

Making the Case for Case Studies in Empirical Legal Research

Aikaterini Argyrou*

1. Introduction

The article aims to discuss and demonstrate the use of the case study qualitative method in support of legal research. The use of the case study qualitative method is discussed in the context of an interdisciplinary research project, which examines legal forms and stakeholder participation in the governance of social enterprises. In particular, the interdisciplinary research project looks at the examination of national legislation and legal forms included in various legal systems, which are tailor-made for social enterprises. The underlying idea is that the legal research *per se* cannot provide answers regarding the function of participatory governance in social enterprises.

To support the legal research I attempted to develop a comprehensive baseline inductive theory through qualitative case studies to further explain the participatory function of governance in social enterprises. The development of qualitative case studies and the use of empirical techniques are used to demonstrate how, in practice, implementation of national legal provisions influences stakeholders and decision-makers to participate in the decision-making processes of social enterprises. Although this type of inquiry cannot be answered within a framework that is only underpinned by legal positivism, the use of the case study method in qualitative research is nevertheless much disputed and underused. This being so, the use of the case study method should be considered prior to its application. For that reason, I have provided a theoretical discussion in this article, which presents various arguments for and against the use of the case study method in qualitative research. Several of these arguments are addressed in this article and reflected on in the context of the empirical legal research project in which I am involved.

Accordingly, in this article, the use of a non-legal method, whose application originates predominantly from the social sciences, i.e. the case study qualitative method, is explained. Section 1 provides a theoretical discussion concerning the content and the foundations of empirical legal research as a form of interdisciplinary research. Section 2 discusses the scholarly discourse relating to the perceived opportunities and limitations of the case study method in qualitative research. This section also illustrates several issues of validity and rigour, which are disputed in qualitative research in relation to the use of the case study qualitative method. Section 3 discusses the use of the case study qualitative method in an empirical legal research project which I conducted. It provides a thorough explanation of the techniques which I applied to mitigate the perceived limitations and to advance the perceived opportunities of the case study method in its execution. Finally, Section 4 contains conclusions.

* Aikaterini Argyrou (A.Argyrou@uu.nl) is a PhD student at Utrecht University and a Visiting Fellow at Nyenrode Business University (the Netherlands).

1.1 Interdisciplinary research and its use in legal scholarship

Interdisciplinary research, as the term suggests, is a type of research that involves two or more research disciplines.¹ A normative discipline, such as law, is combined with an empirical discipline that forms part of the social sciences, namely organisational and entrepreneurship studies, sociology and/or psychology. Although, according to Taekema & Van Klink, disciplines differ in their understanding of concepts, methods used, object of examination, problem awareness (when different disciplines perceive different problems) and research goals, legal scholars may draw inspiration from other disciplines in a way that is auxiliary to their research.² Inspiration from the social sciences in legal research may explain how the legal system works in reality, capturing what is called the ‘law’s truth’ or the ‘essence of law’, such as the inner motives and meanings of legal phenomena.³ In other words, the auxiliary use of methods and inspiration drawn from the social sciences can be used when the response to the problem defined in the research question ‘is not predicated solely on the concrete body of legal rules’ and does not concern a hermeneutical quest for a legal meaning and/or interpretation.⁴ Accordingly, the response cannot be offered with the exclusive use of legal and doctrinal research methods.

Such a situation may require the application of an empirical legal research approach. This approach encourages the outcomes from the study of materials, e.g. facts and data, and the use of techniques that stem from the social sciences, which may serve as contributions to the legal arguments presented by the legal scholar, subject to validity standards from both disciplines.⁵ It involves the use of empirical methods although not for the substantive analysis of law. This task is obviously assigned to judges and to legal practitioners through the interpretation and application of the existing body of knowledge of law and of legal practice. Empirical techniques, tools and methods may be used in legal research to reveal multiple legal discourses and/or ‘legal realities’ through internally realised operations and processes. In other words, to obtain factual data which reveal, ‘the limits of institutional action’, ‘practical insider attitudes’ and ‘conceptions and experiences of law and legal institutions’.⁶ In pursuit of understanding more effectively the two components of empirical legal research, the following section discusses in detail what may constitute in theory an empirical legal inquiry in an interdisciplinary context.

1.2 The empirical legal inquiry in an interdisciplinary context

Empirical legal research comprises an empirical part and a legal part. Legal inquiry requires not only the application of classical legal research methods, i.e. the doctrinal method, but also a combination of black letter law research and non-doctrinal research.⁷ In principle, doctrinal research assigns to the legal scholar and legal practitioner the task of developing an understanding of an authoritative text so as to be able to

1 S. Taekema & B. van Klink, ‘On the border: Limits and Possibilities of Interdisciplinary Research’, in B. van Klink & S. Taekema (eds.), *Law and Method, Interdisciplinary Research into Law* (2011), p. 7. In academic scholarship, the terms to characterise research as ‘multidisciplinary’, ‘cross-disciplinary’, ‘interdisciplinary’ and ‘transdisciplinary’ have been traditionally used to describe the level of interaction and integration of research and thus knowledge from different disciplines. Such knowledge differs from disciplinary knowledge, which is solely generated in the boundaries of the various widely accepted academic disciplines. Various scholarly arguments have been used to demonstrate how the foregoing terms differ or even constitute a continuum indicating a higher or lower degree of integration and synthesis in research and knowledge. Accordingly, ‘multidisciplinary’ refers to integrated research, which does not cross the disciplinary boundaries; ‘cross-disciplinary’ refers to integrated research which uses in one discipline the viewpoint of another discipline; ‘interdisciplinary’ refers to research which crosses disciplinary boundaries in order to create new integrated knowledge; and ‘transdisciplinary’ refers to research which further integrates non-academic knowledge. Other scholars, use the generic term of ‘interdisciplinary’ to develop taxonomies and classifications concerning different levels of integration of ‘basic’ or more ‘advanced’ interdisciplinary research. M.M. Siems, ‘The taxonomy of interdisciplinary legal research: finding the way out of the desert’, (2009) 7 *Journal of Commonwealth Law and Legal Education*, no. 1, p. 6. See G. Tress et al., ‘Clarifying Integrative Research Concepts in Landscape Ecology’, (2005) 20 *Landscape Ecology*, no. 4, pp. 485-488.

2 See Taekema & Van Klink, *supra* note 1, pp. 8-9.

3 R. Banakar, ‘Reflections on the Methodological Issues of the Sociology of Law’, (2000) 27 *Journal of Law and Society*, no. 2, p. 274.

4 *Ibid.*, pp. 282-283.

5 See Taekema & Van Klink, *supra* note 1, p. 11. R. Banakar, *Merging Law and Sociology: beyond the dichotomies in socio-legal research* (2003), pp. 47-49.

6 R. Banakar, ‘On the Paradox of Contextualisation’, in R. Banakar (ed.), *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (2014), p. 91. See Banakar (2000), *supra* note 3, p. 284.

