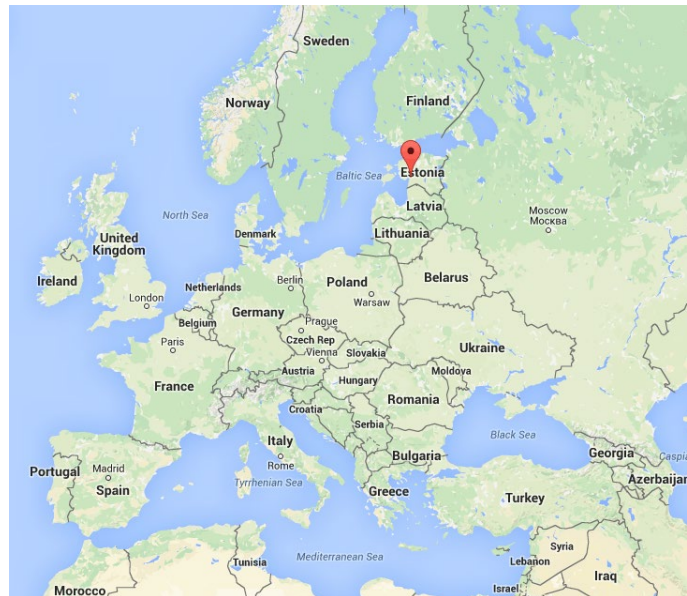


# Ownership models and their legal environment

Dr Roger Evans,  
Estonian University of Life Sciences, Tartu, Estonia.

Lecturer and specialist of rural business and community development.  
Email: [evanter.ou@gmail.com](mailto:evanter.ou@gmail.com)



# Business/company legal forms in CLLC partner countries

- **Sole Trader / Self Employed / Registered Merchant**
- **Partnerships (General or Limited Liability)**
- **Limited Liability Company**
- **Joint Stock Company/Public Limited Company**
- **Foundation/Trust**
- **Mutual societies (incl. cooperatives (may be unlimited liability))**
- **Association**
- **NGO (non-profit organisation)**

In the European Economic Area (including the European Union):

- **EEIG** (European Economic Interest Grouping-association between companies or other legal bodies, firms or individuals from different EU countries)
- **SCE** (Societas Cooperativa Europaea): a European Cooperative
- **SE** (Societas Europaea): a European (Public) Limited Company
- In most cases companies need to be registered on the Companies Register

# What legal structures do social & community enterprises trade under?

- Many start off just from trading without a company structure (sole trader or unincorporated) and this can be fine when the income and activities are small. However, if you wish to win contracts, apply for funding, get investment, and hire people, you will need a legal structure of some sort.
- The reason it is important to think about all the other aspects first, is that they will help you choose the right sort of legal structure for you. Your decision should be influenced by:
  - The type of activities you are going to do
  - Where you think your money will come from (now and in future)
  - What sort of governance you think will suit your enterprise (how much control do you want? Who else do you want to participate?)
  - Who your potential customers and partners may be
- The vast majority of EU Member States do not have tailor-made social enterprise forms. This means that social entrepreneurs will usually have to use or adapt legal forms which are not designed for social enterprise, this may increase the costs and risks of start-up, as well as reducing the visibility of the social enterprise or make it harder to identify and support social enterprises nationally.

# What legal structures do social & community enterprises trade under?

- What to do first: meet interested parties to discuss the following:
- Do you want to undertake one particular project, or do you have a number of aims?
- Is there another organisation in the area doing the same type of things with the same aims? If so, could you work with this organisation in partnership rather than setting up a new organisation?
- Do you intend to complete the work in a limited period of time or remain in existence for a long time?
- Is the group intending to establish a charitable organisation?
- It is important that you agree the main aims right at the start, so that everybody works together with a common purpose.

# What legal structures do social & community enterprises trade under?

- If you are starting an association then you should write a constitution - the set of rules by which the organisation will be run.
- The constitution: is the governing document of the association and it is necessary to have one whether or not the association wants to seek charitable status. It is important to ensure that it takes into account not only what you intend to do in the first year, but also allows for the future development of the association's work and should include the following:

- (1) Name of the organisation.
- (2) Objects—the aims (purposes) of the organisation.
- (3) Powers—what the organisation is permitted to do.
- (4) Membership—what type of individual or organisation will be eligible
- (5) Management—how the organisation will be managed
- (6) Rules and procedures at all meetings

- (7) General meetings—when the Annual General Meeting will be held and what business is to be transacted at it
- (8) Finance—make clear that the funds of the organisation can only be used to further the objects of the association and for no other purpose.
- (9) Property
- (10) Amendments to the constitution
- (11) Dissolution

