for EU Policymakers

Jasper P. Sluijs and Toon Meelen

This discussion paper examines the role of government ownership in driving sustainability transitions within the European Union (EU). First, we shed light on the potential of government-owned enterprises for sustainability outcomes, highlighting their potential to, for instance, reduce emissions, increase sustainable waste management, and drive investment in ‘green’ technology and infrastructure. Second, we discuss the influence of political ties, corruption control, and corporate governance on sustainability performance by publicly owned firms. Depending on the context, government ownership is promising for addressing sustainability problems. Challenges such as efficient management and cross-border operations should also be addressed. Our paper provides insights for EU policymakers and stakeholders involved in sustainability transitions.

1. THE POTENTIAL OF STATE OWNERSHIP IN SUSTAINABILITY TRANSITIONS

In Europe, government ownership was considered to be in decline since the wave of liberalisation and privatisation of the 1980s onwards.¹ Consequently, there has been little interest in European academic and policy circles for government ownership and government-owned enterprises (GOEs) for the past 30 years.²

However, multiple developments argue for re-considering government ownership as a topic of interest in policy research. First, global shocks such as the financial crisis of the early 2000s and the 2020-2022 Covid-19 crisis have prompted a wave of nationalisation and state aid in

finance/banking, utilities, and transportation, with firms remaining dependent on the State post-crisis.³ Second, government ownership did not decrease in the non-Western world. With further globalisation, these non-Western GOEs have become increasingly competitive in international markets⁴, for instance in energy, technology and aviation. Third, GOEs, particularly in energy markets, have become involved in geopolitical or military conflict⁵, as the current Russian-Ukrainian war demonstrates. Fourth, state ownership is increasingly positioned as a way to better achieve global sustainability transitions. This latter development is the focus of the present paper.

Particularly in the EU, government ownership is making an impressive comeback as a means to address sustainability challenges. For example, the French state recently leveraged their partial ownership in Air France to cut down domestic flights⁶, while the Dutch government has proposed to nationalise public heating schemes.⁷ The rationale behind these developments is that government ownership, as opposed to private ownership, allows for a heightened commitment to sustainability transitions and brings stronger motivations to expedite the attainment of sustainability goals.

“Particularly in the EU, government ownership is making an impressive comeback as a means to address sustainability challenges.”

For the purposes of this paper, we define government ownership as “the public sector ownership of firms”. This includes any government exercising significant control of any kind through some level of ownership of a firm.⁸

The European Green Deal stands as the epitome of EU sustainability policy, striving for the EU to achieve climate neutrality by 2050 and concurrently enhancing internal cohesion within the union.⁹ Government ownership is frequently highlighted in the execution of the European Green Deal. For example, it is advocated as a tool to restructure energy retail markets¹⁰, expedite railway connectivity¹¹, and deploy intelligent, sustainable, and socially responsible urban initiatives.¹²

At the same time, government ownership is not a panacea in sustainability transitions. With the expressed promise of government ownership in achieving sustainability goals emerges the risk of an unrealistic over-reliance on publicly-owned firms. There is a rich yet dispersed literature in innovation studies, (business) economics, political science and governance empirically assessing the worldwide contributions to the various sustainability transitions of publicly-owned firms at all levels of government. In what follows, we draw on this literature intending to highlight governance challenges for government ownership that are particularly relevant in the EU context.

2. HOW CAN GOVERNMENT OWNERSHIP CONTRIBUTE TO SUSTAINABILITY TRANSITIONS?

There are multiple reasons for recognising government ownership's contribution to sustainability objectives. The sheer size and scope of publicly owned corporations make their actions consequential: 20% of Forbes 2000 firms worldwide are (partially) publicly owned.¹³ Publicly owned firms hold market values of close to 50% of GDP in some EU member states and provide up to 10% of national employment.¹⁴ Furthermore, they are traditionally active in markets that are key to solving current sustainability challenges, such as energy and transportation.¹⁵ Combining the two previous factors, publicly-owned firms also disproportionately pollute.

In the scientific literature, various mechanisms have been described that foster the contribution of publicly owned firms to sustainability transitions. Regarding internal mechanisms, a key factor identified across studies concerns the different goal orientations of publicly owned enterprises. An absence of profit maximisation as main objective allows publicly owned firms to pursue sustainability-related activities, notably at the local level.¹⁶ The distinctive relationship publicly owned firms have with the government is also important. Both with “carrot” (subsidies) and “stick” (regulation/enforcement), governments are reported to more easily influence publicly owned firms towards sustainability.¹⁷

“The sheer size and scope of publicly owned corporations make their actions consequential: 20% of Forbes 2000 firms worldwide are (partially) publicly owned. Publicly owned firms hold market values of close to 50% of GDP in some EU member states and provide up to 10% of national employment.”

The sustainability transition contributions of firms are also a function of their relation with various other actors, not least civil society. In the case of municipally owned waste collectors in Italy, it is reported that a closer relationship with citizens, as well as higher levels of trust, facilitates knowledge sharing and, in turn, enhances sustainability outcomes.¹⁸ A more responsible attitude of GOEs toward civil society concerns, such as sustainability, is commonly reported.¹⁹

In addition, municipally owned firms are observed to be willing to accept lower returns on investments than their private counterparts when installing renewable energy infrastructure, such as district heating.²⁰ In this regard, public ownership of renewable energy production can lower the costs of the energy transition for residents or ensure that profits are reinvested in public services.

One key study providing evidence of superior sustainability performance of GOEs is Steffen, Karplus and Schmidt's²¹ assessment of renewable energy uptake by utilities in the European Union. Using an extensive database of investments over the 2010-2016 period, they find that public utilities invest more in renewables than private ones. These effects are reinforced by stringent climate policies as well as the overall quality of regulation.

However, no empirical consensus exists regarding the relative sustainability performance of publicly owned firms, and the literature has identified various mechanisms that limit their sustainability contributions.

3. DISADVANTAGES OF GOVERNMENT OWNERSHIP IN SUSTAINABILITY TRANSITIONS

The literature highlights several internal factors that negatively affect sustainability outcomes in GOEs. First, the relative inefficiency of GOEs as compared to private firms, particularly in developing countries, may also have a negative effect on their emissions levels.²² The inefficient operation of a GOE seems to correlate with poor energy efficiency. It has also been shown how liberalisation in the energy sector led to organisational cultures more conducive to innovation, including sustainability technologies²³.

Furthermore, corporate governance and the rule of law standard in the region where the GOE is situated seem to play a significant role in sustainability outcomes. Because GOEs typically have closer ties to politicians and civil servants, they could be more prone to corruption, negatively affecting sustainability outcomes. At the same time, increased corruption control seems to have a direct impact on emissions by GOEs.²⁴ Moreover, regions with better-developed rule of law standards tend to show increased levels of investment into 'green' technology and infrastructure by GOEs²⁵.

Other studies highlight how municipal GOEs that manage to separate managerial and political considerations perform better in terms of sustainable waste management.²⁶ A lack of effective corporate governance in GOEs, particularly in developing countries, can have a negative effect on environmental awareness and environmental commitment of their employees.²⁷ Additionally, collaboration across borders holds significance. In the energy and transportation sectors, GOEs are primarily owned by nation-states and municipalities. It has been observed that although public values guide GOEs domestically, financial interests dominate when they operate abroad in other EU countries.²⁸ In addition, state-owned railway firms are often dominated by strong national logics, which hampers the creation of an interconnected European rail system facilitating more sustainable travel.²⁹

4. EU GOVERNANCE CHALLENGES

The most important caveat on the promise of government ownership towards sustainability transitions is that few general conclusions can be drawn from the empirical literature. This is because the scope of publications is quite specific. Reported results apply to, for instance, national or local ownership, specific industries only (utilities, transportation, real estate, manufacturing, etc.), particular regions (China being over-represented) or various ways of ownership (public shareholding, public management, informal public influence, etc.). Moreover, government ownership relates to many sustainability challenges, such as carbon emissions, energy transition, 'green' innovation and 'green' investment. Most likely, the effects of government ownership on sustainability outcomes differ according to the sector, particular form of ownership and geographical context.

Still, some tentative general lessons can be drawn for policymaking at the EU level.

First, as the Rule of Law and quality of governance are es-

sential enablers for sustainability contributions of GOEs, these deserve continued focus, particularly concerning sustainability-relevant sectors such as energy, transport and agriculture.³⁰ Harmonising disparate rule of law standards across the EU should have a positive effect on GOEs' contribution to sustainability transitions. Moreover, the EU could contribute to a pan-European corporate governance code for GOEs.

Second, rather than an outright dismissal of either private or government ownership, EU policymakers should take a sector- and context-specific approach. A pragmatic approach that acknowledges the benefits and challenges of different ownership forms is most helpful for achieving the economic, environmental, and social goals of the European Union. For instance, in the case of renewable energy, such as solar, wind and district heating, government ownership can enhance investments and contribute to a fairer distribution of benefits to citizens. Given that renewables are capital-intensive yet only need maintenance once installed, government ownership is more beneficial than in the case of operationally intensive ventures where potential inefficiency drawbacks of GOEs play a more prominent role.

Third, the observation that GOEs may behave differently domestically than abroad should be of note to European policymakers. It is well documented how multi-nationally operating GOEs behave less environmentally responsibly when operating further away from their government owners.³¹ If sustainable energy and transport are seen as “European public goods”³² it is worthwhile to explore overcoming and bridging regional or national interests that come with government ownership within EU member states. In some cases, multiple EU states already jointly hold shares in firms operating across European borders, such as the train company Eurostar. However, these are currently exceptions, and other forms of multi-national or European public ownership can be further explored.