7 I. Dobinson & F. Johns, ‘Qualitative Legal Research’, in W. Chui & M. McConville (eds.), *Research Methods For Law* (2007), pp. 18-19.

use it properly in a case or in a legal argument.⁸ The character of legal doctrinal research is argumentative, and it aims at the formation of a legal argument based on legal reasoning.⁹

However, legal research can generally be perceived to comprise doctrinal research and methods as well as non-doctrinal legal research. Non-doctrinal legal research is concerned with a complementary problem, policy and a law reform-based approach.¹⁰ The legal scholar, other than contemplating the normative content of the body of law, is in a position to raise problems that are currently affecting the law.¹¹ An example might be to indicate flaws in the underlying policy (in terms of effectiveness and implementation) and then suggesting necessary changes to the law (law reforms). Such an assignment often requires the consideration of the social references underlying the law, as well as the effect and the impact of the current law on certain social constructs in practice. Thus, in epistemological terms, a space is created for the use of empirical legal research.¹²

The empirical part differs in principle from the typical legal part that was described in the previous paragraph. Empirical research in the social sciences deals with the collection of facts concerning the world and the measurement and careful observation of the reality.¹³ Empirical legal research differs from doctrinal research developed in the normative discipline of law (i.e. 'law on paper') because it seeks to capture real-life evidence (law in practice), regarding the world based on either the researcher's and/or other people's observations or experiences, i.e. through real-life data. This data may be based on legislation or case law as part of the real world.¹⁴ Thus, in empirical legal research, both approaches (legal and non-legal) can be perceived as complementary to the extent that empirical (legal) research will show the *external* perspective of law while the doctrinal research will show the *internal* aspect of law.¹⁵

The use of empirical (non-doctrinal) legal research is an auxiliary and complementary method in legal research. Its application requires the explanation and translation into legal terms of findings that stem from observations, experiences and data regarding the functioning and the effects of law. This has to be done primarily using valid and rigorous justifications.¹⁶ The translational issues raised by the interdisciplinary approach are outlined in the so-called problem: the 'fact-value' separation or the 'gap between facts and values', which reflects the legal researcher's problem of translating the empirical evidence in a normative way that accommodates legal argumentation and scholarship.¹⁷ The problem has been addressed by many scholars, who have tried to develop tools for legal researchers to assist them in 'leaping from valid (and relevant) empirical evidence to formulating normative statements'.¹⁸ These tools comprise 'due process criteria' for validating empirical research, the use of various factors for weighing conflicting arguments in terms of 'completeness', 'relevance' and 'consonance', and tools for the use of empirical legal research in such a way that it shows the effectiveness of law as an instrument (one of different possible solutions) to achieve a set of policy goals.¹⁹ Other scholars, on the contrary, claim that empirical legal research already has

8 S. Taekema, 'Relative Autonomy: A characterisation of the Discipline of Law', in B. van Klink & S. Taekema (eds.), *Law and Method, Interdisciplinary Research into Law* (2011), pp. 46-47.

9 Ibid., p. 47.

10 See Dobinson & Johns, *supra* note 7, p. 19.

11 Ibid., p. 20.

12 L. Epstein & G. King, 'The Rules of Inference', (2002) 69 *University of Chicago Law Review*, no. 1, pp. 2-3. L. Epstein & A.D. Martin, *An Introduction to Empirical Legal Research* (2014).

13 J.W. Creswell, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (2013), pp. 145-146.

14 See Epstein & King, *supra* note 12, p. 3.

15 K. van Aeken, 'Law, Sociology and Anthropology: A Liaison Beginning Endlessly', in B. Van Klink & S. Taekema (eds.), *Law and Method, Interdisciplinary Research into Law* (2011), p. 81. See S.J. Shapiro, 'What is the Internal Point of View?', (2006) 75 *Fordham Law Review*, no. 3, p. 1159 who refers to Hart's theory concerning the internal and external aspect of law: '[F]or it is possible to be concerned with the rules, either merely as an observer who does not himself accept them, or as a member of the group which accepts and uses them as guides to conduct. We may call these respectively the 'external' and the 'internal points of view.' H.L.A. Hart, *The Concept of Law* (1994) p. 89.

16 See Taekema & Van Klink, *supra* note 1, pp. 11, 25-26. In this respect, Chynoweth mentions: 'The normative character of the law also means that the validity of doctrinal research must inevitably rest upon developing a consensus within the scholastic community, rather than on an appeal to any external reality' in P. Chynoweth, 'Legal Research', in A. Knight & L. Ruddock (eds.), *Advanced Research Methods in the Built Environment* (2008), p. 30.

17 See Taekema & Van Klink, *supra* note 1, p. 17. F.L. Leeuw, 'Empirical Legal Research: The Gap between Facts and Values and Legal Academic Training', (2015) 11 *Utrecht Law Review*, no. 2, <<http://doi.org/10.18352/ulr.315>>, p. 22. I. Giesen, 'The Use and Incorporation of Extralegal Insights in Legal Reasoning', (2015) 11 *Utrecht Law Review*, no. 1, <<http://doi.org/10.18352/ulr.308>>, pp. 1-18.

18 See Leeuw, *supra* note 17, p. 22. W.J. Ball, 'A Pragmatic Framework for the Evaluation of Policy Arguments', (1995) 14 *Review of Policy Research*, no. 12, pp. 17-20.

19 See Leeuw, *supra* note 17, p. 29.

a normative meaning when it comprises normative judgements regarding the ‘real needs’ of ‘real people’ in real life.²⁰ Having thus explained the content of empirical legal research, in the next section the discussion will address theoretical debates in the field of empirical legal research.

2. Quantitative or qualitative empirical legal research: a debate

According to Epstein & King, empirical legal research can be either non-numerical and qualitative or numerical and quantitative.²¹ However, in the social sciences discipline there is a long-standing debate among social scientists, who discuss the merits of empirical qualitative and quantitative research methods based on philosophical and epistemological arguments. The qualitative-quantitative debate has also gained considerable impetus among the empirical legal researchers. Scholars such as Epstein & King and/or Dobinson & Johns accept qualitative empirical evidence (non-numerical) and its collection method as a valid means of empirical legal research, something that is not accepted by Heise.²² Heise explains that, up to 1998, empirical legal research comprised only research which made use of quantitative data and methods of statistical analyses to identify patterns in judicial decisions. These included ‘judicial opinion coding or case content analysis, descriptive and inferential’ while excluding empirical legal research which used other qualitative techniques.²³ Since then, legal scholars have been encouraged to employ and develop other empirical methodologies in empirical legal research.²⁴ For instance, the proponents of the use of qualitative research methods advocate that only qualitative empirical legal research offers to policy-makers valuable ‘information about decision making, experiences and behaviour grounded in the experiences and world-view of those likely to be affected by a policy decision’.²⁵

Qualitative empirical legal research examines socially constructed facts, such as people’s perception and understanding of law and justice, whereas quantitative research examines (legal) facts, which are measurable, independent and more easily observed.²⁶ In principle, qualitative research is research the epistemological underpinning of which is mainly found in the paradigm of social constructivism and interpretivism, as opposed to quantitative research, which epistemologically belongs to the research tradition of positivism.²⁷

In particular, qualitative research is ‘naturalistic’ and participatory research conducted in its natural context to capture experiences and observations, and subsequently to understand them and assign a subjective meaning to them.²⁸ In other words, it attempts to capture the complexity of social phenomena in human behaviour and to determine their meaning.²⁹ It is ‘naturalistic’ because it examines social phenomena in their natural settings and it is ‘participatory’ because the research subject plays a crucial role in the research process.³⁰ This is achieved through three main methods and techniques of collecting data: in-depth interviews, direct observations and analysis of data retrieved from relevant documents.³¹ Such empirical research combined with traditional, black letter legal research is often also referred to as ‘socio-legal research’.³²

20 J.M. Smits, ‘Law and interdisciplinarity: on the inevitable normativity of legal studies, *Critical Analysis of Law*’, (2014) 1 *An International & Interdisciplinary Law Review*, no. 1, p. 84.

21 See Epstein & King, supra note 12, p. 2.

22 M. Heise, ‘The importance of being empirical’, (1998-1999) 26 *Pepperdine Law Review*, no. 1, p. 810. See Dobinson & Johns, supra note 7. See also Epstein & King, supra note 12.

23 See Epstein & King, supra note 12, p. 2. See Heise, supra note 22, p. 810. See Dobinson & Johns, supra note 7, p. 17.

24 R.J. Landry, ‘Empirical Scientific Research and Legal Studies Research – A Missing Link’, (2016) 33 *Journal of Legal Studies Education*, no. 1, p. 170. D.R. Cahoy, ‘Editor’s Corner: Considerations in the Rise of Empirical Legal Scholarship’, (2010) 47 *American Business Law Journal*, no. 3, p. vi. L. Webley, ‘Qualitative Approaches to Empirical Legal Research’, in P. Cane & H. Kritzer (eds.), *The Oxford Handbook of Empirical Legal Research* (2010). L. Webley, ‘Stumbling Blocks in Empirical Legal Research: Case Study Research’, (2016) *Law and Method*, no. 3, pp. 1-21.

