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Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands

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Case study

Catching up: The development of legal frameworks for social entrepreneurship in The Netherlands

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Abstract: The development of legal frameworks for social enterprises in the Netherlands is described and analysed in this paper, focusing on 2015-2021. The Netherlands are the largest EU member state in population size without a specific legal form or status for social enterprises. A form of legal recognition is in development, but far from finished. Six lessons can be learned from the process: 1) Even in a thriving ecosystem based on 'bottom up' development, there is need for a legal framework. 2) Local government initiatives spur national government into action. 3) International examples prove inspirational, but the legal framework needs to fit the local context. 4) Finding balance between rule-based and principle-based elements is difficult. 5) Clarifying advantages for social entrepreneurs proves challenging. 6) Tenacious pioneers are crucial to keep the process going. Pressure on the national government to provide a legal framework that fits the Dutch cultural, political and entrepreneurial landscape remains.



Catching up: the development of legal frameworks for social entrepreneurship in The Netherlands

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Abstract

The development of legal frameworks for social enterprises in the Netherlands is described and analysed in this paper, focusing on 2015-2021. The Netherlands are the largest EU member state in population size without a specific legal form or status for social enterprises. A form of legal recognition is in development, but far from finished. Six lessons can be learned from the process: 1) Even in a thriving ecosystem based on 'bottom up' development, there is need for a legal framework. 2) Local government initiatives spur national government into action. 3) International examples prove inspirational, but the legal framework needs to fit the local context. 4) Finding balance between rule-based and principle-based elements is difficult. 5) Clarifying advantages for social entrepreneurs proves challenging. 6) Tenacious pioneers are crucial to keep the process going. Pressure on the national government to provide a legal framework that fits the Dutch cultural, political and entrepreneurial landscape remains.

1. Introduction

In 2019, the OECD/EU In-depth Policy Review of social entrepreneurship in The Netherlands observed that 'deep consensus exists among public and private stakeholders on the need to orient the entire Dutch society towards positive social and environmental impact. The idea that all enterprises should be "social" and that they can all generate a positive social impact is also widespread' (OECD/EU 2019, p. 19).

Still, in the European Commission's 2020 comparative synthesis report on social enterprises and their ecosystems in Europe, the Netherlands turned out to be the largest EU member state (in population size) without a specific legal form or status for social enterprises (European Commission 2020, p. 58). How can these two observations be reconciled? Why did a country with such a positive attitude towards social entrepreneurship not yet develop a form of legal recognition?

This paper focuses on legal frameworks for social entrepreneurship in The Netherlands. A specific legal framework at the national level is currently in development, but within the EU context, the Netherlands are definitely 'late to the party'. Most countries already have a specific legal form, a policy supporting social entrepreneurship, specific tax regulations, or a combination of the above (European Commission, 2020). In the Netherlands, 'consistent with the Dutch government decision to support social entrepreneurship as an approach rather than social enterprises as types of organisations, there is no legal framework in place dedicated to social enterprises' (ibid, p. 57).

One could argue that The Netherlands has a long tradition of building businesses with a social purpose. This goes back to the times when progressive factory owners in the late 1800s started building a social infrastructure for their workers, including pension schemes, schooling, housing and Works Councils.

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An example is Jacques van Marken, director of a company in Delft which later became part of multinational DSM, who is considered the Netherlands' 'first social entrepreneur' (Van der Mast 2019). There are also strong traditions of Corporate Social Responsibility (CSR), cooperatives, volunteering, and charity groups in the country (OECD/EU 2019, p. 17).

However, only after the 2006 Nobel Peace Prize was awarded to 'social entrepreneur' Muhammad Yunus and 'social enterprise' Grameen Bank, terminology around social entrepreneurship started to be used regularly in The Netherlands (Hogenstijn 2018). In 2012 a national platform organisation called Social Enterprise NL was formed, following publication of a first report on the sector the year before (Verloop et al. 2011). In a 2018 report, accountancy firm PwC concluded that 'one of the most salient features of the social enterprise sector in the Netherlands is that it has been built from the bottom up' (PwC 2018, p. 27). It is not really known how large the sector is in The Netherlands, given the lack of a legal form and common definition. An often-cited McKinsey & Company (2016) study calculated that in 2016 between 5,000 and 6,000 social enterprises existed, employing between 65,000 and 80,000 people with a joint turnover of around 3.5 billion EUR. The EU mapping study states that 'more detailed knowledge on the size and scope of social enterprises in the Netherlands is required' (European Commission 2019, p. 33). At the same time, all major recent reports on the social enterprise sector in The Netherlands² report positive developments in the sector and the surrounding ecosystem, with many new initiatives being taken.