5. FINAL REMARKS

Sustainability challenges in the EU are highly urgent, and the promise of government ownership is unmistakable—to the point where there is no way around GOEs in addressing sustainability challenges.³³ With our research, we aim to better understand the contribution of government ownership to sustainability transitions and better control for the governance challenges that come with more prominent government ownership. If EU policymakers are serious about positioning GOEs as catalysts for sustainability transitions and have plenty of reason and opportunity to do so, they should also be serious about GOE governance at the EU level. This concerns safeguarding the Rule of Law, a commitment to government ownership depending on the context, and attention for the tension between national governments as shareholders and the greater European impact of GOEs.

HOUSING AS A COMMON GOOD: THE BERLIN MOVEMENT FOR SOCIALIZATION

Ralf Hoffrogge

1. A TALE OF TWO CITIES: PUBLIC OWNERSHIP AND PRIVATIZATION IN BERLIN AND VIENNA

According to the “economist”, Vienna was the most liveable city in the World in 2023.³⁴ Due to its excellent infrastructure the city held this position four times in the last six years. Part of this infrastructure is a century old tradition of public housing. In the Austrian Capital, 60 % of the inhabitants live in rent-controlled apartments owned either by the city or other non-profit institutions such as cooperatives.³⁵ Berlin has a similar history of public housing: since 1924 the city government erected thousands of apartments and encouraged cooperatives to do the same. The apartments were funded by a tax on landlords called “Hauszinssteuer”. Funding was bound to regulations that included rent controls and construction standards. The regulations were permanent and provided long-term social stability. Only in the 1950s West-Germany and West-Berlin introduced a time-limit for rent controls in publicly funded housing.³⁶ The “Sozialer Wohnungsbau” (Social housing) was opened for private investors. The scheme bought 20 or 30 years of rent-control, then owners could raise rents to market prices. Only units that were both funded by the state and owned by public providers or cooperatives would stay as a permanent non-profit sector. For units owned privately, new public money had to be paid for prolonged rent-controls. This meant a heavy burden for state and city governments – on the brink of bankruptcy, Berlin stopped this “Sozialer Wohnungsbau” in 2003.

At around the same time, the city sold of most of its

housing stock. In 1990 Berlin owned almost 600.000 of the 1.7 million apartments within city limits. Up until 2011 Berlin had sold about half of it to private investors.³⁷ Unlike London or Moscow, Berlin had no schemes of tenant privatisation.³⁸ Still about 85% of the inhabitants were renting. Most units were sold in package deals, as in 2004 when the housing provider “GSW” was privatised – 65,000 apartments sold by the scratch of a pen. The apartments were bought by private equity funds and then resold to newly formed joint-stock companies such as Vonovia and Deutsche Wohnen.³⁹

2. HOUSING CRISIS SINCE 2008

Due to deindustrialisation and stagnation of population, the social impact of privatisation in Berlin was limited during the period 1990 to 2008. Rents were lower than in other European capitals. But while private investors saw change coming and bought real estate, the city government continued to sell even when population numbers were rising again. A shortage of housing was foreseeable, but nothing was done about it. The latent crisis manifested in the years following the financial crisis of 2008. The policy of zero-interest rates led capital towards other investments, and Berlin real estate was one of them: prices were lower than elsewhere, banks would lend cheap money to finance the deals. A real estate rally unfolded, and it was paid by tenants. Between 2013 and 2017 rents increased by 24.5%, while wages were rising by only 8.3%.⁴⁰ The city first denied the problem, then stopped privatisations in 2011 – only after a new social movement of tenants had formed.

“The policy of zero-interest rates led capital towards other investments, and Berlin real estate was one of them: prices were lower than elsewhere, banks would lend cheap money to finance the deals. A real estate rally unfolded, and it was paid by tenants. Between 2013 and 2017 rents increased by 24.5%, while wages were rising by only 8.3%.”

3. A NEW SOCIAL MOVEMENT

In the 2000s Berliners had complained a lot about gentrification, addressing mostly cultural reasons: tourism, new art galleries and restaurants. Following the real-estate rally since 2008, ownership structures became the focus of new protests with different demographics and cultural representation.⁴¹ Social conflicts on housing in the two decades before had been an affair of subcultural squatters defending their “Hausprojekte”. Now the broader population joined. Most of the new protests were neighbourhood groups, a reaction against the profit maximizing strategies of specific owners. Quite some elderly and retired citizens took part in it, with low pensions and no credit line they were highly vulnerable to the changing market. Due to the focus on specific owners, the new social movement was highly fragmented. Often it was inhabitants of one building joining for protest, the most popular demand was that the city should buy their homes. This added up to a general demand for “Rekommunalisierung” – re-municipalisation of housing. From 2016 to 2021, the “Bezirke”, as the districts of Berlin are called, used special preemption rights to buy hundreds of buildings for public housing providers or cooperatives. But this scheme was extremely limited in comparison to the scale of privatisation in the two decades before. The acquirements were costly and legally complicated, and in 2021 preemptive rights were suspended altogether by a

court ruling. The city of Berlin was forced to do more. Already in 2012 it had started a “Mietenbündnis” – an alliance for affordable rents, formed by the six remaining public housing providers that still owned about 300,000 units. The public enterprises were no longer used as cash-cows to pay off city debts. A first Berlin-wide mobilisation of tenants was the movement for a popular referendum in 2015. This rent-referendum (“Mietenvolksentscheid”) ended with a compromise before the final plebiscite could take place. It essentially made the “Mietenbündnis” of 2012 into a legally binding requirement.

4. “DEUTSCHE WOHNEN & CO ENTEIGNEN” AND SOCIALISATION

Following the referendum-movement, the Berlin government made attempts to increase the share of city-owned housing. But real estate prices were a multiple of what the city got when selling off one or two decades before. Re-municipalisation therefore was slow and limited. At the same time, real-estate corporations like Vonovia and Deutsche Wohnen started aggressive strategies to maximise profits. The costs for upkeep were cut, even essential repairs were neglected, janitors and other staff were fired. Headlines of freezing tenants without heating in winter and elderly citizens trapped in their apartment because of broken elevators were quite common in the late 2010s. When after some years the properties were run down, investments were bundled and labeled as “Modernisation”.⁴² In this case, the law allowed rent increases higher than the usual limit of 15 % in three years. The centralisation of capital on the housing market was followed by a centralisation of protest. While tenant initiatives usually organised one building or street, the Deutsche-Wohnen tenants joined with political activists to organise a Berlin-Wide network.⁴³ In this situation, a new demand came up: the socialisation of housing. In 2018, the initiative “Deutsche Wohnen & Co Enteignen” (“Expropriate Deutsche Wohnen”, short: DWE) and announced steps for a second rent-referendum.⁴⁴ It

aimed for the municipalisation of Berlin based real estate of corporate landlords owning more than 3,000 units in the city.

5. LEGAL PROVISIONS FOR SOCIALISATION IN GERMANY

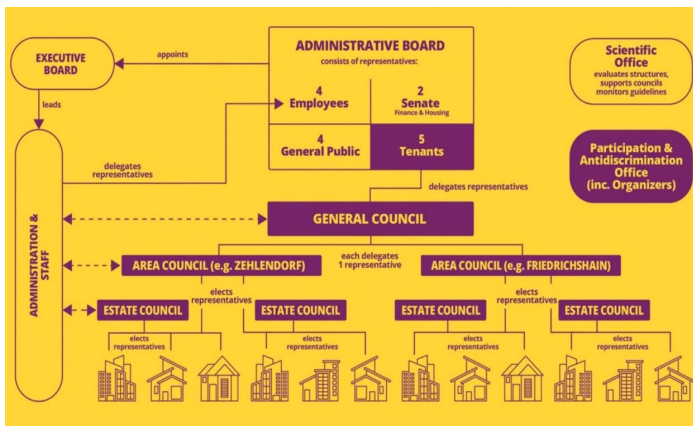
The new movement used two legal provisions as a leverage. Since Berlin is a state in the German federal system, its parliament has the power to enact laws. But the Berlin state constitution also allowed direct law making by plebiscite. Signatures had to be collected in two steps, then a Berlin-wide referendum could take place. This referendum was the means to activate another legal provision – Article 15 of the German Constitution:

“Land, natural resources and means of production may, for the purpose of socialization, be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation.”⁴⁵

The article was drafted in 1949, when socialisation or nationalisation of essential services was quite common in Europe. Britain for example nationalised transport, energy and healthcare services in the late forties. Germany on the other hand never used this provision. Small scale expropriations of land for road construction and other purposes are common, but a full scale socialisation never happened.⁴⁶ Nevertheless, the legal provision could be activated both by the national parliament and state parliaments. But since the provision for socialisation from 1949 was never used, a law on socialisation would need to avoid collisions with later, much more property-centred layers of legislation in Germany and the European union. To avoid this legal obstacle, the first referendum on socialisation took the form of a resolution – it put strong pressure on state politics, but did not include a binding law. To draft such a law would have required a level of expertise the initiative did not possess in 2018.

6. A REFERENDUM FOR SOCIALISATION OF HOUSING

The Berlin referendum for socialisation was aimed at landlords owning more than 3,000 units. Small and medium-sized landlords and owner-used apartments would not be affected, cooperatives and public housing providers would be excluded as well. Only the real estate of about a dozen huge owners would be transferred into public ownership – later estimates counted 250,000 units.⁴⁷ Compensation should be paid, but below market value. The administration of the housing stock would be the task of a new public body that activists christened as “Gemeingut Wohnen”. Its legal form would be an “Anstalt öffentlichen Rechts” (AöR), a public-law institution. The initiative demanded that the new institution should enjoy democratic self-administration and more independence than existing public law institutions. It should be governed by a board representing two delegates from the city government, four employees of the institution, four direct delegates from civil society and a strong representation of five tenants. In addition, local and city-wide tenant councils would take part in decisions on facility management.⁴⁸ The model is similar to a community land trust concerning its idea of safeguarding public real estate permanently. But unlike most land trusts, it would operate as a landlord renting out individual apartments. Eventually, the concept looks more like a democratised version of the public housing providers found in Berlin or Vienna today. The initiative still discusses the use of a trust or foundation to prevent re-privatisation. But since a private trust cannot be enacted by referendum in German law, a public law institution seems more realistic in the context of socialisation.