25 Smith et al., ‘Bridging the Empirical Gap: New Insights into the Experience of Multiple Legal Problems and Advice Seeking’, (2013) 10 *Journal of Empirical Legal Studies*, no.1, p. 149.

26 See Webley (2010), supra note 24, p. 927.

27 J.W. Creswell, *Research Design, Qualitative, Quantitative and Mixed Methods Approaches* (2003), pp. 8-9, 14.

28 See Webley (2010), supra note 24, p. 927.

29 See Creswell, supra note 27, p. 8.

30 See Webley (2016), supra note 24, p. 929.

31 *Ibid.*, pp. 928-929.

32 See Dobinson & Johns, supra note 7, p. 20.

In qualitative research, the objective of the researcher is to understand the meaning that the research subject gives to the examined social phenomenon rather than to generate or validate theories deductively retrieved from academic literature, something that applies when the positivistic or post-positivistic paradigm is followed.³³ Qualitative methods rely heavily on inductive reasoning based on data and reality, which are then categorised into general themes and patterns.³⁴ These methods can be used for exploratory, explanatory and descriptive purposes, and they can lead to the development of descriptive or causal inferences.³⁵ As Creswell notes, this perspective differs substantially from the positivistic and post-positivistic perspectives of empirical research in the social sciences, which seek to achieve law and theory verification and refinement through empirical observation and measurement in order to come to understanding.³⁶

The paradigm of positivism, which also underlies legal studies, focuses on objectivity and neutrality and on the methods of positive sciences and positive law. Qualitative research is predominantly a form of social inquiry. However, there are social scientists who developed a classical positivistic view of the social sciences (such as Comte, Durkheim and Grix).³⁷ There are also researchers who combine different paradigms – and thus research methods.³⁸ At first glance, the combination of legal research and empirical (qualitative) research as related to the social sciences would seem to be a rather strange one. It raises epistemological as well as methodological concerns and the need for multiple tests of validity and rigour from both disciplines. However, many scholars agree that empirical legal research has substantially helped the study of law and subsequently the development of law. In addition, empirical legal research has improved the training of legal scholars and legal practitioners in their application of methodologies other than the doctrinal legal method.³⁹

2.1 The use of the case study qualitative method in interdisciplinary empirical legal research

Creswell notes case study research as a ‘strategy’ of qualitative research,⁴⁰ which is distinguished and established in the empirical qualitative research domain.⁴¹ Case study development is predominantly related to qualitative interpretivist research and methods of collecting evidence. However, a more objective and positivistic approach to case study research has been provided by Yin, probably today’s most influential scholar in the field of case study development. Yin contemplates the case study ‘strategy’ and/or methodology, which ‘does not imply the use of a particular data collection method’ but rather goes beyond that.⁴²

The particularities of the case study ‘strategy’ are explained by Yin in his seminal work of 1984 concerning case study research, its design and methods.⁴³ In his book, Yin distinguishes case study research from the case study as a ‘teaching tool’ used in other fields, such as ‘the field of law’.⁴⁴ He then discusses the case study paradox, i.e. the wide use of case study research in various academic disciplines and fields, although case study research is stereotypically perceived to be a ‘less desirable’ means of research that lacks

33 See Creswell, *supra* note 27, p. 9.

34 See Webley (2010), *supra* note 24, p. 929.

35 *Ibid.*, p. 928. See Epstein & King, *supra* note 12, p. 20.

36 See Creswell, *supra* note 27, pp. 6-7.

37 See Van Aeken, *supra* note 15, pp. 64-65.

38 See Creswell, *supra* note 27, pp. 15-17. Examples are provided by Webley (2010), *supra* note 24, on p. 930 citing G. King et al., *Designing Social Inquiry Scientific Inference in Qualitative Research* (1994), p. 3.

39 See Smits, *supra* note 20, p. 85. See Epstein & King, *supra* note 12, pp. 8-9. T. Eisenberg, ‘The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns’ (2011), p. 1719 available at: <<http://scholarship.law.cornell.edu/facpub/974>> (last visited 7 November 2017). See Heise, *supra* note 22, p. 813

40 In Creswell’s language the term ‘strategy’ is used interchangeably with the term ‘methodology’ to describe any researcher’s ‘strategy of inquiry’, method of research and/or the principles that guide a ‘plan of action that links methods to outcomes’ and governs the ‘choice and use of methods’ in qualitative research. The term ‘strategy’ and the equivalent term of ‘methodology’ differ in Creswell’s language from the terms ‘methods’ and ‘techniques’, which are used interchangeably to describe the techniques used for the collection of data in qualitative research. See Creswell, *supra* note 27, p. 5.

41 See Creswell, *supra* note 27, p. 15.

42 For instance, according to Yin, case study research differs from ethnographic research, which employs only data collection through the participant’s observations. R.K. Yin, ‘The Case Study Crisis: Some Answers’, (1981) 26 *Administrative Science Quarterly*, no. 1, pp. 58-59. See Webley (2016), *supra* note 24, p. 939.

43 R.K. Yin, *Case Study Research: Design and Methods* (5th edition 2014).

44 *Ibid.*, p. 5.

precision, objectivity and rigour.⁴⁵ The case study paradox is also central to the scholarship of Flyvbjerg, who demonstrates in what terms the case study method is actually and constantly ‘poorly understood’.⁴⁶ The ‘special’ but ‘unexamined status’ of the case study methodology due to various methodological stereotypical perceptions is also reflected in the scholarship of Ragin & Becker and George & Bennett.⁴⁷ The stereotypical perceptions concerning the use of the case study qualitative method as well as its perceived advantages and limitations are discussed in Subsection 2.2.

A case study, according to Yin’s definition, is an empirical study that ‘investigates a contemporary phenomenon in-depth within its real-life context, especially when the boundaries between the phenomenon and the context are not clearly evident’.⁴⁸ The case study research in social inquiry and its valid development has stimulated the emergence of significant methodological scholarship.⁴⁹ Although case study research is stereotypically perceived to be mainly used for exploratory purposes, e.g. for generating hypotheses in the preliminary stages of research, according to Yin and to other scholars it aims to provide further in-depth exploration and detailed descriptions and explanations of activities, events, situations and processes concerning people’s behaviour and phenomena.⁵⁰ Accordingly, Flyvbjerg argues that ‘the case study is useful for both generating and testing of hypotheses but is not limited to these research activities alone’.⁵¹

Case study research is suited particularly for use when ‘a how and why [research] question is being asked about a contemporary set of events, over which the investigator has little or no control’.⁵² For instance, a case study can be developed if a researcher aims to determine the meaning that certain people give to, amongst other things, real-life events, organisational and managerial processes, situations and actions as well as processes by which these actions, events and situations actually take place.⁵³ In this way, the researcher can achieve greater knowledge and understanding of the examined phenomena.⁵⁴

Yin’s popular development of the case study method has a positivistic and deductive stance, which mainly intends to *test* theory (in single case study designs) and to *generate* theory (in multiple case study designs), subject to criteria concerning validity and reliability-replication.⁵⁵ Those are established to safeguard the study’s objectivity against the researcher’s personal bias. According to Yin, maintaining objectivity and meeting the requirements of validity and reliability require the development of a research design, which contains certain steps and systemic processes that are traceable and transparent.⁵⁶ Eisenhardt & Graebner, two well-known social scientists, provide a more interpretivist approach to case study research.⁵⁷ They suggest how to handle emergent theory to the extent that it is evidence-based. They call it ‘grounded’ theory, a qualification which differs from the classical meaning that Glaser & Strauss gave to grounded theory development.⁵⁸

45 Ibid., p. 19.

46 B. Flyvbjerg, ‘Case study’, in N.K. Denzin & Y.S. Lincoln (eds.), *The Sage Handbook of Qualitative Research* (2011), p. 302. J. Gerring, ‘What is a case study and what is it good for?’, (2004) 98 *The American Political Science Review*, no. 2, p. 341.