# What legal structures do social & community enterprises trade under?

- The precise characteristics of the different legal structures for social enterprises vary between Member States. However, three main 'types' of legal forms used by social and community enterprises can be identified as follows:
- Type 1: Non-Profit Organisations (foundation, association, non-profit company, some social co-operatives) – which may be democratic or controlled by managers, do not distribute profit and trade in furtherance of a social purpose:
- Type 2: Co-operatives – which are generally owned and controlled on a democratic basis by members, distribute profit from trading activities to members and may have a social purpose beyond benefitting members written into the constitution or carry out a service of general interest;
- Type 3: Share Companies – which are generally owned and controlled by shareholders on a pro rata basis and which may trade in furtherance of a social purpose and may have other governance features to subordinate profit to purpose.

The following forms of legal structures are some of the most commonly used by social enterprises in CLLC project Member States

Estonia	Association	Foundation	Share Company
Germany	Sole Proprietor	Share Company	Entrepreneur (Limited Liability) Company
Netherlands	Foundation	Association	Co-operative
Romania	Association	Mutual Help Associations for Employees	Mutual Help Associations for Pensioners

# Types of companies

There are two main types of companies:

- Companies limited by guarantee (CLG)  
CLGs have no shareholders, only 'members' who cannot profit personally from the company.
- Companies limited by shares (CLS)  
A CLS can be a social enterprise, but will often require adaptation (e.g. stating what will happen with profits, putting social mission in governing documents).



# Characteristics of Associations & Foundations

## **Associations:**

- voluntary and open membership
- equal voting rights - resolutions carried by majority
- membership fees - no capital contribution
- autonomy and independence
- service providers, voluntary work, and advocacy/representation
- important providers of health care, care for the elderly and children, and social services.

## **Foundations:**

- they are run by appointed trustees
- their capital is supplied through donations and gifts
- they may finance and undertake research
- they may support international, national, and local projects
- they may provide grants to meet the needs of individuals
- they may fund voluntary work, healthcare, and elderly care.

# Unincorporated association

- simplest type of organisation and the favourite legal structure chosen by new groups.
- cheap to set up and run, and there is no red tape to deal with. It is suitable for setting up a group with aims that are “otherwise than for-profit” (it is not suitable for a ‘for-profit’ organisation).
- down side of the association is that it has no separate legal personality distinct from the members and it cannot enter into contracts or hold property in its own name.
- In addition, the committee members may incur personal liability for any debts the association might incur

# Cooperatives

- Cooperatives are unique because their members are stakeholders at different levels:
- workers have a direct stake in worker co-operatives,
- producers in producers or retailers' cooperatives,
- users in cooperatives of users (consumer cooperatives, housing cooperatives, cooperative banks, etc.).
- Multi-stakeholder cooperatives (such as an increasing number of social co-operatives and community co-operatives) also feature different types of stakeholders. This leads to more collaborative, long-term ways of engaging in business.

Fundamental aspect of cooperatives is that they have members - not shareholders - who make decisions democratically. These members can be employees, producers or clients depending on the kind of cooperative. At the same time, they are the owners of the cooperative business. So they control and share the profits themselves.

# Values based companies

- "Our people are our most important asset." You've heard these words many times if you work in an organization. Yet how many organizations act as if they really believe these words are true? Not many.
- These words are the clear expression of a value, and values are visible through the actions people take, not their talk. People judge their organisation's sincerity when they see senior managers walk their talk. Nothing else really matters.
- Values form the foundation for everything that happens in your workplace. If you are the founder of an organization, your values permeate the workplace. You naturally hire people who share your values. Whatever you value, will largely govern the actions of your workforce.
- Core values are traits or qualities that are not just worthwhile, they represent an individual's or an organization's highest priorities, deeply held beliefs, and core, fundamental driving forces. They are the heart of what your organization and its employees stand for in the world.

# Values based companies: social values, social aims, social objectives

- Social Values: base of organization. principles that we use to determine our behaviour
- Social Aims: general following values, governance documents and business strategy
- Social Objective: specific, how to make true the aims. included in the business plan. are specific, measurable, realistic, and may have targets attached to them
- What are the values companies use and promote? We can now go to look at some key questions regarding values and how companies can use them.

# Values based companies: social values, social aims, social objectives

- What are the values that companies use and promote

- participation & empowerment
- equality
- good, safe, satisfying, interesting work
- fair pay and good employment practices
- self development, re-skilling, education and training

- ethical behaviour
- a commitment to communities
- safe, healthy, good quality, user focused products and services
- environmental sustainability
- transparency and trust
- co-operation between enterprises.