Organisational Chart of “Gemeingut Wohnen”, a public-law institution that could take over socialised housing units. Source: Deutsche Wohnen & Co Enteignen (ed.), Gemeingut Wohnen, Berlin 2023; English translation: Josh Peterson.

A first petition for a referendum was successfully completed in June 2019. The mandatory second petition was procrastinated by the city government for over a year, it could not take place until February 2021. But then, 359,063 signatures were handed over to the authorities within four months – despite the pandemic. In September 2021, the final plebiscite took place. More than a million people, 59.1 % of the Berlin electorate, voted in favour of socialization. A final law enacting the transfer of ownership could have been drafted within months. But the Berlin government instead decided to install a commission that debated the resolution well into 2023. Eventually the commission’s final report stated that the socialisation model designed by the initiative DWE was in line with the German Constitution, the Berlin Constitution and European law.⁴⁹ At this point, there were no legal obstacles anymore, but the political will to act on the referendum was lacking. While tenants supported socialisation, all the major business associations opposed it, even those not affected. It was seen as an attack on private property as such and therefore also opposed by most political parties. Only the left “DIE LINKE” and parts of the greens and social democrats supported the referendum. In the elections of 2021, the popular ma-

majority for socialisation did not translate into a majority in the Berlin state parliament. This gap between direct and representative democracy is the biggest political obstacle to socialisation so far. It resulted in a tactic of procrastination by successive city governments. The current coalition of social democrats and christian democrats declared to enact a legal framework for socialisation, but no law on socialisation of housing. Therefore, Deutsche Wohnen & Co Enteignen in September 2023 declared to start a new referendum process in the near future – this time with a binding law instead of a resolution.

7. THE COSTS OF COMPENSATION

The commission in 2023 found that Berlin is under no legal obligation to compensate market value of socialised property. It encouraged models drafted by DWE that take a future non-profit use as basis of calculation. The result would be a moderate compensation sum, which then could be paid off in four decades by the public-law institution as new owner, using its revenue from rents. The compensation would take the form of public obligations which former owners could either resell or hold, collecting interest until the compensation would be paid off. In this model, the compensation would be paid exclusively by the tenants – no state subsidies are needed. The city of Berlin could almost double its share of public housing with no additional costs to the taxpayer.

8. MORE THAN PUBLIC HOUSING

During its five years of existence between 2018 and 2023, Deutsche Wohnen & Co enteignen has refined its socialisation model. This included the draft of a socialisation law,⁵⁰ model calculations on compensation⁵¹ and a more detailed scheme of organisation for the public-law institution “Gemeingut Wohnen” with focus on its self-administration. The⁵² sum of these proposals gives a vision of how socialisation could deliver more than affordable rents – it could renew urban life and form part of a solu-

tion for broader problems such as climate change.⁵³ Instead of a conclusion, some aspects of this vision may be outlined in the following:

“The sum of these proposals gives a vision of how socialisation could deliver more than affordable rents – it could renew urban life and form part of a solution for broader problems such as climate change.”

Housing: the proposed socialisation would add about 250,000 units to the city owned public housing and restore it to the level of 1990. These units would be rent controlled, which would indirectly affect the remaining private sector, because rents in Germany are regulated by a market-index, the so-called “Mietspiegel”. A big public sector with low rents would dampen rents in the remaining private sector.

Democracy: 15 years of tenant protest since 2008 have seen Berlins democratic institutions helpless. Public trust in democratic solutions has suffered in these years while right-wing populism gained ground. The act of socialisation would restore trust in the ability of democratic institutions to solve problems. In addition, the proposed public-law institution “Gemeingut Wohnen” would bring democracy from the town hall to every citizen’s doorstep. Tenants would have seats in the board, local tenant councils would have a say in everyday issues of facility management.

Business space: most of the legislation that protects tenants and regulates rents in Germany does not apply to businesses. Socialisation would add many multi-purpose buildings that include business space to the public housing stock. Direct rent control here would allow owner-run businesses to continue their service, it would preserve and strengthen a diverse landscape of small enterprises.

Social and cultural institutions: day-care centres, social clubs for senior citizens, medical services, artist spaces

and cultural institutions also rent business-space to provide their services – rising rents have been threatening these institutions for years, many of them already closed down. Socialisation could reverse this trend.

Climate neutrality: a public housing provider could directly implement a strategy for climate neutrality in its buildings, while such strategies for the private sector only work as indirect incentives. In the past, German climate legislation burdened all costs for these incentives on the tenants. For years, an “energetic modernisation” was the most feared measure any landlord could take. While private-sector incentives have ruined popular support for climate legislation in the past, socialisation of housing could help reduce CO2 emissions of buildings and restore lost trust in climate policies.

Public finances: with compensation below market value, socialisation would be more than a zero-sum transaction for public finances. The city of Berlin would save considerable sums every year in social transfer payments (Wohngeld) that support low-income households. These payments are a municipal obligation, expensive adjustments are needed regularly. The payments are received by tenants, but eventually finance investor’s profit. A sizable public housing sector with affordable rents would reduce this transfer of tax-money to the stock market.

Circular Economy: the proposed municipal way of socialisation transforms global capital into a local resource. Public housing will need repairs, upkeep and modernization to achieve climate-neutrality. The public-law institution would reverse cost-cutting and re-employ janitors and other service personnel missed dearly by tenants. The institution would be able to construct new housing like the existing housing providers already do. All these activities would stimulate the local economy. Socialisation as a municipalisation could be a democratic form of de-globalisation. Global capital that today stimulates speculation and real-estate bubbles could be bound locally, one step towards a climate-friendly circular economy.

EMBRACE THE DIVERSITY OF THE ENERGY COMMONS!

Björn Hoops

1. INTRODUCTION

Energy Commons can make a vital contribution to the energy transition, decarbonisation, and to combatting the climate emergency. Energy Commons are communities of citizens who jointly invest in and maintain renewable energy generators. They generate and use or sell electricity or heat from biomass, sun, water, wind, and/or other renewable sources.⁵⁴ Directly involving private citizens in small-scale projects, the Energy Commons contribute to a decentralised energy transition, diminish market power of established players, mobilise previously inaccessible private capital, and reduce local resistance to renewable energy projects.⁵⁵

The Energy Commons are a form of citizen ownership of energy generation capacity that drives a gradual shift away from the prevailing large-scale power plants that are either privately or state-owned. In Germany, the Member State with largest citizen energy sector, private citizens hold around 40% of all renewable energy capacity, of which Energy Commons hold half.⁵⁶ The Energy Commons are anything but a new phenomenon. In many countries in Europe, energy cooperatives ensured broad-based electrification in the 19th and 20th century.⁵⁷ Some EU Member States, particularly Denmark, Germany, and the Netherlands, developed a tradition, with ups and downs, of stronger involvement of citizens in the energy sector.⁵⁸ The promotion of renewable energy by governments through, for instance, feed-in tariffs,⁵⁹ fuelled this development even further. Importantly, this development did not give rise to uniform Energy Commons. There is a large variety of Energy Commons with different characteristics and needs. To name but a few

examples:⁶⁰ there are heat cooperatives that generate heat from biomass and distribute it through their own local grid. Others generate electricity for buildings or have to rely on the public grid exclusively. Some are exclusively local, in other words place-based, and others have members from all over the country who pursue a common idealistic or financial interest. Energy commons vary in size and show different degrees of active participation. They assume different legal forms and governance structures, from simple associations to cooperatives to limited partnerships with a private limited-liability company.

“The Energy Commons are a form of citizen ownership of energy generation capacity that drives a gradual shift away from the prevailing large-scale power plants that are either privately or state-owned.”

Recently, the EU formally recognised the Energy Commons as ‘citizen energy communities’ under the Internal Electricity Market Directive (Art. 16 IEMD, Directive (EU) 2019/944) and ‘renewable energy communities’ under the Renewable Energy Directive (Art. 22 RED II, Directive (EU) 2018/2001). The Directives aim to remove regulatory obstacles to their access to the energy markets and to give energy communities the right to share their energy through the public grid, enabling them to use their own energy. However, as not every group of citizens is supposed to enjoy these advantages, the Directives had to delineate the beneficiaries. With the ideal of inclusive, citizen-driven, and democratic communities in mind,⁶¹ the Directives define citizen and renewable en-

ergy communities by setting standards for their internal organisation, specifically their purpose, membership, effective control, and the use of profits.⁶²

Essentially, the Directives impose some degree of homogeneity on community initiatives in the energy sector. Where there is no prominent tradition of Energy Commons that rely upon the public grid, as is the case in, for instance, Italy,⁶³ this will not inflict much harm. The advantages under the Directives, once transposed into national law, promise to kick-start the creation of new Energy Commons. Where there already is an immeasurable diversity, such homogeneity can exclude Energy Commons or induce a painful restructuring of Energy Commons to comply with the Directives.