The main new initiative is the formulation of a policy by the national government in July 2020, which will be elaborated upon in section 4. One of the aspects of this new policy is the adoption by the national government of a definition which describes social enterprises³ as enterprises which:

- offer a product or service;
 - act primarily and explicitly to contribute to a social goal registered in the company statutes, instead of aiming for profit;
 - reinvest part of the turnover in striving for the social goal and/or are limited in the distribution of profit and capital, in order to guarantee that the social goal comes first;
 - identify their relevant stakeholders and enter into dialogue with them, at least annually;
 - are transparent on their website (or in other publicly accessible ways, such as their annual report) about the most material created social value; and
 - can pursue their own strategy, independent from government and/or other entities.'
- (Keijzer 2020, originally put forward by KPMG/Nyenrode 2020; own translation).

Focus in this paper is on developments in the national policy context for social entrepreneurship, leading towards legal recognition, in the period 2015-2021. The process is described and analysed. However, in order to understand this process, background information is needed on three topics. Therefore, the next section will focus on the political system, the process of law-making and the legal forms for enterprises in The Netherlands.

² Major sources include the OECD / EU In-depth policy review (2019); the EU mapping study (European Commission 2019, synthesis in European Commission 2020); a scoping study by PwC (2018), the KPMG / Nyenrode report (2020) ordered by the government and the annual Social Enterprise Monitor by platform organization Social Enterprise NL; plus the article by Backer (2020) on 'Understanding social enterprise in The Netherlands'.

³ Note that there is also a terminology discussion regarding the best Dutch translation of 'social enterprise'. The term 'social' in English has a broader definition than the term 'sociaal' in Dutch. 'Maatschappelijk' (with respect to society) could be regarded a better translation. Still, the most commonly used term for a social enterprise in Dutch is 'sociale onderneming'. In the letter to parliament, the Secretary of State proposes to use the term 'maatschappelijke onderneming' from now on.

2. Context

2.1 The political system

To understand the policy context of social enterprise in the Netherlands, it is necessary to briefly explain the political system⁴.

The Netherlands form a parliamentary democracy and constitutional monarchy. Government is organised at three levels:

1. The national level, with a two-chamber parliament (House of Representatives and Senate). The main political decisions are taken in the 150-member House of Representatives (*Tweede Kamer*), elected every four years by proportional representation. Government is usually formed by a majority coalition of two to four parties. These parties usually form a government on the basis of a (very) detailed Coalition Agreement.
2. The provincial level. The Netherlands are divided in twelve provinces (*provincies*), each with a directly elected provincial parliament serving four-year terms. Coalition governments are formed here as well. Spatial planning is the main issue handled at provincial level. Following the provincial parliament election (organized at the same times for all provinces), the members of the provincial parliaments elect the 75 members of the Senate (*Eerste Kamer*).
3. The local level. The Netherlands consist of around 400 municipalities (*gemeenten*), each with a directly elected municipal council (*gemeenteraad*). The municipalities' main responsibilities are in education, social affairs, welfare and care, local economy and local infrastructure.

Legislation and main economic policies are set at the national level. However, there is also room for municipalities to set their own policies within the national legal boundaries.

2.2 The process of law-making

The Dutch government describes the process of law-making in seven stages (Government of the Netherlands, n.d.):

1. Making plans
2. Drafting a bill
3. Advice from the Council of State
4. Passage through the House of Representatives
5. Passage through the Senate
6. Assent
7. Publication

The plans for a new law on social enterprises are currently in stage 2. Therefore the explanation below is focused on the first three stages. In the first stage, 'ministry officials often look into what forms of expertise, and what opinions, about the issue at hand are present in the Netherlands. Public or private research institutes might be commissioned to conduct investigations. Permanent or temporary advisory committees might be asked for advice, or might submit recommendations on their own initiative. Interest groups might be consulted (in some cases via permanent consultative bodies) and broad public debate could take place. This kind of debate is sometimes conducted on the Internet.'

Once a Bill has been drafted in stage 2, the Cabinet is required to ask advice at the Council of State (*Raad van State*; stage 3). The Council uses 'an assessment framework made up of three elements: policy analysis, legal issues and technical aspects' (Raad van State, n.d.). A judgment is then given. 'If negative, the dictum will recommend against introducing the Bill or promulgating the order in council,

⁴ This description is based on Hogenstijn, 2019.

or it may recommend waiting until substantial amendments have been made. In such cases, the proposed legislation is returned to the Cabinet' (ibid). The minister responsible for the bill must then present his/her view on the judgment. If the Cabinet decides to introduce the bill to parliament, political debate follows (stage 4 and further).

2.3 Available legal forms for social enterprises

With a distinct legal form still lacking, social enterprises in The Netherlands have adopted a variety of different legal forms. The main ones available are:

- private limited company (*besloten vennootschap or BV*)
- public limited company (*naamloze vennootschap or NV*)
- foundation (*stichting*)
- association (*vereniging*)
- cooperative (*coöperatie*)

It is not possible to exactly establish the current division of adoption of the different legal forms by social enterprises. However, three forms seem most widespread. In the most recent Social Enterprise Monitor with data on legal forms (2019), the top-3 was formed by private limited company (52%), foundation (24%) and combination of private limited company and foundation (10%). A 2020 government-ordered report found similar numbers with private limited company at 48% and foundation at 29% (KPMG / Nyenrode 2020, p. 20)⁵.

