

Steward Ownership – Concept, Potential and Implementation

in Germany and the Netherlands

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Abstract

Steward ownership is a form of business ownership that is gaining international traction. In steward-owned businesses, there are no traditional shareholders. Instead, control is held by stewards who have no entitlement to the business's profit. Profit therefore becomes a means to achieve the organization's purpose, rather than an end in itself.

Worldwide, various approaches are emerging to embed this concept in legal frameworks, drawing on company law, foundation law and trust law. In some countries, designated laws for steward-owned businesses are under discussion. In 2024, at the request of three rapporteurs in the German parliament, an independent academic working group presented a new draft law to establish a "steward owned company" as a distinct legal form. On January 21, 2025, researchers and practitioners submitted a draft with principles for a Dutch legal form for steward owned businesses to the Dutch Minister of Justice, following a parliamentary resolution of April 16, 2024.

In this paper, we introduce the concept of steward ownership, examine its potential societal benefits and outline the key points of the new German draft as an example of how steward ownership could be codified in law. We also touch on the draft principles for a Dutch legal form as another possible approach.

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Introduction

Across the globe, there is growing interest in alternative models of business ownership that foster long-term thinking and address global environmental and social challenges. This is reflected in an impressive worldwide diversity of forms of business ownership, including not only corporate forms but also cooperatives, associations and various forms of employee ownership.

In Europe, well-established foundation-held companies - such as Denmark's Carlsberg and Novo Nordisk - are receiving renewed attention. In these so called 'enterprise foundations,' a business is controlled by a foundation (a non-profit entity), while traditional shareholders typically hold only a minority share.² Meanwhile, in other countries where such forms are unknown or not widely established such as in the US,³ innovative structures like the Oregon stewardship trust have emerged.⁴

A significant example of this movement occurred in 2022, when Yvon Chouinard, founder of Patagonia - a benefit corporation - transferred his shares in the company into a two-tier foundation structure that separated control over the company from its profits. He donated the latter to fight climate change, while ensuring the company's future existence and independence of its leaders. In doing so, Chouinard introduced a business ownership model that does not distribute profits to shareholders. "Companies that create the next model of capitalism through deep commitment to purpose will attract more investment, better employees, and deeper customer loyalty. They are the future of business if we want to build a better world," commented board member Charles Conn. Though Patagonia's approach captured headlines, it was not entirely new - even in the United States - where Organically Grown⁵ had paved the way with a Delaware stewardship trust⁶ and

² See for a definition: ANNE SANDERS & STEEN THOMSEN, ENTERPRISE FOUNDATION LAW IN COMPARATIVE PERSPECTIVE 1 (2023); enterprise foundation law is the topic that is gaining interest for example through the project of the European Law Institute ELI on the topic, in which Anne Sanders is a co-reporter: <https://www.european-lawinstitute.eu/projects-publications/current-projects/current-projects/eli-enterprise-foundations-in-europe/> (last visited Mar. 13, 2025).

³ In the US, tax law creates major obstacles for such enterprise foundations, Ofer Elder, in ENTERPRISE FOUNDATION LAW IN COMPARATIVE PERSPECTIVE 201, 201, 203-204 (Anne Sanders & Steen Thomsen eds., 2023).

⁴ Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 UNIVERSITY OF CINCINNATI LAW REVIEW 707 (2020); for a comparative perspective on steward ownership see: Florian Möslin & Anne Sanders, *Corporate Asset Locks: A Comparative and European Perspective*, FRENCH JOURNAL OF LEGAL POLICY, No. 1 Dec. 2023, at 51; ANNE SANDERS, BARBARA DAUNER-LIEB, SIMON KEMPNY, FLORIAN MÖSLEIN, NOAH NEITZEL & CHRISTOPH TEICHMANN, GESETZ ZUR EINFÜHRUNG EINER GESELLSCHAFT MIT GEBUNDENEM VERMÖGEN 48 (2024), available online: <https://www.mohrsiebeck.com/buch/gesetz-zur-einfuehrung-einer-gesellschaft-mit-gebundenem-vermoegen-9783161640773/> (last visited Jan. 26, 2025).

⁵ Sustainable Food & Agriculture Perpetual Purpose Trust, <https://sustainablefoodandagtrust.com/our-story> (last visited Feb. 18, 2025).

⁶ Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 UNIVERSITY OF CINCINNATI LAW REVIEW 707 (2020).

Open AI originated as a non-profit corporation. Patagonia also benefited from European experiences, where similar structures have existed for decades, spanning companies, partnerships, cooperatives and associations, such as the German manufacturer Bosch.⁷

While structures like these span different countries and different legal forms, they share a key feature: they are not controlled by shareholders who seek to maximize shareholder value by selecting and incentivizing board members. Instead, these entities separate voting rights from rights to profit distribution. In that sense, steward-owned businesses can be described as nonprofit enterprises according to Henry Hansmann's famous definition. Such enterprises are "barred from distributing [their] net earnings, if any to individuals who exercise control over it, such as members, officers, directors or trustees."⁸ Notably, these nonprofit enterprises are not barred from generating profits but from distributing them to certain people.

With this separation of control and profit distribution steward owned businesses aim to maintain long-term independence and often pursue a social or environmental purpose.⁹ German and Swiss groups of entrepreneurs, like GTREU and Purpose Economy, appear to have been the first to analyze such structures and business practices as a uniform concept. These groups have promoted innovative approaches to business ownership, helped existing firms to transition to new models and supported startups by offering advice and networking opportunities. Purpose Economy now collaborates with partners worldwide, such as WeAreStewards and Nonprofit Ventures, and has counterparts in the United States, European countries, Latin America and Asia.¹⁰ Although "steward ownership" is the most common label, other terms - like "purpose ownership," "trust ownership" and "steward controlled business" - are also used.¹¹ Whether there is broad consensus on all elements of the concept remains unclear, making ongoing discussions even more dynamic.

⁷ Prominent examples include the companies Bosch and Mahle, CAMILLE CANON ET AL., STIFTUNG VERANTWORTUNGSEIGENTUM 3 (2019); On the historical development VANESSA FRANKE, DIE ENTWICKLUNG DES VERANTWORTUNGSEIGENTUMS ANHAND DER CARL-ZEISS-STIFTUNG UNTER ERNST ABBE (2024).

⁸ Henry Hansmann, *The Role of Nonprofit Enterprise* 89 YALE LJ 835 (1980).

⁹ Anne Sanders, *Binding Capital to free purpose: Steward Ownership in Germany*, 19 ECFR 622 (2022); Anne Sanders, *Steward-ownership – Transformative Business Ownership in Europe and Germany*, in WHITEPAPER SUSTAINABLE BY DESIGN 45 (Marja Bartl, Rutger Claassen, Nena van der Horst eds., 2024) ; MARVIN REIFF, VERANTWORTUNGSEIGENTUM (2023).

¹⁰ PURPOSE ECONOMY, <https://purpose-economy.org/en/who-we-are/> (last visited Dec. 29, 2024).

¹¹ In Germany, there are also problems to find the right terminology. They are referred to as "*Unternehmen mit gebundenem Vermögen*" („enterprises with a capital lock"), "*Treuhänderisches Unternehmertum*" ("fiduciary entrepreneurship") or "*Verantwortungseigentum*". The term "*Verantwortungseigentum*" is particularly difficult to translate. It is intended to mean "ownership defined by the responsibility with respect to the thing or right being owned," but is often (mis)understood as "Responsible Ownership." Cf. the literature review at the Sanders Chair <https://www.uni-bielefeld.de/fakultaeten/rechtswissenschaft/ls/sanders/verantwortungseigentum/literatur-1/> (last visited Mar. 13, 2025).

Different understandings of the concept are also noticeable in the German and Dutch drafts discussed below.

These drafts are parts of global efforts to implement steward ownership within various legal frameworks and legal systems, not only through existing laws but also via new legislation. In the United States, legislative action in Delaware and Oregon permitted the stewardship trust as early as 2019.¹² Patagonia likewise used trusts for its new structure, with a purpose trust holding voting rights of the company.¹³ In Germany, creating a new legal basis for steward ownership was on the political agenda of the last German government. Upon request of members of parliament from the governing coalition, we, the authors, co-created a draft law on a company for steward ownership in 2024. In the Netherlands, a paper with draft principles on a new legal form for a steward company was published in January 2025.

This paper examines the concept and principles of steward ownership, considers its potential societal benefits, and explores how the proposed German draft and Dutch ideas addresses common challenges. However, given that the German draft is more detailed¹⁴ and prepared (among others) by the authors' of this article, the article shall focus on the German draft.

Part I briefly explains the political development of the German draft law and the Dutch draft principles. Part II introduces the core tenets of steward ownership, and how they are expressed in the German draft law and Dutch principles. Part III discusses the German draft law's further key provisions - ranging from liability rules to supervisory mechanisms with notes on the Dutch ideas. Part IV concludes with reflections on the future of steward ownership, both in Germany, the Netherlands and internationally, and identifies areas for further research and policy debate.

¹² Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 UNIVERSITY OF CINCINNATI LAW REVIEW 707 (2020).

¹³ ACTEC FOUNDATION, PATAGONIA PURPOSE TRUSTS, available online: <https://actecfoundation.org/podcasts/purpose-trusts-patagonia/> (last visited Feb. 9, 2025); Beck Groff and Susan N. Gary, *Patagonia, Purpose Trusts, and Stewardship Trusts – Business with a Purpose*, 37 PROBATE AND PROPERTY 19 (2023)

¹⁴ The German draft offers not only a complete bill for the introduction of a new legal form, but also rules on transformation, co-determination, tax law principles and detailed explanations on 456 pages. The Dutch draft offers an initial draft of principles on 9 pages and not yet a full legislative draft, so the views provided here can only be preliminary.

I. Movement for a new legal form in Germany and the Netherlands

Both in Germany and the Netherlands, there are businesses that already subscribe to the principles of steward ownership. In both countries, there is also a movement for legislative action.

In Germany, steward-owned enterprises mostly use existing structures in foundation and company law (the German closed corporation/private limited company, *GmbH*). Still, a movement of entrepreneurs¹⁵ has argued for a new legal form for steward ownership since 2019. This interest in steward ownership has crystallized into three concrete legislative proposals. These proposals suggest creating a designated legal form or a variant of an existing legal form to better accommodate steward ownership, giving entrepreneurs a new option. In 2020/2021, a German academic working group¹⁶, chaired by Anne Sanders, presented two drafts for implementing the concept as a sub-form of the *GmbH*.¹⁷ In this draft, shareholders had voting rights, but could not receive profit distributions or proceeds at the time of liquidation. These drafts sparked a lively political and legal debate.¹⁸

At the end of 2021, the governing federal coalition incorporated the project of creating a new legal framework in its agenda.¹⁹ In 2024, the rapporteurs²⁰ of the project in the German Bundestag, the German federal

¹⁵ These entrepreneurs have organised in two NGOs, GTREU and Purpose Economy, the latter has project partners across the globe. Both GTREU and Purpose have joined forces in Stiftung Verantwortungseigentum e.V.

¹⁶ The working group was composed of: Prof. Dr. Anne Sanders, Bielefeld University, Prof. Dr. Dr. hc. Barbara Dauner-Lieb, University of Cologne, Prof. Dr. Simon Kempny, Bielefeld University, Prof. Dr. Florian Möslin, University of Marburg, Prof. Dr. Rüdiger Veil, Munich University, Dr. Arne von Freeden, Attorney with Flick Gocke Schaumburg.

¹⁷ ANNE SANDERS, BARBARA DAUNER-LIEB, ARNE VON FREEDEN, SIMON KEMPNY, FLORIAN MÖSLEIN & RÜDIGER VEIL, ENTWURF EINES GESETZES FÜR DIE GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG MIT GEBUNDENEM VERMÖGEN, 2021, available online at: <https://www.gesellschaft-mit-gebundenem-vermoegen.de/der-gesetzesentwurf/>, (last visited Apr. 2, 2024).

¹⁸ Cf. only Arnd Arnold, Ulrich Burgard, Georg Roth & Birgit Weitemeyer, *Die GmbH in Verantwortungseigentum – eine Kritik*, NEUE ZEITSCHRIFT FÜR GESELLSCHAFTSRECHT (NZG) 1321 (2020); Barbara Grunewald & Joachim Hennrichs, *Die GmbH in Verantwortungseigentum, wäre das ein Fortschritt?* NZG120 (2020)1; Matthias Habersack, *Gesellschaft mit beschränkter Haftung in Verantwortungseigentum – ein Fremdkörper im Recht der Körperschaften*, GMBHR 992 (2020); Karl-Georg Loritz & Philipp S. Weinmann, *Die GmbH mit gebundenem Vermögen – Kreative Idee oder Legitimation zum Betreiben eines Unternehmens ohne typische Unternehmerpflichten?* DEUTSCHES STEUERRECHT (DSTR) 2205 (2021); MARVIN REIFF, VERANTWORTUNGSEIGENTUM (2024); Anne Sanders, *Vermögensbindung und Verantwortungseigentum im Entwurf einer GmbH mit gebundenem Vermögen*, NZG 1573 (2021); Rainer Hüttemann & Wolfgang Schön, *Die GmbH mit gebundenem Vermögen – ein Steuersparmodell?* DB 1356 (2021); Simon Kempny, *Die GmbH mit gebundenem Vermögen ist kein Steuersparmodell*, DB 2248 (2021); Hans-Jörg Fischer, *Die GmbH mit gebundenem Vermögen als eine mögliche neue Rechtsform für den Mittelstand*, BB 2114 (2021); a current literature overview can be found at: Sanders Chair, <https://www.uni-bielefeld.de/fakultaeten/rechtswissenschaft/ls/sanders/verantwortungseigentum/literatur-1/>, (last visited Apr. 2, 2024).

¹⁹ Coalition agreement 2021 - 2025 between SPD, Alliance 90/The Greens and FDP, 30; see also: The federal Government, Growth initiative - new economic dynamism for Germany No. 37 (2024).

²⁰ In Germany, governments' legislative projects are typically facilitated by rapporteurs (*Berichterstatter*). They are designated members in parliament, who assume responsibility for a specific bill.

parliament, asked the author Anne Sanders to form a new working group²¹ to prepare a new draft for a steward owned company as a designated legal form.²² The outcome of this project is a draft law introducing a steward-owned company (the legal form is abbreviated below as "GmgV" ("*Gesellschaft mit gebundenem Vermögen*") and the draft law as "GmgVGE") with explanatory notes.²³ This draft legal form has no shareholders, but members like in a cooperatives or association.

The German coalition collapsed in November 2024. It remains to be seen what role the project will play in the next government²⁴ which is likely to be formed by the conservative party, CDU and the Social Democrats, SPD, which had the project in its election program.

In the Netherlands, like in Germany, a movement of entrepreneurs²⁵ is advocating for a new legal form. A parliamentary resolution on April 16, 2024, called for developing such a legal form for steward ownership²⁶ the "*Rentmeestervennootschap*" (hereafter *Dutch-RV*). In response to this, a working group of researchers and practitioners²⁷ drafted principles and ideas for a corporate legal form for steward owned businesses and submitted these to the Minister of Justice on January 21, 2025.²⁸ While the latest German draft proposes a

²¹ The second working group was composed of: Prof. Dr. Anne Sanders, Bielefeld University, Prof. Dr. Dr. hc. Barbara Dauner-Lieb, University of Cologne, Prof. Dr. Simon Kempny, Bielefeld University, Prof. Dr. Florian Möslin, University of Marburg, Dr. Noah Neitzel, Attorney with LindenPartners, Prof. Dr. Christoph Teichmann, University of Würzburg.

²² The rapporteurs were Esra Limbacher (SPD), Katharina Beck (Bündnis 90/DIE GRÜNEN) and Otto Fricke (FDP).