Drawing on empirical research on the internal organisation of Energy Commons in Germany, this contribution points to possible conflicts between how the Energy Commons shape their internal organisation in practice and the requirements under the EU Directives. It pleads for changes to, and/or clarifications of the meaning of, the requirements in order to resolve or prevent these conflicts. This contribution first briefly sketches the methodology behind this contribution (section 2.). Subsequently, this contribution deals with the tension between the Energy Commons on the ground and selected aspects regulated by the Directives, specifically with respect to the purpose of the Energy Commons (3.), the exclusion of powerful legal persons from membership under the RED II (4.), the inclusion of low-income households in the Energy Commons (5.), the right to exit (6.), and democratic decision-making (7.). This contribution concludes with a number of policy recommendations (8.).

2. METHODOLOGY

This contribution has a traditional legal and an empirical component. To determine the meaning of the requirements for the status of citizen or renewable energy community under the Directives, the Directives and relevant scholarly literature have been analysed. To contrast these

requirements with the internal organisation of existing Energy Commons, empirical research has been undertaken. The geographical focus is Germany because it has the largest community energy sector in the EU with 1,750 citizen initiatives.⁶⁴ The empirical research consists of interviews, a desk review of statutes of citizen-led energy cooperatives, and the responses to a questionnaire by Energy Commons. Interviews were conducted with four citizen-led energy cooperatives, to explore their activities and organisational arrangements. A desk review was undertaken of the statutes of 570 citizen-led energy cooperatives in Germany. The statutes were statistically analysed with respect to characteristics relevant to the Directives, specifically: the purpose of the cooperative, membership requirements, requirements for an exit, voting rights in the general assembly, the appointment or dismissal of the board, decision-making powers of the different bodies, and the disbursement of profits. In addition, the cooperative's year of foundation and the statute's age were noted.

Finally, as statutes do not cover all aspects regulated by the Directives and only represent a formal reality of the internal organisation, a questionnaire was distributed, and the 127 responses were statistically analysed to ascertain the application of the statutes in practice and to cover all relevant aspects. The questionnaire contained questions on the characteristics of the respondents such as the source of renewable energy, the year of foundation, the generation capacity, the number of members, legal form, and paid positions, the aspects covered by statutes, and the affiliations and residence of the members and managers.

3. THE PURPOSE OF ENERGY COMMUNITIES

Under the Directives, both citizen and renewable energy communities must not define their primary purpose as financial profits. Rather, their primary purpose must be to provide environmental, economic, or social community benefits for its members or for the local area where

it operates. In practice, the statutes of 21 cooperatives only feature a financial or no relevant goal at all. They will struggle to find recognition as citizen or renewable energy communities. They should revise their statute by including a relevant goal, provided their activities and the interests of their members reflect this goal.

The rest have included environmental, economic, or social community benefits in their statutes. What remains problematic is that over 60% of the statutes incorporate financial goals alongside these benefits. Of the Energy Commons that filled in the questionnaire, around 72% disburse a dividend. The median of these Energy Commons disbursed around 30% of their net annual profit to their members.

These figures pose the challenge of determining whether these financial gains are the primary purpose of the Energy Commons. It is submitted that regulators should adopt a lenient approach to this issue. A stricter approach would disadvantage Energy Commons without their own grid because, unless they engage in energy sharing, the members will only directly benefit from their activities through a dividend. Also, Energy Commons generally face lower returns of investments due to their smaller size and higher transaction costs. This fact indicates that the primary motive of most members is not to make a return on their investment. Therefore, as long as the statute provides for economic, environmental, or social benefits as a purpose of the Energy Commons, it should be presumed that financial goals do not form the primary purpose of the Energy Commons. A closer investigation should only follow if there is an indication that financial gains are the primary purpose of the Energy Commons. This approach will also lower bureaucratic hurdles as the investigation will generally be limited to the statute.

4. THE EXCLUSION OF POWERFUL LEGAL PERSONS FROM MEMBERSHIP

When powerful companies or authorities join an Ener-

gy Commons, they may, intentionally or inadvertently, dominate the internal decision-making, thereby eroding its legitimacy as a citizen-led organisation. For this reason, the RED II precludes energy companies, large enterprises, and non-local authorities from becoming members in renewable energy communities.

This rule may exclude a significant share of existing Energy Commons from the benefits of the RED II. Eleven out of 119 respondents to the questionnaire (9.2%) reported energy companies as members, and 14 respondents (11.8%) reported large enterprises as members. If they produce electricity, these Energy Commons could still become citizen energy communities, falling back on the IEMD. In any case, they could arrange for an exit of these entities. However, the downside of this step would be that it jeopardises fruitful collaborations and exchange of knowledge and skills. In addition, access barriers for energy companies, large enterprises, and/or non-local authorities that play a prominent role in the life of members may reduce the legitimacy of the Energy Commons. It seems likely that to preserve the advantage of the collaboration, they would find a subtler way to involve these entities. The mandatory exclusion of these entities is thus at best ineffective, and at worst harmful. It is recommended that the exclusion of these entities be scrapped from RED II.

“The mandatory exclusion of these entities is thus at best ineffective, and at worst harmful. It is recommended that the exclusion of these entities be scrapped from RED II.”

5. SHARE PRICES AND PROCESSING FEES AS DISCRIMINATORY ACCESS BARRIERS

Under the Directives, Energy Commons must be ‘open’ to qualify as an energy community. Openness means that nobody should be excluded from joining the energy community on arbitrary or discriminatory grounds.

⁶⁵The price of a share in the Energy Commons and processing fees are a common access barrier. A person's socio-economic status and, therefore, their ability to pay for the share and the fees are widely recognised as an exclusionary or at least deterring factor.⁶⁶ The analysis of 570 statutes of German energy cooperatives shows that the median of the minimum investment in the cooperatives equals 500 EUR, with 93 energy cooperatives asking 1,000 EUR and 43 cooperatives asking more than a 1,000 EUR. Also, this amount generally has to be paid up-front in its entirety. Only 33 out of 570 statutes (5.8%) allow for a payment in instalments.

In the heat sector, the costs of connecting new buildings to the grid may motivate such high amounts. In other cases, the interviews with German Energy Commons suggest that the administrative burden of a large number of members would be disproportionate if the minimum investment were lower. It is questionable whether this would justify the high prices of a share under the Directives. While both Directives aim to alleviate energy poverty and acknowledge the role of energy communities in this endeavour,⁶⁷ Art. 22(4)(f) RED II even compels Member States to ensure “[...] the participation in the renewable energy communities is accessible to all consumers, including those in low-income or vulnerable households; [...]” This provision bans exorbitant financial barriers in renewable energy communities. It is essential that regulators clarify soon what an acceptable minimum investment and processing fee would be, taking into account the different circumstances under which the Energy Commons operate. In this way, the Energy Commons can adapt to the Directives, if necessary and/or desirable.

6. THE RIGHT TO EXIT

Both Directives require that the participation in the energy communities be voluntary.⁶⁸ Voluntary participation always implies the right to non-participation. Thus, energy communities must give their members an option

to leave. However, it is unclear what limitations Energy Commons may set for the right to exit. Under the 570 examined statutes of German energy cooperatives, 569 statutes subject the exit through a transfer of shares to the approval by the Board of Directors. One statute bans transfers altogether. A member may, in any case, exit by cancelling their shares. To safeguard the liquidity of the cooperative, which has to pay back the nominal value of the shares, the cancellation never has immediate effect. For instance, under German law, Section 68(2) Cooperative Act (*Genossenschaftsgesetz*) sets a minimum notice period of three months, which can be extended to 60 months. The analysis of statutes produces a median of 24 months, with 112 statutes prescribing the maximum of 60 months.

As all German energy cooperatives limit transfers and such a large percentage of them impose very long notice periods, the potential exclusionary effect of the Directives is immeasurable. It is imperative that regulators acknowledge that the right to exit may be limited and specify the boundaries to such limitations, taking into account the need to ensure the liquidity of the Energy Commons.

7. AUTONOMY AND EFFECTIVE CONTROL AS DEMOCRATIC DECISION-MAKING

Citizen and renewable energy communities must be autonomous and effectively controlled by their members. The most practical approach to these requirements is the formal approach of Lowitzsch. He advocates that effective control at most requires 51% of votes in an assembly of members, not on a management board.⁶⁹ Lowitzsch defines autonomy as no individual member holding more than 33% of all votes. Effective control by members would not require a decisive voice in day-to-day business. This entails that Directives would omit to promote direct democratic decision-making and management.

The formal approach resembles the lived practice of the Energy Commons. Under the examined statutes of Ger-

man energy cooperatives, the assembly of members elects the Supervisory Board that, in turn, appoints the Board of Directors. Members have little to no say in the design, implementation and operation of renewable energy projects, while the Board of Directors performs this task. The members only appoint the Directors under 102 out of 570 statutes (17.9%). Only under eight statutes (1.4%) do the members co-decide on renewable energy projects.

The formal approach would become unacceptable where the members do not even have indirect influence on the composition of the Board of Directors, eroding their control. Under 14 of the 570 statutes (2.5%), representatives of a regional cooperative bank or municipal energy utilities (so-called *Stadtwerke*) must form part of the Board with decisive influence on decision-making. Just as ‘dominating influence’ by ‘controlling undertakings’ under the Works Council Directive,⁷⁰ effective control should include the right to appoint more than half of the management body. Regulators should embrace the indirect democracy within many Energy Commons and clarify that it is necessary but also sufficient that the members elect more than half of their management body.

8. CONCLUSIONS AND POLICY RECOMMENDATIONS

The Energy Commons are a diverse group of communities, and their internal organisation can vary substantially. The EU Directives on energy communities offer privileges such as the right to share energy in return for the adaptation of their internal organisation. Such attempts at homogenising the Energy Commons can lead to painful transitions and disregard the need for tailor-made approaches and individual regulation. To reduce the number of painful transitions, administrative burdens, and the exclusionary effects of the Directives, policymakers and regulators at national and EU level should adhere to the following recommendations:

- Include in the regulations a presumption that the primary purpose of an Energy Commons is

not financial gain if the statute incorporates economic, environmental, or social benefits as the purpose.