As noted in the OECD/EU 2019 report, 'in practice, social entrepreneurs need to make trade-offs when choosing a legal form for their initiative as no form reflects their hybrid identity. For example, some legal forms (e.g. *stichting*) give limited possibilities for commercial trading, while other forms (e.g. BV) entail tax-oriented constraints. (...) Given the trade-offs involved in choosing a legal form, some social entrepreneurs end up adopting a dual form (typically a BV and a Stichting), which entails bureaucratic costs and governance issues' (OECD/EU 2019, p. 28).

3. Main question and methodology

Following this basic information on the legal context in The Netherlands, we can now move to the main question in this paper:

What contextual developments have affected the design of legal frameworks for social enterprises in The Netherlands in the period 2015-2021, and what lessons can be learned from this process?

In answering this question, this paper first follows a descriptive approach, detailing the process of developing a legal framework. Drawing on a variety of policy documents, reports and scientific literature, a preliminary analysis is made of the most prominent contextual developments. Note that the description of phases is related to the development of legal frameworks for SE at the national level. If the development of the sector was taken as point of departure, this might have resulted in different phasing.

Finally, lessons to be learned from the Dutch context and process are identified.

⁵ Exact numbers on the combination private limited company – foundation could not be given as participants could choose multiple options as well as an unspecified option 'other'.

4. Description of the process

4.1 Situation at the outset (2015)

In early 2015, social enterprises are on the rise in The Netherlands. Indeed, in a 2018 report PwC retrospectively typifies the Dutch social enterprise sector as moving from ‘pioneering phase’ into ‘development phase’ in 2015. However, the sector faces many obstacles. There is no legal recognition for social enterprises and little attention in (local) government policy. Policy makers still seem ‘haunted’ by a failed attempt to design a legal form for a social company in 2009, when a bill was put forward proposing a modality of the association (*vereniging*) or the foundation (*stichting*). The bill was not intended for what is now usually referred to as social enterprises, but for private organizations which serve the public interest, in the fields of for example education, health care and council housing. Following negative advice by the Council of State, the bill was withdrawn before coming up for discussion by the parliament (Helder 2013).

In an often-cited opinion article in The Guardian in 2013 (Koopman 2013), The Netherlands are named the ‘black hole of Europe’ regarding social enterprise development, a quote attributed to Filippo Addari – then President of the Euclid Network (PwC 2018, p. 3). While this does not do justice to the companies themselves, it may be understandable when looking at recognition of the sector in the public domain. In the Social Enterprise Monitor 2015, the participants place ‘government policies and regulations’ at the top of their list of obstacles for increasing their social impact.

However, signs that the sector is developing also start to appear. In 2013, the first Social Impact Bond is launched in Rotterdam. In 2014, the Cabinet requests a report on social entrepreneurship from the Social and Economic Council of the Netherlands. Also, the organization of the sector is improving. In 2011 a first scoping study on the sector is delivered by McKinsey et al. (Verloop et al. 2011) and this leads to the establishment of platform organisation Social Enterprise NL in 2012.

4.2 Phase 1: First signs of movement (2015-2017)

The start of the first phase is marked by the publication in May 2015 of a report on social entrepreneurship by the Social and Economic Council of The Netherlands, one of the main advisory bodies of the national government. The report addresses both the potential value of the sector and the main challenges faced. The Council identifies five main obstacles for further development (SER 2015, p. 14-15, own translation).

1. Impact measurement
2. Limited recognition
3. Finance
4. Barriers in laws and regulations
5. Government procurement

Regarding a specific legal form for social enterprises, the Council states it is ‘not convinced’ of its desirability. ‘Creating such a new legal form is highly complex; as such a form must not only do justice to the needs of social enterprises but also of stakeholders’ (p. 104). The Council here refers to the earlier failure to create a legal form for ‘social companies’. However, the Council does recommend research into a ‘lighter form’ of recognition, such as a private quality mark or a public label.

Initially, the advice does not spur government action. It takes over a year before the responsible ministry finally responds. This response (Ministerie SZW 2016) states that the government appreciates the sector, but falls short of formulating policy. One specific action is taken: the government orders

research into impact measurement. This finally results in the Impact Path⁶, describing general principles for and steps in impact measurement, as well as specific methodologies for certain domains. Meanwhile, platform organization Social Enterprise NL takes two main next steps. First, it publishes a 'vision document' explaining why a specific legal form for social enterprises is needed, and what it should look like (Social Enterprise NL, 2016). In this document the term 'BvM' is first introduced; referring to the legal form of a private limited company (BV), but with a social goal (in Dutch: *maatschappelijk*, hence the m) added. Second, Social Enterprise NL also takes the initiative to develop a set of guidelines for a private label for social enterprises. This finally leads to a 'Code Social Enterprises', published in July 2017 (Commissie Code Sociale Ondernemingen 2017). The Code has by then been decoupled from Social Enterprise NL and is further developed in a separate foundation.