²³ ANNE SANDERS, BARBARA DAUNER-LIEB, SIMON KEMPNY, FLORIAN MÖSLEIN, NOAH NEITZEL & CHRISTOPH TEICHMANN, GESETZ ZUR EINFÜHRUNG EINER GESELLSCHAFT MIT GEBUNDENEM VERMÖGEN, (2024) available online: <https://www.mohrsiebeck.com/buch/gesetz-zur-einfuehrung-einer-gesellschaft-mit-gebundenem-vermoegen-9783161640773/> (last visited Jan. 26, 2025), hereafter German GmgV-Draft, sections of the draft are cited just cited sec, number GmgVGE.

²⁴ Three parties (SPD, FDP and Alliance 90/The Greens), the coalition partners of 2021-2024, have made the creation of a new legal form for steward-owned businesses part of their election programs: SPD REGIERUNGSPROGRAMM 2025 at 6, line 231-235; BÜNDNIS 90/DIE GRÜNEN, ENTWURF ZUM REGIERUNGSPROGRAMM 2025. at 15.

²⁵ WeAreStewards and Non Profit Ventures.

²⁶ 29023-509 Motie d.d. 16 april 2024 – JC Sneller, Tweede Kamerlid Gewijzigde motie van de leden Sneller en Zeedijk over met universiteiten en bedrijfsleven een voorstel uitwerken voor een rentmeestervennootschapsbedrijfsmodel (t.v.v. 29023-4/2).

²⁷ The working group was composed of Sophie Kuijpers (lawyer at De Zaak van Advocaten), Rutger Marres (independent Lawyer), Casper Nagtegaal (candidate civil law notary and partner at De Brauw Blackstone Westbroek), Emilie van Blokland (candidate civil law notary at KB notarissen) and Nena van der Horst (PhD student University of Amsterdam).

²⁸ The principles were also published on this date, see the Dutch version: <https://www.recht.nl/nieuws/ondernemingsrecht/67921f7e67af3f242247/rentmeestervennootschap-uitgangspunten-voor-een-nieuwe-rechtsvorm/>; <https://www.rentmeestervennootschap.nl/Uitgangspunten%20RV.pdf> (last visited Jan. 24, 2025) a rough English draft was prepared with the help of deepl and Melanie Rieback. Hereafter cited as U Uitgangspunten van de Rentmeestervennootschap.

novel stand-alone legal form, the Dutch RV is conceptualised as a sub-form of the Dutch private limited company (“*Besloten vennootschap*”, BV).

II. The concept of steward ownership

1. Basic principles

The concept of steward ownership is characterized by two basic principles.²⁹ The first principle is self governance. The second principle says that profits should be a means to an end, not the end itself and should thus support the business and its purpose. This principle is deeply intertwined with the “asset lock”.

These principles require legal tools for implementation. As already mentioned, in different countries, different legal tools are used and the adoption of new legal frameworks is under discussion.

a) Self Governance – control by stewards

Self governance requires that control of the steward owned enterprise should remain with the stewards. Stewards should be actively involved entrepreneurs, not absentee owners interested in capital returns. To further explain this principle, we first define the term “steward.” Second, we examine rules and mechanisms which may structurally enforce active involvement of the stewards.

aa) Who are the Stewards?

At its most basic, a steward or steward owner is a person with ultimate decision-making power over a company. This person should use her power in an engaged entrepreneurial way in the best interest of the business, not in the interest of personal profit. The term “steward” in this context should not be confused with the term “investment stewardship” used by institutional investors.³⁰

²⁹ See GmgVGE 32; MARVIN REIFF, VERANTWORTUNGSEIGENTUM, at 4 (2024) identifies three basic principles, but the result is the same.

³⁰ See BLACKROCK, STEWARDSHIP AT BLACKROCK, <https://www.blackrock.com/corporate/insights/investment-stewardship> (last visited Mar. 13, 2025); VANGUARD, INVESTMENT STEWARDSHIP <https://corporate.vanguard.com/content/corporatesite/us/en/corp/how-we-advocate/investment-stewardship/index.html> (last visited Mar. 13, 2025); JP MORGAN, INVESTMENT STEWARDSHIP, <https://am.jpmorgan.com/us/en/asset-management/adv/about-us/investment-stewardship/> (last visited Mar. 13, 2025) ; JP Morgan defines investment stewardship as “the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries.”

Whether stewards are legally conceptualized as trustees, members or shareholders or something else depends on the particular legal regime in which steward ownership is implemented. Insofar, the term “steward ownership” functions as a legal metaphor rather than a precise legal term.³¹ For example, in an enterprise foundation, there are no shareholders, trustees or company members - only board members who act as stewards.³² By contrast, in an Oregon stewardship trust, the voting shares of the company are held in trust, and a trustee (supervised by a trust enforcer) occupies some of the functions that a beneficiary would take in a conventional trust arrangement. A separate trustee committee handles the day to day-administration of the business.³³ Meanwhile, non-voting shares might be given out to secure financing.³⁴ In this arrangement, the trustee and the members of the trustee committee can be seen as stewards, because they ultimately control the company.

If a limited company or corporation is used as the basis for steward owned business, shareholders with voting rights but no rights to dividends can be regarded as the stewards. While investors may receive shares without voting rights, they are not steward owners (see the table below).

The new German draft law (GmgVGE) proposes a designated legal form where stewards are members of the company. There are no shares and thus no shareholders. Despite this, the draft law uses the term “*Gesellschafter*” which can be loosely translated as partner, or shareholder and not the German (legal) term for “member,” “*Mitglied*,” because it does not convey the image of an entrepreneurial activity. However, in this article, we use the term “member” because it better describes the legal character of the people engaged in the entity.³⁵ This terminological conundrum illustrates well how conventional legal terms and categories often do not easily map onto steward ownership.

According to the Dutch RV-principles, the novel Dutch legal form has shareholders. However, these shareholders have no voting rights, only some enforceable rights to information regarding the company. There is a council of stewards (*raad van rentmeesters*) that executes control rights usually held by shareholders,

³¹ GmgVGE 33

³² See the definition of enterprise foundations in the introduction. However, even if the foundation itself has no shareholders or members, it may be a shareholder of a company.

³³ Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 UNIVERSITY OF CINCINNATI LAW REVIEW 707, 725-729 (2020).

³⁴ Susan N. Gary, *The Oregon Stewardship Trust: A New Type of Purpose Trust that enables Steward Ownership of a Business*, 88 UNIVERSITY OF CINCINNATI LAW REVIEW 707, 729 (2020).

³⁵ The role of the *Gesellschafter*/member in the draft law draws on elements from cooperatives (*Genossenschaften*), associations (*Vereine*), limited partnership law (*Kommanditgesellschaften*) and the German private limited company (*GmbH*), see GmgVGE 175.

such as decisions over changing the charter and profit-distributions to those shareholders that may receive dividends.³⁶

bb) How is Self Governance Enforced?

The principle that shareholders or members of a steward-owned business should be actively engaged entrepreneurs can be supported by several legal mechanisms: the asset lock (which is discussed below), restrictions on the type of persons who are eligible to become stewards and restrictions on the fungibility of the position as a steward. These mechanisms are not the only possible legal tools, as exemplified by the German draft, which is discussed below.

Under the asset lock, stewards may work in the enterprise, e.g. as a managing director, and receive a salary at arms lengths, i.e. not higher than the usual market value of the service. However, they may not receive profit distributions neither during the lifetime of the company or upon liquidation. This facilitates self-selection of these people. Typically, only those who are primarily interested in active entrepreneurial involvement will choose to become stewards.³⁷ Persons who seek the status of an absentee owners and merely want to invest capital will not choose such a position (unless they plan to break the rules, which must be stopped by appropriate mechanisms). However, investors who receive a profit-oriented return but do not claim any decision-making rights as shareholders or members are compatible with the model.

For purpose of illustration, see the following table:

	Steward	Investor
Control over company / voting rights	Yes - should use this right as an engaged entrepreneur	No
Right to profits	No	Yes

Stewards should generally be natural persons. Legal persons, especially anonymous investment companies should be excluded from the role as a steward. This restriction fosters accountability through transparency as well as a personal connection between stewards and companies. Exceptions to this rule might be useful when it comes to ensuring that a company does not end up without anyone controlling them – picture a

³⁶ Uitgangspunten van de Rentmeesterverenootschap II 2, 3 at 5-6.

³⁷ In this respect, the asset lock may promote purposeful enterprises as advocated by Cathy Hwang and Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER part II (2025).

fateful car crash in which all stewards die. To avoid this scenario, it makes sense to allow for at least some types of legal persons (who are in a sense structurally immortal) to be eligible to become stewards – at least as a temporary last resort. The position as a steward should not be a commodity. Unlike fungible shares which can be bought and sold, there should be no market for control of steward-owned companies. This means that control does not go to the highest bidder, who might be incentivized to recoup their investment through circumvention of the asset lock. Instead, the role as steward should be passed on to people who display the highest potential for good leadership and who share the values of the company. Current stewards should choose future stewards based on these principles.

In order to ensure a personal commitment of stewards, the position should also not be obtained through inheritance.

The German draft, in which the stewards are the members of the company, implements self governance through several provisions. The GmgVGE (the draft bill that introduces the new legal form, the GmgV) explicitly codifies the principle of the "actively engaged" member as a reference point for interpreting the law.³⁸ Only natural persons and legal entities with asset-locks can become members.³⁹ Unlike in a German public limited company or stock corporation (GmbH or AG), members do not hold transferable or inheritable fungible shares. Instead, membership is established upon joining the GmgV and ceases when the person leaves or dies.⁴⁰ Each member generally has the same voting weight, expressing the fundamental equality of all members, although deviating rules remain possible in the articles of association.⁴¹ Rules for joining, terminating and excluding members have been drafted taking into account German cooperative regulations.⁴² It is relatively easy to terminate membership, as members should only remain in the GmgV if they continue to support the company's mission and purpose.⁴³ Members hold directors accountable. As in other small German limited companies, there is no mandatory independent supervisory board.

In the Dutch RV, the stewards, the members of the council of stewards must also be natural persons. The draft states that the bylaws or regulations of the Dutch RV may include a profile (i. e. selection criteria) regarding the stewards. The Dutch draft also lays out that members of the council of stewards have the duty to act in the interest of the company and its purpose/mission for instance when deciding on paying dividends to the non-voting shareholders. If they violate their duties, they are liable to the company and may be

³⁸ § 1 (1) sentence 1 GmgVGE.

³⁹ § 9 (1) GmgVGE; GmgVGE 170.

⁴⁰ § 10 (1) GmgVGE; GmgVGE 175.

⁴¹ GmgVGE § 34 (2); GmgVGE 220.

⁴² GmgVGE §§ 11-14.

⁴³ GmgVGE 181.

removed by the council of stewards or the board of directors. They may receive a remuneration for their service that shall not exceed the statutory limits of the Dutch Act on Top Incomes (*Wet Normering Topinkomens*). Members of the steward council cannot simultaneously be shareholders with rights to profits, so investors and stewards are strictly separated.⁴⁴ However, as explained below, there might be a future debate on admitting a limited number of shareholders on the council of stewards.⁴⁵

Self governance also should mean that stewards are not merely involved in high-level decision making but also in the daily business of their business. They can do so by being employed as managers. Because of this, the German draft allows members (the stewards) to work as managing directors. This, however, is not mandatory, so as to allow for flexibility (for example during long instances of illness or pregnancy). Whether or not the draft RV-Principles allow for such active involvement remains unclear. The Dutch draft mentions that the council of stewards holds directors, and if one exists, the supervisory board accountable. This might indicate that stewards may neither be directors nor members of a (non mandatory) supervisory board, because this could conflict with their supervisory role. Moreover, the draft states that the supervisory board (if there is one) is closer to the board of directors than the council of stewards, which signals that the stewards might not be close to day to day decision making.⁴⁶ However, since there is nothing in the Dutch draft saying that members of the council of stewards cannot work in the company, for example as directors, we assume that a double position as a director and steward is possible. Nevertheless, this should be clarified. However, both the Dutch RV and the GmgV must also grapple with the fact that direct involvement by the stewards can mean that there is no separate body to supervise the directors. Such a combination of directors and shareholders or members as ultimate controllers is common in companies around the world. Whether this can lead to challenges in ensuring effective and efficient governance in the context of steward ownership will be discussed further at III. 5.

b) Profits as a means to an end – asset lock

At the heart of steward ownership is the idea that a business should be controlled by stewards, not shareholders with voting rights incentivized by profit distributions. The profits of the steward-owned business⁴⁷ belong to the company (i.e. the legal entity that owns the business and its assets) and not to the shareholders

⁴⁴ Uitgangspunten van de Rentmeesterverenootschap II 2. at 5-6.

⁴⁵ Uitgangspunten van de Rentmeesterverenootschap II 2. at 5, 8. n.11.

⁴⁶ Here raad van commissarissen: Uitgangspunten van de Rentmeesterverenootschap at 7.

⁴⁷ The term "business" "Unternehmen", is not defined uniformly in German law, see BGH, judgment of October 26, 1959 - KZR 2/59, BGHZ 31, 105-114, juris, para. 8; BGH, judgment of October 13, 1977 - II ZR 123/76 -, BGHZ 69, 334-337, para. 6. It can be described as a "community of people working together [with material resources]" in the sense of a "real unit of action", whose owner is the company, CAMILLE CANON ET AL., VERANTWORTUNGSEIGENTUM - UNTERNEHMENSEIGENTUM FÜR DAS 21. JAHRHUNDERT 3 (Purpose Stiftung ed. 2020); KARSTEN SCHMIDT, HANDELSRECHT 75 (6th ed. 2014); MARVIN REIFF, VERANTWORTUNGSEIGENTUM 5 (2024).

or members with voting rights.⁴⁸ As a result, voting rights are to be separated from (any) profit participation rights. It is also conceivable to implement the concept by creating different share classes or members. In this case, as in the Dutch draft principles, there would be shares or members with voting rights but without profit participation rights and shares or members without voting rights but with profit participation rights. At least in Germany, this is known as the “asset lock”, “capital lock” or “profit distribution constraint.” (*Vermögensbindung*).⁴⁹ Such asset locks are well known from civil law foundations, legal entities without members of shareholders pursuing a private or public benefit purpose set by their founder. Their assets may only be used in accordance with that purpose.⁵⁰ Such asset locks are also known from charitable entities and social enterprises, where profits may only be distributed in pursuit of their purpose.⁵¹ Steward-owned businesses do not necessarily pursue a charitable or beneficial purpose. Their surpluses can be used for various entrepreneurial, or charitable purposes, but cannot be distributed to the stewards.⁵² Similarly, the liquidation proceeds must also be used for such purposes and may therefore not be distributed to stewards.⁵³ This principle represents a reversal of the conventional means-end relationship: profits are a means to an end and not the purpose of the company.⁵⁴

The term “asset lock” is misleading. Steward owned businesses do not have “locked assets,” but they can exchange their assets freely and change the way they use them. As an alternative term, “capital lock” has been suggested and used.⁵⁵ This is still not ideal, because capital can be invested but just not paid out to members/shareholders with voting rights. Perhaps the term “distribution constraint” may be more precise and closer to the classic definition by Henry Hansmann.⁵⁶ Nevertheless, we primarily use the term asset

⁴⁸ CAMILLE CANON ET AL., VERANTWORTUNGSEIGENTUM - UNTERNEHMENSEIGENTUM FÜR DAS 21. JAHRHUNDERT at 12, 15 et seq, 57 et seq (Purpose Stiftung ed. 2020).

⁴⁹ PURPOSE FOUNDATION, STEWARD-OWNERSHIP – RETHINKING OWNERSHIP IN THE 21ST CENTURY at 11, https://purpose-economy.org/content/uploads/purposebooklet_en.pdf. (last visited Mar. 13, 2025).

