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## Understanding how the Earth Charter can serve as a guidance for social enterprises (and legislators)

### Introduction

This essay responds to the essay “A reflection on The Earth Charter Project and its Mission in the Anthropocene” by Brendan Mackay.<sup>2</sup> In his essay, Mackay first elaborates on the drafting process of the Earth Charter in the period 1993-2000. He highlights that the Earth Charter - drawing upon the findings from a global consultation process - has become a real ‘civil society document’ expressing a progressive world ethic of shared values and principles. It also extends conventional international ethical norms by not only including all people in all countries, but also future generations and the greater community of life – “the species and ecosystems with whom we share Earth as home”.<sup>3</sup> Since the launch, the Charter has been formally endorsed by more than 7,000 organisations and 35,000 individuals.<sup>4</sup>

Mackay argues that in a world where humans are massively destructing the flora and fauna on our planet, mostly with the effect that the most vulnerable groups are suffering therefrom, that it is urgent to consider again the important ethical messages which the Earth Charter brings. One of them is: “If sustainability is to be progressed, it will require lifelong commitment by people of courage.”<sup>5</sup> This means that everyone has a role to play and contribution to made as the required work is difficult. Mackay proposes that the Earth Charter can be put to useful work in three areas: education, governance and activism, thereby promoting the four pillars of the Earth Charter: (1) Respect and Care for the Community of Life, (2) Ecological Integrity, (3) Social and Economic Justice, and (4) Democracy, Non-Violence and Peace. These pillars can be regarded to provide “the foundation of a world ethic on which to our collective goal of a more just, sustainable and peaceful world.”<sup>6</sup>

In regard of governance, Mackay explains that the Earth Charter has value to governance in helping to establish ethical norms for a more just, sustainable and peaceful world at the international but also at national levels as it can validly claim legitimacy and authority.<sup>7</sup> In this vein, he contends that we need to implement a new economic vision<sup>8</sup> and refers to the final paragraph of the Preamble of the Earth Charter, which states:

*We urgently need a shared vision of basic values to provide an ethical foundation for the emerging world community. Therefore, together in hope we affirm the following*

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<sup>2</sup> Place and date of publication: Brendan Mackey, A Reflection on The Earth Charter Project and its Mission in the Anthropocene, 2017.

<sup>3</sup> Idem, p. 3.

<sup>4</sup> Idem, p. 2.

<sup>5</sup> Idem, p. 5.

<sup>6</sup> Ibidem.

<sup>7</sup> Idem, p. 7.

<sup>8</sup> He refers to K. Bosselmann, P.G. Brown and B. Mackay, “Enabling a Flourishing Earth: Challenges for the Green Economy, Opportunities for Global Governance”, *Review of European Community & International Environmental Law* (2012) 21, 23-39.

*interdependent principles for a sustainable way of life as a common standard by which the conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed.*

I wish to reiterate Mackay's statements that the Earth Charter can provide value to governance, because it can comfort in establishing ethical norms for a more just, sustainable and peaceful world as part of an urgently needed new economic vision. As a professor in Corporate Law, I wish to reflect on his line of thought and in particular to explore how these ethical norms can service "organizations, businesses, governments", as referred to in the Preamble, in developing a new economic vision.

### **Corporate law and new legal forms for social enterprises**

Corporate Law comprises the part of the legal system that contains the rules and regulations applicable to companies and other organisations. It discerns between the legal forms of sole entrepreneurship, partnership, limited liability company, cooperatives, foundations and associations. All of these legal forms can be found in many jurisdictions all over the world.<sup>9</sup> In some jurisdictions, such rules are included in a 'Company Act' and in other jurisdictions they form part of the 'Commercial Code' or 'Civil Code'. Corporate law stipulates how to establish or incorporate a legal form, and how to dissolve or liquidate the same. It also provides guidance on the governance of business organisations and it elaborates on the role of the stakeholders involved. In terms of purpose, most business organisations are set up to generate financial profit for its incorporators or owners. Cooperatives usually have to pursue economic benefit for the members, and foundations and associations have to abide by the goals recorded in their constitutional documents, which are often goals that aim to benefit the society.