While the national government remains mostly silent, lower layers of government take initiatives to develop support policies for social entrepreneurship, most notably at municipality level. In 2015, the City of Amsterdam is one of the pioneers, publishing an ambitious three-year Action Program (Oetelmans 2015). The program has the ultimate aim that Amsterdam grows out to be the place for social entrepreneurship within the Netherlands. Indeed, Amsterdam serves as an example for other municipalities developing policies on social entrepreneurship in the years afterwards.

4.3 Phase 2: Specifying intentions, actions and research (2017-2020)

The process towards legal recognition of social enterprises enters a new phase in October 2017. Following lengthy negotiations, the Coalition Agreement of a new national government consisting of four parties is published⁷. In this Agreement, one sentence is devoted to social enterprises, stating that 'Appropriate rules will be drawn up and more scope will be created for businesses whose goals relate to civil society, while efforts will be made to maintain a level playing field' (p. 36).

While this is seen as a hopeful sign by the sector, it is not followed by immediate action. In September 2018, MP Eppo Bruins⁸ takes the initiative to publish a position paper called *Ondernemen met een maatschappelijke missie* (entrepreneurship with a social mission; Bruins 2018). Following up on the argumentation introduced in the 2016 Social Enterprise NL vision document, he argues that legal recognition for social enterprises should be strengthened by introducing a BvM in the form of a 'modality' on the current private limited company (BV).

Also in 2018, the Ministry of Economic Affairs and Climate Policy commissions Utrecht University to do research on the desirability of a new legal framework for social enterprises. The resulting report is delivered in March 2019 (Bosma et al. 2019) and sums up the arguments for and against such a form, also considering alternatives. The authors recommend two options for the Cabinet to develop their intention formulated in the Coalition Agreement into a specific policy. The first option is to make better use of existing legal options; the second is to develop a specific legal framework, more specifically a 'light' version of the BvM (Bosma et al. 2019, p. 54).

At around the same time, the OECD/EU report *Boosting Social Entrepreneurship and Social Enterprise Development in the Netherlands* (OECD/EU 2019) is delivered, providing a state-of-the-art of the sector and policy recommendations for development. Two of the seven main recommendations focus on the definition and legal recognition of social enterprises. The authors state that 'the lack of conceptual clarity and difficulties in identifying social enterprises makes it difficult for public and private

⁶ Avance, Social Enterprise NL, & Impact Centre Erasmus, 2018. The Impact Path (Impactpad) was originally published in Dutch only, but consequently translated into English and updated in 2020.

⁷ People's Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats '66 (D66) and Christian Union (CU) (2017).

⁸ Eppo Bruins is MP for the Christian Union, one of the parties in the 2017-2021 coalition government.

stakeholders (policy makers, investors, buyers, etc.) to navigate through the social entrepreneurship field and to distinguish the diverse organisations composing it' (p. 29). In addition, they conclude that 'the lack of a formal recognition for social enterprises hinders their future development and visibility, thus not fully delivering on their potential to bridge commercial and social goals for the advancement of Dutch society' (p. 31). The main related policy recommendations are to adopt an official and operational definition of social enterprise; and create a registration system for social enterprises that conforms to this operational definition (see Hogenstijn 2019).

In May 2019 the responsible Secretary of State Mona Keijzer writes a letter to parliament, stating that she 'sees the importance and the possibilities of social enterprises, appreciates their social entrepreneurship and also wants to further stimulate this' (Keijzer 2019, p. 1, own translation). She believes 'that further exploration of the needs of social entrepreneurs and the possibilities for better recognition of social enterprises is necessary' (ibid, p. 6).

In December 2019, both the letter by the Secretary of State and the position paper by MP Bruins are discussed in a parliamentary commission, and the cabinet is urged to proceed. The Ministry of Economic Affairs and Climate Policy is set to take the initiative and orders two new reports, which are delivered early 2020. The report by BMC (2020) addresses bottlenecks experienced by social entrepreneurs. The report by KPMG / Nyenrode (2020) is explicitly focused on recognition of social enterprises. Different alternatives for legal recognition are proposed to social entrepreneurs participating in the research, asking them about acceptance and adoption (will they actually take on the new form). The researchers recommend to further work out two options: introducing a BvM and introducing a new status based on the Code Social Enterprises.