⁵⁰ ANNE SANDERS AND STEEN THOMSEN, CONCLUDING OBSERVATIONS, IN ENTERPRISE FOUNDATION LAW IN COMPARATIVE PERSPECTIVE 222-224 (Anne Sanders and Steen Thomsen eds., 2023).

⁵¹ Florian Möslin & Anne Sanders, *Corporate Asset Locks: A Comparative and European Perspective*, FRENCH JOURNAL OF LEGAL POLICY, No. 1 Dec. 2023, at 51; Rasmus Kristian Feldthusen, Susanne Kalss & Christoph Teichmann, *Unternehmensträger mit Vermögensbindung*, ZGR 862 (2024).

⁵² § 16 GmgVGE.

⁵³ § 71 GmgVGE.

⁵⁴ See in this regard MARVIN REIFF, VERANTWORTUNGSEIGENTUM 8 (2024). In corporations, the purpose of the company is usually to generate profits for the benefit of the shareholders; Hans Christoph Grigoleit, *Commentary on § 1 AktG para 7*, IN AKTIENGESETZ: AKTG (Hans Grigoleit ed., 2nd ed. 2020); Andreas Pentz, *Commentary on § 23 AktG para 71*, IN MÜNCHENER KOMMENTAR ZUM AKTIENGESETZ: AKTG (Wulf Goette et al eds., 6th ed. 2024); Holger Fleischer, *Commentary on § 1 GmbHG para 19*, IN MÜNCHENER KOMMENTAR ZUM GMBHG (Holger Fleischer et al eds. 4th ed. 2022).

⁵⁵ Marvin Reiff, *Entwurf eines Gesetzes für die GmbH in Verantwortungseigentum (VE-GmbH) vorgelegt*, ZIP 1750 (2020); Anne Sanders, *Binding Capital to free purpose: Steward Ownership in Germany*, 19 ECFR 622, 629 (2022).

⁵⁶ See Cathy Hwang & Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER 7 (2025).

lock because it is more widely recognized, such as in the context of social enterprises like the UK Community Interest Company.

The asset lock is a guiding principle in the German draft law.⁵⁷ Members of a GmgV, the stewards, may only receive goods, money or services from the GmgV at fair market value, e.g. a salary in line with the market for work as a managing director. Profits remain in the GmgV for reinvestment, donations and development. In the event of liquidation and dissolution, which the members are free to decide, the proceeds from the sale of the GmgV's assets, including the business, are transferred to another GmgV or to a charitable foundation. This approach is familiar from German foundation law.

The Dutch RV-principles do not mention an asset lock. They do however suggest that shareholders with rights to profit distributions may not have voting rights.⁵⁸ The voting powers held by shareholders in a traditional company are held by a council of stewards.⁵⁹ Stewards may not be shareholders at the same time and their remuneration is capped. This suggests a separation of control and profits, that is typical for the asset lock. However, according to footnote 11 of the Dutch draft, there are structures (which are considered steward owned) in the Netherlands where rights to profits are combined with limited non-controlling voting rights. This may for example be the case, where start-ups want to compensate their founders for their work or members of a family business want to secure income. The RV-principles explain that more research is necessary on these points.

This seems to indicate that – for the Dutch RV – the degree of separation of voting rights and profit distribution is not yet finally decided. Specifically, the draft principles seem to suggest that in the future some members of the council of stewards may also be shareholders with profit rights, at least in some cases. This touches on a crucial issue for steward ownership. In our opinion, the conceptual integrity of steward ownership requires that control rights and profit rights must be meaningfully separated. Otherwise, there is no real difference to a traditional corporation where shareholders control decisions and there is no need for a separate council of stewards. Also, if there are stewards with profit interests, the enterprise is not a nonprofit in the sense of Henry Hansmann, even though overall control might still be held by stewards. Control over a business is a well-known topic of company law. However, the question of what degree of control is

⁵⁷ § 1 (1) sentence 1 GmgVGE.

⁵⁸ Unlike for example in the British community interest company, there is no cap in the percentage of profits that can be paid out to shareholders, *Uitgangspunten van de Rentmeesterverenootschap II Vermoegen en uitkeringen* 7. See on the CIC: J. S. Liptrap, *British social enterprise law*, 21 *Journal of Corporate Law Studies* 595-630 (2021); J. S. Liptrap, *The social enterprise company in Europe: policy and theory*, *JOURNAL OF CORPORATE LAW STUDIES* 495 (2020).

⁵⁹ *Uitgangspunten van de Rentmeesterverenootschap II* 3, 6.

desirable for steward owned businesses deserves further discussion. Is it a majority of votes including multiple voting rights or a qualified majority excluding veto power? At the very least, it must be determined by nuanced deliberation. Bright line tests will not provide clear or helpful answers in each case. The degree of influence, which persons with profit rights may exercise over steward owned company, must follow from the goals which steward ownership ultimately serve. These goals are discussed below.

For the Dutch RV, the prospect of having shareholders with profit rights on the steward council raises the question of which number or percentage of these shareholder-stewards would be too many. One might conclude with some certainty, that a limit would be reached, where such members hold a “controlling interest” in the company. Determining a controlling interest is a well known topic of corporate law. In this case, much depends on whether there are decisions that can only be made with a qualified majority, e.g. a changing the charter. If the Dutch RV requires a high majority for such changes, a minority of shareholder-stewards could hold a powerful veto-force in this regard. Having the option of steward-shareholders might make the Dutch RV more attractive to a wider range of businesses, however, it could also jeopardize the conceptual integrity of the legal form. This risk is well explained in the recent discussion of the dramatic story of OpenAI by Eldar and Øberg. Eldar and Øberg persuasively argue that the risk of investors pushing for mission drift to increase profits should not be underestimated but regarded as a major factor in regulating nonprofit controlled businesses.⁶⁰ In fact, even shareholders without formal voting rights may have considerable de facto influence in the RV.

The conceptual integrity of the asset lock must also be upheld in the context of rewarding the founders of start-ups. This issue came up in Germany as well. This is an important issue, because founders of start-ups typically work for below-market rate wages, hoping that they will ultimately be rewarded by cashing in via a lucrative exit. Steward ownership must find ways to be attractive for start-ups while not giving up the asset lock. The GmgV addresses this by allowing start-ups to reimburse founders for past below-market wages, once the financial situation of the company has improved. However, this is not a distribution of profits but a deferred payment of a salary.⁶¹ Founders are merely put in the financial position which they would have had, if they had received a market-rate salary from the start. They cannot access the market value of the company. This is meaningfully different from a conventional exit-scenario where a founder may access the full market value of the company, regardless of the market value of the labor that they have invested in the company. Nevertheless, this point was sometimes misunderstood in Germany and has caused

⁶⁰ Oder Eldar & Mark Øberg, *The Anatomy of Nonprofit Control of Business Enterprise*, 820 ECGI WORKING PAPER 27-29, 52 (2025).

⁶¹ GmgVGE 269-271.

irritation by critics, who argue that it is hypocritical to have an asset lock while getting such deferred payments.

The separation of control rights and profit rights is a not only an issue when it comes to shareholders and members. If one wants to truly separate profit rights from control rights, managing directors – who hold significant influence over the day-to-day business – may also not hold profit rights. Therefore, the GmgVGE stipulates that managing directors of a GmgV may not receive profits, even if they are not steward-members. However, nothing in the Dutch-RV paper indicates that managing directors cannot be shareholders with profit rights at the same time, perhaps even be the only shareholders.⁶² It is true that members of the council of stewards cannot be shareholders at the same time and that they are bound to act in the best interest of the company. However, if the managing director is one or maybe the only shareholder with profits rights, there are considerable incentives to make day to day decisions with an eye to profits, no matter what the council of stewards says. Henry Hansmann’s definition of a nonprofit enterprise says that profits restriction must not only apply to members, but also to directors.⁶³ However, Hansmann’s definition has of course no binding force to any legislator. One must also keep in mind that Danish enterprise foundations – which are seen as manifestations of steward ownership – also allow executives of subsidiary companies to hold profit rights.⁶⁴ Thus, there is no uniform approach to this question yet. The important governance implications of the Dutch draft will be discussed below. However, any policy maker who seeks to introduce legal structures for steward ownership in their country should at the very least be mindful of the centrality of the separation of control and profit rights and the influence of directors on daily decisions.

2. Potential Benefits of Steward Ownership

Steward ownership may have two main socio-political potential benefits.⁶⁵ First, it could create new opportunities for facilitating corporate succession (a) while at the same time maintaining entrepreneurial flexibility (b). This way, it could be argued, steward ownership can promote the long-term independence of businesses in the interest of the larger economy (c). Second, it can structurally promote a long-term orientation in corporate governance (see d). It should be kept in mind that it is not yet clear if all these benefits

⁶² Uitgangspunten van de Rentmeestervennootschap II Bestuur 7.

⁶³ Henry Hansmann, *The Role of Nonprofit Enterprise*, 89 YALE LJ 835 (1980).

⁶⁴ Steen Thomsen, Foundation Ownership at Novo Nordisk, 4. May 2016, p. 13. <https://www.enterprisefoundations.dk/wp-content/uploads/2020/08/Novo-Nordisk-09.pdf> (last visited Mar. 13, 2025). It should be kept in mind, however, that the directors will not hold all profit rights to the business and that Danish enterprise foundations are not only subject to regulation with respect to the foundation board but also supervised by a powerful supervisory authority.

⁶⁵ For a more detailed discussion of these potentials, see GmgVGE at 46.

can indeed be achieved by steward ownership. There is empirical evidence on the economic success and beneficial effects of Danish enterprise foundations.⁶⁶ However, more empirical research is necessary on steward owned businesses in other forms and countries.

a) Succession

The asset lock may facilitate company succession - especially for medium-sized companies. Many family businesses face the challenge that there are no suitable or willing successors within the biological family.⁶⁷ On the one hand, potential successors - particularly among the workforce - often lack the financial means to buy a company and are reluctant to take on debt for a leveraged acquisition.⁶⁸ Entrepreneurs, on the other hand, are usually unwilling to simply gift the company to such persons as they fear that their successors could sell the company to competitors or other investors for their own financial gain.⁶⁹ As a result, the company is often sold outright. This often leads to considerable outflows of cash from the company because the purchaser needs to refinance the purchase price.⁷⁰ There is also a risk of such outflows if the business is passed on within the family to financially compensate the family members who are not included in the business.

By contrast, the permanent asset lock or division of control rights and profits allows for the transfer of control to persons who are chosen for their entrepreneurial skills and not because of family ties (succession within a "family of merit and values"). As the successors are only remunerated for their labor and cannot

⁶⁶ See Steen Thomsen, Thomas Poulsen, Christa Winther Børstig & Johan Moritz Kuhn, *Industrial Foundations as Long-Term Owners*, 556 FINANCE WORKING PAPER (2018); Steen Thomsen & Nikolaos Kavadis, *Enterprise Foundations. Law, Taxation, Governance, and Performance*, 6 ANNALS OF CORPORATE GOVERNANCE 227–333 (2022); Christa Winther Børstig & Steen Thomsen, *Foundation Ownership, Reputation and Labour*, in 33 OXFORD REVIEW OF ECONOMIC POLICY 317 (2017); David Schröder & Steen Thomsen, *Foundation Ownership and Sustainability*, in 2023 Academy of Management Proceedings (Sonia Taneja ed., 2023); Rasmus Feldthusen & Steen Thomsen, *How enterprise foundations can sustain sustainability: The European Relevance of a Nordic Ownership Model*, in NORDIC COMPANY LAW: BROADENING THE HORIZON 111 (Beate Sjøfjell & Jukka Mähönen eds., 2023); Nikolas Kavadis & Steen Thomsen, *Sustainable Corporate Governance: A Review of Research on Long-Term Corporate Ownership and Sustainability*, in 31 CORPORATE GOVERNANCE: AN INTERNATIONAL REVIEW 198 (2023); Steen Thomsen & Nikolas Kavadis, *Enterprise Foundations. Law, Taxation, Governance, and Performance*, 6 ANNALS OF CORPORATE GOVERNANCE 227–333 (2020).

⁶⁷ In 2023, around 42% of the 1,500 to 2,000 companies surveyed as part of the FamData survey stated that they had not yet found a management successor from within the family: Johanna Garnitz, Anette von Maltzan & Johannes Müller, *Nachfolge-Monitoring deutscher Familienunternehmen*, 12 IFO SCHNELLDIENST 46, 48 (2023).

⁶⁸ Studies show that financial risk, a lack of capital and a lack of social security are major obstacles to taking over or starting a business: GEORG METZGER, KFW-GRÜNDUNGSMONITOR 2024, at 14 (2024); MARC EVERS, DIHK REPORT ON BUSINESS SUCCESSION 2024 - FIGURES AND ASSESSMENTS ON GENERATIONAL CHANGE IN GERMAN COMPANIES 13 (German Chamber of Commerce and Industry ed., 2024).

⁶⁹ See also ARMIN STEUERNAGEL, DIE STIFTUNG 9, 15, (2023); Till Wagner, *Pro und Contra: Verantwortungseigentum*, 4 STIFTUNG & SPONSORING (S&S) 32 (2022). Solutions must be found that ensure an appropriate pension for an entrepreneur whose main asset is the company.

⁷⁰ In this regard MARVIN REIFF, VERANTWORTUNGSEIGENTUM 239, n.599 (2024).

appropriate the company value, there is no longer a financial burden on the company to buy out the business. Additionally, within this legal framework, entrepreneurs can trust that the successors will in turn pass the company on to the next generation of capable successors.⁷¹ Of course, this form of succession is not right for everybody. A successor who wishes to receive profits from the business in the future will not be happy with this arrangement. They need to finance a regular purchase. For other people, steward ownership may offer entrepreneurial freedom without debt.

The division of control rights and profit thus not only expands the scope for action in resolving succession issues, but also promotes social mobility within the entrepreneurial community.⁷² Future generations of stewards are no longer selected based on their ability to pay for the company shares. Instead, those who share the values of the company from the perspective of the previous generation and are most likely to be able to successfully manage the company in line with these values can join as stewards.⁷³

b) Entrepreneurial flexibility

Steward ownership allows for flexible entrepreneurial decision making. The fact that the asset lock preserves the independence of businesses does not mean that it restricts the free movement of assets in the market or seeks to perpetuate a certain business model.⁷⁴ The existence and fate of the business remain dependent on the economic success and will of the stewards.⁷⁵ The entrepreneurial purpose of a steward-

⁷¹ In terms of social psychology and behavioral economics, the asset-lock creates conditions for *conditional cooperators* to engage in cooperative behavior: many people are willing to contribute to the creation and maintenance of public goods if they believe that other people will also contribute. Passing on a business outside the family free of charge can contribute to social mobility in business succession and to a decentralized, competitive market economy. This can be seen as a contribution to a public good, but this presupposes that entrepreneurs can trust that other people will also contribute. In this respect, the asset-lock serves as a safeguarding mechanism for cooperative behavior, Urs Fischbacher, Simon Gächter & Ernst Fehr, *Are people conditionally cooperative? Evidence from a public goods experiment*, 71 *ECONOMICS LETTERS*, 397-404 (2001); Urs Fischbacher & Simon Gächter, *Social Preferences, Beliefs, and the Dynamics of Free Riding in Public Goods Experiments*, 100 *THE AMERICAN ECONOMIC REVIEW* 541-556 (2010).

⁷² Of course, the asset-lock should not be glorified as a panacea for ensuring meritocratic corporate succession. Michael Hartmann, *Nichts Neues an der Spitze der Großunternehmen!? Die deutsche Wirtschaftselite zwischen 1970 und 2020*, 30 *BERLINER JOURNAL FÜR SOZIOLOGIE* 347-368 (2020), on the dominant role of social origin in the filling of management positions in business.