47 C.C. Ragin & H.S. Becker, *What is a Case?: Exploring the Foundations of Social Inquiry* (1992), p. 8. See A.L. George & A. Bennett, *Case studies and theory development in the social sciences* (2005), pp. 5-6.

48 See Webley (2010), supra note 24, pp. 939-940. See Yin, supra note 43, p. 16. See Webley (2016), supra note 24, pp. 1-21.

49 H. Simons, ‘Case Study Research: In-Depth Understanding in Context’, in P.L. Leavy (ed.), *The Oxford Handbook of Qualitative Research* (2015), pp. 455-470. R.E. Stake, ‘Qualitative Case Studies’, in N.K. Denzin & Y.S. Lincoln, *The Sage Handbook of Qualitative Research* (2005). See Ragin & Becker, supra note 47. D. Byrne & C.C. Ragin, *The Sage Handbook of Case-Based Methods* (2009). See Flyvbjerg, supra note 46. See Gerring, supra note 46.

50 See Webley (2010), supra note 24, p. 940. See Creswell, supra note 27, p. 15. See Flyvbjerg, supra note 46, p. 302. See Yin, supra note 43, p. 4.

51 See Flyvbjerg, supra note 46, p. 306.

52 See Yin, supra note 43, p. 14.

53 J. Mason, *Qualitative Researching* (1996), p. 129.

54 J.A. Maxwell, ‘Designing a qualitative study’, in L. Bickman & D.J. Rog (eds.), *The Sage Handbook of Applied Social Research Methods* (2009), p. 221.

55 See Yin, supra note 43, pp. 36-37. See Webley (2010), supra note 24, pp. 932-936.

56 These are: the development of a research protocol, cautious and justifiable case selection on the basis of repetition, a definition of the unit of analysis, the collection of data from multiple and varied sources, a logical manner of linking data with theoretical propositions through pattern matching and other techniques, and finally the interpretation of findings. See Yin, supra note 43, pp. 27-68.

57 K.M. Eisenhardt & M.E. Graebner, ‘Theory Building from Cases: Opportunities and Challenges’, (2007) 50 *Academy of Management Journal*, no. 1, p. 25.

58 Ibid., pp. 27-30.

The above-mentioned approaches offer room for the case study method to be used by legal scholars in empirical legal research. However, as Webley notes, the application of the case study method is ‘relatively underused in empirical legal research’.⁵⁹ According to her, the application of case study method in empirical legal research could provide analyses concerning how legislation is ‘understood’, ‘applied’ or ‘misapplied’, ‘subverted’, ‘complied with’ or ‘rejected’ which can influence law-related areas, such as ‘legal and policy making processes’ and ‘court procedure’ amongst others.⁶⁰ Similarly, Hutchinson demonstrates what type of case study research could be embedded into empirical legal research for:

- (i) exploratory reasons: the legal case study will allow the exploration of typical examples of legal cases which have produced varied legal outcomes, e.g. a legal case study which covers the data from trial transcripts and decisions or interviews with litigants;
- (ii) illustrative (descriptive) reasons: the legal case study can be illustrative by indicating and comparing practices in various organisations and explaining their differences; and
- (iii) explanatory reasons: the legal case study will explain significant reasons underlying a certain legal process.⁶¹

2.2 The strengths and weaknesses of the case study method in empirical legal research

In Subsection 2.1, it was explained that the case study qualitative method in empirical legal research is a method that could investigate, in an in-depth way, the meaning of real-life events, organisational and legal processes and/or human actions and behaviours.⁶² As a research method, it has perceived weaknesses and strengths that any researcher should be aware of, especially when it is used as an auxiliary method within the framework of empirical legal research. The strengths and weaknesses of case study research can be further extended to the field of empirical legal research. However, although the strengths and weaknesses of case study research have become the subject of scholarly debate, which provides multiple arguments with respect to both (see Table 1), these arguments will be only discussed in this section briefly and in a less analytical but more informative manner. This is because the objective of this article is not to participate in the continuing case study methodological debate, which is developed in particular by qualitative researchers in the social sciences discipline. On the contrary, it is considerably more important here to contemplate the opportunities offered by a non-legal research method that can be used more often by legal researchers in support of legal research.

The case study development offers an advantage to the legal researcher in answering questions of ‘how’ and ‘why’. These are not legal questions *per se*, but they can be complementary to legal questions. In response to these questions, the legal researcher can use a contemporary set of real-life events data (collected through interviews, documents and observations), rather than legal arguments and theoretical constructs, to examine particular topics. Examples are ‘the application of legal rules and procedures’ and other ‘processes’ including as well the implementation of ‘organisational and managerial processes’ and in particular relating to how these are perceived, how the persons involved in them react to them and how such a reaction influences the effectiveness of such rules, processes and procedures.⁶³ In this way, and by being engaged in tasks which require an improved skillset, the legal researcher can seek answers to certain research questions.⁶⁴ Webley is not the first scholar to raise the issue of legal education traditionally training lawyers to handle only legal data retrieved predominantly from legislation and case law.⁶⁵ This results in

59 See Webley (2016), *supra* note 24, p. 2.

60 *Ibid.*, p. 3.

61 T.C.M. Hutchinson, *Research and Writing in Law* (2002), p. 104.

62 See Yin, *supra* note 43, p. 4.

63 See Webley (2016), *supra* note 24, p. 21.

64 *Ibid.* See Yin, *supra* note 43, pp. 9-11. See Webley (2016), *supra* note 24, p. 21 mentions regarding the effective use of case study in empirical legal research which enlarges the skills of the legal practitioner: ‘it requires us to adopt a structured and reflective approach to research design in many instances, to consider pre-emptively possible explanations (hypotheses) and rival propositions and to engage with theory at an early stage in a study’.

65 See Webley (2016), *supra* note 24, p. 2. See Heise, *supra* note 22, p. 811. See Epstein & King, *supra* note 12, p. 1. In the field of empirical legal research Siems states: ‘Lawyers may have to accept that without additional training scientific legal research may remain superficial or may produce wrong results’. See Siems, *supra* note 1, p. 11.

lawyers not being trained in handling other types of sources of real-life data, i.e. interviews, surveys and observations.

In addition, the case study research offers an opportunity to the legal researcher to collect and verify responses originating from different sources of data collection, by comparing a number of different approaches to resolving an issue using the technique of triangulation.⁶⁶ The technique of triangulation applied in case study qualitative method is accurately defined by Webley as the process of considering a research question ‘from as many different standpoints as possible, using as many different data types as possible to permit a holistic examination of the question to see which explanations, if any, remain consistent across all data sources’.⁶⁷ Such an approach allows the legal researcher to examine holistically a phenomenon in its natural environment and to identify multiple explanations, while capturing different perspectives from different types of data.⁶⁸

Within the framework of case study qualitative development as part of empirical legal research, the legal researcher is able to see the reality with a more holistic, in-depth and contextual view, a view that is evidence-based with respect to approaches, events, behaviours and processes. Case study research, as part of empirical legal research offers an opportunity to the legal researcher to examine the effects and the complexities of the implementation of the law in a sequence of events that follow a natural order in a specific period.