- Scrap from the RED II the exclusion of energy companies, large enterprises, and non-local authorities from membership.
- Specify what minimum investment in the Energy Commons and processing fees would be acceptable in light of the need to include low-income households and whether the opportunity to pay in instalments is mandatory.
- Acknowledge that the right to exit can be subject to a notice period and define how long this period may be under various circumstances.
- Determine that for members to have effective control, it is necessary and sufficient for them to decide on more than half of the members of the management body.

These proposals are meant to accommodate the Energy Commons as they evolve in practice. They should not be confused with calls for a commercialisation of Energy Commons. Involving experts with links to energy companies and large enterprises is increasingly unavoidable in a sector as complex as the energy sector, in particular as citizen energy projects grow in ambition and generation capacity, but entails the risk of the abuse of Energy Commons as vehicles for corporate interests.⁷¹ To prevent this risk from materialising itself, authorities must apply the existing legal safeguards against corporate abuse, in particular the effective control by citizens through the election of supervisory and management boards.

TOWARDS 100% RENEWABLE ENERGY: DEMOCRATIZING THE ENERGY MARKET WITH ENERGY COMMONS

Deborah Tappi

1. INTRODUCTION

The energy landscape has continuously transformed, shifting from renewable energy sources to fossil fuels and now back towards renewable energy. This shift includes integrating electricity with high-density carriers and heat and improving local energy autonomy through systems integration, digitalization, and energy management. Concerns over environmental sustainability and climate change have accelerated this transition. Failing to achieve this transition would significantly contribute to pollution and climate change, impacting public health and ecological systems and jeopardizing Europe's energy supply and economic climate.

Ownership is crucial in this transformation. Adopting non-extractive ownership structures like commons represents a significant shift in business operations, focusing on sustainability, democracy, and long-term value creation. These structures challenge the conventional capitalist model by prioritizing stakeholder interests over shareholders' profits. However, cultural, political, legal, and economic obstacles hinder their adoption and growth. Drawing from Ostrom's characterisation of commons⁷², energy commons refer to community-owned and managed energy resources and systems that prioritize sustainable and equitable access to energy.

“Ownership is crucial in this transformation. Adopting non-extractive ownership structures like commons represents a significant shift in business operations, focusing on sustainability, democracy, and long-term value creation.”

2. UNDERSTANDING THE LANDSCAPE

This paper explores obstacles and possible solutions to spreading energy commons within the competitive energy market. Literature has examined challenges such as grid integration, intermittency of renewable sources, and investment requirements, providing insights into the economic, technological, and policy considerations crucial for successful energy transitions⁷³. The concept of prosumerism, where consumers also produce energy, has been studied for its impact on energy markets and its potential to create sustainable competitive advantages.⁷⁴ This shift together with the creation of more diversity in roles and possibilities in energy systems, is fundamental in creating more democracy, inclusion, justice and security.

Yet another set of literature explores the governance challenges inherent in transitioning to sustainable energy systems. Examining the complex interplay between political, economic, and social factors shaping energy transition processes and highlighting the need for effective governance mechanisms to facilitate coordination among diverse stakeholders, navigate conflicting interests, and promote long-term sustainability goals.⁷⁵ The role of digitalization and blockchain for the decentralization of energy has also been explored, including the role of the Internet of Energy and peer-to-peer energy trading, on energy markets.⁷⁶

While further understanding the potential of energy commons for the energy transition, this contribution aims to understand possible concrete actions and policies to allow the existence and for thriving of these ownership

forms in the European energy sector.

3. ENERGY COMMONS: FROM SMALL PLAYERS TO KEY CATALYSTS IN SUSTAINABLE TRANSITION

Traditionally, centralised energy players have dominated the energy landscape, controlling production, distribution, and pricing. Yet, as the world seeks to transition away from fossil fuels toward renewable sources, the role of alternative energy initiatives, such as energy cooperatives/commons, has emerged as a powerful force for change.

The 2019 European Green Deal serves as the blueprint for achieving climate neutrality by 2050 and provides guidance on how to achieve this. Since then, the EU and its member states have been confronted with a series of geopolitical challenges that have further accelerated the energy transition across the EU. Russia's weaponisation of energy exports was a significant wake-up call for the security of supply and tackling dependencies. Market dynamics, driven by factors such as the war in Ukraine, have led to price spikes, with natural gas and electricity costs surging by over 1,100% in 2022. This has created a highly volatile and insecure market, with grid operators struggling to adapt to changing demands and bidirectional supply. Users are receiving notices from their Distribution System Operators, informing them of restrictions on installing solar panels or connecting to the grid. These restrictions 1) hinder citizens from achieving energy independence, 2) affect companies facing high investment costs to counteract unreliable power supplies, 3) pose challenges to new businesses and neighbourhood developers unable to secure grid connections, and 4) impede society's overall progress by slowing down the energy transition towards 100% renewables.⁷⁷ Moreover, these restrictions disproportionately impact vulnerable groups who already struggle with energy poverty, further intensifying their challenges in accessing affordable and sustainable energy. Current market dynamics widen the

gap between the 'haves' and the 'have-nots'.⁷⁸

Awareness of geopolitical, market, or resource-based energy dependencies of the EU Member States and their businesses and households is quickly increasing. The EC advocates for user-centric sustainable energy systems through initiatives like the Clean Energy for All Europeans Package, aiming to empower consumers by simplifying the production, storage, sharing, and selling of their own energy and by fostering participation through cooperatives. This approach is reinforced by critical directives, including the Renewable Energy Directive (RED III)⁷⁹ and the Internal Electricity Market Directive, which introduce frameworks for Renewable Energy Communities and Citizen Energy Communities. These initiatives allow for comprehensive engagement in energy market activities and ensure equitable access to markets, emphasising the sharing of sustainably produced energy within communities.

The EU is pushing policies and regulations, such as a proposed reform of the EU electricity market design and the EU Renewable Energy Directive that supports Renewable Energy Communities and Citizen Energy Communities. However, aligning this transition with all the member states poses a challenge given the current state of imbalance in the pace of implementation of the EC directives in national laws.

“Energy commons can play a pivotal role in driving the transition towards 100% renewable energy production for several reasons.”

Energy commons can play a pivotal role in driving the transition towards 100% renewable energy production for several reasons. Firstly, they foster community engagement and empowerment, allowing individuals to actively participate in the energy transition rather than being passive consumers. This grassroots involvement not only enhances local resilience but also builds social capital and strengthens the fabric of society.⁸⁰ This directly

contributes to the Sustainable Development Goal (SDG) 16 on participation, democracy, and inclusion “Peace, Justice, and Strong Institutions.” aiming to promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive institutions at all levels. SDG 16 specifically targets the promotion of inclusive governance and participation, emphasising the importance of transparent, responsive, and participatory decision-making processes. By fostering democracy, accountability, and inclusivity, SDG 16 seeks to ensure that all voices are heard in decision-making, regardless of socioeconomic status, gender, ethnicity, or other factors. Energy commons align with SDG 16 by empowering communities to participate in the decision-making processes related to energy production and distribution. By engaging citizens in the transition towards renewable energy, these initiatives contribute to building inclusive institutions and fostering democratic governance at the local level. They enable marginalised groups to have a voice in shaping energy policies and ensure that the benefits of renewable energy are shared equitably across society.

Secondly, energy commons promote decentralisation and democratisation of energy production, challenging the traditional centralised model dominated by large corporations. By decentralising energy generation and distribution, these initiatives reduce dependence on fossil fuels and enhance energy security. As emphasised by environmentalist and author Bill McKibben, “The first task is to get the carbon we emit to plummet”.⁸¹ Energy cooperatives enable communities to harness renewable resources such as solar, wind, and hydroelectric power, thereby accelerating the shift towards sustainability.

Third, commons foster innovation and experimentation in renewable energy technologies and new and inclusive business models. By creating a conducive environment for entrepreneurship and collaboration, these initiatives drive down costs and spur technological advancements. As Nobel laureate economist Elinor Ostrom argued,

“Individuals are capable of solving social dilemmas and organizing themselves to achieve mutually beneficial outcomes”.⁸² Energy cooperatives exemplify this principle by leveraging local knowledge and resources to develop innovative solutions tailored to the specific needs of their communities.

Energy commons embody a democratic approach to energy production and distribution, where communities collectively own and manage renewable energy resources. This model contrasts sharply with the centralised, profit-driven approach of traditional energy companies. By empowering local communities to become stakeholders in their energy futures, cooperatives foster a sense of ownership, participation, and accountability that aligns closely with the principles of justice and equity. Moreover, energy cooperatives empower communities to take control of their energy sources, reducing reliance on distant, often environmentally damaging energy sources. This localised approach not only enhances energy security but also fosters a sense of self-reliance and resilience, particularly in areas vulnerable to energy poverty or supply disruptions.

“This localised approach not only enhances energy security but also fosters a sense of self-reliance and resilience, particularly in areas vulnerable to energy poverty or supply disruptions.”

Understanding the contextual nuances of local energy transitions, especially decentralised approaches (through commons), is deemed crucial and has received little attention both from the politics as well as from the literature. Additionally, the roles of companies, governments, regulatory intermediaries, civil society, and local communities have been examined extensively. The next part will explore the obstacles energy commons face in the current energy systems.