Meanwhile the Code Social Enterprises becomes operational by the end of 2018. A Review Board is formed⁹ and the Register is opened. The Code operates on the basis of five main principles, with 'impact first' as the driving force. One of the intentions is that the Code is used in the collaboration between social enterprises and government. An example of such use is initiated in the region of Twente, where a group of 14 municipalities introduces a mechanism to give social enterprises who are in the register a qualification for being included in social return in public procurement.

Also, many municipalities and some provinces start adopting policies on social entrepreneurship, following the example of pioneering cities such as Amsterdam and Utrecht. In Amsterdam itself, the action program 2015-2018 is followed by an even more ambitious program for the period 2019-2022, focused on 'strengthening the ecosystem for impact entrepreneurship' (City of Amsterdam, 2019). The G40 group of medium-sized municipalities names social entrepreneurship a priority area and subsequently publishes a roadmap intended to help municipalities build stimulating policies (Stedennetwerk G40 2018). By 2019 'about 40% of the Dutch municipalities have developed some kind of support policy targeted at social entrepreneurship' (European Commission 2020, p. 75).

While the sector rapidly develops, entrepreneurs in the 2018 Social Enterprise Monitor still state that 'regulations and policies from national government' are the single market circumstance that did not significantly improve in recent years (p. 21). However, this is about to change.

4.4 Phase 3: Building a legal framework (from July 2020)

On 10 July 2020, a new phase starts when the Cabinet again sends a letter to parliament. It brings news regarding a legal framework: 'The Cabinet chooses to start preparations for a legal regulation, which offers entrepreneurs the possibility to make a choice for a 'social limited company' [maatschappelijke

⁹ The author of this paper has been member of the Review Board of the Code Social Enterprises since its launch.

BV; BVm], taking into account the acknowledgement and better recognition of the social character of their enterprise' (Keijzer 2020, own translation).

A dedicated team at the ministry starts preparing a proposal for a legal framework for the BVm. Their first ideas are gathered in a discussion document which forms the basis of a set of meetings with social entrepreneurs and other stakeholders in the SE ecosystem¹⁰.

In March 2021, a first draft of the new legal recognition for social enterprises is put in internet consultation (Ministerie EZK 2021); providing all with the opportunity to express their views. The draft is based on the principle that recognition of social enterprises is key, while maintaining, as set in the Coalition Agreement, 'a level playing field'. The following elements are included in the draft:

- The BVm is not a new legal form, but a kind of 'label' exclusively connected to the private limited company (BV). This implies that other legal forms such as the foundation, cooperative or public limited company are not included in this process of legal recognition.
- A private limited company (BV) can freely choose to become a BVm. To do this, the company must register with a Civil-law Notary, who checks whether the company meets the requirements. If approved, the company must register as BVm with the Chamber of Commerce.
- A BVm is obligated to name a specific social mission in the company statutes, and to prioritize this mission when it distributes profits or capital. A minimum percentage that should be devoted to the mission is not set, but 50% is mentioned as 'point of reference'.
- A BVm is obliged to publicly report on its trade-offs regarding profit and other financial distributions. It is not yet clear how this should be done exactly. Obligations will be lifted for starting companies that do not yet make a profit.
- A BVm is required to annually publish a 'social report'. Its exact contents are not yet clear.
- Specific regulations are developed on how to 'shed' the status of BVm, and how to handle mergers and divisions. A procedure is foreseen in which stakeholders can oppose a decision.

In the period of internet consultation, many (online) meetings are held to explain and discuss all details of the draft. At the time of writing, the process of internet consultation on the draft has just closed. In total, 60 public reactions were sent in, often going in much detail; with respondents including individual social entrepreneurs, lawyers, civil-law notaries, platform organisations, trade associations, branch organizations, knowledge networks and unions (Arnoldus 2021). Two comments mentioned most are:

- 1) the question why the legal recognition is limited to the private limited company (BV), while social enterprises take on many different legal forms; and
- 2) the lack of clear advantages attached to the new legal status. No special tax arrangements or other financial advantages are foreseen.

The government will now take all reactions into account. It is expected that it will take some time before a new version is ready. This is also related to the fact that national elections were held in March 2021, and a new government is being formed.

5. Lessons learned

In the period 2015-2021 important steps have been taken in the process of designing a legal framework for social enterprises in the Netherlands. As the new legal framework is not yet finalized, it is too early for final lessons. However, six lessons can already be discerned at this point in the process.

¹⁰ All meetings in this period are held online due to the coronavirus situation.

Lesson 1. Even in a thriving ecosystem based on ‘bottom up’ development, there is need for a legal framework

The ecosystem for social entrepreneurship in The Netherlands has largely developed because of the actions of intrinsically motivated entrepreneurs and other players surrounding them, such as networks and platforms, local authorities, the regular business community, institutes of research and education, financiers and consumers (PwC 2018, p. 6). This ‘bottom up’ development has produced a ‘rich landscape of organisations and initiatives generating, or claiming to generate, social impact’ (OECD/EU 2019, p. 19). However, it has also become clear that the field is ‘evolving and still undefined (ibid, p. 18). Entrepreneurs and others in the ecosystem have consistently stated that a more active role of national government is needed. This was reconfirmed in the KPMG/Nyenrode report (2020).