However, the legal researcher should also be aware of the perceived weaknesses and ‘prejudices’ of case study research and its used applied methods.⁶⁹ The most commonly acknowledged weakness is the perceived vulnerability of case study research in terms of rigour and validity when compared with quantitative numeric studies.⁷⁰ According to methodological scholarship, the case study research is seen to lack the validity of developing a proper sample of cases and providing objectively verified results.⁷¹ In case study research, it is seen that there is space for the researcher’s bias to infiltrate the selection of cases and the research results.⁷² Hence, case study research can encompass predominantly the ‘insider view’, i.e. the personal bias of the researcher, without encompassing an objective understanding of the data.⁷³ However, as Yin puts it correctly, the various logics applied to case study selection among others, e.g. the replication logic, differ from the objective sampling logic applied to surveys.⁷⁴

Indeed, the collection and analysis of data, which originate from interviews and observations, may allow for the personal bias of the researcher to affect the outcome of the research, if the case study method is not used properly and consistently.⁷⁵ In that respect, Yin and other scholars encourage the development of scholarship for the methodology of case study research that will assist case study researchers to avoid commonly occurring mistakes, e.g. sloppiness in research, deviations from systemic methodological processes, ambiguous results and weak evidence and the personal bias of the researcher infiltrating the research findings.⁷⁶ One could even argue that the stereotypical perceptions militating against the use of case study research have resulted in strengthening the development of the method and its methodological rigour, something that is clearly reflected in the work of Flyvbjerg and in other scholarship.⁷⁷

66 See Hutchinson, *supra* note 61, p. 103. See Webley (2016), *supra* note 24, p. 3.

67 See Webley (2016), *supra* note 24, p. 3.

68 See Hutchinson, *supra* note 61, p. 103.

69 See Webley (2016), *supra* note 24, p. 14.

70 See Yin, *supra* note 43, pp. 19-22. See Flyvbjerg, *supra* note 46, pp. 302, 309-311. See George & Bennett, *supra* note 47, pp. 22-25.

71 See Hutchinson, *supra* note 61, p. 103. See Flyvbjerg, *supra* note 46. See George & Bennett, *supra* note 47.

72 See Yin, *supra* note 43; Flyvbjerg, *supra* note 46; George & Bennett, *supra* note 47; Hutchinson, *supra* note 61.

73 See Yin, *supra* note 43; Flyvbjerg, *supra* note 46; George & Bennett, *supra* note 47; Hutchinson, *supra* note 61.

74 See Yin, *supra* note 43, p. 59. Yin notes that the sampling logic of surveys requires: ‘an operational enumeration of the entire universe or pool of potential respondents and then a statistical procedure for selecting a specific subset of respondents to be surveyed. The resulting data from the sample that is actually surveyed are assumed to reflect the entire universe or pool, with inferential statistics, used to establish the confidence intervals for which this representation is actually accurate. The entire procedure is commonly used when an investigator wishes to determine the prevalence or frequency of a particular phenomenon’. See Flyvbjerg, *supra* note 46. See George & Bennett, *supra* note 47.

75 See Yin, *supra* note 43, pp. 19-20. See Hutchinson, *supra* note 61, p. 103. See Flyvbjerg, *supra* note 46.

76 See Yin, *supra* note 43, pp. 19-20. See Epstein & King, *supra* note 12, pp. 5-6.

77 See Flyvbjerg, *supra* note 46. See Yin, *supra* note 43. See Stake, *supra* note 49. See George & Bennett, *supra* note 47.

Another perceived weakness of case study research claims that, due to its naturalistic character, there is no control exerted by the researcher over the examined variables or the behaviour of the participants.⁷⁸ Such a lack of control may allow the development of bias on the data and even result in the respondents altering their behaviour because they know that they are being studied.⁷⁹ Additionally, case study research (and especially the single case study) is stereotypically perceived to provide only a weak basis for generalisations to larger populations, i.e. the so-called ‘statistical generalisation’.⁸⁰ However, according to Yin and other scholars it provides a strong basis for the ‘analytical generalisations’ of theories and theoretical propositions particularly in a process of using ‘falsification’, ‘rival’ or ‘deviant’ cases or ‘a case that runs counter to a rule’.⁸¹

Flyvbjerg explains the different logic underlying case study research, emphasising that knowledge that ‘cannot be formally generalized does not mean that it cannot enter into the collective process of knowledge accumulation in a given field or in a society’.⁸² Timulak confirms that the idea of generalisation in case study research is ‘somewhat contradictory to the nature of most qualitative research which cherishes more contextualised knowledge’.⁸³ What needs to be understood is the simple argument offered by Webley, who explains that a case study ‘is a study of a phenomenon in itself rather than a means through which to view the whole world’.⁸⁴

Finally, scholarship also provides arguments against case study research on the basis of practical implications. Literature claims that in contrast to other types of research, interdisciplinary research and particularly case study research requires more time, more commitment and more financial resources.⁸⁵ In empirical legal research, case study research obviously requires the understanding of a different methodological position and familiarity with new terminology and techniques that are most of the time unknown and new to the legal researcher.⁸⁶ Table 1 demonstrates an indicative list of arguments provided in literature for and against the case study research.⁸⁷

Table 1 Arguments for and against case study research

Arguments for case study research	Arguments against case study research
It offers opportunities to verify responses by comparing a number of different approaches to resolving an issue.	It lacks the validity of a proper sample and objective quantitative proof (if not used in a mixed setting).
It allows the researcher to look at a particular situation in some depth and also in a broader sense.	There is a risk of respondents changing their behaviour because they know that they are being studied.
It allows a contextual rather than an artificially constructed view of experiences.	It may only reflect the situation through the eyes of the researcher: the data may be more reflective of the view of the beholder rather than the subject (fears of bias).
It allows for a contextual approach to the situation, especially with regard to ‘time slice’ situations, which can be viewed before and after major events or changes in order to document actual effects.	There is greater latitude for researcher bias in the actual choice of the individual or case to be examined.
It allows the researcher to delve further into inconsistent responses.	The ‘insider view’ being presented is by definition idiosyncratic-individual and not as encompassing as a bird’s-eye external sweep of the situation.
It allows for the complexities of social and political relations to be seen and for the relationships between these and the effects of one on others to become more obvious.	It would be nearly impossible to replicate a case study; the researcher can only document an example of a situation, so further research would usually be deemed necessary.

78 See Webley (2016), supra note 24, pp. 4-5.

79 See Hutchinson, supra note 61, p. 103.

80 See Yin, supra note 43, p. 21; Flyvbjerg, supra note 46, p. 305; Stake, supra note 49, p. 448; George & Bennett, supra note 47, p. 7.

81 See Yin, supra note 43; Flyvbjerg, supra note 46; Stake, supra note 49; George & Bennett, supra note 47.

82 See Flyvbjerg, supra note 46, p. 305.

83 L. Timulak, ‘Qualitative Meta-analysis’, in U. Flick (ed.), *The Sage Handbook of Qualitative Data Analysis* (2013), p. 492.

84 See Webley (2016), supra note 24, p. 5.

85 See Siems, supra note 1, pp. 7-8.

86 Ibid., pp. 7-8.

87 See Hutchinson, supra note 61, p. 103. See Flyvbjerg, supra note 46. See George & Bennett, supra note 47. See Yin, supra note 43, pp. 19-22. S.B. Merriam, *Qualitative Research: A Guide to Design and Implementation* (2009), p. 53.

Arguments for case study research	Arguments against case study research
Universals cannot be found in the study of human affairs. Context-dependent knowledge is more valuable.	General, theoretical knowledge is more valuable than concrete case knowledge.
Formal generalisation is overvalued as a source of scientific development; the force of a single example is underestimated.	One cannot generalise based on an individual case; therefore, the case study cannot contribute to scientific development.
The case study is useful for both generating and testing of hypotheses but is not limited to these activities.	The case study is most useful for generating hypotheses; that is, in the first stage of a total research process, while other methods are more suitable for testing hypotheses and theory building.
There is no greater bias in case study towards confirming preconceived notions than in other forms of research.	The case study contains a bias toward verification, that is, a tendency to confirm the preconceived notions of a researcher.
Difficulty in summarising case studies is due to properties of the reality studied, not the research method.	It is often difficult to summarise and develop general propositions and theories based on specific case studies.
Potential for achieving high conceptual validity.	It is prone to versions of 'selection bias'.
Strong procedures for fostering new hypotheses.	Case studies are much stronger at identifying the scope conditions of theories and assessing arguments about causal necessity or sufficiency in particular cases than they are at estimating the generalised causal effects or causal weight of variables across a range of cases.
Useful means to closely examine the hypothesised role of causal mechanisms in the context of individual cases.	Lack of representativeness: case researchers do not aspire to select cases that are directly 'representative' of diverse populations and they usually do not and should not make claims that their findings are applicable to such populations.
Capacity for addressing causal complexity.	Case studies require more time and commitment and hence adequate financial resources in order to be properly conducted. They often result in unreadable extensive data.