In the last decade, corporate law has witnessed the emergence of business organisations that are not only focused on generating profit for their owners or incorporators but primarily on creating societal impact.<sup>10</sup> They aim to offer a response to a societal problem in an entrepreneurial way of working. Besides this development, it can also be observed that many foundations, associations and cooperatives have transformed their modus of operating from relying on donations and subsidies towards an entrepreneurial way of doing business. Such hybrid organisations are generally called: social enterprises. Defining a social enterprise can be challenging because the concept has been evolving rapidly in recent years and "increasingly blurs the lines of the traditional business, government and non-profit sectors".<sup>11</sup> To clarify the concept of social enterprises, I will first provide some examples from The Netherlands, where we conducted several case studies regarding social enterprises, and from Asia and the USA:

*Taxi Electric (The Netherlands)*<sup>12</sup> - With the slogan "Taxi Electric. Change the System", Taxi Electric offers electric taxi services in and from Amsterdam (the Netherlands) and aims to

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<sup>9</sup> T.E. Lambooy and J. Stamenkova, "Can corporate law on groups assist groups to effectively address climate change?", *Dovens Schmidt Quarterly* 2014. R. Kraakman et al, *The Anatomy of Corporate Law*, third edition, Oxford University Press 2017.

<sup>10</sup> J. Defourny, "Introduction: From third sector to social enterprise", in C. Borgaza and J. Defourny (eds.), *The Emergence of Social Enterprise* (Routledge, 2001) 1-2, 3-5.

<sup>11</sup> Social Enterprise; [https://socialenterprise.us/about/social-enterprise/?gclid=EAlalQobChMI6ouvt5KC2QIVb7HtCh1FUgc4EAAYASAAEgIxFD\\_BwE](https://socialenterprise.us/about/social-enterprise/?gclid=EAlalQobChMI6ouvt5KC2QIVb7HtCh1FUgc4EAAYASAAEgIxFD_BwE). Visited on 31 January 2018.

<sup>12</sup> Taxi Electric; <https://www.taxielectric.nl/en/>. Visited on 31 January 2018.

boost the demand for electric transportation in order to keep the Amsterdam air clean from black carbon and other particles which cause lung diseases and cancer. At the same time, they actively recruit drivers amongst people over fifty, as today for them, it is difficult to find a job. The social enterprise conveys: “Delivering a contribution to society is more important to us than making huge profits. ....Our world has become seriously out of balance, the differences are increasing. If everyone remains self centered, we will all lose in the long run. It is time for change. With more attention to each other, to the environment and to collective profits. Join us. Change the System.”

*Dopper (The Netherlands)*<sup>13</sup> - Dopper employs the slogan: “The bottle is the message”. Dopper represents a new type of business operation which not only aims at economic profit, but also at societal gains. They express: “Each year, approximately 8 million kilo tonnes of plastic end up in our oceans. Dopper wants to turn the tide with reusable water bottles to prevent the use of disposable ones. Of the net turnover, 5% is donated to the Dopper Foundation and invested in solutions that go beyond the bottle. And because clean drinking water is vital if you want to replace bottled water with a sustainable alternative, Dopper Foundation also invests in safe drinking water.”

*Autitalent (The Netherlands)*<sup>14</sup> - AutiTalent is a work integration social enterprise, which engages in finding suitable jobs for people who are in the autistic spectrum. They search for jobs which align with their talents. These employees perform their work generally in a very conscious manner, demonstrate a strong sense of responsibility for the job to be done and aim for perfectionism.

*Grameen Foundation (Asia)*<sup>15</sup> - The Grameen Foundation, liaised to the Grameen Bank, states on their website that they “connect women and men in poor communities to a vital mix of financial, health, and agricultural services and information. Our innovations include, yet go well beyond, new technologies. Working with our partners, we generate inclusive ways of sharing knowledge and doing business across four main program areas, highlighted below.”