⁷³ Steen Thomsen, Siv Catharina Hereith Levorsen & Andreas Beckmann Nilhausen argue that industrial/enterprise foundations contribute to greater wealth equality in Denmark because the profits of the foundation companies would otherwise accrue to the richest Danish families. *Enterprise Foundations and Inequality*, ENTERPRISE FOUNDATIONS WORKING PAPER (2023).

⁷⁴ M. w. w. See MARVIN REIFF, VERANTWORTUNGSEIGENTUM 201 (2024).

⁷⁵ No business is to be “perpetuated”. See w. w. On this aspect, see MARVIN REIFF, VERANTWORTUNGSEIGENTUM 209 (2024). The legal form is also not comparable with the rightly dissolved “Fideikommisse”, MARVIN REIFF, VERANTWORTUNGSEIGENTUM 206 (2024) with further references.

owned company is not determined by the founders for all eternity. Each generation of stewards can make any decision about the company, including realignment, sale or liquidation.

In the GmgV for example, members can decide to sell the company - also for the purpose of consolidation - through an asset deal. A sale via a share deal is also possible; for instance, if members spin off the business to a subsidiary of the GmgV and then decide to sell the shares to an investor.⁷⁶ The proceeds from the sale flow to the GmgV which formerly owned the business and can then be used for new entrepreneurial or non-profit purposes. However, they may not be distributed to the members. The business as an organizational unit can therefore continue to exist without being subject to an asset lock. The wealth generated in the GmgV, on the other hand, continues to be subject to the asset lock and is reallocated to a new use as decided by the members. The GmgV therefore allows for constant further development and realignment of the business without violating trust in the asset lock.⁷⁷ The Dutch principles also do not prohibit the sale of the business or its assets.

c) Long-term independence of businesses

Organizing succession with steward ownership may not only offer benefits to persons who cannot or do not want to finance a purchase. Steward ownership also offers the opportunity to preserve the company as an independent entity. This is particularly the case if the only alternative would be to sell the company to a larger competitor.

In this way, the asset lock may structurally promote a decentralized economy with a diverse landscape of companies and innovative competition. It achieves this by counteracting economically disadvantageous market concentration⁷⁸ and the resulting reduction in competition.⁷⁹ In this competition, however, steward-

⁷⁶ GmgVGE 303.

⁷⁷ GmgVGE 46, 303.

⁷⁸ Market concentration, i.e. the concentration of market share in a sector to individual companies, can have several detrimental consequences for consumers in particular and the economy in general: Increasing market concentration increases the risk of anti-competitive agreements. In addition, markets with high market concentration typically have high barriers to entry for competitors. This has a detrimental effect on competition and the development of innovation. Furthermore, market concentration increases the risk of political influence by companies to the detriment of competition. Finally, market concentration on individual companies can result in an economic cluster risk, in which the endangerment of individual companies poses systemic risks, Helen Heidorn & John P. Weche, *Business Concentration Data for Germany*, 241 JAHRBÜCHER FÜR NATIONALÖKONOMIE UND STATISTIK 804 (2020); monograph on this topic MASSIMO MOTTA, COMPETITION POLICY (2004). However, market concentration can also translate into efficiency advantages and innovation gains to a certain extent, so that a distinction must be made between "good" and "bad" market concentration, Thomas Philippon, *The Economics and Politics of Market Concentration*, in 4 THE REPORTER 11-12 (2019),.

⁷⁹ Lars Feld & Bruno Frey, "Verantwortungseigentum" can strengthen the plurality of the social market economy, WELT (Mar. 19, 2021), <https://www.welt.de/wirtschaft/article228655091/Verantwortungseigentum-Wertvoll-fuer-die-soziale-Marktwirtschaft.html> (last visited Mar. 13, 2025).

owned companies must assert themselves in the same way as other companies. They should not receive any tax privileges and must operate profitably.

At the same time, steward ownership can protect national champions from being bought up and moved out of a company. This can be seen in Danish enterprise foundations. If not for the foundations controlling these companies, successful businesses like Novo Nordisk or Maersk might have been sold long ago to investors outside Denmark which might have moved their headquarters elsewhere.⁸⁰

d) Long-term oriented entrepreneurship by shaping incentives

The asset lock can structurally promote long-term orientation in entrepreneurship.⁸¹ It creates a framework that avoids *shareholder primacy* and the associated externalities (see aa). Instead, it can promote corporate governance according to the principles of *stakeholder value* and the *purpose economy* (see bb). The asset lock achieves this by structurally shaping the incentives of decision-makers (see cc).⁸² The resulting incentive structure provides a suitable basis for entrepreneurial motivation (see dd).

aa) Turning away from shareholder primacy

Steward ownership rejects shareholder primacy or *shareholder value orientation*. Shareholder primacy is a management philosophy that has prevailed in US legal and economic discourse since the 1970s and spread from these circles to Europe. Probably the most central figure behind this principle was Milton Friedman, who, in a now famous article, argued that the sole duty of corporate managers is to serve the interests of

⁸⁰ The asset-lock might therefore facilitate competition while also preserving local ownership. Foreign direct investments remain possible though through non-voting shares or mezzanine-capital, see part II. 3.

⁸¹ This is reflected in § 1 (1) sentence 2 GmgVGE, according to which "the asset-lock [...] is intended to facilitate long-term value creation, taking into account the interests of the stakeholders". This wording describes a key mechanism of the asset-lock and at the same time specifies the guiding principle of the GmgV. A distinction must be made between two levels of impact: Firstly, asset-locks avoid *short-termism* and promote the long-term nature of entrepreneurial activity. Secondly, the asset-lock avoids *shareholder primacy* and structurally promotes the consideration of stakeholder interests (stakeholder value orientation). Concerning the difference between these two aspects, ECKART BUEREN, SHORT-TERMISM IM AKTIEN- UND KAPITALMARKTRECHT, 74 (2022): "The shorttermism accusation is aimed at behavior that is detrimental to the economic success of the company or companies in question in the long term because achievable future earning potentials are given away for short-term gains. Ethical considerations play no independent role here. To put it bluntly: exploiting employees or causing serious environmental damage during production certainly violates the principles of CSR [i.e. taking stakeholder interests into account], but does not constitute short-termism if the behavior works as a business model, i.e. is more profitable for the company than alternative (possibly longer-term) strategies, even taking into account the follow-up costs."

⁸² In more detail see Marvin Reiff, *Verantwortungseigentum, Nachhaltigkeit und Kapitalismus*, in NACHHALTIGKEITSRECHT: SELBSTVERSTÄNDNIS, STATUS QUO UND PERSPEKTIVEN 207-228 (Bayer et al. eds., 2022); Noah Neitzel, *Vermögensbindung und Nachhaltigkeit*, KJ 479, (2022).

shareholders.⁸³ In his view, shareholders generally have an interest in earning as much money as possible through their investment. Accordingly, management should align all its actions with the goal of maximizing the profits of the companies it manages.⁸⁴ In particular, management should not sacrifice shareholders' profits in favor of other stakeholders. Milton Friedman's thinking continues to enjoy a significant following to this day. In the United States, shareholder primacy is legally reflected in the corporate law of several states, including Delaware, which is particularly important for listed companies. There, the management has a duty to act solely in the interests of shareholders.

Shareholder primacy is criticized for driving companies to maximize profits, even if this is at the expense of people and the environment.⁸⁵ These so-called externalities include carbon emissions from factories which contribute to the ongoing climate crisis, tobacco products that harm consumers or spyware that is used to spy on journalists and members of the opposition, thereby undermining the rule of law and privacy.⁸⁶ Advocates of shareholder primacy argue that externalities should be avoided solely through government regulation, for example in the form of taxes or fines, while companies should pursue their goals uncompromisingly within the framework of the law.⁸⁷ This division is criticized by many as inadequate. They point out that oftentimes, the state can only regulate nationally, while companies operate globally. In addition, there is often an asymmetry of knowledge between regulatory authorities and companies, which makes effective regulation more difficult. Furthermore, companies have an incentive to prevent effective

⁸³ Milton Friedman, *A Friedman doctrine-- The Social Responsibility of Business Is to Increase Its Profits*, THE NEW YORK TIMES MAGAZINE (published Sept. 13, 1970), <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> (last visited Mar. 13, 2025) ; FRIEDRICH AUGUST VON HAYEK, THE CORPORATION IN A DEMOCRATIC SOCIETY (1960), *republished in* ESSAYS ON LIBERALISM AND THE ECONOMY, Vol. 18 at 232-244 (Paul Lewis ed., 2022); Lucian Al. Bebchuk & Roberto Tallarita, *The Illusory Promise Of Stakeholder Governance*, CORNELL LAW REVIEW 91-178 (2020).

⁸⁴ However, a legal obligation to maximize profits by the company management does not exist in all legal systems, especially not in Germany (see in this regard with further references Noah Neitzel, *Vermögensbindung und Nachhaltigkeit*, KJ 479, 483 [2022]).

⁸⁵ REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE 12 (2020); William Savitt & Aneil Kovvali, *On The Promise Of Stakeholder Governance: A Response To Bebchuk And Tallarita*, CORNELL LAW REVIEW 1881, 1883 (2021); Colin Mayer, *Shareholderism Versus Stakeholderism--A Misconceived Contradiction*, CORNELL LAW REVIEW 1859, 1872 (2021); Lenore Palladino & Kristina Karlsson, *Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (published on Feb. 11, 2019), available at: <https://corpgov.law.harvard.edu/2019/02/11/towards-accountable-capitalism-remaking-corporate-law-through-stakeholder-governance/>.

⁸⁶ Jean-Jacques Laffront, *Externalities*, in THE NEW PALGRAVE DICTIONARY OF ECONOMICS 1998 (Steven N. Durlauf & Lawrence E. Blume eds., 2008); for an overview of the topic, see Thomas Helbling, *Externalities: Prices Do Not Capture All Costs*, FINANCE & DEVELOPMENT MAGAZINE (published May 10, 2017).

⁸⁷ Milton Friedman, *A Friedman doctrine-- The Social Responsibility of Business Is to Increase Its Profits*, THE NEW YORK TIMES MAGAZINE (Sept. 13, 1970), available at: <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html>; FRIEDRICH AUGUST VON HAYEK, THE CORPORATION IN A DEMOCRATIC SOCIETY (1960); Lucian Al. Bebchuk & Roberto Tallarita, *The Illusory Promise Of Stakeholder Governance*, CORNELL LAW REVIEW 91, 176 (2020).

regulation from the outset through lobbying.⁸⁸ Voices from academia and politics are therefore calling for government measures "from the outside" to be complemented by changes in the objectives of corporations "from the inside."⁸⁹ This change is seen both in a stakeholder *value orientation* and in an orientation towards the principles of the *corporate purpose movement*.

bb) Stakeholder value and corporate purpose as alternatives

Stakeholder value orientation is a principle whereby a firm's managers should create value not only for shareholders, but for all stakeholders.⁹⁰ This principle is not necessarily a rejection of shareholder primacy. Often, value creation is not a zero-sum game in which shareholder value subtracts from stakeholder value. This idea is particularly promoted by advocates of the *shared value* approach. According to this idea, managers should try to create a win-win situation for the business and its wider stakeholders.⁹¹ Nonetheless, this approach cannot fully avoid scenarios in which tradeoffs are inevitable.⁹² Proponents of a stakeholder value approach hold that in these cases - provided that business operations are generally profitable - managers may refrain from maximizing profits in favor of stakeholders other than shareholders.⁹³ In German company law, managers are generally permitted to follow stakeholder value orientation and such an orientation is the *formal legal* norm, particularly in the German Stock Corporation.⁹⁴

⁸⁸ Colin Mayer, *The Future of the Corporation and the Economics of Purpose*, 58 JOURNAL OF MANAGEMENT STUDIES, 887, 891 (2020); ALEX EDMANS, GROW THE PIE, 52, 58, 373 (2021)

⁸⁹ REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE, 12 (2020); William Savitt & Aneil Kovvali, *On The Promise Of Stakeholder Governance: A Response To Bebchuk And Tallarita*, CORNELL LAW REVIEW, 1881 (2021); Colin Mayer, *Shareholderism Versus Stakeholderism- A Misconceived Contradiction*, CORNELL LAW REVIEW 1859 (2021).

⁹⁰ R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (1984); with further references. This approach already corresponded to the consensus in German corporate law and German business administration in large parts of the 20th century, Franz W. Wagner, *Für wen sind Unternehmen da?*, PERSPEKTIVEN DER WIRTSCHAFTSPOLITIK 27 (2021). It is enshrined in the German Corporate Governance Code (Preamble DCGK) and was recognized as a guiding principle with great media attention in 2019 in the "Statement on the Purpose of a Corporation" by 181 members of the American Business Roundtable.

⁹¹ See in particular Michael E. Porter & Mark R. Kramer, *The Big Idea: Creating Shared Value*, 89 HARVARD BUSINESS REVIEW 62-77 (Jan.-Feb. 2011); Paul Brest, *Reconciling corporate social responsibility and profitability: guidelines for the conscientious manager*, in PHILANTHROPY IN DEMOCRATIC SOCIETIES: HISTORY, INSTITUTIONS, VALUES 153 (Rob Reich et al eds., 2016)

⁹² Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, CORNELL LAW REVIEW 108 (2020).

⁹³ REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE 31 (2020); Holger Fleischer, *Commentary on § 76 AktG para 38*, in AKTIENRECHT (Gerald Spindler & Eberhard Stolz eds., 5th ed. 2024) with further references.

⁹⁴ At least according to the predominant view. For the AG with further references Jens Koch, *Commentary on § 76 para 28*, in: AKTIENGESETZ (Jens Koch ed., 17th ed. 2023); for the GmbH with further references Holger Fleischer, *Commentary on § 43 para 13* in: MÜNCHENER KOMMENTAR ZUM GMBHG, BAND 2: §§ 35-52 (Holger Fleischer & Wulf Goette eds., 4th eds., 2023).

The corporate purpose movement demands that companies go even further in changing their purpose and guiding principles: Instead of merely considering the concerns of stakeholders in the pursuit of profit, they should pursue a "*purpose*."⁹⁵ This management concept thus reverses the end-means relationship between profits and entrepreneurial activity.⁹⁶ According to *Colin Mayer*, the "purpose" should lie within the following parameters: "*To solve problems of people and planet while not profiting from producing problems for people and planet.*"⁹⁷ A purpose understood in this way should help to ensure that entrepreneurial activity is aimed from the outset at creating value for the benefit of society as a whole while avoiding externalities. Indeed, a "just" profit is – according to Mayer – only a profit that has been generated in solving problems, not creating them.⁹⁸

cc) Shaping of incentives by the separation of control and profit

So how does the asset lock, ie the separation of control and profit incentives help companies avoid externalities? This question arises particularly because the range of possible business areas and corporate practices is not limited in steward ownership. Critics have pointed out that business operations can be directed towards activities with high externalities, such as the production of cigarettes or fossil fuels, even with an asset lock.⁹⁹ Therefore, they argue that no positive sustainability effect can be expected from the asset lock. Moreover, some fear that corresponding expectations of sustainability would be raised and disappointed.¹⁰⁰

However, this criticism is too superficial. It overlooks the fact that shareholder primacy is largely the result of structural incentives that are removed by the asset lock. The question of whether a business is oriented towards shareholder primacy or also towards other stakeholder interests is regularly seen as a question of

⁹⁵ This concept particularly stems from the work of Colin Mayer and Richard Edmans and has been very popular in recent years, RICHARD EDMANS, *GROW THE PIE* (2021); from the German-speaking world ANNETTE BRUCE & CHRISTOPH JEROMIN, *CORPORATE PURPOSE - DAS ERFOLGSKONZEPT DER ZUKUNFT* (2020); Holger Fleischer, *Corporate Purpose: Ein Management-Konzept und seine gesellschaftsrechtlichen Implikationen*, ZIP 5-15 (2021); Mathias Habersack, *Corporate Purpose*, in Festschrift für Christine Windbichler zum 70. Geburtstag am 8. Dezember 707-718 (Gregor Bachman et al eds., 2020).