In Subsection 2.3, certain issues of validity and rigour relating to the qualitative case study method will be discussed as well as some of the methodological tools and techniques provided to avoid such issues.

2.3 Validity and rigour of the case study method

It was earlier mentioned in Subsection 2.1 that empirical legal research is subject to certain criteria with respect to validity, rigour and reliability. These criteria show to what extent the legal researcher validly and accurately captured the reflection of the examined phenomenon in real life. They also show to what extent data processing and measurements can be replicated by other researchers so that they may produce similar results which are free from bias. This can be done based on various techniques that have been developed to cross-examine data, amongst others, e.g. the method of data triangulation that was also explained earlier in Subsection 2.2.⁸⁸

Additionally, in Subsection 2.2 it was noted that the most commonly claimed consideration regarding the use of the case study qualitative method as developed within the post-positivistic paradigm, concerns the manipulation of data and their interpretation to an extent that reflects the researcher's personal bias. The post-positivistic paradigm of the case study, as opposed to the paradigm of constructivism and interpretivism, requires the pursuit of objectivity and reliability in generating research results. Accordingly, in this type of qualitative research, several converging techniques have been methodologically developed to assist researchers to safeguard what is called the 'validity' and 'rigour-reliability' of the case study research.⁸⁹ Yin distinguishes three types of validity criteria, i.e. construct validity, internal validity and external validity. Another parameter he mentions is reliability.⁹⁰

⁸⁸ See Webley (2010), *supra* note 24, p. 935.

⁸⁹ *Ibid.*, p. 935.

⁹⁰ See Yin, *supra* note 43, p. 46.

Construct validity refers to a safeguarding process that takes place during the collection of data and the development of the case study analysis with the aim of determining whether the case analysis contains any fallacies and whether it has been developed in a way that is free from bias. Construct validity requires the researcher to address three questions:

- (i) whether multiple sources of evidence have been used, cross-checked and cross-matched (using a triangulation method);
- (ii) whether a chain of evidence has been established in the presentation of the collected data; and
- (iii) whether key interviewees have reviewed and provided feedback regarding the collected data that are later processed through interview reports and coding.⁹¹

Internal validity refers to a process that allows the researcher to identify during the data analysis whether the identified inferences and the causal relationships between them are correct. This process requires the researcher to reconsider the analytical tools used by demonstrating the causal relationships between evidence and theory.⁹² Internal validity differs from external validity, which examines whether the results of a case study can be subject to replication. This replication logic is of major importance because it illustrates the reliability and rigour of the case study itself by considering whether the case study protocol and the research design have been appropriately developed to the extent that the study will produce the same results if it is replicated by other scholars.

Creswell & Miller also consider validity and reliability to be the anchors of case study research developed in the post-positivism paradigm.⁹³ This can be achieved through the employment of procedures that demonstrate the validity and reliability of all the steps that were used for the development of the case study. Validity would then entail the convergence and saturation of information (the extent to which no new data can be collected and coded and/or no new information can be compared with the maximum possible) among different sources of data.⁹⁴ Such a result is achieved through triangulation across data sources, theories and methods, e.g. interviews, observations and documents.⁹⁵ This is the process that Creswell & Miller, in citing Patton, simplify as 'returning to the data over and over again to see if the constructs, categories, explanations, and interpretations make sense'.⁹⁶ Creswell & Miller, in unanimity with Yin, consider external validity through 'member checking', during which the interviewees can review the credibility of the data and their interpretations in the case study concerned, as well as the reliability and the replicability of the method used. This is done by means of a trail technique, which requires the researcher to write down and catalogue the entire case study research process.⁹⁷

Other scholars, such as Maxwell, place at the epicentre of validity and reliability the quest of the researcher to identify the bias in the developed case study.⁹⁸ The bias can be the 'researcher's bias', as well as 'the effect of the researcher on the setting or individuals studied, generally known as reactivity'.⁹⁹ Maxwell, citing various scholars, such as Miles & Huberman, Becker, Kidder and Guba & Lincoln, enumerates a list of techniques that allow the researcher to identify personal bias, such as the intensive, repeated and long-term engagement of the researcher with the study participants, the acquisition of rich and thick data as opposed to poor data, the respondent's validation, searching for discrepant evidence and negative cases, triangulation, quasi-statistics, and finally the comparison of information.¹⁰⁰ Leeuw & Schmeets provide similar criteria for assessing the validity of empirical legal research designs: internal validity (assessment

91 Ibid., p. 47.

92 Ibid., pp. 47-48.

93 J.W. Creswell & D.L. Miller, 'Determining Validity in Qualitative Inquiry', (2000) 39 *Theory into Practice*, no. 3, p. 125.

94 P.I. Fusch & L.R. Ness, 'Are we there yet? Data saturation in qualitative research', (2015) 20 *Qualitative Report*, no. 9, p. 1409.

95 See Creswell & Miller, supra note 93, pp. 126-127.

96 Ibid., p. 125 citing M.Q. Patton, *Qualitative evaluation methods* (1980), p. 339.

97 See Creswell & Miller, supra note 93, pp. 127-128.

98 See Maxwell, supra note 54, p. 243.

99 Ibid.

100 Ibid., pp. 243-245. See M.B. Miles & A.M. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (1994), p. 237. H.S. Becker, *Sociology work: Method and substance* (1970), p. 51. L.H. Kidder, 'Qualitative research and quasi-experimental frameworks', in M.B. Brewer & B.E. Collins (eds.), *Scientific inquiry and the social sciences* (1981), pp. 226-256. E.G. Guba & Y.S. Lincoln, *Fourth generation evaluation* (1989), pp. 238-239.

of the causal relationship between theory and evidence), external validity (assessment as to whether the results can be subject to generalisation), descriptive validity (assessment of the quality of reporting of the empirical study) and criteria for assessing qualitative data analysis, such as confirmation or else verification of bias, reliability or else dependability, and finally internal validity or else authenticity.¹⁰¹ They also present a ‘reasoned justification’ or ‘due process’ approach that enables the legal researcher to reasonably justify the use of extra-legal information with the aim of answering the research question.¹⁰²

3. Featuring the case study qualitative methodological toolkit in an empirical legal study

3.1 The Social Enterprise Study

Section 3 will reflect on the opportunities and hindrances of using case study research in one empirical legal study currently undertaken by the author of this article. As such, for the purpose of this article, the study will be called the ‘Social Enterprise Study’. The Social Enterprise Study examines a new and unexplored concept in legal scholarship, i.e. the social enterprise, as well as the associated particularities in legislation, which is tailor-made for social enterprises. A social enterprise is a new type of socially and environmentally conscious enterprise.¹⁰³ Several and varying examples of social enterprises can be found in various countries in the EU, one of them being for example a café located in Bratislava, which solely employs the homeless and another being a taxi company in Amsterdam, which uses only electric taxis driven by middle age people who are long-term unemployed.¹⁰⁴

Social enterprises tend to exhibit certain key characteristics in their organisational structuring, some of the most important being the pursuit of a societal (social and environmental) purpose over profit and the development of inclusive and participatory decision-making processes for their stakeholders.¹⁰⁵ Accordingly, national legal frameworks and tailor-made legal forms for social enterprises have been developed in several jurisdictions in the EU to accommodate their unique characteristics already mentioned. However, there are also EU countries which have not yet introduced any legal status for the development of social enterprises.¹⁰⁶

The Social Enterprise Study investigates the research question asking to what extent tailor-made legal forms in selected jurisdictions support social enterprises in their efforts to be participatory and inclusive to their stakeholders. Based on that research question, the Social Enterprise Study comprises a legal research part, which examines the legal forms and governance structures provided in tailor-made laws for social

101 F.L. Leeuw & H. Schmeets, *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators* (2016), pp. 120-122, 153.

102 *Ibid.*, p. 227.