*TerraCycle (USA)*<sup>16</sup> - TerraCycle aims to contribute to the eliminating of the idea of waste by recycling. They communicate: “Whether it’s coffee capsules from your home, pens from a school, or plastic gloves from a manufacturing facility, TerraCycle can collect and recycle almost any form of waste. We partner with individual collectors such as yourself, as well as major consumer product companies, retailers, manufacturers, municipalities, and small businesses across 20 different countries. With your help, we are able to divert millions of pounds of waste from landfills and incinerators each month.”

Attempting to defining social enterprises, the American Social Enterprise Alliance suggests the following basic working definition, illustrated by the visual presented as Figure 1:

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<sup>13</sup> Dopper; <https://dopper.com/>. Visited on 31 January 2018. T. Lambooy, H. Kievit, O. Vuletic, A. Argyrou, R.J. Blomme, “Understanding how social enterprises can stimulate sustainable business in a Europe of crisis: Case Study Report of the social entrepreneurial model of Dopper BV in the Netherlands”, in B. Sjaafjell, C. Villiers, G. Tsagas (eds), *Sustainable business solutions for a Europe in Crisis*, Cambridge University Press, forthcoming 2018.

<sup>14</sup> Autitalent; <https://www.autitalent.nl/>. Visited on 31 January 2018. A. Colenbrander, A. Argyrou, T. Lambooy and R. Blomme, Inclusive Governance in Social Enterprises in the Netherlands – A Case Study (December 2017). *Annals of Public and Cooperative Economics*, Vol. 88, Issue 4, pp. 543-566, 2017. Available at: SSRN: <https://ssrn.com/abstract=3067096>.

<sup>15</sup> Grameen Foundation; <https://www.grameenfoundation.org/>. Visited on 31 January 2018.

<sup>16</sup> TerraCycle; <https://www.terracycle.com/en-US/>. Visited on 31 January 2018.

“Organizations that address a basic unmet need or solve a social problem through a market-driven approach.”<sup>17</sup>

Figure 1: The place of social enterprises in the economic landscape<sup>18</sup>



In an effort to align the existing concepts of social enterprises across Europe, the European Commission has developed a definition in its communication on the ‘Social Business Initiative’.<sup>19</sup> Its reads as follows:

*A social enterprise is an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.*

The Commission further uses the term ‘social enterprise’ to cover the following types of business:

*(a) those for which the social or societal objective of the common good is the reason for the commercial activity, often in the form of a high level of social innovation, (b) those where profits are mainly reinvested with a view to achieving this social objective, (c) and where the method of organisation or ownership system reflects their mission, using democratic or participatory principles or focusing on social justice.*<sup>20</sup>

<sup>17</sup> . Social Enterprise; [https://socialenterprise.us/about/social-enterprise/?gclid=EAlalQobChMI6ouvt5KC2QIVb7HtCh1FUgc4EAAAYASAAEgIxJfD\\_BwE](https://socialenterprise.us/about/social-enterprise/?gclid=EAlalQobChMI6ouvt5KC2QIVb7HtCh1FUgc4EAAAYASAAEgIxJfD_BwE). Visited on 31 January 2018.

<sup>18</sup> Idem.

<sup>19</sup> European Commission, “Social Business Initiative: Creating a favourable climate for social enterprises, key stakeholders in the social economy and innovation”, (COM 682 final/25.10.2011) <[http://ec.europa.eu/internal\\_market/social\\_business/docs/COM2011\\_682\\_en.pdf](http://ec.europa.eu/internal_market/social_business/docs/COM2011_682_en.pdf)>. Visited on 31 January 2018.

<sup>20</sup> The definition continues: “Thus: (A) businesses providing social services and/or goods and services to vulnerable persons (access to housing, health care, assistance for elderly or disabled persons, inclusion of vulnerable groups, child care, access to employment and training, dependency management, etc.); and/or (B) businesses with a method of production of goods or services with a social objective (social and professional integration via access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalisation) but whose activity may be outside the realm of the provision of social goods or services.” Categories (A) and (B) relate to all the types of businesses referred to above under (a), (b), (c). Ibid. 2-4.