# What is governance and why is it important?

- Governance is simply the systems and processes which decide the overall direction, supervision and accountability of an organisation.
- Good governance practices demonstrate that your organisation is willing and able to act in the best interests of the organisation. Good governance practices are effective, open and ethical, which adhere to the law and allow you to stand up to scrutiny. These help to grow public trust and confidence, encouraging people to support your organisation.



# What is governance and why is it important?

- Governance processes are set out primarily in an organisation's governing document, and are supplemented by any additional policies or secondary rules.
- Governance is different from the day-to-day running of an organisation, as it deals with overall systems and processes, rather than smaller details.
- For example, governance is not about paying wages or bills, but is about ensuring that systems are in place to guarantee that wages and bills are paid on time.



We can now look at some questions regarding good governance



# Governance and your stakeholders

- Good governance is important to balance the needs and aspirations of your organisation, and a range of stakeholders, including your staff, customers, supporters and volunteers. Stakeholders include all of the people who your potential plans will have an impact on or connection to, such as local residents, businesses or community leaders.
- It is important to be inclusive of all of the views in your local community, and understanding different stakeholder motivations will help you to identify potential support or conflict that may arise.
- It is important to have an understanding of the range of stakeholders who might be involved in assisting you to take forward any plans and actions identified by your organisation and includes people, other groups and organisations who may have an interest in what you plan to do.
- Stakeholders are all the people that your plans and actions may have an impact on or connection to.

# Good governance document

- A governing document is a record of the governance arrangements of an organisation, typically detailing the purpose of the organisation and its relationship both to its members and to the outside world. The governing document will generally define why an organisation exists, what it intends to do and how it will do it.
- The legal structure of an organisation is generally defined as the combination of its legal form and its governing document.
- It is important to be inclusive of all of the views in your local community, and understanding different stakeholder motivations will help you to identify potential support or conflict that may arise.
- It is important to have an understanding of the range of stakeholders who might be involved in assisting you to take forward any plans and actions identified by your organisation and includes people, other groups and organisations who may have an interest in what you plan to do.
- Stakeholders are all the people that your plans and actions may have an impact on or connection to.

# Ethics and company behaviour

## Ethical behaviour

- honest accounting and tax calculation;
- paying suppliers on time;
- providing quality goods and services;
- keeping your promises;
- treating members, staff, customers and suppliers with courtesy, dignity and respect
- conserving natural resources and protecting the environment.

## Unethical behaviour

- using insider knowledge or confidential information for personal gain;
- buying poor materials and equipment because there is some kind of payoff from the supplier;
- side-stepping rules and regulations, such as health and safety, because it is cheaper and more convenient to do so;
- miscalculating invoices and hoping customers won't notice;
- providing misleading information in order to win contracts;
- making false claims about products or services;
- adjusting business expense accounts in order to make a personal profit.

## The legal status of Social Enterprises across EU Member States

When selecting the legal form for your enterprise you will often be able to do much of this work of choosing and registering on your own.

If you need specialist help though, there are lawyers who specialise in social enterprise. As you can see from this lecture, there is no one place that says 'you are a social enterprise' and which regulates that.

# The legal status of Social Enterprises across EU Member States

A number of EU Member States have created 'Legal Statuses' which are related to the SBI concept of a Social Enterprise or to other related concepts. These are understood and applied differently in different Member States though, and are sometimes described in terms of 'social enterprise' but are often closer to a more traditional concept of the 'social economy'.

The following Member States have a Social Enterprise Legal Status, in the SBI sense of the term:

- Belgium - Social purpose company
- Italy - Social Enterprise 'ex-Lege'
- France - ESUS enterprise
- UK - Community Interest Company

# The Social Purpose Company (SPC) – Belgium

Any form of Company or Co-operative may become an SPC. An SPC must have an altruistic purpose, being a social objective that the shareholders wish to realise and this is the key motive for the incorporation of the SPC and is not for the enrichment of its members.

The Companies Code in Belgium requires that details of the social purpose are written into the SPC's bylaws/articles. There are no formal restrictions on the activities an SPC is able to carry out since it is understood that a classical/commercial company can take on the status of an SPC provided it carries out its social purpose through trading.

The SPC has certain rules which reflect inclusive governance, such as a right for employees to have shares and a limit on any person having no more than 10% of the voting rights in an SPC.

An SPC has to produce an annual report on how it acted to deliver on the social goals of the company.