⁹⁶ On purpose economics and the links to steward-ownership see Marvin Reiff, *Verantwortungseigentum, Nachhaltigkeit und Kapitalismus*, in NACHHALTIGKEITSRECHT: SELBSTVERSTÄNDNIS, STATUS QUO UND PERSPEKTIVEN 207, 210 (Bayer et al. eds., 2022).

⁹⁷ COLIN MAYER, *PROSPERITY* 11 (2018); in his last book, Colin Mayer bases his theory prominently on this principle: COLIN MAYER, *CAPITALISM AND CRISES – HOW TO FIX THEM* 35, 35 (2024).

⁹⁸ COLIN MAYER, *CAPITALISM AND CRISES – HOW TO FIX THEM* 35, 181 (2024).

⁹⁹ Holger Fleischer, *Ein Schönheitswettbewerb für eine neue Gesellschaftsform mit Nachhaltigkeitsbezug: Zur rechtspolitischen Diskussion um eine GmbH mit gebundenem Vermögen*, ZIP 345, 353 (2022).

¹⁰⁰ Jan-Erik Schirmer, *Nachhaltigkeit via Gesellschaftsform: Europäische Lektionen für die GmbH mit gebundenem Vermögen*, ZEUP 326, 337 (2023); Arnd Arnold et al., *Die GmbH im Verantwortungseigentum – eine Kritik*, NZG 1321, 1327 (2020).

the content of the management's fiduciary duties.¹⁰¹ According to this view, the orientation is determined by to whom managers owe their fiduciary duty - shareholders or stakeholders.¹⁰² However, this approach falls short because shareholder primacy is only to a small extent the result of the management's fiduciary duties. At least in Germany, fiduciary duties do not regularly require shareholder primacy.¹⁰³ Even if such a duty existed, its effect would be limited.¹⁰⁴ Rather, the main drivers of shareholder primacy are incentives that go beyond fiduciary duties and their enforcement.¹⁰⁵ Shareholders typically expect share value maximization and design incentive structures with this objective in mind. Company managers have an incentive to maximize shareholder profits (even at the expense of other stakeholders) if they are rewarded for maximizing profits and punished for reducing shareholder profits. The reward for maximizing shareholder value usually takes the form of variable remuneration, such as stock options or profit bonuses.¹⁰⁶ Punishments often involve managers being removed from office by shareholders and thus losing their jobs.¹⁰⁷

¹⁰¹ See only Daniel Walden, *Corporate Social Responsibility: Rechte, Pflichten und Haftung von Vorstand und Aufsichtsrat*, NZG 50, 59 with further references (2020). For the GmbH and the AG fiduciary duties are regulated in § 76 (1), § 93 (1) AktG and in § 43 (1) GmbHG.

¹⁰² This question regarding the content of the "corporate interest" is likely to be one of the *evergreens* of company law, see only with further references Holger Fleischer, *Commentary on § 76 para 24*, in AKTIENRECHT (Gerald Spindler & Eberhard Stilz, 5th ed. 2024); Anne-Christin Mittwoch & Tonio Friedmann, *Nachhaltiges Geschäftsleiterhandeln nach der CSDDD – im Unternehmensinteresse*, NZG 1439, 1441, (2023).

¹⁰³ More detailed on this with f. w. Noah Neitzel, *Vermögensbindung und Nachhaltigkeit*, KJ 479, 483 (2022).

¹⁰⁴ The company management can regularly justify profit-reducing actions in favor of stakeholders on the grounds that these have a positive long-term effect on the economic success of the company, for example by avoiding reputational and liability risks. In addition, the company management regularly has broad discretionary powers and D&O insurance, meaning that liability for stakeholder-oriented behavior is practically unlikely, Gerald Spindler, *Commentary on § 76 AktG para 96*, in MÜNCHENER KOMMENTAR ZUM AKTIENGESETZ: AKTG, BAND 2: §§ 76-117 (Wulf Goette & Mathias Habersack eds., 6th ed. 2023); Holger Fleischer, *Commentary on § 76 para 44 AktG*, in AKTIENRECHT (Gerald Spindler & Eberhard Stilz eds., 4th ed. 2019); BASTIAN BRUNK, MENSCHENRECHTS COMPLIANCE, 84, 88 (2022). Gregor Bachmann, *Zielsetzung und Governance von Unternehmen im Lichte der Klimaverantwortung*, 187 ZHR, 166, 196 (2023): "The effect of an environmental protection standard that appeals to the responsibility of companies and their managers has no effect in itself if it is not linked to tangible, effectively sanctioned requirements and if the economic framework conditions provide the incentive for contrary behavior. A standard of this kind remains just as much a paper tiger as the fine-tuned legal commitments to social responsibility, 'planetary boundaries', etc."

¹⁰⁵ Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise Of Stakeholder Governance*, CORNELL LAW REVIEW 91, 123, 140 (2020) "[...] prevailing norms to serve shareholder value have been supported by the system of robust incentives to serve shareholder value [...]. By contrast, norms to balance the interests of shareholders with those of stakeholders would be resisted by and in tension with this incentive system."; Edward B. Rock, *For Whom Is the Corporation Managed in 2020? The Debate over Corporate Purpose*, 76 THE BUSINESS LAWYER 363, 372 (2021); COLIN MAYER, FIRM COMMITMENT 42 (2013): "Get incentives right and the rest will follow; get them wrong and nothing that lawyers, governments, or anyone else can do will fix the problem."

¹⁰⁶ Cf. Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, CORNELL LAW REVIEW, 91, 148 (2020).

¹⁰⁷ Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise Of Stakeholder Governance*, CORNELL LAW REVIEW 91, 153 (2020).

The incentive structure described here also exists in the law of German stock corporations¹⁰⁸ and limited liability companies.¹⁰⁹ It conflicts with the goal of having managers consider the interests of stakeholders and pursuing a corporate purpose. The decisive innovation in steward ownership - and in the GmgV - therefore lies in the structural waiver of profit distributions and liquidation proceeds by the stewards. The asset lock shapes the incentive structure of the firm, by excluding those who control and run it from receiving any profit distribution. Financial rewards for unconditional profit maximization are forbidden, and punishments for failure to maximize profits are unlikely. Therefore, in the GmgV, any intention to practice stakeholder value-oriented management or to pursue a corporate purpose is not counteracted by conflicting incentives.¹¹⁰ In the RV, this applies as well, since managers are controlled by stewards who have no rights to profits. However, if the managing director can also be shareholders with profit, the effect might be substantially reduced.

This mechanism should by no means be understood as automatic. Even with an asset lock, there is still a great deal of entrepreneurial freedom, which leaves open the choice to disregard stakeholder interests. Also, the limitations of stakeholder value orientation in achieving sustainability goals should not be ignored. There can be considerable tradeoffs between the interests of individual stakeholders, such as employees and environmental interests, thus complicating the pursuit of sustainability goals.¹¹¹ Furthermore, neither

¹⁰⁸ Based on the German Stock Corporation Act (AktG) and the legal practice based on it, the management board of an AG has considerable incentives to focus its actions on maximizing shareholder value. On the one hand, the Management Board is at least indirectly appointed and dismissed by the shareholders (§ 101 (1) sentence 1 AktG, § 84 AktG). On the other hand, management boards are regularly shareholders themselves and/or receive variable remuneration that is linked to the profit interests of shareholders. With the intention of creating such incentives, the legislator has, for example, facilitated the acquisition of shares by executives pursuant to § 192 (2) no.3 AktG, see Bill of Federal government for a law on control and transparency in the corporate sector, published in BT-Drs. 13/9712, 23, available online at <https://dserver.bundestag.de/btd/13/097/1309712.pdf>; § 87 (1) sentence 1 AktG expressly includes share subscription rights as "incentive-oriented" remuneration of the management board, see also Gerald Spindler, *Commentary on § 87 para 102*, in: MÜNCHENER KOMMENTAR ZUM AKTIENGESETZ: AKTG, BAND 1A/2A: NACHTRAG: AKTG (Wulf Goette & Mathias Habersack eds., 5th ed. 2021); Noah Neitzel, *Vermögensbindung und Nachhaltigkeit*, KJ 479, 483 (2022).

¹⁰⁹ Through their comprehensive right to issue instructions, the shareholders can easily direct the management towards maximizing profits. In addition, the managing director in a GmbH is dependent on the shareholders for her employment in accordance with § 46 No. 5 GmbHG. In addition, variable remuneration in the form of profit bonuses is also permissible and widespread in the GmbH, Joachim Tebben, *Commentary on § 6 para 167 GmbHG*, in: KOMMENTAR ZUM GMBHG (Lutz Michalski et al. eds., 4th ed. 2023); Hans-Carl von Hülsen, *Variable Vergütung auf dem Rückzug?*, 63 CONTROLLING & MANAGEMENT REVIEW 8, 12 (2019).

¹¹⁰ Marvin Reiff, *Verantwortungseigentum, Nachhaltigkeit und Kapitalismus*, in: NACHHALTIGKEITSRECHT: SELBST-VERSTÄNDNIS, STATUS QUO UND PERSPEKTIVEN 207-228 (Bayer et al. eds., 2022); Noah Neitzel, *Vermögensbindung und Nachhaltigkeit*, KJ 479, 489 (2022); Lisa Beer, *Nachhaltigkeit durch Vermögensbindung*, Verfassungsblog (published Jun. 26, 2023) <https://verfassungsblog.de/nachhaltigkeit-durch-vermogensbindung/> (last visited Mar. 13, 2025); THERESA VIKTORIA PREIS, ANFORDERUNGEN AN EINE SYSTEMKONFORME AUSGESTALTUNG DER VERMÖGENSBINDUNG IM RECHT DER GMBH 25 (2024); Hans-Joerg Fischer, *Die GmbH mit gebundenem Vermögen als eine mögliche neue Rechtsform für den Mittelstand*, in: BETRIEBS-BERATER (BB) 2122 (2020).

¹¹¹ Fundamental Lucian A. Bebchuk & Roberto, Tallarita, *The Illusory Promise Of Stakeholder Governance*, CORNELL LAW REVIEW, at 91, 116 (2020); see also the reply by Colin Mayer, *Shareholderism Versus Stakeholderism—A*

the GmgV nor the Dutch RV force any company to pursue a beneficial *purpose*.¹¹² Both the GmgV and RV have no restriction on business models, unlike the requirements for non-profit status under tax law. Under the GmgV, when setting up the charter, members must choose an entrepreneurial, beneficial or charitable purpose or objective (*Gesellschaftszweck*) and specify the activity the GmgV should pursue to achieve this purpose (*Unternehmensgegenstand*).¹¹³ Directors acting outside the scope of the purpose and prescribed activity commit a violation of their duties under general company law.

The RV-principles suggest that in addition to the object (i.e. a description of the activity) of the business,¹¹⁴ companies should state a “mission” in their bylaws. This mission then helps to determine the character of an RV. The company’s mission does not need to meet requirements other than that it must not lie in creating profits for shareholders.¹¹⁵ However, given that there is nothing to ban managing directors from being shareholders, incentives for profit maximization can remain strong. The council of stewards is particularly important to ensure then that the company’s mission is still put first.

Thus, both drafts encourage the companies to pick a purpose. The separation of control and profit distribution support pursuing it in an authentic way, which allows such businesses to reap the benefits of increased direction, motivation and stakeholder commitment as identified by Hwang and Lund.¹¹⁶ Indeed a yet unpublished interview study¹¹⁷ with founders and managers of steward owned businesses has shown that purpose orientation was very important to them.

The freedom of choice regarding different business models, which the GmgV offers, is expressly emphasized in section 1 para. 1 sentence 2 GmgVGE. This section clarifies that stakeholder value creation is *facilitated*, but not prescribed. In line with this guiding principle, the draft proposes to expressly clarify that fiduciary duties also include the interests of stakeholders.¹¹⁸ Based on its governance structure, the GmgV is particularly suitable as a legal entity for critical infrastructure. Especially where profit maximization

Misconceived Contradiction, CORNELL LAW REVIEW 1859-1879 (2021); generally fundamental on sustainability and corporate law: ANNE-CHRISTIN MITTWOCH, NACHHALTIGKEIT UND UNTERNEHMENSRECHT (2022).

¹¹² The GmgV is *also* an offer for, but by no means *only* for, companies in the corporate purpose movement (see section II 2 c bb above).

¹¹³ § 1 (2) sentence 1 GmgVGE, § 3 (1) no. 2 and 3 GmgVGE. This is a deviation from general German company law, which does not prescribe that a purpose must be fixed in the charter; if nothing else is specified, it can be assumed that profit making on the market is the default purpose.

¹¹⁴ Dutch doe Art. 2:177 Dutch Civil Code (*Burgerlijk Wetboek*, BW).

¹¹⁵ Uitgangspunten van de Rentmeestervennootschap II 1. at 4.

¹¹⁶ See Cathy Hwang & Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER 13 (2025).

¹¹⁷ The interviews were conducted by Christina Hoon and Anne Sanders with 25 managers or founders of steward owned businesses in early 2023.

¹¹⁸ § 30 (1) sentence 2 GmgVGE; GmgVGE 216.

interests should not come into conflict with the mandate to promote the common good, the asset lock enables decentralized, non-state provision of goods. Examples of this could be so-called data trustees or healthcare facilities.¹¹⁹

While steward ownership does provide potential structural benefits, one must not ignore the fact that many companies create long-term value for the benefit of their stakeholders, without being subject to an asset lock.¹²⁰ The GmgV and RV are intended to offer an additional option, not to replace existing models.

dd) Entrepreneurial motivation of steward owners

Unlike in companies without an asset lock, the decisions of steward owners are not driven by personal profit motives.¹²¹ Critics have therefore questioned whether members can be sufficiently motivated without the prospect of gaining profits.¹²² However, this assumption is contradicted by insights from the business world and behavioral science. Companies are often well managed because managers enjoy having considerable autonomy to shape businesses according to their personal vision.¹²³ Behavioral psychology and experiences with German companies with asset locks and Danish enterprise foundations show that their self-selected group of shareholders is not subject to a structural motivational deficits when exercising their management rights.¹²⁴ Moreover, the many people who passionately work in fields like the judiciary, academia, as employees, artists, in politics or in families - without the prospect of profit sharing - impressively demonstrate how important intrinsic motivation and social recognition are as an incentive. For young people in particular, meaningful work is becoming increasingly important.¹²⁵ In a legal form with an asset lock, they can

¹¹⁹ GmgVGE 48.

¹²⁰ In particular, shareholder profits are often not in conflict with the interests of the stakeholders because shared value can be created; for so-called "*shared value*" see REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD ON FIRE 12 (2020, 31; Holger Fleischer, *Commentary on § 76 AktG para 38*, in beck-online.GROSSKOMMENTAR (Martin Henssler ed., Feb. 1, 2024).

¹²¹ However, members also have a private financial interest in the economic success of the company insofar as this secures their job and justifies their salary.

¹²² This is discussed by Arnd Arnold et al., *Die GmbH im Verantwortungseigentum – eine Kritik*, NZG 1321, 1326 (2020); Mathias Habersack, „*Gesellschaft mit beschränkter Haftung in Verantwortungseigentum*“ – ein Fremdkörper im Recht der Körperschaften, GMBHR 992, 994 (2020); Barbara Grunewald & Joachim Hennrichs, *Die GmbH in Verantwortungseigentum, wäre das ein Fortschritt?*, NZG 1201, 1203 (2020).