4. IDENTIFYING THE OBSTACLES TO ENERGY COMMONS

Legal frameworks often favour centralized energy operators over decentralized energy players like commons. Centralized operators benefit from streamlined grid connection processes and regulatory frameworks that prioritize large-scale projects. Regulatory barriers and market entry thresholds disproportionately affect smaller local players, limiting their ability to compete.

Accessing capital is challenging for energy commons, as traditional financial institutions are often unfamiliar with or hesitant to finance these ventures. Investors prioritize financial gain, viewing energy commons as riskier due to unfamiliarity or lower potential returns. This conflict complicates financing efforts for these organizations.

Existing structures tend to favour traditional ownership structures and business models, making it difficult for energy commons to thrive. Tax codes, corporate governance laws, and labour regulations prioritise shareholders' interests over those of community-owned ventures. Establishing new legal frameworks and governance structures for energy commons can be daunting, further inhibiting their development. Powerful corporate interests may resist policy changes that threaten their traditional business models, impeding the advancement of energy commons.

An example of this can be represented by the case of the takeover of the Dutch energy provider Vandebron by Essent. Vandebron emerged in the Dutch energy market as a platform pioneering a decentralised approach to renewable energy distribution that prioritised transparency, consumer empowerment, and community engagement (Vandebron website) by directly connecting the energy producer with the user. As a disruptive force in the energy market, Vandebron redefined traditional energy supply chains and empowered consumers to make conscious choices about their energy sources and played a pivotal role in promoting distributed renewable energy

generation by showcasing a diverse portfolio of renewable energy sources, including solar, wind, hydro, and biomass. This approach also injected economic value into communities, supporting job creation, local investment, and community development initiatives by sourcing energy directly from local producers. The takeover reflects the dynamics of centralised energy operators leveraging their market position and regulatory advantages to expand their influence and market share, potentially at the expense of decentralised energy commons/players.

Traditional capitalist culture, emphasizing individualism, competition, and profit maximization, presents a significant barrier to energy commons. These businesses prioritize equitable access and community well-being over short-term profit, making it challenging to compete with profit-driven energy providers. Public tenders all over Europe often prioritize price over societal values, disadvantaging energy commons, often in contrast with their own intrinsic aim.

In 2020, the Dutch government awarded the Hollandse Kust (zuid) wind farm tenders to the multinational energy company Vattenfall. These tenders were originally aimed at encouraging local and community-based renewable energy projects. However, due to the high capital requirements, competitive bidding process, and risk assessment larger corporations were more capable of meeting the tender criteria and securing the contracts, sidelining smaller community initiatives⁸³.

Germany's Renewable Energy Sources Act (EEG) has faced criticism for favoring large-scale solar PV developers over smaller community projects. For instance, in the 2017 solar PV tenders, most of the contracts were awarded to major corporations such as EnBW and BayWa r.e.⁸⁴ The complex application process and the financial guarantees required made it difficult for smaller community groups to participate, despite the initial goal to promote decentralized energy production.

In France, the national renewable energy tenders have

seen similar outcomes. In 2018, the government awarded the Fécamp offshore wind project to a consortium of large companies, including EDF Renewables, Enbridge, and wpd⁸⁵. Although there were intentions to support local and community-led wind projects, the financial and technical criteria favoured larger, established corporations, making it difficult for citizen initiatives to compete effectively.

Italy's energy efficiency incentive programs, such as the Conto Termico, have faced criticism for being inaccessible to small community groups. In many cases, large corporations like Enel and Eni have secured significant portions of the available funds. The bureaucratic complexity and stringent requirements of the application process have been barriers for smaller, community-based projects, despite the program's goals to promote widespread participation in energy efficiency improvements.

These are only a few examples highlighting the challenges faced by community energy initiatives in competing with large corporations for public procurement contracts. While the intention behind these tenders is often to support decentralized and community-based projects, the reality is that financial, technical, and bureaucratic barriers often favour larger, more established players in the energy market.

5. CONSIDERATIONS, CONCLUSION & RECOMMENDATIONS

Energy commons are key in the switch to a carbon-neutral energy production and a step towards building a more equitable, secure, sustainable, and resilient energy system. Since the current market isn't built for these forms of organisations, these experience obstacles in the economic, cultural legal and financial areas. A different system would be necessary to allow these new organisational forms to thrive. A change in the system might imply a switch from rewarding volume of energy sold, to a shift to value and balance and a change in the roles

of existing players with the integration of new ones. In the current situation in which energy consumption and, therefore production need to be radically downsized in order to move to a zero-carbon emission system, the existent market system based on price and volume seems unfitted. This shift towards a value-centric approach promotes diversification across user profiles, technologies, energy sources, and carriers, thereby bolstering system resilience and inclusivity.

“Energy commons are key in the switch to a carbon-neutral energy production and a step towards building a more equitable, secure, sustainable, and resilient energy system.”

The academic literature in energy transition economics highlights the positive impact of this approach on job creation, community empowerment, energy access, affordability, and the equitable distribution of societal benefits⁸⁶, prioritising the sustainability and resilience of the energy system while considering factors like resource scarcity, climate change, and energy security⁸⁷, this shift encourages energy diversification, decentralisation, and flexibility to navigate future uncertainties, thereby advancing the resilience and sustainability of energy systems.⁸⁸ In the absence of such a radical change, a multi-faceted approach is necessary to allow these to survive in the current energy system to enable the creation of diversity.

Culturally, there is a need for a shift towards values that prioritise cooperation, sustainability, shared prosperity and shared ownership and responsibility in the transition. This can be achieved through education, awareness campaigns, and showcasing successful examples. With this aim, a few energy cooperatives are collaborating with a coalition of universities and representatives of the market and civic society (Coop Centraal) to form students on these values and offer them valuable studying and work experience in this sense (COOP Centraal Energie Col-

lege). Politically, advocacy, public pressure, and policy reforms can help create a more favourable environment for energy commons. A partnership between the City of Amsterdam and commons activists and experts has led to the creation of an incubator to foster and showcase bottom-up initiatives among others in the energy sector.

Economically, aligning incentives with long-term sustainability and enforcing antitrust laws can create a more equal playing field. Financially, education on the advantages of energy commons, standardized impact measurements, and risk mitigation strategies can encourage more investment. Governments can provide incentives, guarantees, or insurance mechanisms to mitigate perceived risks.

Legally, simplifying frameworks, providing support, and revising regulations to be more inclusive can facilitate the adoption of energy commons. Establishing a dedicated legal status for these organizations can offer numerous benefits, ensuring clarity and permanence in governance structures, protecting them from frequent changes, and fostering trust among stakeholders.

Overcoming these obstacles requires a collaborative effort involving governments, social organizations, schools, universities, businesses, banks, investors, and individuals. This collaboration should lead to an energy transition driven by value creation, balance, diversity, and a more democratic and localized production and consumption of energy.

CHANGING HABITS AND TRANSFORMING OWNERSHIP – SOCIAL CULTURAL CHANGE AND REIMAGINING THE ROLE OF GOVERNMENT

Sophie Bloemen

1. INTRODUCTION

Non-extractive ownership structures, characterised by regenerative and democratic principles, offer a transformative path toward a sustainable and equitable future. The urgent need for alternative ownership structures that prioritise community and environmental well-being is paramount in the face of pressing global challenges. However, the widespread adoption of these structures faces significant barriers rooted in cultural, political, legal, and economic domains. The main obstacles to the widespread adoption of these alternative business models are both social-cultural and institutional. Without a cultural shift and broadening of imaginaries we will not get far, and neither will we without governments and public authorities taking up their role.

2. UNDERSTANDING NON-EXTRACTIVE OWNERSHIP STRUCTURES

Non-extractive ownership structures are defined by their commitment to bringing value to communities and the environment, avoiding the exploitation of labour, and fostering shared wealth. As we confront crises in climate, wealth centralisation, mental health and inequality, embracing these non-extractive ownership models has become an imperative for systemic change. There exist a variety of alternative models to the privately owned enterprise, models include cooperatives, employee ownership and steward ownership, but also public ownership and municipalist ownership. Some models focus on purpose and reinvestment of profit in its mission, others contribute to the democratization of the economy through

shared ownership and a community driven economy. This contribution focuses on models that bring ownership and benefits to local communities and economies,

“Non-extractive ownership structures are defined by their commitment to bringing value to communities and the environment, avoiding the exploitation of labour, and fostering shared wealth.”

3. SOCIAL CULTURAL SHIFT: IMAGINARIES AND PRACTICES

‘It is not political leaders who ran the world, but big political stories. Humans try to navigate the world by means of narrative frameworks. [...] The stories which seize the public mind, determine the direction that society takes.’⁸⁹

A huge part of the challenge of adopting more democratic ownership models lies in dismantling the existing paradigm dominated by neoliberal ideologies and fostering a cultural shift toward alternative economic imaginaries. The ways in which we perceive reality, the economy, and what we consider possible, limits our potential to act. We are socialised by the practices we engage in on a daily basis and constrained by the limits of our imaginaries and the habits we have collectively developed. These limits and habits in turn also withhold policy makers and governments from enacting change and developing new institutions. The pervasive influence of a neoliberal paradigm, emphasising efficiency, markets, and private prop-

erty, hampers the ability to envision alternative economic systems. Shifting cultural narratives surrounding work, ownership, and governance is crucial for the transformation of the economy in one that is socially just and functions with planetary boundaries.