In academic literature, social enterprises are described as organisational vehicles of the social economy which focus mostly on the creation of new socio-economic incentives and the operation of evolved forms of organisations without having the generation of profit as their main concern.<sup>21</sup> Their hybrid character, with 'for profit' and 'not for profit' aspects, enables them to satisfy their social mission while achieving financial revenues. These newly introduced organisational schemes in the form of companies with a social purpose, cooperatives, mutual societies and associations are mainly driven by societal motivations. They primarily aim at the provision of services which benefit the community and the general interest of society. Furthermore, social enterprises pursue the allocation of resources through production particularly against the global economic crisis and towards the strengthening of social cohesion and the social integration of deprived people.<sup>22</sup> The existence and the development of social entrepreneurship as a reflection of societal needs showcases an emblematic turn to a new model of the welfare state which regards the public sector, the private 'for profit sector', and the social economy as three distinguished pillars which interact in a framework of fairness and social justice.<sup>23</sup>

I would argue that social enterprises are the embodiment of a new economic vision as proposed by Mackay. In the next part of this essay, I will clarify my statement.

### **Do social enterprises embody a new economic vision?**

Mackay mused that the new economic vision be based on the Earth Charter's ethical norms for a more just, sustainable and peaceful world. Indeed, social enterprises have explicated in their constitutional documents societal goals as the purpose of their entrepreneurial activities. In various studies concerning new legal forms, tailor-made for social enterprises operating in Europe, it is established that each of such legal forms explicitly requires that: (i) a societal goal be included in its constitutional documents as the purpose of the enterprise; (ii) the business is organised in a transparent way and that annually information is made available not only about the financial results but also about the social and environmental impact of the enterprise; (iii) that the governance includes the participation of stakeholders; and – in various jurisdictions – (iv) that the enterprise is restricted in distributing assets and dividends to the shareholders as any generated profit primarily has to be reinvested in the enterprise with the purpose of enhancing the societal goal.<sup>24</sup>

#### *Conceptual study on the legal requirements regarding social enterprises' objectives compared with Earth Charter Principles*

Exploring the claim that social enterprises are the embodiment of a new economic model in which ecological sustainability, fairness and social justice are the core values, we designed a study in which we tested if and how each of the legal characteristics listed in the paragraph under (i)-(iv) will be accommodating sustainable development. We selected the Earth Charter

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<sup>21</sup> A. Bugg-Levine, B. Kogut, N. Kulatilaka, "Unbundling societal benefits and financial returns can dramatically increase investment" [2012] *Harvard Business Review* (2012) 120-122.

<sup>22</sup> Ibid. 119-120. See also J. Defourny and M. Nyssens, "Conceptions of Social Enterprise and Social Entrepreneurship in Europe and the United States: Convergences and Divergences", 1(1) *Journal of Social Entrepreneurship* (2010) 34-35.

<sup>23</sup> Defourny and Nyssens, 34-37.

<sup>24</sup> A. Argyrou and T. Lambooy, "An Introduction to Tailor-Made Legislation For Social Enterprises In The EU: A Comparison of Legal Regimes In Belgium, Greece and The UK", *International and Comparative Corporate Law Journal*, Volume 12 (2017), issue 3, 47-107.

as the standard for sustainable development because the Earth Charter represents an authoritative civil society document as it has been drafted with the input of thousands of civil society organisations worldwide, as has been explained in the first paragraph above. The result of the study is remarkably positive.<sup>25</sup> In this essay, I will only reiterate the results in regard of the first characteristic, i.e. the societal goal.

The study entailed a theoretical assessment of the character of the societal goal as required in the legislation concerning the tailor-made legal forms adopted by the Belgium legislator (i.e. the *Vennootschap met Sociaal Oogmerk*; VSO - i.e. the company with a social purpose), the British legislator (i.e. the Community Interest Company; CIC) and the Greek legislator (i.e. the Social Cooperative Enterprise; SCE). The study confirmed that each of these legal forms requires that the social enterprise incorporates a societal purpose in its constitutional documents. See Table 1 which explicates in which way the law requires the social enterprise to include a societal purpose.