103 These enterprises differ from mainstream companies and commercial business organisations to the extent that they are socially and environmentally conscious enterprises, which seek to contribute to contemporary social and environmental challenges through business activities and adopted business models. As such, they are characterised by an inherent hybridity, which entails the combination of for-profit and not-for-profit elements in their legal, governance and business structures. For instance, a distinctive feature of social enterprises is the pursuit of social and environmental objectives, which overrides the pursuit of profit-making activities and the distribution of profits to the enterprise’s owners and shareholders. Social enterprises prioritise the fulfilment of their social mission in response to major social challenges such as poverty, social exclusion, discrimination and stigma; accordingly, they further the improvement of society and the protection of human rights. They also take into account their environmental impact by displaying a high level of environmental responsibility and accountability. They do so by adopting innovative business models and tailor-made legal forms, which allow them to operate in a way that is more open, transparent, participatory and inclusive towards stakeholders and third parties. See J. Defourny & M. Nyssens, ‘Conceptions of Social Enterprise and Social Entrepreneurship in Europe and the United States: Convergences and Divergences’, (2010) 1 *Journal of Social Entrepreneurship*, no. 1, pp. 33-38. J.A. Kerlin, ‘Social Enterprise in the United States and Europe: Understanding and Learning from the Differences’, (2006) 17 *Voluntas*, no. 3, p. 247. J. Defourny, ‘From third sector to social enterprises’, in C. Borzaga & J. Defourny (eds.), *The Emergence of Social Enterprise* (2001), pp. 1-18. A. Nicholls, ‘Introduction’, in A. Nicholls (ed.), *Social Entrepreneurship: New Models of Sustainable Social Change* (2006), pp. 1-35. B. Huybrechts & A. Nicholls, ‘Social Entrepreneurship: Definitions, Drivers and Challenges’, in C.K. Volkmann et al. (eds.), *Social Entrepreneurship and Social Business: An introduction and discussion with case studies* (2012), pp. 31-48. G. Galera & C. Borzaga, ‘Social Enterprise: An international overview of its conceptual evolution and legal implementation’, (2009) 5 *Social Entrepreneurship Journal*, no. 3, p. 212. J. Austin et al., ‘Social and Commercial Entrepreneurship: Same, Different, or Both?’, (2006) 30 *Entrepreneurship Theory and Practice*, no. 1, pp. 2-3. J.G. Dees, ‘The meaning of “Social Entrepreneurship”’, (1998) Kauffman Foundation and Stanford University: Kansas City and Palo Alto, p. 1.

104 Taxi Electric, available at: <www.taxielectric.nl/>. Café Dobre & Dobré, available at: <www.dobredobre.sk/> (both websites last visited 21 November 2017).

105 A. Argyrou & T. Lambooy, ‘An introduction to tailor-made legislation for social enterprises in Europe: A comparison of legal regimes in Belgium, Greece and UK’, (2017) 12 *International and Comparative Corporate Law Journal*, no. 3, pp. 47-107. European Commission, ‘A map of social enterprises and their eco- systems in Europe (Synthesis Report)’ (2015), available at: <<http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149>> (last visited 20 January 2017).

106 Synthesis Report, *supra* note 105, p. 52, which shows that for example, one of those countries is the Netherlands.

enterprises.¹⁰⁷ It also compares the legal forms and governance structures tailor-made for social enterprises in selected jurisdictions, namely in Greece, the UK and in Belgium.¹⁰⁸

In the Social Enterprise Study, doctrinal research is employed, which elaborates on the meaning of the legal provisions in the examined social enterprise legislation. Doctrinal research is also used to indicate and explain the key rules underlying the legal forms and governance structures of social enterprises in the selected jurisdictions.¹⁰⁹ The sources used are provisions from tailor-made social enterprise laws.¹¹⁰ Subsequently, a comparison is employed.¹¹¹ The Social Enterprise Study investigates the similarities and differences of the rules, while demonstrating and explaining the benefits of multiple and various legal possibilities in the examined jurisdictions.¹¹²

However, in establishing correctly what the social enterprise law contemplates concerning the participatory governance of social enterprises, the research also takes into account a ‘gap’ that may exist ‘between the law on the books and law in action’.¹¹³ On these grounds, the Social Enterprise Study is extended to an empirical complementary research on social enterprise.¹¹⁴ The empirical research in the Social Enterprise Study examines stakeholder participation in the governance of social enterprises, i.e. how social enterprises, their decision-makers and their stakeholders are influenced in practice by tailor-made legal rules in organising in particular their participatory governance structure. The legal analysis of the concept of participatory governance suggests the participation of stakeholders in the governance and decision-making of social enterprises in various forms.

Accordingly, in the Social Enterprise Study an investigation is performed on the practical implementation of legal provisions regulating the organisational processes of decision-making and stakeholder participation in the governance structures of social enterprises. This is achieved through the development of *empirical*

107 See Argyrou & Lambooy, supra note 105.

108 See Argyrou & Lambooy, supra note 105. The legal research extends to a jurisdiction without a tailor-made legal framework for social enterprises, i.e. the Netherlands. See in A. Argyrou et al., ‘Legal Forms for Social Enterprises in the Dutch Legal Framework: An Empirical Analysis of Social Entrepreneurs’ Attitudes on the Needs of Social Enterprises in the Netherlands’, (2017) 12 *International and Comparative Corporate Law Journal*, no. 3, pp. 1-46. R. Helder, *De juridische infrastructuur van de maatschappelijke onderneming* (2013). R. Helder, ‘Maatschappelijke onderneming en social enterprise’, (2014) *Tijdschrift voor Ondernemingsbestuur*, no. 3, pp. 93-100. R. Helder, ‘Van wie is de maatschappelijke onderneming?’, (2014) *Maandblad voor Vermogensrecht*, no. 2, pp. 36-42. J.M. de Jongh et al., ‘Naar maatschappelijke varianten van de rechtsvormen in Boek 2 BW?’, (2010) 140 *Handelingen Nederlandse Juristen Vereniging*, pp. 193-256. T. Lambooy, ‘Maatschappelijk’ Ondernemen: Begripsbepaling en Ontwikkelingen’, in B.F. Assink & L. Timmerman (eds.), *De toekomst van het ondernemingsrecht: Het ondernemingsrecht van de toekomst* (2015), pp. 281-315.

109 See Argyrou & Lambooy, supra note 105.

110 To this end, authoritative legal texts, namely provisions from primary sources, i.e. social entrepreneurship laws are examined and analysed. See the examined Greek laws: Law 4019/2011 on the Social Economy and Social Entrepreneurship 2011, Official Government Gazette A’ 216/30.09.2011 and its latest amendment in Law 4430/2016 concerning Social and Inclusive Economy and Development of its Institutions and Other Provisions, Official Government Gazette A’ 205/31.10.2016 [in Greek: Νόμος 4019/2011 Κοινωνική Οικονομία και Κοινωνική Επιχειρηματικότητα και λουτές διατάξεις, Φύλλο Εφημερίδας της Κυβερνήσεως Α’ 216/30.09.2011; Νόμος 4430/2016 Κοινωνική και Αλληλέγγυα Οικονομία και Ανάπτυξη των Φορέων της και Άλλες Διατάξεις, Φύλλο Εφημερίδας της Κυβερνήσεως Α’ 205/31.10.2016]. See the examined UK laws: Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27); Community Interest Company Regulations 2005 (SI 2005/1788). See the examined Belgian law: Belgian Companies Code 1999, Arts. 661-669, Book X, Chapter I (BS 06.08.1999) [in Dutch: Wetboek Van Vennootschappen van 7 mei 1999, Art. 661-669, Boek X, Hoofdstuk I (BS 06.08.1999)]. The identified relevant case law was very limited, i.e. only case law from one case was identified in Greece. The case law databases that were used to identify the case law were: Westlaw UK, DSAnet, Jura.be and Juridat available at: <<http://legalresearch.westlaw.co.uk/>> <<http://www.dsanet.gr/1024x768.htm>> <<http://www.jura.be/Default.aspx>> <<http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=nl>> (all websites last visited 13 November 2017).