Major fault lines have appeared in the dominant worldview based on individualism, private ownership and an extractive relationship with nature. In recent years, the range of insights on how we can shape the economy and society differently has grown steadily and is reaching an increasingly broader audience. Economical theoretical frameworks such as wellbeing economy, ecological economics, and feminist economics offer alternative perspectives that and prioritise care, cooperation, and community.⁹⁰ These approaches sketch the outlines of an economy that places the wellbeing of people and planet at the centre, where GDP growth is a means and not an end in itself, and where there is room for value that cannot be expressed financially.⁹¹ Well-being and social wealth are not just defined by narrow economic criteria like gross domestic product or a company's success. Instead, these approaches look to a richer, more qualitative set of criteria that are not easily measured – including moral legitimacy, social consensus and participation, equity, resilience, social cohesion and social justice. Recognising and preserving that what is shared becomes essential, reinforcing the idea that certain resources belong to the collective and should not be subject to exploitation.

There is a need for this other story to be told, for another narrative to be developed and take hold. For this education and awareness about non-extractive practices and ownership structures is fundamental. We need to show and acknowledge these practices such as cooperative ownership, community-centric business models and open-source software, and how they contribute to our wellbeing already. This other economy is already there. Depicting the benefits and possibilities of non-extractive ownership models can serve as powerful catalysts for cultural transformation. The Commission

has taken an important step with its Social Economy Action Plan, which describes the social economy and how much it already contributes. By fostering this awareness and challenging preconceived notions, we can facilitate a cultural shift towards regenerative economies.

4. COMMONS

Against this background the commons can serve as an inspiration, as a practice and organisation model, where non-extractive ownership structures and democratic stewardship inherently promote community-based, democratic, equitable, and sustainable practices. The commons refer to shared resources and frameworks for social relationships, managed by a community. This model of economic organizing has been around for thousands of years as a sustainable provisioning model. From the management of traditionally sustained rice fields, to fisheries, grazing lands and irrigation waters.⁹² Currently digital commons such as Wikipedia, creative commons licenses and open-source software are achieving the sharing of knowledge on a huge scale. Today also, in many places, people are engaging in alternative practices as part of the struggle for ecological, social and cultural transition within their communities. Local energy cooperatives are prioritising community wealth, so are neighbourhood coops, and community land trust, and housing coops. All these practices build community wealth. Both in a monetary sense, bringing value to neighbourhoods, such as co ownership of energy systems and affordable and democratically managed housing, but also in terms of social value, by contributing to social cohesion, equity, and collectivity.

“The commons refer to shared resources and frameworks for social relationships, managed by a community. This model of economic organizing has been around for thousands of years as a sustainable provisioning model.”

The institutional environment is by and large presenting these developments with obstacles, legally, financially, and by lack of acknowledgement and support. How do we change this? Just as we need to reimagine what an economy can look like we need to reimagine the role of government. There is a plethora of possibilities in the role of government beyond the regulation of liberal markets.

5. REIMAGINING THE ROLE OF GOVERNMENT AND INSTITUTIONAL CHANGE

An active government is essential in supporting the transition to a democratic and regenerative economy. There is an important role for public authorities to co-create and partner with a new economic ecosystem. Yet, institutional dogma and resistance to change pose powerful challenges to the adoption of non-extractive ownership structures. Governmental policies, regulations, and institutions are deeply entrenched in supporting neoliberal markets. It is crucial to challenge existing institutions that favour oligarchic and extractive practices, and instead bring them to invest and co-build a democratic economic ecosystem that serves communities and the planet.

6. ALIGNING POLICIES WITH REGENERATIVE PRACTICES

Governments can incentivise businesses to adopt regenerative practices through tax measures, grants, and other incentives. They can encourage businesses to prioritise community wellbeing and environmental sustainability which align economic success with broader societal benefits. To facilitate the adoption of non-extractive ownership structures, legal and economic frameworks must align with regenerative practices. This includes redefining procurement strategies, fostering purpose-driven partnerships, and actively supporting entities committed to community wealth. Legal frameworks can encourage cooperative and employee ownership, community governance, and sustainable business practices while discour-

aging exploitative and extractive behaviours.

Public procurement practices should prioritise partnerships with organizations aligned with democratic and regenerative principles. Such a shift can catalyse a broader transformation by redirecting resources to businesses that contribute positively to their communities and the environment. This requires policy changes at the European, national and local levels. One important consideration is that of public-collective partnerships: local governments partnering with local communities through cooperatives or other entities. Moving away from solely employing the public-private partnership model for the supply and management of services and resources, and instead favouring public-collective partnerships can enhance a locally rooted and community driven democratic economic ecosystem.⁹³ Reforming the financial sector to support non-extractive model is also critical. This involves incentivising banks and financial institutions to invest in businesses that prioritise social and environmental responsibility over short-term profits, for example through adding value locally and to communities

7. COMMUNITY WEALTH BUILDING

Community Wealth Building (CWB) is an integrated approach public authorities can employ to achieve the needed reforms. It employs a vision of the role of the state where governments can play a pivotal role in fostering a different ecosystem. Community Wealth Building is an economic development model that transforms local economies based on communities having direct ownership and control of their assets. It addresses wealth inequality at its core in order to produce broadly shared economic prosperity, and ecological sustainability.⁹⁴

Community Wealth building is a relatively new term (coined by the US based think tank Democracy Collaborative in 2004) but builds on a long and rich history, including the cooperative movements such as in Mondragon, social democratic tradition, and the economic justice

activities of the Civil rights era. The current movements for collective ownerships and a more democratic economy have further shaped the community wealth building approach, which combines a top down and bottom-up approach. This new way of organising our economies has been used successfully employed in various cities in the United States, and in the United Kingdom.⁹⁵ More and more local and national governments have started exploring this approach, including Amsterdam which is employing the approach in three large neighbourhoods with 20 year programs and the Scottish national government, which has unrolled many CWB programs already and has spectacularly even recently instated a Minister of Community Wealth Building.

“Community Wealth Building is an economic development model that transforms local economies based on communities having direct ownership and control of their assets.”

Community Wealth Building focuses on broad-based and democratic ownership in a variety of forms—from local and cooperative to community and public ownership—so that more people can share in wealth that is generated and have control over their economic conditions. Community wealth building promotes various models of enterprise ownership. These include public sector insourcing, municipal enterprises, worker ownership, co-operatives, community ownership and local private ownership. These models enable wealth created by users, workers and local communities to be held by them, rather than flowing out as profits to shareholders.⁹⁶

‘..rebuilding the connection between the people and places that create wealth and those who benefit from it is at the heart of community wealth building. We know that locally owner or socially minded enterprises are more likely to employ, buy and invest locally. This means that rather than extracting wealth they contribute to the local economic development. For this reason, communi-

ty wealth building seeks to promote locally owned and socially minded enterprises.’⁹⁷

By enabling places to grow and develop from within, CWB harnesses existing resources in more progressive ways, leading to local economic, social, and environmental benefits. This approach shifts the focus from pre-eminent big businesses to small enterprises and social initiatives. It emphasizes harnessing local resources, and prioritising community well-being over conventional economic metrics like GDP.

8. FIVE PILLARS – A MIX OF POLICIES AND ACTIONS

The approach consists of five pillars: i) Non-extractive or pluralist ownership: CWB seeks to move away from an economy in which economic assets are mostly in the hands of large private companies, and bring them in the hands of communities and public authorities. It therefore promotes locally owned and socially minded enterprises.

ii) Spending: CWB employs the progressive procurement of goods and services. Through procurement authorities and semi-public organisations (anchor institutions) can create dense local supply chains and ecosystems, promoting community ownership. This way wealth and surplus will recirculate locally.

iii) Fair work: CWB includes fair employment and just labour markets, with the aim to improve employment opportunities but also workers’ rights.

iv) Finance: Setting out to make financial power work for local places, CWB seeks to increase flows of investment within local economies. It does this by harnessing the wealth that exists locally, rather than by seeking to attract national or international capital

v) Land: Socially Just use of land and property. “A goal here is not simply for a local authority or anchor institution to ‘own more land’, but instead to ensure that they

land they do own is run by and for the people. This can be understood through the concept of ‘the commons’- the idea that the land held by public institutions is owned by all of us, together. To achieve this, public landowners should develop governance and management structures where communities can take direct control of common assets, for example through transferring under-utilised assets to Community Land Trusts, or working through Public-Commons Partnerships. The local state should engage citizen groups to get involved in the governance and management of municipal assets at every level.”⁹⁸

Across these pillars, there is a set of complementary policies and actions that can be employed in different mixes and orders, to produce systemic change. Procurement is an essential lever in this approach, in the support of these democratic business initiatives. But the scaling of these non-extractive businesses and initiatives also requires incubator and other support programs. Hence, this approach requires an active role of the government and public authorities across the board in co creating the right ecosystem for these businesses and organisations to thrive.

9. CONCLUSION

A new paradigm where the wellbeing of communities and the planet are given priority is already emerging. Yet, for the transition to a more equitable and sustainable future transforming ownership is paramount. Overcoming the cultural, political, legal, and economic obstacles to the widespread adoption of non-extractive ownership structures requires a multifaceted approach. Challenging ingrained cultural narratives and reimagining the role of government allows us to align legal and economic frameworks with regenerative practices and democratised economy, empowering communities. It is time to reimagine our economy and the role of government and transform ownership to serve people, communities, and the planet.

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96 A few years later, those percentages have changed dramatically. Inner city spending has grown from 5 per cent to almost 20 per cent and the money remaining in the wider region has gone from 39 per cent to almost 80 per cent. It is an impressive change for the better. While the focus is still on increasing the local economic impact of procurement and creating better jobs with better wages, Preston’s community wealth building programme also relies on the incubation of co-operatives – democratic businesses that can act as alternatives to private companies.’ See Thomas de Groot in <https://www.greeneuropeanjournal.eu/a-wealth-of-opportunities/> *A Wealth of Opportunities*, *Green Journal* (2022),

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CONTRIBUTORS

**Bertram Lomfeld**

Bertram Lomfeld is a professor of law and legal philosophy at Free University Berlin and co-founder of the Free University Empirical Legal Studies Center (FUELS). Bertram is working on a socio-ecological transformation of law, focusing currently on property and debt theory. His ERC starting grant project “Resolvency – A Global Theory of Reflexive Debt” (www.resolvency.eu) tries to rethink the concept of debt as a more sustainable socio-economic medium.