¹²³ See, for example, BRUNO S. FREY, MARKT UND MOTIVATION: WIE ÖKONOMISCHE ANREIZE DIE (ARBEITS-)MORAL VERDRÄNGEN 20 (1st ed. 1997); Bruno S. Frey & Margit Osterloh, *Yes, managers should be paid like bureaucrats*, 14 JOURNAL OF MANAGEMENT INQUIRY 96, 101 (2015).

¹²⁴ See in detail in this regard, GmgVGE 41. On intrinsic motivation in the governance of industrial foundations Henry Hansmann & Steen Thomsen, *The Governance of Foundation-Owned Firms*, 13 JOURNAL OF LEGAL ANALYSIS 172-230 (2021).

¹²⁵ RANDSTAD, WORKMONITOR 2024, at 32, available online at: <https://www.randstad.com/workmonitor/> (last visited Aug. 25, 2024).

rely on the fact that the profits which they forego will benefit the company in the long term and will not be appropriated by other members for private gain.

III. Key points of the German draft law and Dutch RV-principles for the implementation of steward ownership

The previous chapter has laid out the core principles of steward ownership, illustrating how the German draft law (the GmgVGE) for a special legal form for steward ownership (the GmgV) puts them into law. In this chapter, we take a closer look at the legal form proposed by the GmgVGE, the GmgV, and its design. Readers who do not have a background in German or civil law might have limited capacity to follow each aspect of this chapter. However, we have reduced the need for an understanding of German law as much as possible and believe that there are many aspects of designing a legal form for steward ownership which are universally important to all jurisdictions. Insofar, the GmgV can provide inspiration to lawyers and politicians outside of Germany. The article will also refer to the Dutch-RV principles. However, given that there is no draft for a legal form yet but only underlying principles, the discussion will be shorter. Moreover, we are no experts in Dutch corporate law.

1. Designated legal form and sub form of the closed limited liability company

The GmgVGE proposes creating a designated legal form, the GmgV. The two preceding draft bills, prepared by an academic working group chaired by Anne Sanders, proposed implementing steward entrepreneurship as a sub-form of the German limited liability company (GmbH) to make its introduction and use as simple as possible for legislators and practitioners. However, through intensive discussions, it became clear that a designated legal form is preferable for two reasons:

First, a designated form with its own statute allows for tailor-made rules. The GmgV differs conceptually from existing German legal forms, such as the GmbH,¹²⁶ cooperatives and legal forms of partnership law. A designated statute is the best way to independently interpret and develop the rules on governance and finance, particularly the necessary regulations that protect the characteristic asset lock against evasion.¹²⁷ The GmgV is designed as a legal entity with legal capacity or juristic person (“*Körperschaft*”) with

¹²⁶ See already Anne Sanders, *Binding Capital to Free Purpose: Steward Ownership in Germany*, 4 ECFR 622, 641 (2022); MARVIN REIFF, VERANTWORTUNGSEIGENTUM (2024), is particularly critical of the implementation in GmbH law.

¹²⁷ On the second draft, Jan-Erik Schirmer, *Nachhaltigkeit via Gesellschaftsform: Europäische Lektionen für die GmbH mit gebundenem Vermögen*, ZEUP 326, 348 (2023); Birgit Weitemeyer, Barbara Weißenberger & Götz T. Wiese, *Eine GmbH mit ewigem Gewinnausschüttungsverbot*, GMBHR 1069, 1075 (2021), calling for stronger hedging measures.

members, but not as a corporation with shares (“*Kapitalgesellschaft*”) like the AG and the GmbH.¹²⁸ It is similar to a cooperative (“*Genossenschaft*”), but also to an association (“*Verein*”).¹²⁹ Unlike a German cooperative, however, the purpose of the GmgV is not to promote the economic interests of its members.¹³⁰ A key difference to a foundation (“*Stiftung*”) is that the GmgV is governed by the will of its members, not by the foundation's purpose, which is in principle permanently defined by the founder.¹³¹ Although it borrows from the law of the limited partnership, KG (“*Kommanditgesellschaft*”) (see below), the GmgV is not a partnership, but a legal entity/juristic person with its own legal personality. This entity is of a more personal character than a public corporation and could thus be described as a legal entity with close ties to its members (“*personalistische Körperschaft*”), a conceptual term already used for German cooperatives. Readers who are not familiar with German law might have limited knowledge of the German legal forms and doctrinal categories mentioned in this paragraph. However, its central point should be universally understandable: A designated statute allows for regulatory flexibility and coherence, whilst still permitting the targeted use of tried and tested company law.

Second, a designated legal form can eliminate concerns regarding EU law: to ensure the asset-lock, cross-border conversions of the GmgV are subject to certain restrictions.¹³² This has raised two concerns regarding compliance with European regulations. One concern is, whether or not such restrictions are compatible with European freedom of establishment. This concern is minor, as there is broad consensus among EU law experts that these restrictions can be justified under the general principles of the freedom of establishment.¹³³ There is also the question of compatibility with the European Mobility Directive.¹³⁴ This directive dictates that corporations must be convertible into foreign legal entities. However, this directive is limited to corporations (“*Kapitalgesellschaften*”). Since the GmgV would be a separate legal form without the

¹²⁸ On the characteristics of the corporation BVerfG, judgment of March 1, 1979 - 1 BvR 532/77 -, BVerfGE 50, 290-381, juris, para. 133, 161.

¹²⁹ GmgVGE 23, 27, see also the draft accompanying overview of templates of the GmgVGE.

¹³⁰ In detail on this, GmgVGE 156.

¹³¹ Anne Sanders, *Binding Capital to Free Purpose: Steward Ownership in Germany*, 4 ECFR 622, 636 (2022); MARVIN REIFF, VERANTWORTUNGSEIGENTUM, at 415 (2024).

¹³² See below under 6.

¹³³ See GmgVGE 314; MARIJA BARTL ET AL., ZUR UNIONSRECHTSKONFORMEN GESTALTUNG EINER NEUEN DEUTSCHEN RECHTSFORM "GESELLSCHAFT MIT GEBUNDENEM VERMÖGEN" (Jun. 13, 2024), available online at: <https://www.neue-rechtsform.de/thesenpapier-europarechtskonformit%C3%A4t/> (last visited Aug. 23, 2024).

¹³⁴ Cf. for example Andreas Engel & David Haubner, *Die GmbH mit gebundenem Vermögen und das Europarecht*, DStR 844 (2022); Vera Obernosterer, *Die GmbH mit gebundenem Vermögen – eine GmbH mit beschränkter Niederlassungsfreiheit?*, GMBHR 434 (2023); on the other hand, however, Florian Möslin & Anne Sanders, *Vermögensbindung und Europäisches Gesellschaftsrecht*, 77 JZ, 923 (2022); Florian Möslin & Anne Sanders, *Corporate Asset Locks: A Comparative and European Perspective*, FRENCH JOURNAL OF LEGAL POLICY, No. 1 Dec. 2023, 51; Caspar Behme, *Umwandlungssperre bei der Gesellschaft mit gebundenem Vermögen*, ZRP 38 (2023).

characteristics of a corporation and not a sub-form of the GmbH (which is a corporation), it can be argued that the directive would not apply to the GmbH.

Even though there was never a draft published by the German Federal Ministry of Justice, a representative mentioned in a public presentation¹³⁵ that the Ministry favored regulation for steward ownership via the creation of a sub form of the GmbH.

If implemented according to the principles presented in the RV-principles, the Dutch way forward would be to draft the RV as a subform of the Dutch BV, the Dutch private limited company, comparable to the German GmbH.

2. Use of established corporate law

The Dutch BV and the German GmbH are both flexible closed limited companies. Building a sub form onto the BV has the advantage that existing rules on establishment, boards and decision making can be adopted. At the same time, the RV-principles also suggest using rules on foundations with regards to the council of stewards and in the context of conversion into other legal forms.¹³⁶

While the third German draft creates a new legal form, it deliberately employs established corporate law from legal forms such as cooperatives (*Genossenschaft*), private and public corporations (*GmbH, AG*), limited partnership (*KG*), general partnership law and foundations (*Stiftungen*). This ensures that practitioners can rely on existing case law, legal literature and statutes when dealing with the new legal form – thereby reducing legal uncertainty and costs for implementation.¹³⁷ This applies in particular to those norms that can be classified as a “universal” principles of German corporate law, such as the *actio pro socio* (similar to derivative action in common law), the business judgment rule and the principle that members can leave a company and be removed from it for good cause.¹³⁸

¹³⁵ Stiftung Verantwortungseigentum, Symposium at the Bundestag on the draft law, presentation of Benjamin Strasser starting at 33:55. Available online at: <https://www.youtube.com/watch?v=ZV0ISPKEFQMY&t=12s> (last visited Jan. 26, 2025).

¹³⁶ Uitgangspunten van de Rentmeesterverenootschap II 2 and 5, at 5-6.

¹³⁷ This saves costs during implementation, see Holger Fleischer, *Ein Schönheitswettbewerb für eine neue Gesellschaftsform mit Nachhaltigkeitsbezug: Zur rechtspolitischen Diskussion um eine GmbH mit gebundenem Vermögen*, ZIP 345, 347 (2022).

¹³⁸ The *actio pro socio* is codified, for example, in partnership law in § 715b German Civil Code (BGB), recognized in the GmbH, BGH, judgement of 16 March 1998 - II ZR 303/96 -, juris para. 6, cf. also the action admission procedure in § 148 AktG. The exclusion of a shareholder is regulated, for example, in § 68 Cooperative Law, GenG, § 727, 723 (1) no. 5 German Civil Code (BGB), §§ 134, 130 (1) no. 5 and (3) HGB and recognized as a general principle in company law BGH, judgement of 1 April 1953 - II ZR 235/52 -, BGHZ 9, 157-179, juris, para.

The GmgV builds on existing law by using the wording of other statutes but also by explicitly referring to certain rules outside of the new statute, the GmgVGE. This approach is not new in German company law. For example, the partnership limited by shares (*KGaA*) combines elements of limited partnership (“*Kommanditgesellschaft*”) and stock corporation law in one corporation and the partnership (“*Partnerschaftsgesellschaft*”) makes use of references to general, commercial partnership OHG (“*Offene Handelsgesellschaft*”) law.¹³⁹ A separate register is not required for the GmgV; instead, it should be entered in the German commercial register.¹⁴⁰

Lawyers who design legal forms for steward ownership in other jurisdictions will have to make similar considerations. They will want to minimize legal uncertainty and costs of implementation, which can be achieved by using as many elements of established laws as possible. At the same time, they will want to remain true to the concept of steward ownership and overcome flaws of established laws. The difficulty of this task will depend on the status quo of each jurisdiction.

3. Asset lock and corporate finance

The asset lock, raises questions of how to finance steward owned businesses. Since the asset lock entails the separation of voting rights and profits, it is in tension with conventional corporate finance, where equity investors become owners by receiving shares in return for capital.¹⁴¹ These shares convey both control rights and rights to profits, which will not work for steward-owned business. At the same time steward owned businesses will need patient capital, typically provided in the form of equity finance.

The German draft GmgV is not a corporation with capital divided in shares and only has members, not shareholders. Nevertheless, the GmgV allows for patient investments by third parties.¹⁴² While the concept of steward ownership requires the separation of voting rights and profit participation rights, it does not

12, 15, 17. The Business Judgement Rule is codified in § 93 (1) sentence 2 AktG, § 34 (1) sentence 2 Cooperative Law GenG, § 84a (2) sentence 2 German Civil Code (BGB), and, in the opinion of the legislator, applies "even without positive legal regulation in all forms of entrepreneurial activity", Federal government bill on corporate integrity and modernization of the right of avoidance, published in BT-Drs. 15/5092, 12, available online at: <https://dserver.bundestag.de/btd/15/050/1505092.pdf> (last visited Mar. 4, 2025).

¹³⁹ With further references on the legal nature of the KGaA Johannes Perlitt, *Commentary on § 278 AktG para 3*, in MÜNCHNER KOMMENTAR ZUM AKTIENGESETZ (Wulf Goette et al eds. 6th ed. 2023); on the referral technique of the PartGG Bernd Hirtz, *Commentary on § 1 PartG para 2*, in: GESELLSCHAFTSRECHT (Martin Henssler & Lutz Strohn eds., 6th ed. 2024).

¹⁴⁰ GmgVGE 219.

¹⁴¹ This does not disregard the discussion on whether and to what extent shareholders can be described as owners of a business at all, see about that the work of David Ciepley and Rutger Claassen.

¹⁴² See § 18 GmgVGE.

categorically exclude profit participation rights to finance the business. It is thus acceptable under the concept to have members with voting rights but no rights to profits and members who receive profits but do not have voting rights. However, the approach taken in the German draft GmgVG is to only have members with voting rights. Accordingly, capital may not be exchanged for membership. Instead, other financing instruments - such as debt-based instruments such as profit participation rights or mezzanine financing - must be used.¹⁴³ Investors may also neither hold member-like rights nor may they be related to members.¹⁴⁴ They receive limited profit participation rights as remuneration for their invested capital.¹⁴⁵ It is possible, however, that such investors hold certain rights to information as part of their investment contracts. Existing steward-owned companies demonstrate that this structure of mezzanine financing can be used successfully. The Purpose Network estimates that to date, more than 250 million Euros of capital is/ has been invested in steward owned companies.¹⁴⁶

The Dutch principles suggest having shareholders without voting rights, who provide equity capital. These shareholders may receive dividends at the discretion of the council of stewards.¹⁴⁷ They hold an annual meeting, at which the board and council of stewards provide information and answer questions about their work and strategy, but no votes are cast.

While the position of investors in the Dutch and German models seem radically different at first glance, they are not that far apart. Both have no legal influence on the company but may receive information. It is possible, however, that the label “shareholder” along with the right to attend a shareholders’ meeting may be more attractive for investors than the role of investors in the GmgV. On the other hand, the position as an investor in the GmgV with rights and duties negotiated on a contractual basis may better reflect their actual position. Depending on the legal system, there may also be differences in tax treatment. However, there is stark difference insofar as neither directors nor members may be investors in the German draft,¹⁴⁸ while in the Dutch principles, a managing director may be a shareholder.

4. Liability of members, insolvency and liquidation

Since the GmgV is a legal entity, it is liable for the debts it incurs. However, this does not answer the question whether and to what extent members should be expected to provide finance for the GmgV and be

¹⁴³ See on financing: GmgVGE 19- 30, 70, 276-283.

¹⁴⁴ See § 138 German Code on Insolvency Proceedings (“*Insolvenzordnung*”).

¹⁴⁵ § 18 (2) GmgVGE; GmgVGE 19, 276 .

¹⁴⁶ Key Figures available at: <https://purpose-economy.org/en/> (last visited Mar. 4, 2025).

¹⁴⁷ However, it is also possible to create shares without rights to dividends. Such shareholders may be members of the council of stewards *Uitgangspunten van de Rentmeesterverenootschap* II 3 at 6.

¹⁴⁸ § 18 (2) sentence 1 GmgVGE.

personally liable. The GmgV emphasizes the entrepreneurial commitment of its members by incorporating elements of the limited partnership (KG). Each member is personally liable for claims against the company up to a certain amount, which must be determined in the articles of association (at least EUR 5,000) and must contribute equity capital in the same amount.¹⁴⁹ However, similar to a limited partnership, personal liability ceases when members have fully paid their equity contribution. There is no partner with unlimited personal liability in the GmgV.¹⁵⁰ Indirectly, this concept of liability also reinforces the asset lock: any distribution of profits - which is not permitted in the GmgV anyway - would qualify as a repayment of the contribution and revives personal liability. In this way, members demonstrate their personal and financial commitment to the GmgV and creditors help to preserve the asset lock indirectly by enforcing their own claims.