Table 1. An overview of the selected legislative environments

	<b>Belgium</b>	<b>UK</b>	<b>Greece</b>
<b>Legal form</b>	Vennootschap met Sociaal Oogmerk (VSO)	Community Interest Company (CIC)	Social Cooperative Enterprise (SCE)
<b>Establishment objectives</b>	The law does not define specific objectives but stipulates that the main aim of the VSO 'cannot be to provide direct or indirect economic benefit to the members'.	The law requires that the object clause of the CIC does not entail a 'charitable status' but that is concerns 'activities that are carried out for the benefit of the community'.	The law defines that the object clause of the SCE fulfils 'collective or societal interests' and describes 'the performance of activities which aim to enhance local and regional development as a part of a broader society'.  There are three legal forms: the SCE of Integration, the SCE of Care, and the SCE of Collective and Productive Purpose.

As a next step, the authors tested whether in each of the three jurisdictions, the legal condition applicable to the societal purpose would be capable of supporting the realisation of sustainable development. The concept of sustainable development was given shape by using certain variables promoted by the Earth Charter, because this civil society document extends an ethical framework aimed at achieving sustainable development, as also proclaimed by

<sup>25</sup> T. Lambooy, A. Argyrou and R. Hordijk, "Social Entrepreneurship as a New Economic Structure that Supports Sustainable Development: Does the Law Provide for a Special Legal Structure to Support Innovative and Sustainable Non-Profit Entrepreneurial Activities? (A Comparative Legal Study)", *University of Oslo Faculty of Law Research Paper No. 2013-30*. Available at SSRN: <https://ssrn.com/abstract=2346684>.

Mackay. The Earth Charter variables which we utilised to assess whether the objects of the social enterprises – as prescribed by the domestic laws – can in theory support sustainable development were: ‘(1) Care for the community of life with understanding, compassion, and love; (2) The eradication of poverty as an ethical, social, and environmental imperative; (3) Integration into formal education and lifelong learning the knowledge, values, and skills needed for a sustainable way of life’<sup>26</sup>.

These variables were thus compared in a conceptual way (i.e. not verbatim way) with the legal requirements that apply in each of the three jurisdictions to the formulation of the ‘societal purpose’ in the social enterprise’s object clause. The outcome was that the content of the object clauses as required by the examined Belgium, UK and Greek legal forms in a conceptual way indeed align with the sustainable development concept as stipulated by the Earth Charter. Hence, these laws provide the necessary legal certainty to prospective social entrepreneurs that they conduct their social entrepreneurial activities in a sustainable way. A detailed comparison revealed furthermore, that although both the Belgium VSO and the UK CIC legislation clearly call for socially-oriented objectives, only the legal requirements pertaining to the Greek SCE satisfy the set criteria by demanding that: (1) the ‘Social Cooperative Enterprises of Integration’ promote integration; (2) the ‘Social Cooperative Enterprise of Care’ provide goods and services of a social character or social care; and (3) the ‘Social Cooperative Enterprises of Collective and Productive Purpose’ provide goods and services to satisfy the social needs or social benefits of the community in relation to environmental, cultural and ecological concerns. Table 2 comprises the findings of the comparative analysis.

*Table 2. Testing the formulation of societal purpose in the social enterprise’s object clause against the Principles of the Earth Charter*

<b>Earth Charter Principles</b>	<b>Legal establishment objectives of social enterprises in Belgium, the UK and Greece (purpose/aim to benefit the community/society)</b>
Care for the community of life with understanding, compassion, and love.	SCE of Care
Build democratic societies that are just, participatory, sustainable, and peaceful.	SCE of Collective and Productive Purpose

<sup>26</sup> Principles I.2, III.9 and IV.14 of the Earth Charter; <http://earthcharter.org/discover/the-earth-charter/>.