Lesson 2. Local government initiatives spur national government into action

In the absence of action at the national level, local governments have taken the lead in supporting social entrepreneurship with targeted policies (Hogenstijn 2019). Municipalities like the City of Amsterdam, the other G4 (the four largest cities) and the G40 (medium-sized municipalities) have taken action themselves and also regularly expressed their wish for more national government action. In its Letter to Parliament of July 2020, the Cabinet addresses this, by promising a working group on social entrepreneurship, in which the ministry (EZK), G4 and G40 are represented. The goal of this working group is to ‘strengthen knowledge sharing and network formation between levels of government with regard to social entrepreneurship, in order to better stimulate and facilitate social entrepreneurship and strengthen the ecosystem around social enterprises’ (Keijzer 2020, own translation).

Lesson 3. International examples prove inspirational, but the legal framework needs to fit the local context

Throughout the process of legal framework design, examples from other countries are used. This starts in 2013 (Arnoldus et al. 2013) and continues in the reports laying the foundation for the July 2020 letter to parliament. The draft legal framework references international examples in the explanatory remarks. With regard to serving the goals of a social enterprise financially, examples mentioned are the ‘Community Interest Company’ in the UK, the ‘Coöperatieve Vennootschap erkend als sociale onderneming’ in Belgium, ‘la société à mission’ in France, the ‘Société d’Impact Sociétal’ in Luxembourg, the ‘GmbH VE’ in Germany and the register for ‘socialøkonomiske virksomheder’ in Denmark. However, most references are still to the research done in the sector in The Netherlands (Ministerie EZK 2021, p. 10-11).

Apart from the international examples, there is also the element of international comparison. Policy makers do not like their country left blank on a map showing legal frameworks and support policies (see European Commission 2015, 2020). This is also explicitly mentioned in the draft: ‘in most EU member states the need for legal recognition of social enterprises has already been honoured by the legislator’ (Ministerie EZK, p. 10, own translation).

Lesson 4. Finding balance between rule-based and principle-based elements is difficult

Designing the content of the new law on social enterprises has been and still is a balancing act between ‘rule-based’ and ‘principle-based’ forms of recognition. The drafting of the new law shows this. While an earlier version shown to experts included detailed rule-based regulations on for example profit distribution, these were left out in the draft that was put into internet consultation. Some public respondents to the internet consultation would prefer some kind of ‘dividend cap’. However, among

the respondents more focus is placed on the need for a regulatory body, minimizing the risk of ‘mission drift’.

Lesson 5. Clarifying advantages for social entrepreneurs proves challenging

A complicating factor in designing the legal framework is the notion of maintaining a ‘level playing field’, as formulated in the Coalition Agreement in 2017. This implies that for example no special tax arrangements for social enterprises will be made available. This spurs a lot of questions: apart from recognition, what are the actual advantages for social enterprises to adopt BvM as their legal status? In one public reaction to the internet consultation, a well-known social entrepreneur argues that ‘optimization of productivity / efficiency / local employment is often at odds with creating maximum (social) impact. (...) If the combination with our social mission (...) puts us at a disadvantage towards regular enterprises, then there is no level playing field. (...) The choice of an entrepreneur for the BvM should equalise this disadvantage. That could be done by combining this form with compensating tax measures’ (Creutzberg 2021, own translation).

Lesson 6. Tenacious pioneers are crucial to keep the process going

The last, but certainly not least, lesson is about the role of pioneering individuals and organisations. Their tenacity has proven crucial to keep the process going in periods when progress was slow, for example when the Cabinet took over a year to respond to the advice of the Social and Economic Council in 2015-2016, or when nothing seemed to happen after the intention to draw up ‘appropriate rules’ was formulated in the Coalition Agreement in 2017. MP Eppo Bruins deserves to be named as such a pioneer, along with Social Enterprise NL as platform organization for the sector.

6. Final remarks

In recent years The Netherlands have come a long way in designing a legal framework for social enterprises. Six years after the first signs of movement in 2015, a draft for a new law creating a specific legal form of recognition for social enterprises is published. In international perspective, the Netherlands are ‘catching up’. However, the country has not caught up yet. It proves challenging to find the right balance between different interests and principles in the design of a legal form of recognition. With a thriving ecosystem consistently expressing the need for a legal framework and the continuing efforts of tenacious pioneering individuals and organisations, the pressure remains of the national government to come up with a legal framework that fits the Dutch cultural, political and entrepreneurial landscape.