This regulation, modeled on limited partner liability, also allows for dispensing with complex rules for raising and maintaining capital (which are quite idiosyncratic to German law), such as those found in the GmbH.¹⁵¹ Creditors are also protected by the fact that the asset lock reduces outflows of cash from the company, which contributes to a solid equity base.¹⁵²

Since the Dutch RV is a sub form of the Dutch BV, its shareholders are not liable for the company's debts. While shareholders must make any agreed upon equity contribution, there is no minimum capital requirement to set up an RV or a BV. This differs from the laws on the German limited private or public corporation, which both have minimum capital requirements.

¹⁴⁹ See § 8 (1) sentence 1 GmgVGE.

¹⁵⁰ As is well known, this position in the limited partnership, KG is regularly held by a legal entity anyway (especially in the form of a GmbH & Co. KG), which would contradict the model of the personally participating shareholder in the GmgV as a natural person.

¹⁵¹ Here, a non-German reader should keep in mind that German company law still requires that corporations with shares such as the private and public limited company require that a minimum capital of at least € 25.000 (GmbH) or € 50.000 (AG) is raised at the time of founding and later maintained. Because no profits may be distributed exceeding this minimum capital, German company law already knows a limited asset lock. With the idea of using the ideas of limited partnership law, the draft also builds on *Walter Bayer's* ideas on the reform of GmbH law, cf. only Walter Bayer, *Moderner Kapitalschutz*, 36 ZGR 220 (2007). On the pros and cons of minimum liable capital as a creditor protection instrument Holger Fleischer, *Introduction para 305*, in MÜNCHENER KOMMENTAR ZUM GMBHG, BAND 1: §§ 1-34 (Holger Fleischer & Wulf Goette eds., 4th ed. 2022).

¹⁵² This applies, for example, in comparison to the GmbH and in particular the UG, which also retains profits, but whose formation only requires a low minimum capital. In detail, there are differences between the retention of profits for the UG and the GmgV: According to § 5a (3) GmbHG, *it is mandatory to retain* a portion of the annual net profit until the accumulated share capital amounts to €25,000. With the GmgV, no profits may be distributed, so retention is structurally obvious. However, surpluses may also be donated in full. In this respect, the GmgV is not obliged to retain profits, but there is a prohibition on distributions (compared to the UG) that is quantitatively unlimited, which structurally favors retention, but does not make it mandatory.

Both under the German draft GmgV and the Dutch principles, all assets can be ceased to cover the company's debts. Both members in the GmgV as well as shareholders of an RV are merely residual claimants on their equity contributions when the company is wound up. In both cases, any surplus on the equity contribution must be spent in accordance with the company's charter and mission.¹⁵³

5. Governance

a) Decision making

In the German GmgV, fundamental decisions such as the amendment of the charter, are the responsibility of the members.¹⁵⁴ One or more managing directors represent the company and make day-to-day decisions. However, they are - like in a GmbH or small German cooperative – bound by instructions of the members.¹⁵⁵ Although the principle of self governance might suggest that only members may be managing directors, third party directors are also permitted to allow for flexibility. However, it can be assumed that usually managers will be members to bring entrepreneurial ideas to life and earn a living.¹⁵⁶

In the Dutch RV, day-to-day decisions are made by the board of managing directors, who also represent the company. They are appointed and dismissed by the council of stewards that also holds them accountable. Fundamental decisions such as the amendment of the bylaws also fall in the responsibility of the council of stewards who may also include shareholders without rights to dividends and without voting rights. The fact that the Dutch RV grants persons, who are neither shareholders nor members ultimate decision-making powers over a company raises some categorical doctrinal questions. German corporate law operates under the doctrinal paradigm, that the shareholders and members of a company must be able to decide its ultimate fate.¹⁵⁷ This is part of the reason why the German draft suggests that control over the GmgV (but not rights to profit) should lie with persons who have the status of members. The Dutch paper goes the opposite way, allowing shareholders to receive profits (but not voting rights) while stewards - who are mostly neither

¹⁵³ §§ 58-72 GmgVGE; Uitgangspunten van de Rentmeesterverenootschap II 3 first paragraph at 6 could be understood as if only shareholders who do not receive dividends are limited to their investment. However, II 4 clarifies that all shareholders only receive their investment at time of liquidation. Uitgangspunten van de Rentmeesterverenootschap II 4 at 6.

¹⁵⁴ § 33 GmgVGE; GmgVGE 219.

¹⁵⁵ §§ 19, 20, 24 GmgVGE.

¹⁵⁶ GmgVGE 205.

¹⁵⁷ There are different explanations for this principle. One explanation is that shareholders/members are seen as residual claimants and owners of the company and that they therefore carry responsibility for its fate. This responsibility, in this view, must coincide with ultimate decision making power, see Thomas Liebscher, *Commentary on § 45 para 42, in MÜNCHENER KOMMENTAR ZUM GMBHG, BAND 1: §§ 1-34* (Holger Fleischer & Wulf Goette eds., 4th ed., 2022).

shareholders nor members - exercise ultimate control.¹⁵⁸ This is not necessarily a flaw, but nonetheless unusual from a German legal perspective. Also, from an economic perspective, it should be considered to what extent it makes sense to grant ultimate decision making power to persons who do not have to make any equity contributions (i.e. non-shareholders) and are therefore not structurally incentivized to protect residual claims.¹⁵⁹ After all, the German members of the GmgV have to contribute at least € 5.000 per person to the company. Since shareholders without dividend rights and voting rights may be members of the steward council, this raises the question why there is a need for a council of stewards in the first place and not just shareholders with and without voting rights.

The council of stewards is comparable to the governing board of a civil law foundation, which has no shareholders or members at all. Such governing boards make decisions in line with the purpose set by the founder. However, in many European legal systems - different from the ideas for the Dutch RV - the legality of the conduct of the governing board is supervised by public supervisory authorities.¹⁶⁰

For a comparison of the different corporate bodies of the GmgV and the Dutch RV as well as their respective functions, see the table below.

¹⁵⁸ Even though the Dutch RV is a sub-form of the Dutch private limited company, the BV, the RV-principles contemplate applying Dutch foundation law to the council of stewards, not only the rules on the BV.

¹⁵⁹ There is some evidence that requiring decision makers to have „skin in the game” might lead to better decision making, Chen Li et al., *Is skin in the game a game changer? Evidence from mandatory changes of D&O insurance policies*, 68 JOURNAL OF ACCOUNTING AND ECONOMICS, Issue 1 August 2019, 101225 .

¹⁶⁰ ANNE SANDERS AND STEEN THOMSEN, CONCLUDING OBSERVATIONS, IN ENTERPRISE FOUNDATION LAW IN COMPARATIVE PERSPECTIVE 234 (Anne Sanders and Steen Thomsen eds., 2023); Ofer Eldar and Mark Øberg, *The Anatomy of Nonprofit Control of Business Enterprise*, 820 ECGI WORKING PAPER 32 (2025).

	GmgV	Dutch RV
Stewards (holders of ultimate control)	Members of the GmgV	Members of the council of stewards
Representation/daily decision making	Managing directors	Members of managing board
Equity / equity-like investors	Contractual investors	Shareholders without voting rights
Supervision (internal)	<ul style="list-style-type: none"> • Optional supervisory board (supervising directors and members) • Members (supervising managing directors) 	<ul style="list-style-type: none"> • Optional supervisory board (supervising management board) • Members of council of stewards (supervising managing board and supervisory board if there is one)
Supervision (external)	Supervisory association Annual audit of mandatory asset lock-report	Court (approval for certain decisions)

b) Securing the asset lock/separation of control and profit rights

The need for specialized governance has been at the heart of the German discussion on steward ownership.¹⁶¹ Even if the GmgV does not seek any tax or other privileges, members must be prevented from damaging the reputation of the legal form by deliberately circumventing the separation of control and profit rights (asset lock). For example, stewards and managers could use their control to extract profits through lucrative advisory contracts. Preventing such behavior faces an unusual principal-agent problem, which is different from conventional companies. In the view of principal agent theory, shareholders of traditional companies (principals) hire managers (agents) to run their companies on their behalf in the interest of increasing their financial returns. This means that shareholders will have to try to align the incentives of

¹⁶¹ See Arnd Arnold et al., *Die GmbH im Verantwortungseigentum – eine Kritik*, NZG 1321 (2020); Barbara Grunewald & Joachim Hennrichs, *Die GmbH in Verantwortungseigentum, wäre das ein Fortschritt?*, NZG 1201 (2020); Joachim Hennrichs, *Zur GmbH mit gebundenem Vermögen. Würdigung und Änderungsvorschläge, Vergleich zur unternehmensverbundenen Stiftung*, in Festschrift für Martin Henßler 927 (Christian Deckenbrock et al. eds., 2023); Clara Marie Katte, *Die GmbH mit gebundenem Vermögen - Geboten oder Überflüssig?* 223 (2023); Marvin Reiff, *Verantwortungseigentum*, 311 (2024).

managers with their own incentives or face monitoring costs, to ensure that managers act in their interest.¹⁶² Accordingly, Eugene Fama and Michael Jensen worry about “separation of ownership and control” as increasing agency costs.¹⁶³ In steward owned companies, stewards holding control rights must have no financial interest in the business. Like in civil law foundations and charitable entities, this raises specific governance issues.¹⁶⁴ Since there are no shareholders with financial interests and control, board members and managing directors might be tempted to circumvent the asset lock and profit financially. In civil law foundation law this problem is well-known as the “control gap” or the special “vulnerability of the foundation”.¹⁶⁵ In steward owned businesses, third-party stakeholders such as investors, consumers or employees need to be secure in their trust that stewards and managers do not act together to circumvent the asset lock. Therefore, through the lens of principal-agent theory, stewards and managers can be seen as agents who preserve the asset-lock on behalf of third-party stakeholders, who can be seen as principals.

However, the conclusions based on principal-agent theory should be balanced with insights from stewardship theory. While principal-agent theory assumes that managers (agents) are primarily driven by self-interest - necessitating stringent oversight and incentive schemes to align their actions with the interests of principals - stewardship theory offers a markedly different perspective. Stewardship theory posits that, when entrusted with control, managers (or stewards) are intrinsically motivated by commitment to the organization’s mission and long-term well-being rather than by immediate personal financial gain.¹⁶⁶ In the context of steward-owned companies, where stewards forgo claims to profits in favor of safeguarding the company’s purpose, the basic tenets of stewardship theory help explain why these entities may not require the level of stringent oversight typically recommended by principal-agent models.¹⁶⁷ Along these lines, Hwang and Lund have argued that purpose can be helpful in nonprofit enterprises, giving them direction,

¹⁶² Michael C. Jensen & William H. Meckling, *Theory of the firm: Managerial behavior, agency costs and ownership structure*, 3 JOURNAL OF FINANCIAL ECONOMICS at 3045 (1976).

¹⁶³ Eugene Fama and Michael Jensen, *Separation of Ownership and Control*, 26 JOURNAL OF LAW & ECON 301 (1983).

¹⁶⁴ See Cathy Hwang and Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER at 7 (2025).

¹⁶⁵ See DOMINIQUE JAKOB, DER SCHUTZ DER STIFTUNG 103, 361, 405 (2006); Claus Koss, Prinzipal-Agenten Konflikte in Non-Profit Organisationen in NON-PROFIT ORGANISATIONEN IN WIRTSCHAFT UND GESELLSCHAFT 197 (Klaus Hopt, Thomas von Hippel and W. Rainer Walz, 2005).

¹⁶⁶ James H. Davis et al., *Toward a Stewardship Theory of Management*, 22 THE ACADEMY OF MANAGEMENT REVIEW 20-47 (1997).

¹⁶⁷ Nonprofit companies generally defy expectations of underperformance raised by principal agent theory, HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 227 (1996).

motivation and promoting stakeholder commitment.¹⁶⁸ Nonetheless, it can be assumed that external oversight does remain necessary to at least some degree.¹⁶⁹

Since the supervisory role of investors is limited, an outside party with the capacity to monitor stewards and managers is needed. Overall, breaches of the asset lock must be prevented through effective and cost-efficient governance measures, which can be enforced by an outside party. In European foundation law, especially in Danish enterprise foundation law, the legality of the foundation board's actions is supervised by supervisory authority that also needs to approve changes of the charter and other decisions of fundamental importance.¹⁷⁰ Such a supervisory agency must not only act lawfully but also with sufficient resources and business competence. In Germany, the supervisory authority for foundations often seems to lack both the business competence and resources.¹⁷¹ Consequently, German discourse has generally deemed foundation law inadequate for implementing steward ownership, chiefly because it limits the flexibility and risk-taking that a small and medium sized businesses need. By contrast, Dutch foundation law is more flexible and uses courts and the public prosecutor to supervise foundations rather than a public agency. The Dutch RV principles use some of these tools.

In Germany, some legal academics and practitioners suggested a mandatory supervisory board as the solution, similar to those required in German public limited companies and big cooperatives. However, we did not adopt this approach for the draft GmgVG.¹⁷² In a GmgV, such a body can be established voluntarily. For smaller GmgVs, a mandatory supervisory board would mean disproportionately high costs. Moreover, there is a danger that friends and family might be put on such boards to avoid effective supervision. Larger GmgVs, like other businesses, on the other hand, must set up a supervisory board in accordance with German co-determination regulations.¹⁷³

Instead of a supervisory board, the German draft proposes coordinated instruments, which are enforced by a different outside entity:¹⁷⁴ If a member receives a hidden profit distribution (e.g. through an excessive

¹⁶⁸ See Cathy Hwang and Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER part II at 13 (2025).

¹⁶⁹ Alnoor Ebrahim et al., *The Governance of Social Enterprises: Mission Drift and Accountability Challenges in Hybrid Organizations*, 34 RESEARCH IN ORGANIZATIONAL BEHAVIOR 81-100 (2014).

¹⁷⁰ Rasmus Feldthusen, *Denmark: Enterprise Foundations*, in ENTERPRISE FOUNDATION LAW IN A COMPARATIVE PERSPECTIVE 147-149 (Anne Sanders and Steen Thomsen eds., 2023); Ofer Eldar and Mark Øberg, *The Anatomy of Nonprofit Control of Business Enterprise*, 820 ECGI WORKING PAPER (2025).

¹⁷¹ With further references ANNE SANDERS, ENTERPRISE FOUNDATIONS IN GERMANY, in ENTERPRISE FOUNDATION LAW IN COMPARATIVE PERSPECTIVE 48-49 (Anne Sanders and Steen Thomsen eds., 2023).

¹⁷² Cf. GmgVGE 225.

¹⁷³ It is proposed to extend the right of co-determination to the GmgV, GmgVGE 167.

¹⁷⁴ For alternatives, in particular to the probably more costly and less effective mandatory supervisory board, see the discussion in the GmgVGE 209 and 225.

salary), she must reimburse the GmgV.¹⁷⁵ Until reimbursement, her personal liability is revived in the amount of the payment, up to the maximum liability amount.¹⁷⁶ Additionally, members are liable for payments that cannot be obtained from co-members but are necessary to satisfy creditors.¹⁷⁷ Serious or continued breaches of the asset lock justify exclusion from the GmgV.¹⁷⁸

The managing director may not make payments that violate the asset lock, otherwise they are liable to the company for this breach of duty.¹⁷⁹ Creditors of the GmgV may also assert this claim.¹⁸⁰ Furthermore, serious and intentional breaches of the asset lock are often likely to constitute a crime under established criminal law, such as fraud or breach of trust.¹⁸¹

A key instrument is an annual asset lock report. The managing director must prepare this report, and the members must approve it. The report provides comprehensive information on the various aspects of compliance with the asset lock.¹⁸² In preparation, the managing director must document legal transactions between the company and the members and related parties.¹⁸³ The report must be audited by an auditor or, in the case of small GmgVs, a tax consultant.¹⁸⁴ The result of the audit report must be published in the commercial register to create transparency and public pressure to comply with the asset lock. Intentional breaches of the reporting and auditing obligations are punishable under the GmgVGE.¹⁸⁵

This governance system is supplemented by supervisory associations. These associations are inspired by the German Cooperative Auditing Associations (“*Prüfungsverband*”). Such Cooperative Auditing Associations conduct wide ranging financial audits and have a long-standing track record of ensuring good governance in the German cooperative landscape. However, the tasks of the supervisory associations are much more streamlined than those of the Cooperative Auditing Associations prescribed by the law on

¹⁷⁵ See § 17 (1) GmgVGE. In this respect, the activities of the tax authorities (as with other corporations), which are responsible for uncovering hidden profit distributions (for the purpose of correct assessment), help to ensure the retention of assets. With examples of prohibited contributions GmgVGE 195.