**Jennifer Hinton**

Dr. Jennifer Hinton is a systems researcher and ecological economist. She holds a double PhD in Economics and Sustainability Science. Hinton’s work focuses on how societies relate to profit and how this relationship affects global sustainability challenges. Her relationship-to-profit theory explains how key aspects of business and markets drive social and ecological sustainability outcomes. She has also co-developed a conceptual model of a not-for-profit market economy.

**Nien-hê Hsieh**

Nien-hê Hsieh is Kim B. Clark Professor of Business Administration at Harvard Business School. He co-leads The Ownership Project, which investigates the role of ownership in realizing dignity and democratic values, ways to structure ownership of economic resources and enterprises, and broadening ownership in the digital economy. He is a Director at the Berkman Klein Center for Internet and Society and past president of the Society for Business Ethics.

**Mario Pagano**

Mario Pagano is a postdoctoral researcher at the University of Amsterdam where he works in the frame of the N-EXTLAW research project. Prior to join the University of Amsterdam, Mario completed his PhD in Law at the EUI, where he wrote about environmental NGOs’ legal mobilisation strategies to try to get access to justice before the CJEU.

**Anne Sanders**

Prof. Dr. Anne Sanders holds the chair for Civil law, Company law, the law of Family Businesses and Judicial Studies at the University of Bielefeld, Germany. She is co-director of the Institute for Family Businesses at the University of Bielefeld (IFUn) and co-head of the interdisciplinary Bachelor program “Law and Management” at the University of Bielefeld. Anne Sanders has been a part-time judge at the Higher Regional Court of Hamm, Germany (2019-2021) and is a Professor II of the faculty of law of the University of Bergen, Norway.

**Rasmus Kristian Feldthusen**

Rasmus Kristian Feldthusen, Ph.D., is a full professor at the Faculty of Law, University of Copenhagen, Denmark. Professor Feldthusen specializes in the law and governance of enterprise foundations and has authored numerous articles on these subjects. Professor Feldthusen is chairman of the Foundation Law Committee (appointed by the Minister of Justice) and member of the Danish Committee on Foundation Governance (appointed by the Minister for Industry, Business and Financial Affairs).

**Maike Kauffmann**

Maike Kauffmann, Co-Lead Purpose Nonprofit & Board member Foundation for Steward-ownership
Maike Kauffmann has been working on the topic of steward-ownership since 2019. She is involved both in the nonprofit work of the Purpose Foundation as well as in the policy work around a new legal form for steward-ownership in Germany in the Foundation for steward-ownership (Stiftung Verantwortungseigentum). Her background is in Business Studies and Ecological Economics. Coming from a family business that was transitioned into steward-ownership, Maike has experienced the potential of steward-ownership first hand.

**Gijsbert Koren**

Gijsbert Koren is founder and director of We Are Stewards. We Are Stewards is a foundation based in the Netherlands and stimulates the development and adoption of steward-ownership. Gijsbert has an engineering background and is an experienced entrepreneur. He was a pioneer in the field of crowdfunding and contributed to the rise and development of crowdfunding in the Netherlands.



Bart van Breukelen

Bart van Breukelen (64), former CEO of TBI Holdings. He is the father of three adult sons and husband of Jose, living in Breda. During his active career, he managed several companies active in project development. Attention to urban development and architecture and contributing to the quality of the city and its residents was always paramount.

For the last 5 years he was CEO of TBI Holdings, a company with 20 subsidiaries, active in Technology, Construction and Infrastructure. The TBI Foundation has been the 100% shareholder of TBI for more than 40 years. This guarantees their active contribution to society and the continuity of the company in the long term. He retired on May 1st 2024.



Melanie Rieback

Dr. Melanie Rieback is the CEO/Co-founder of Radically Open Security, the world's first non-profit computer security consultancy company. She is also a former Assistant Professor of Computer Science at the Free University of Amsterdam (VU) who performed RFID security research (RFID Virus and RFID Guardian), that attracted worldwide press coverage and won several awards (Mediakomeet, ISOC Award, NWO I/O award, IEEE Percom Best Paper, USENIX Lisa Best Paper). Melanie worked as a Senior Engineering Manager on XenClient at Citrix, where she led their Vancouver office. She was also the head researcher in the CSIRT at ING Bank, where she spearheaded their Analysis Lab and the ING Core Threat Intelligence Project. For fun, she co-founded the Dutch Girl Geek Dinner in 2008. Her company, Radically Open Security, was named the 50th Most Innovative SME by the Dutch Chamber of Commerce (MKB Innovative Top 100) in 2016.



Lisa Herzog

Lisa Herzog is Professor of Political Philosophy and Director of the Center for Philosophy, Politics, and Economics at the Faculty of Philosophy of the University of Groningen. She works on the philosophical dimensions of markets (both historically and systemically), liberalism and social justice, ethics in organizations, and the future of work. The current focus of her work are workplace democracy, professional ethics, and the role of knowledge in democracies.



Iñigo González-Ricoy

Iñigo González-Ricoy is an Associate Professor of Political Philosophy and an ICREA Academia Research Fellow at the University of Barcelona, where he is also a member of the Barcelona Institute of Analytic Philosophy and coordinates a research project on the political philosophy of work. His research lies at the intersection between philosophy and the social sciences, with a focus on corporate governance, labor market policies, workplace democracy, and intergenerational justice.



Tej Gonza

Tej Gonza serves as the director and co-founder of the Institute for Economic Democracy, a research fellow at Rutgers University, and a researcher at the University of Ljubljana. Gonza has published numerous scientific papers, participated in academic conferences worldwide, and received a fellowship for outstanding doctoral students from Rutgers University (NJ). Gonza has co-authored policy research for different EU institutions, focusing on broad-based employee ownership. He has actively contributed to various governmental working groups, providing expert advice on legislation that promotes employee participation in management and ownership.



Dylan Pauuwe

Dylan Pauuwe is the founder of De Vrije Markt (www.vrijemarkt.org), a worker cooperative selling exclusively from freelancers, worker cooperatives and small farmer cooperatives. Originally from the Netherlands, his current main focus is holiday & retreat center Oasi Sorgente (www.oasisorgente.com) in the hills of central Italy. Dylan is passionate about building a free, democratic and sustainable economy from the grassroots, transcending ideological divides and building community. You can contact him directly at dylan@disroot.org.



Sara Lafuente

Sara Lafuente is Senior Researcher at the European Trade Union Institute and Associate Researcher at the Université Libre de Bruxelles. She holds a PhD in Law and Political and Social Sciences on ‘Democracy at work under Europeanisation’. As a specialist in worker participation, codetermination and industrial democracy in Europe, she has number of publications in these areas and is a co-founding member of the global network Democratizing Work, and the of the Economic and Industrial Democracy working group of the European Labour History Network (ELHN).



Jasper P. Sluijs

Dr. Jasper P. Sluijs is assistant professor in competition law and regulation at the Utrecht University School of Law. His research focuses on how state ownership can contribute to sustainability transitions, without distorting markets or leading to corruption or geopolitical tension. He obtained his PhD (cum laude) at Tilburg Law School, and previously was a Fulbright scholar at the Georgia Institute of Technology and the University of Pennsylvania. In 2023 he was a visiting scholar at the Faculty of Law of the National University Singapore.



Ralf Hoffrogge

Ralf Hoffrogge has published monographs and articles on German labour history, including Working Class Radicalism in the German Revolution (Brill, Leiden 2014) and A Jewish Communist in Weimar Germany – The Life of Werner Scholem (1895-1940) (Brill, Leiden 2017). He holds a PhD in history and is affiliated with the Centre for Contemporary History in Potsdam, Germany. Hoffrogge lives in Berlin, has been part of the local tenants’ movement for over a decade and was co-founder of the initiative „Deutsche Wohnen & Co Enteignen“ that in 2021 won a referendum on the socialisation of corporate-owned housing stock in the German capital.



Björn Hoops

Björn Hoops is Professor of Private Law and Sustainability at the University of Groningen. His research focuses on legal obstacles to the energy transition. Björn obtained his PhD with distinction in Groningen in 2017. He has been a visiting scholar at various institutions, including Columbia Law School. From April 2022 to March 2024 Björn was an EU-funded Marie Curie fellow at the University of Turin for the project “Private Law and the Energy Commons”.



Deborah Tappi

Deborah Tappi, PhD in Economics from Max Planck Institute and Friederich Schiller Universität, is Research Lead at the Centre for Economic Transformation (CET), Amsterdam University of Applied Sciences AUAS. With 15+ years in academia, she specializes in commons and energy systems, coordinates and designs courses in economics and international business strategy. Her academic roles include thesis coaching and developing master courses in Economics and Sustainable Strategy. She has also served as a Post-Doc Researcher at TU/Eindhoven and Research Fellow at Max Planck Institute. Additional experience includes consulting and project management roles.



Sophie Bloeman

Sophie is co-founder and director of Commons Network, a collaborative think tank for the new economy and just transition based in Amsterdam. Taking a political economic and feminist perspective she works on ideas and proposals around a postgrowth economy, commons and the role of governments. As social advocate in policy and consultant to non-profits and public institutions, she has over 15 years of experience on policy at various levels of government.

Whitepaper

Sustainable By Design: Industrial Policy for Long-Term Competitiveness In The EU

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