Eradicate poverty as an ethical, social, and environmental imperative.	SCE of Collective and Productive Purpose
Ensure that economic activities and institutions at all levels promote human development in an equitable and sustainable manner	
Affirm gender equality and equity as prerequisites for sustainable development and ensure universal access to education, health care, and economic opportunity.	SCE of Integration
Strengthen democratic institutions at all levels, and provide transparency and accountability in governance, inclusive participation in decision making, and access to justice.	SCE of Integration
Integrate into formal education and lifelong learning the knowledge, values, and skills needed for a sustainable way of life.	SCE of Integration, SCE of Care, and SCE of Collective and Productive Purpose

### *Empirical study concerning social enterprises' societal objectives*

In another study, still ongoing, we have empirically examined the societal goals of 200 British social enterprises, organised as a Community Interest Company, the tailor-made legal form offered in the UK Company Act 2007,<sup>27</sup> and categorised them by the type of societal goal. Most of such goals comprise activities that lie in the field of promoting and supporting a sustainable and inclusive way of life as a common standard, like the Earth Charter Preamble stipulates. Most of their goals are also in line with and support one or more of the United Nations Sustainable Development Goals (SDGs).

Additionally, we empirically examined 200 Dutch social enterprises, all of them registered with the social enterprise network organisation in The Netherlands, Social Enterprise NL. In the Netherlands, corporate law does not (yet) cater for a tailor-made social enterprise legal form. We do have a private-regulatory system however, fairly new, introduced in July 2017, which is based on a Code which social enterprises can voluntarily adopt.<sup>28</sup> Following a peer-review process, the social enterprises which pass the peer-review test are allowed registration in the Register Social Enterprises in the Netherlands. In this way, they can carry the label of 'social enterprise' as an aid to consumers, social impact financiers and municipalities which are choosing to work with such a social enterprise precisely because it implements a societal purpose. The label helps to substantiate the claim and to prevent green washing.

<sup>27</sup> The research team comprises: T. Lambooy, A. Argyrou, P. Antoni, four Nyenrode Business University students and one Utrecht University law school student. Publication of this study is anticipated in 2018.

<sup>28</sup> Code Sociaal Ondernemen; [www.social-enterprise.nl/actueel/code-sociale-ondernemingen/](http://www.social-enterprise.nl/actueel/code-sociale-ondernemingen/). Visited on 31 January 2018.



The empirical research revealed that the examined 200 Dutch social enterprises also had adopted goals which are to a great extent in line with the values promoted by the Earth Charter such as supporting economic and social inclusiveness, reinforcing ecological and cultural diversity, assisting in implementing ecological prudence and ecosystems conservation, bolstering transparency of the conduct of multinational companies, and enhancing peace, as well as the goals defined in the SDGs.

### **Recommendation for the way forward to a new economic vision**

With our research team, we are in contact with legislators (who develop tailor-made legislation for social enterprises), private regulatory regime drafters (re. private label), impact investors (who provide funds to social enterprises) and academics in several European countries. We understand that many find it difficult to define the concept of ‘societal purpose’ in the law, legislative guidelines or private label regimes. This is nonetheless important in order to be able to discern between social enterprises – which are allowed to employ the tailor-made legal forms for social enterprises, adopted in more than half of the EU jurisdictions - and regular commercial companies. Enterprises of the latter category should not be able to use a social enterprise legal form or label, because that could lead to green washing.

To solve this problem, I would argue - based on our conceptual and empirical research - that the legislator can include a reference to the Earth Charter, or several Principles, and to the SDGs, in order to clarify what is meant by the following terms in the law and private regulatory regimes: ‘societal purpose’, ‘social purpose’, ‘community benefit’, ‘collective purpose’, ‘integration’, ‘care’ or ‘inclusiveness’. The reference would entail language such as: “The societal purpose of the social enterprise must aim to fulfil one or more Principles stipulated in the Earth Charter or one or more goals defined by the Sustainable Development Goals”. In this way, the Earth Charter could assist social entrepreneurs to identify which description would be appropriate to be included in the enterprise’s object clause and to ensure that he or she really drives a social enterprise.