¹⁷⁶ § 8 (2) GmgVGE.

¹⁷⁷ § 17 (2) GmgVGE.

¹⁷⁸ § 14 (1) GmgVGE. Exclusion due to breaches of the asset-lock is also possible with a simple majority, GmgVGE 183.

¹⁷⁹ § 30 (1), (2) GmgVGE.

¹⁸⁰ § 30 (4) GmgVGE.

¹⁸¹ In this respect, there are certain parallels to embezzlement by the foundation's board of directors with regard to the property rights of the GmgV, which are assigned to the parent company (unlike the structuring rights to which the shareholders are entitled), see BGH, judgment of June 24, 2010 - 3 StR 90/10 -, juris, para. 10.

¹⁸² § 29 (1) GmgVGE; GmgVGE at 214.

¹⁸³ § 21 GmgVGE; GmgVGE 206-207.

¹⁸⁴ § 29 (2) GmgVGE.

¹⁸⁵ § 76 (1) no. 2, (2) no. 2, 77 GmgVGE; On the criminal and administrative offense law of the GmgV, see GmgVGE 30-31, 259.

cooperatives.¹⁸⁶ Each GmgV must be a member of a supervisory association of its choice, financed by contributions from its members.¹⁸⁷ Unlike Cooperative Auditing Associations, the supervisory association designed by the draft law for the GmgV does not supervise the company's business activities and financial reporting, but only audits its compliance with the asset lock. This is less time-consuming than the mandatory audit under German cooperative law.¹⁸⁸ The association only conducts an audit if there are indications that a breach of the asset lock has occurred.¹⁸⁹ Such indications may arise from the asset lock reports, regular audits of asset lock reports, information from whistleblowers or other sources.¹⁹⁰ This means that the association only carries out an audit on an ad hoc basis rather than at regular intervals. In the event of violations, the association can take appropriate measures, from convening a members' meeting with suggestions to the members to asserting claims on behalf of the GmgV or taking legal action to dissolve the company.¹⁹¹ The Supervisory association must also be involved in transformation measures.¹⁹²

Additionally, according to our draft law, the supervisory association serves as an external reporting office (*“Externe Meldestelle”*) under the German Whistleblower Protection Act.¹⁹³ Whistleblowers who report breaches of the asset lock to the supervisory association are therefore legally protected from reprisals.¹⁹⁴ This way, employees can serve as additional governance mechanisms preventing a breach of the characteristic asset lock.¹⁹⁵

The supervisory structure allows several GmgVs to "share" a supervisory association. According to the calculations presented in the annex to the GmgVGE-draft, this is less financially burdensome than requiring each GmgV to establish its own mandatory supervisory board.¹⁹⁶ Particularly for small GmgVs, a mandatory supervisory board would result in high costs and difficulties in finding suitable members, as reported by businesses already working according to steward ownership principles. Moreover, unlike establishing a state supervisory authority like the ones supervising German foundations, supervisory associations do not burden the public sector since they are financed by the companies themselves. Finally, supervisory

¹⁸⁶ §§ 44-57 GmgVGE. On the overall system of the supervisory association GmgVGE 225.

¹⁸⁷ § 45 GmgVGE.

¹⁸⁸ See GmgVGE 228 and the cost calculation in the annex to the draft.

¹⁸⁹ § 44 GmgVGE.

¹⁹⁰ The draft draws on the regulatory concept of danger or threat in § 62 (1) GmbHG and § 396 (2) sentence 1 AktG, GmgVGE 233.

¹⁹¹ § 52 GmgVGE; GmgVGE 238.

¹⁹² See GmgVGE 269.

¹⁹³ § 57 GmgVGE.

¹⁹⁴ GmgVGE 242.

¹⁹⁵ Giving OpenAI as an example, Hwang and Lund have argued that employees may challenge misguided boards in purpose oriented enterprises. Protecting whistleblowers can help them execute this function Cathy Hwang and Dorothy Lund, *Purpose and Nonprofit Enterprise*, 819 ECGI LAW WORKING PAPER 20 (2025).

¹⁹⁶ GmgVGE 228.

associations can pool experiences and act as competent points of contact especially for small GmgVs.¹⁹⁷ In the medium term, they could also develop special steward governance recommendations for companies similar to the German Corporate Governance Code.

The Dutch RV-principles do not mention the governance problem that steward owned companies face. However, there are a couple of principles that can help address this issue. The Members of the Council of Stewards may not receive remuneration exceeding the Dutch Act on Top Incomes Act (*Wet Normering Topincomens*).¹⁹⁸ They are also required to act in the interest of the company as well as its mission and can be held liable for breaches of these duties. Moreover, there are ideas to prevent a member of the council of stewards from casting a vote if she has a personal interest at stake.¹⁹⁹ However, the question arises, as to who will enforce these rules. While the council of stewards oversees, appoints and dismisses directors, it is itself not subject to mandatory oversight from another body inside the company. Its members are appointed and dismissed by the other stewards (co-optation). A supervisory board - which could act as a third party watchdog if composed of independent members- is possible but not mandatory. Even if there is one, is it not meant to supervise the council of stewards.²⁰⁰ However, the RV draft draws on Dutch foundation law. As in a foundation (Art 2: 298 Dutch Civil Code (*Burgerlijk Wetboek*, BW), an interested party or public prosecutor may petition the court to remove a steward from the council of stewards for breaching their duties, with the court empowered to make inquiries and interim provisions. A director dismissed in this manner cannot become a director again for a period of five years. Courts have previously removed directors who misused foundation assets for their private gain.²⁰¹ Dutch foundation law leaves defining interested parties to the courts. They may be former directors, founders, beneficiaries of foundation assets, benefit recipients, employees and subsidy providers.²⁰² It will be particularly interesting to see how existing case law might be applied to steward owns businesses. Furthermore, questions remain regarding whether supplementary auditing might be beneficial in this context. However, a thorough examination of current BV-law would be necessary to consider this suggestion in full. It appears, that the right of inquiry granted to the public prosecutor under Art 2:297 is not suggested for the RV.

¹⁹⁷ GmgVGE 29.

¹⁹⁸ Uitgangspunten van de Rentmeesterverenootschap II 2 p. 5-6.

¹⁹⁹ Uitgangspunten van de Rentmeesterverenootschap II 2 p. 5-6.

²⁰⁰ Uitgangspunten van de Rentmeesterverenootschap II 2 p. 5.

²⁰¹ Court of Appeal The Hague 19 December 2023, ECLI:NL:GHDHA:2023:2684 and Court of Appeal Amsterdam 9 June 2020, ECLI:NL:GHAMS:2020:1499 (*Stichting ANV Fondsen*). See also M van Uchelen-Schipper 'Stichting en extern toezicht', in: *De stichting, een onbegrensde rechtsvorm*, preadviezen WPNR/KNB, The Hague, SDU 2024.

²⁰² See Stokkermans and van Uchelen in Sanders and Thomsen, *Enterprise Foundations in Comparative Perspective* 2nd edition coming up; Wezeman/Winter/Schoonbrood, *Van de BV en de NV*. 18 ed. 2022, 110.

The Dutch RV principles lack some clarity on the extent to which transactions between stewards and their company are permissible. It seems that members of the council of stewards or shareholders may work in the company, e.g. as a managing director. What is not quite clear is whether they can receive additional remuneration for such employment. Moreover, it remains unclear whether they may enter into contractual agreements with the company, e.g. renting a building to it. If so, profits may be extracted this way, circumventing the separation of voting rights and profits.

Upholding the separation of voting rights and profit in steward owned businesses can be particularly challenging where there are coordinated violations by multiple actors or in situations where one person runs a company alone. Managing directors and stewards could work together to extract profits from the business. Also, according to the RV principles, there only needs to be one steward, so a person could be the only steward and managing director at the same time. In this situation, it will be particularly interesting to see, who will be accepted as interested party, who can initiate claims and how the prosecutor and courts perform their duties. Stakeholders such as employees could be considered as potential claimants in these situations. In this respect, both the German as well as the Dutch proposal build on interested parties, whistleblowers and other stakeholders as forces for external supervision.

Another possible high risk scenario is that the managing director is a shareholder at the same time. In this situation, it is particularly important that members of the councils of stewards take their job seriously and ensure that the company is not run entirely according to shareholder primacy. Also, there is a risk that a managing director could put friends on the council of stewards who do not object to unfettered shareholder primacy. All these scenarios, pose the threat that steward ownership could be seen as untrustworthy. Directors and stewards can be removed and held liable, so it is even more important that the outsider's perspective has some influence here.

The fear for such a circumvention of steward ownership principles was raised with great force in the German discussion. This is why the German draft developed a special auditing system and external oversight as a governance instrument. The RV-principles refer to some principles of established foundation law in this respect.²⁰³

²⁰³ It seems as if the RV-principles do not refer to Art. 2:21 according to which in exceptional cases, interested parties can even ask a court to resolve a foundation, for example if the interested parties believe that the foundation is distributing property against the rules of foundation law.

6. Establishment, transformation and restructuring

The German GmgV draft provides rules on its establishment. A GmgV is set up by its members who draft the charter, appoint the first managing director who then applies for registration. The Dutch RV principles do not mention its establishment, which indicates that general BV-rules must be applied. The first council of stewards, board of directors and articles of association must be provided by the founders, who also must sign the notarial deed of incorporation together with the first shareholders.

The German draft proposes that conversions from another legal form into a GmgV require a unanimous vote of all members. This is because such a conversion represents a fundamental change to the rights of shareholders, and facilitating it without their consent would not only be questionable in terms of legal policy, but also constitutionally problematic.²⁰⁴ In the event of conversion, the shareholders' creditors are entitled to a security deposit to ensure that the asset-lock does not negatively affect them.²⁰⁵ A similar structure might also be discussed for the future development of the Dutch RV.

The GmgV cannot convert into another legal form without an asset lock. Allowing such conversions would breach the trust that stakeholders place in the permanent asset lock. This also would jeopardize the goal of having a legal form that facilitates corporate succession and long term orientation. Therefore, a conversion into another German form is not permissible. However, in view of the fundamental freedoms to convert legal entities under EU law, cross-border conversion into a foreign EU legal form with a comparable asset lock is possible - e.g. into a Swedish company without profit participation rights, the "aktiebolag med särskild vinstutdelningsbegränsning."²⁰⁶

The German Justice Ministry has argued, that in order to avoid problems of European law, transborder transformations should be possible without any restrictions. This, however, would make the asset lock completely unreliable. Every new generation of shareholders would be free to sell the company for their personal profit after transformation into, e.g. a French stock corporation.

²⁰⁴ Introduction to the transformation law of the GmgVGE 269. On the majority requirement, GmgVGE 271.

²⁰⁵ § 22 (3) UmwGE.

²⁰⁶ On cross-border conversion GmgVGE 314.

The Dutch RV-principles allow conversion into other legal forms with court approval.²⁰⁷ In this regard, the paper refers to the rules and restrictions on conversions of Dutch foundations into other legal forms.²⁰⁸ Moreover, in case of a conversion, the assets raised in the RV are safeguarded and may not be used for distributions on shares not yet provided for in the articles of association prior to the conversion. A cross-border conversion is possible as explained above if a court holds that the RVs' assets are sufficiently safeguarded after conversion.²⁰⁹ This might also be a possible approach for the German draft.

In summary, the separation of control and profit rights i.e. asset lock is softer in the Dutch-RV principles than in the German draft. While there might be experiences with such court approval in Dutch foundation law, a more developed draft could provide some aspects that could guide the decision making of a court. Given that even foundations can be transformed under Dutch law with court approval, something that is impossible under German law, it is understandable that the RV-principles allow conversion under the same rules.

For the German draft, we discussed whether to suggest a system that allows for a GmgV to convert into another legal form, while courts are tasked with safeguarding the assets that were raised in the GmgV. However, our drafting team decided against it, because we considered it too difficult, costly and time consuming to evaluate which assets require safeguarding. This would especially be the case where an existing business converts into a GmgV and the GmgV then converts back into another legal form. Then, a court would have to determine which parts of the assets of the GmgV were raised during the time when the asset lock was in effect. Moreover, properly safeguarding assets also then requires a sufficient governance structure after a conversion. The possibility to circumvent the asset lock through conversion could erode the trust in steward ownership. This trust is central for the viability of any new legal form. However, if there are good experiences with the approach in the Netherlands, German law could learn from this.

IV. Outlook

As this article has shown, steward ownership aims at creating a business structure where firms are run in the long-term interest of the business rather than short term profit of shareholders. The asset lock ensures that profits are reinvested into the business or used for charitable purposes rather than distributed to

²⁰⁷ Court approval is not only necessary for transformation into another legal form, moreover in the charter certain clauses can be safeguarded by requiring court approval for their amendment, *Uitgangspunten van de Rentmeesterverenootschap* II 6 at 7.

²⁰⁸ A conversion of a foundation is not possible in not possible in many legal systems. Its not permissible in Germany, but is possible under Dutch law.

²⁰⁹ *Uitgangspunten van de Rentmeesterverenootschap* II 5 at 6-7.

shareholders, promoting long-term development over short-term gains. By separating corporate control from rights to profits, the model facilitates corporate succession by enabling control to pass to capable successors based on merit and commitment rather than capital investment or familial ties. It structurally encourages firms to consider the interests of all stakeholders, moving away from traditional shareholder primacy that can lead to harmful externalities. Ultimately, steward ownership seeks to create resilient, purpose-driven companies that contribute positively to society.

The GmgVGE is the first proposal for implementing the concept of steward ownership as a designated legal form in Germany. It introduces substantial innovation while building on existing legal frameworks, maximizing legal certainty and minimizing costs for implementation. The draft lays out a robust governance system which preserves the asset lock and ensures sufficient flexibility for entrepreneurial decision making of the members. It remains to be seen if its elaborate governance system can work in practice and allow for sufficient financing. However, its combination of internal and external governance tools could encourage stakeholders to trust the integrity of the legal form.

The fate of the GmgVGE will depend on political negotiations and the outcome of the upcoming German elections. Yet the broader movement toward steward ownership - exemplified by Patagonia, Danish enterprise foundations, and similar initiatives worldwide - signals a growing desire for forms of ownership that structurally align economic success with social and environmental goals. Germany's experience in developing a dedicated legal form may offer insights for other jurisdictions, where legislative debates on steward ownership are already unfolding.

The Dutch RV-principles offer a bold but different approach to the German one, allowing for profit distribution to shareholders but granting them no right to decision making. All main decisions remain with the council of stewards that is also supposed to safeguard the characteristic steward ownership features. It remains to be seen how these principles will be further developed into a draft. The proposal refers to instruments of foundation law for external supervision of members of the council of stewards. Stakeholders and the public prosecutors shall play a role in that respect.

We hope that both the German draft as well as the RV-principles will stimulate critical discussion and contribute to further evolution of stewardship-oriented models in Germany, the Netherlands and internationally.