# Social Enterprise Ex-Lege - Italy

Any form of private organisation, whether for profit or otherwise, may be a Social Enterprise ex-Lege under Italian law.

The organisation must have organised economic activity oriented to general interest but can only deliver: social assistance, health care, social-healthcare assistance, education, instruction and training, environmental conservation, cultural heritage appreciation, social tourism, university and post university education, research and distribution of cultural services, after-school training

This status can also be obtained by organisations which conduct entrepreneurial activity oriented to job inclusion of disadvantaged or disabled workers.

They must include workers and beneficiaries in governance and allow workers and beneficiaries to influence the management of the company especially on working conditions and quality of goods or services.

All Social Enterprises ex-Lege in Italy also must produce a social report

# Entreprise Solidaire d'Utilité Sociale (ESUS) – France

Any form of private organisation (e.g. Company, Co-operative, Non-Profit, Association, Foundation or Integration Enterprise) can get ESUS status provided:

They are a social economy organisation (Association, Co-operative, Foundation, or Mutual) or an ESS Enterprise can apply for ESUS status.

In addition, these organisations must satisfy the following three criteria:

The primary aim of the organisation must be a social purpose (d'utilité sociale). The social purpose (d'utilité sociale) has a significant impact on its business. this can include:

- at least 66% of the operating expenses were spent on activities related to the social purpose
- limits on the ratio between the cost of dividends and financial products over equity and financial products

There are limits to the salary and bonuses of employees, shares cannot be traded on a regulated market (not a public company). These restrictions must be integrated in the organisation's Articles of Association (statutes).

Integration Enterprises automatically receive the ESUS legal status and social economy organisations (Mutual, Co-operative, Association, Foundation) can become an ESUS without engaging in economic activity or having inclusive governance.



# The Community Interest Company (CIC) – UK

CICs can be of two principal legal forms:

as a share company, which can be public or private

as a Non-Profit entity without shares

CICs are regulated, must have a purpose for the benefit of the community and provide a 'community interest statement' to the CIC Regulator who will decide whether a "reasonable person" would consider that the activities of the CIC will be carried out for the benefit of the community.

an annual report on how it delivered on its social mission ('community interest');

limitations (for Company Limited by Shares) on profit distribution

any assets are retained for community benefit

Because of these additional protections, CICs can often get access to some grant funding and are understood as being clearly a social enterprise. The directors of a CIC are under a stronger obligation to have regard to the wider community which the CIC serves, than would be the case for an ordinary company. CIC will not qualify if its activities are carried on only for the benefit of the shareholders or the employees of a particular employer.

# Société Cooperative D'Interet Collectif (SCIC)

An SCIC is a form of Social Enterprise Co-operative.

An SCIC must pursue both an efficient commercial purpose and social purpose (“caractère d'utilité sociale”) which benefits the community.

The definition of “utilité sociale” is focused primarily on providing assistance to vulnerable persons or activities which remedy discrimination or inequalities within society. This definition is narrower than the European definition of a “social benefit” as it does not include environmental activities.

It must therefore show that its economic activities relate to its social purpose. It is governed in a democratic fashion, as it operates on a one member, one vote principle and must publish its social impact in its management report.

An “Entreprise de l'ESS” is a form of share company.

It must have a social purpose (“but d'utilité sociale”), have a democratic and participative governance structure, and must return the majority of its profit into the activity of the company.

As with an SCIC, the definition of “utilité sociale” is focused primarily on providing assistance to vulnerable persons or activities which deal with discrimination or inequalities within society.

# Social Co-operatives – Italy

Social Co-operatives are formal adaptations of the Co-operative Legal Form that legally provide that, to qualify as a Social Co-operative, the Co-operative must have a further defined social purpose (as opposed to simply the mutual interest of its members).

The Italian law, for example, provides for two types of Social Co-operatives:

- type “A”, which provide social, health and educational services
- type “B” that can engage in any other type of economic activity that is not listed in type “A” which furthers the work integration of defined disadvantaged groups.

Other examples of Social Cooperatives include the Greek Social Co-operatives and the Polish Social Co-operatives.

# Registered Charities - UK

Registered UK charities can be social enterprises, as long as the amount of income they earn from trading is more than 50%; the main difference from CICs or companies is that:

- they are more heavily regulated (by the Charity Commission),
- they have a board of voluntary trustees (rather than directors),
- there are some limitations on trading - it generally also takes longer to register.

On the positive side, because of the heavier regulation, charities have greater access to tax relief (for example on business rates) and grants from foundations.