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INTRODUCTION

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

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1. INTRODUCTION

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

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

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

Steward ownership organisations are governed by two principles. First, the right to decide on the purpose and management of the company is held by 'stewards' instead of shareholders. Stewards - for instance foundations - are persons who have no personal financial interest in the company, so that they can act in the best long-term interest of the company and its mission. Second, the profits in such steward-owned firms serve the mission, meaning that they are for a large part reinvested in the company. Many successful steward-owned companies exist, including Novo Nordisk, Bosch, and Carlsberg.

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

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

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

approach to achieve an economy that is sustainable by design.

2. LONG-TERM COMPETITIVENESS IN THE EU

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

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

2.1. RESILIENT AND INNOVATIVE PROSPERITY

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

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

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

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

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

2.2. COMMUNITY CONNECTION, STRATEGIC AUTONOMY AND PURPOSEFUL WORK

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

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

2.3. INCLUSIVE ENVIRONMENTAL SUSTAINABILITY

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

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

3. THE INDUSTRIAL POLICY APPROACH

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

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

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

3.1. LEVELLING THE PLAYING FIELD

3.1.1 Creating Legal Forms

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

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

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

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

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

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

3.1.2 Removing Regulatory Obstacles

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

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

Financial regulation in particular is often designed for mainstream for profit business and investment, and therefore perceives alternative ownership forms as more risky - even though they will be usually less risky.[27] The same is paradoxically also the case with regard to many public funding programmes, for which sustainable organisations often do not qualify. If (financial) regulation becomes better aligned with the character and needs of organisations that are sustainable by design, this would further incentivize firms and investors, as well as public actors, to develop workable forms of financing.

3.2. PROMOTING "SUSTAINABILITY BY DESIGN"

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

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

To create private markets for organizations that are sus-

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

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

4. CONCLUSIONS

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

The industrial policy approach is not just important for the entrepreneurs who (want to) adopt this way of pursuing economic activity. It is also vital for European business culture more broadly. Facilitating and promoting sustainable ownership models will show that another economy is possible. Business can be about more than just profit; it can also be about coming together, having a nice place to work, while contributing in a meaningful way to our communities, sustainable planet and just society.

NOTES

1 See the contribution in this whitepaper by Rutger Claassen and Bertram Lomfeld, 'Towards a Corporate Ownership that is Sustainable by Design.'

2 This is attested by the Sustainable Finance Package as well as the recent adoption of the Corporate Sustainability Due Diligence Directive (CSDDD).

3 Steen Thomsen, 'Foundation Ownership and Economic Performance' (1996) 4 Corporate Governance: An International Review 212

4 Øyvind Bøhren and Morten G Josefsen, 'Stakeholder Rights and Economic Performance: The Profitability of Nonprofits' (2013) 37 Journal of Banking & Finance 4073.

5 Steen Thomsen and others, 'Industrial Foundations as Long-Term Owners' (2018) 26 Corporate Governance: An International Review 180.

6 Steen Thomsen and Caspar Rose, 'Foundation Ownership and Financial Performance: Do Companies Need Owners?' (2004) 18 European Journal of Law and Economics 343

7 Pérotin V (2016) What do we really know about workers' co-operatives? In: Webster A, Shaw L, and Vorberg-Rugh R (eds) Mainstreaming Co-Operation. Manchester: Manchester University Press. DOI: 10.7765/9781526100993.00019.

8 Akin Gedilkli, 'The Role of Steward-ownership in Enabling Sustainable Innovation an Explorative Study' (Master's thesis, Eindhoven University of Technology 2022) <https://research.tue.nl/files/195281425/Master_Thesis_Akin_Gedikli.pdf> accessed 14 March 2024.

9 Steen Thomsen, The Danish Industrial Foundations (Djøf Forlag 2017) <https://research.cbs.dk/en/publications/the-danish-industrial-foundations> accessed 10 March 2024.

10 O'Boyle EH, Patel PC and Gonzalez-Mulé E (2016) Employee ownership and firm performance: a meta-analysis. Human Resource Management Journal 26(4): 425–448. Similarly, with respect to firms with co-determinaiton, see the contribution in this whitepaper by Iñigo González-Ricoy, 'Employee Ownership and Employee Participation.'

11 https://www.syndikat.org/en/

12 https://taxfoundation.org/data/all/eu/capital-gains-tax-rates-in-europe-2024/?hss_channel=tw-16686673&utm_content=285679543&utm_medium=social&utm_source=twitter

13 Examples of companies that do this include Novo Nordisk, Carlsberg, and TBI.

14 Magne N (2017) Wage inequality in workers' cooperatives and conventional firms. European Journal of Comparative Economics 14(2).: 303–329.

15 The European Commission suggests that 'there are 2.8 million social economy enterprises, representing 10% of all businesses in the EU. Almost 13.6 million people – about 6.2% of the EU's employees – work for social economy enterprises'. See Commission's website, https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu_en.

16 Here again large steward-owned companies like Novo Nordisk, Carlsberg and Bosch are exemplary.

17 Igalla, M., Edelenbos, J. & van Meerkerk, I. Citizens in Action, What Do They Accomplish? A Systematic Literature Review of Citizen Initiatives, Their Main Characteristics, Outcomes, and Factors. Voluntas 30, 1176–1194 (2019). https://doi-org.proxy.uba.uva.nl/10.1007/s11266-019-00129-0.

18 Claudine Madras Gartenberg and George Serafeim, 'Corporate Purpose in Public and Private Firms' (2019) <https://papers.ssrn.com/abstract=3440281> accessed 4 February 2021.

19 Steen Thomsen and others, 'Industrial Foundations as Long-Term Owners' (2018) 26 Corporate Governance: An International Review 180.

20 For example, Bosch has invested in environmental technologies long before the competitors.

21 For how to further improve these energy cooperatives, see the contribution in this whitepaper by Björn Hoops, 'Embrace the Diversity of the Energy Commons!'

22 Jegoo Lee, Douglas L. Kruse, and Joseph R. Blasi, 'Shared Capitalism and Corporate Sustainability: Broad-Based Employee Share Ownership, CEO Ownership, and Corporate Environmental Performance', in: Business & Society 2024. DOI: 10.1177/00076503241254532

23 European Commission, A New Circular Economy Action Plan, COM(2020) 98 final, p. 15.

24 E.g. in the Netherlands, there are more possibilities than in Germany for foundations to pursue commercial goals, which facilitates steward-ownership. See Sanders & Thomsen, Enterprise Foundation handbook (forthcoming).

25 https://purpose-economy.org/content/uploads/purpose-guidebook-for-lawyers10022021.pdf .

26 This follows from interviews conducted in the N-EXT-LAW project with housing cooperatives in the Netherlands. See also the discussion in this whitepaper by Tej Gonza, 'Using the ESOP Model to Scale Broad-based Employee Ownership.'

27 See for example the contribution in this whitepaper by Annika Schneider ' Obstacles towards a more widespread adoption of steward-ownership as an alternative, non-extractive ownership model for businesses.'

28 COM (2017) 572 fnal, p. 3

29 https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=10117&furtherNews=yes#navItem-1

30 On both of these proposals, see the contribution in this whitepaper by Mario Pagano, 'Enhancing Socially Responsible Public Procurement under EU law.'

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