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References

Arnoldus, M., van Kuik, J., Hillen, M., & Verloop, W. (2013). *Stimuleren van de social enterprise sector. Ervaringen en lessen uit Europa voor het ministerie van Economische Zaken*. <https://www.social-enterprise.nl/wp-content/uploads/2014/01/Stimulansen-voor-de-Social-Enterprise-Sector.pdf>

Arnoldus, M. (2021). *Kunnen alleen BV's sociale ondernemingen zijn? Dit zijn de reacties op de BvM*. 8 May 2021. Available at: <https://socialfinancematters.nl/kunnen-alleen-bvs-sociale-ondernemingen-zijn-dit-zijn-de-reacties-op-de-bvm/>

Avance, Social Enterprise NL & Impact Centre Erasmus. (2018). *Het Impactpad - Hoe je als ondernemer groeit in het meten van je maatschappelijke impact*. https://impactpad.nl/wp-content/uploads/2018/06/Het_Impactpad.pdf

Backer, J.W. (2020). Understanding social enterprise in The Netherlands: An application of the macro-institutional social enterprise framework to identify the institutional characteristics of social enterprise in The Netherlands. *Social Enterprise Journal* 16(1), 18-45. <https://doi.org/10.1108/SEJ-04-2019-0025>

BMC (2020). *Versterken sociaal ondernemerschap. Knelpunten die sociaal ondernemers tegenkomen en voorstellen voor maatregelen om deze weg te nemen*. Available at: <https://www.rijksoverheid.nl/documenten/rapporten/2020/07/10/versterken-sociaal-ondernemerschap>

Bosma, N., Hummels, H., Manunza, E., Argyrou, A., Kamerbeek, S., Meershoek, N. & Helder, R. (2019). *Versnelling en verbreding van sociaal ondernemerschap. Een onderzoek naar de wenselijkheid van nieuwe juridische kaders*. Universiteit Utrecht. Available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/02/18/versnelling-en-verbreding-van-sociaal-ondernemerschap/Versnelling+en+verbreding+van+sociaal+ondernemerschap.pdf>

Bruins, E. (2018). *Ondernemen met een maatschappelijke missie*. Initiatiefnota ChristenUnie. Available at: <https://www.tweedekamer.nl/downloads/document?id=86d5895f-1a95-4388-871b-06cd24cc98e3&title=Initiatiefnota.pdf>

City of Amsterdam (2019). *Impact Entrepreneurship Action Programme 2019 – 2022. Strengthening the ecosystem for impact entrepreneurship*. Available at: <https://www.iamsterdam.com/en/business/amsterdam-impact/who-we-are/action-programme-2019-2022>

Commissie Code Sociale Ondernemingen (2017). *Impact First. Code Sociale Ondernemingen. Vastgestelde versie 1.0*. Available at: https://www.social-enterprise.nl/files/5614/9855/5734/Vastgestelde_versie_Code_Sociale_Ondernemingen.pdf

Creutzberg, J. (2021). *De BVm: (h)erkenning van een “ongelijk speelveld”?* Reaction internet consultation BVm. Available at: <https://www.internetconsultatie.nl/bvm/reactie/245ab7fb-5595-4a91-9107-b3ec33f36787>

European Commission (2015). *A map of social enterprises and their ecosystems in Europe. Synthesis report*. Available at: <https://op.europa.eu/en/publication-detail/-/publication/b556d0e5-8907-11e5-b8b7-01aa75ed71a1>

European Commission (2019). *Social enterprises and their ecosystems in Europe. Updated country report: The Netherlands*. Author: Niels Bosma. Luxembourg: Publications Office of the European Union. Available at: <https://ec.europa.eu/social/BlobServlet?docId=21133&langId=en>

European Commission (2020). *Social enterprises and their ecosystems in Europe. Comparative synthesis report*. Available at: <https://op.europa.eu/en/publication-detail/-/publication/4985a489-73ed-11ea-a07e-01aa75ed71a1/language-en/format-PDF/source-123378057>

Government of the Netherlands (n.d). *How an act becomes law*. Available at: <https://www.overheid.nl/english/about-the-dutch-government/what-government-does/how-an-act-becomes-law>

Helder, E.R. (2013). *De juridische infrastructuur van de maatschappelijke onderneming*. PhD thesis, Utrecht University. Available at: <https://dspace.library.uu.nl/bitstream/handle/1874/283336/Helder.pdf>

Hogenstijn, M. (2018). *Sociaal ondernemerschap: grip op het begrip*. Delft: Uitgeverij Eburon. Available at: https://pure.hva.nl/ws/files/5083957/sociaal_ondernemerschap_grip_op_het_begrip.pdf

Hogenstijn, M. (2019). *Developing dialogue bottom-up: social enterprises and local government in the Netherlands*. In EMES Selected Conference Papers 2019 (pp. 1-18). Available at: <https://emes.net/publications/conference-papers/7th-emes-conference-selected-papers/developing-dialogue-bottom-up-social-enterprises-and-local-government-in-the-netherlands/>

Keijzer, M. (2019, 17 May). *Passende regels en ruimte voor sociale ondernemingen* [Letter to Parliament]. DGBI-O / 19046752. <https://www.tweedekamer.nl/kamerstukken/amendementen/detail?id=2019D20250>

Keijzer, M. (2020, 10 July). *Brief van de staatssecretaris van Economische Zaken en Klimaat* [Letter to Parliament]. Available at: <https://zoek.officielebekendmakingen.nl/kst-32637-426.pdf>

Koopman, N. (2013). The emerging Dutch social enterprise sector. *The Guardian*, 9 May. Available at: www.theguardian.com/social-enterprise-network/2013/may/09/dutch-social-enterprise-sector

KPMG/Nyenrode (2020). *Stimuleren van (h)erkenning van sociale ondernemingen*. Available at: <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2020/03/01/stimuleren-van--herkening--van-sociale-ondernemingen/bijlage-rapport-stimuleren-van-herkening-van-sociale-ondernemingen.pdf>

McKinsey & Company (2016). *Scaling the impact of the social enterprise sector*. <http://www.mckinsey.com/industries/social-sector/our-insights/scaling-the-impact-of-the-social-enterprise-sector>

Ministerie EZK (Economische Zaken en Klimaat) (2021). *Aanzet voor een wettelijke regeling voor een besloten vennootschap met maatschappelijk doel (BVM)*. Available at: <https://www.internetconsultatie.nl/bvm/document/6797>

Ministerie SZW (Sociale Zaken en Werkgelegenheid) (2016). *Kabinetsreactie SER advies sociale ondernemingen*. <https://www.ser.nl/~media/files/internet/kabinets%20reactie/2016/sociale-ondernemingen.ashx>

OECD/EU (2019), *Boosting Social Entrepreneurship and Social Enterprise Development in the Netherlands*, OECD Working Paper, Paris. <https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/rapporten/2019/02/18/boosting-social-entrepreneurship-and-social-enterprise-development-in-the-netherlands/boosting-social-entrepreneurship-and-social-enterprise-development-in-the-netherlands.pdf>

Oetelmans, E. (2015). *Actieprogramma sociaal ondernemen 2015-2018*. Amsterdam, *dé plek voor sociaal ondernemen*. Available at: [https://www.social-enterprise.nl/files/3514/5587/4034/Actieprogramma Sociaal Ondernemen Amsterdam.pdf](https://www.social-enterprise.nl/files/3514/5587/4034/Actieprogramma_Sociaal_Ondernemen_Amsterdam.pdf)

People's Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats '66 (D66) and Christian Union (CU). (2017). *Confidence in the future. 2017–2021 coalition agreement*. Document AVT17/AZ124020. Available at: <https://www.government.nl/documents/publications/2017/10/10/coalition-agreement-confidence-in-the-future>.

PwC (2018). *Building an ecosystem for social entrepreneurship: lessons learned from The Netherlands*. Available at: <https://www.pwc.nl/nl/actueel-publicaties/assets/pdfs/pwc-building-an-ecosystem-for-social-entrepreneurship.pdf>

Raad van State (n.d.). *The Council of State*. Available at: <https://www.raadvanstate.nl/talen/artikel/>

SER (Sociaal Economische Raad). (2015). *Sociale ondernemingen: een verkennend advies*. Advies 15/03, mei 2015. Available at: <https://www.ser.nl/-/media/ser/downloads/adviezen/2015/sociale-ondernemingen.pdf>

Social Enterprise NL (2015). *De Social Enterprise Monitor 2015*. http://social-enterprise.nl/wp-content/uploads/2015/05/Social_Enterprise_NL-monitor_2015-digitaal.pdf

Social Enterprise NL (2016). B.V.m. *De sociale onderneming op weg naar het Burgerlijk Wetboek*. Available at: https://www.archief.social-enterprise.nl/files/6914/5735/5318/Op_Weg_Naar_Het_Burgerlijk_Wetboek.pdf

Social Enterprise NL (2018). *De Social Enterprise Monitor 2018*. https://www.social-enterprise.nl/files/1515/3631/9481/Social_Enterprise_Monitor_2018_final.pdf

Stedennetwerk G40 (2018). *Meer impact met sociaal ondernemerschap - Roadmap voor gemeenten*. Available at: https://www.g40stedennetwerk.nl/files/2018-02/Meer_impact_met_sociaal_ondernemerschap_Roadmap_voor_gemeenten.pdf

Van der Mast, J. (2019). *Jacques van Marken. De eerste sociaal ondernemer van Nederland*. Nieuw Amsterdam

Verloop, W., van Dijk, M., Carsouw, R., & van der Molen, O. (2011). *Opportunities for the Dutch Social Enterprise Sector*. Amsterdam: McKinsey & Company. Available at: <https://www.archief.social-enterprise.nl/files/6714/4181/6376/Opportunities.pdf>



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