111 See Argyrou & Lambooy, supra note 105.

112 Ibid.

113 As such, the comparison can be also developed as an interdisciplinary task, which ‘sees its place somewhere between the social sciences on the one hand and legal studies on the other, and that draws methodological inspiration from both’. J.C. Reitz, ‘How to Do Comparative Law’, (1998) 46 *American Journal of Comparative Law*, no. 4, pp. 628-631. This is also noted by M.M. Siems, *Comparative Law* (2014), p. 8. M. Van Hoecke, ‘Methodology of Comparative Legal Research’, (2015) *Law and Method*, DOI: 10.5553/REM/.000010.

114 A. Argyrou et al., ‘An empirical investigation of supportive legal frameworks for social enterprises in Belgium: A cross-sectoral comparison of case studies for social enterprises from the social housing, finance and energy sector perspective’, in V. Mauerhofer (ed.), *Legal Aspects of Sustainable Development: horizontal and sectorial policy issues* (2016), pp. 151-185 [Argyrou et al. 2016a]. A. Argyrou et al., ‘An understanding how social enterprises can benefit from supportive legal frameworks: a case study report on social entrepreneurial models in Greece’, (2016) 16 *International Journal of Business and Globalisation*, no. 4, pp. 491-511 [Argyrou et al. 2016b]. A. Argyrou et al., ‘Unravelling the participation of stakeholders in the governance models of social enterprises in Greece’ (2017) 17 *Corporate Governance*, no. 4, pp. 661-677. A. Colenbrander et al., ‘Inclusive Governance in Social Enterprises in the Netherlands – A Case Study’, (2017) 88 *Annals of Public and Cooperative Economics*, no. 4, pp. 543-566.

qualitative case studies on social enterprises which employ tailor-made legal forms for social enterprises in the selected jurisdictions.¹¹⁵

3.2 The qualitative case studies

3.2.1 The conceptual framework and the research design

A research design and a conceptual framework have been developed for the Social Enterprise Study. The conceptual framework contemplates the theoretical structure of assumptions and sub-concepts, rules and principles that underpin stakeholder participation in the governance of the social enterprises using literature and reason.¹¹⁶ The basic idea underpinning the examination of participatory governance in the Social Enterprise Study is the fact that the legal frameworks in the selected jurisdictions include rules and provisions, which shape the governance of the legal forms and the organisations themselves. The legal rules provide:

- (i) ownership rights;
- (ii) voting and decision-making rights;
- (iii) information; and
- (iv) consultation rights, to stakeholders, who demonstrate their role and their level of involvement in the decision-making processes.

These powers may be conferred to stakeholders through the ownership of shares and/or membership, participation in the decision-making bodies' composition and processes, information and consultation; all of them understood as stakeholder participation mechanisms through formal schemes, i.e. all of them contained in law or in the formal constitutional documents of social enterprises. Additionally, these powers may also be contained in informal mechanisms, which involve various types of stakeholders, either directly or indirectly, and in a regular or more ad hoc manner.¹¹⁷ As such, stakeholders have the power to participate in the decision-making processes of the governing bodies to a certain extent and with certain roles. However, the role and level of stakeholders' involvement is unknown. Its extent might be similar or different in different social enterprises from different jurisdictions.¹¹⁸ The effect of stakeholder participation on the social enterprise and on the decision-making processes is also a topic under examination.

Using this conceptual approach, the phenomenon of participatory governance of social enterprises in compliance with tailor-made legal provisions is examined. Such a conceptual idea allows the valid investigation of the most important governance mechanisms and decision-making processes of the social enterprises, as well as the relationship between decision-makers and stakeholders, who are involved in such enterprises. Most importantly, this approach allows the replication of the case study with social enterprises employing other tailor-made legal forms in different jurisdictions.

The research design of the Social Enterprise Study also contains a research logic. It prescribes the use of standardised methods and techniques that are employed in a consistent and coherent way to provide an answer to the research question. The research design used for the Social Enterprise Study prescribes the examination of nine units of analysis, i.e. nine different social enterprises, each using tailor-made legal forms for social enterprises, which are established in various geographical locations in the three selected

115 The research concerns the identification of the effects of law on the governance of social enterprises. The participatory governance of social enterprises is a key characteristic. The decision-makers are the fiduciaries of the social and environmental objectives of social enterprises, which they have to maintain while simultaneously dealing with and balancing the different and multiple interests of various types of stakeholders. As such, the study investigates:

- (i) the impact of the implementation of new and complex tailor-made social entrepreneurship rules and legal provisions, and
- (ii) their effect on the social enterprises' governance, function and structure.

It also identifies the practical implications of the implementation of rules regarding governance, and explains how social entrepreneurs deal with them in practical terms.

116 More information concerning the conceptual framework underlying the Social Enterprise Study can be found in Argyrou et al. (2016a); (2016b); (2017), *supra* note 114. See Colenbrander et al., *supra* note 114.

117 See Argyrou et al. (2016a); (2016b); (2017), *supra* note 114.

118 See Whitley's theory regarding the inherent differences in the structure and governance of companies viewed in different jurisdictions in differently organised economic settings. R. Whitley, 'The Institutional Construction of Firms', in G. Morgan et al., *The Oxford Handbook of Comparative Institutional Analysis* (2010), p. 454.

countries, i.e. Greece, Belgium and the UK.¹¹⁹ Subsequently, a consistent methodological framework is applied in the development of the case studies. A comparative multi-case study approach is then employed which comprises nine case studies concerning social enterprises employing tailor-made legal forms for social enterprises: three of them being in Greece, three in the UK and three in Belgium.¹²⁰ The case studies are developed predominantly in a multiple case study setting following a replication logic in the application of the research protocol.¹²¹ The single case study setting is only used for two unique cases that exhibit special methodological and theoretical characteristics. A multiple case study design is then used to compare the cases holistically on a cross-case and cross-country level.

3.2.2 The selection of cases

In the Social Enterprise Study, the sampling (selection) of the case studies is based on two concrete selection criteria. The establishment of both criteria prevents a biased selection of cases based on personal preferences. The selection of cases in the Social Enterprise Study is based on a purposeful and theoretical sampling logic. Both logics were intentionally chosen amongst other logics for selecting cases developed in the social sciences discipline.¹²² According to the purposeful selection logic, the selected cases constitute an *a priori* strategic selection of certain cases of social enterprises that contain rich insights regarding participatory governance, to the extent that they serve the purpose of the study, i.e. to examine stakeholder participation in legal forms, which are tailor-made for social enterprises. As such, one criterion for the selection of certain cases of social enterprises is the selection of social enterprises that constitute legal variations of the tailor-made legal forms for social enterprises prescribed in the different social enterprise laws in each of the jurisdictions selected for this study.¹²³ This type of purposeful selection offers a mixed and heterogeneous sample of cases. Accordingly, a theoretical selection logic is then applied, i.e. the cases finally selected exhibit rich theoretical insights in respect of, e.g. stakeholder participation in social enterprises, and also in respect of theoretical variations of the examined phenomenon, e.g. stakeholder membership in participatory governance.

3.2.3 Data collection and respondents

The Social Enterprise Study comprises the application of a consistent research protocol for the collection of empirical data. Data are collected from various sources, e.g. relevant documents (desk research), the use of observations from the visits to the organisations and from in-depth and semi-structured interviews.¹²⁴ Relevant documents (desk research) are consistently collected and examined in every case study. They concern the constitutional documents of the organisations, i.e. the articles of association, the memoranda, the statute and the bye-laws, all of which show the legal and the governance structure of each organisation. Those sources contain necessary information relating to the inner legal and governance structure of the

119 The legal forms concern:

- (i) legal variations of the social cooperative enterprise (Κοινωνική Συνεταιριστική Επιχείρηση – here abbreviated as Koinsep) as prescribed in the Law on the Social Economy and Social Entrepreneurship 2011 and its later amendment (supra note 110), such as for instance the Koinsep for integration, the Koinsep for care and the Koinsep for productive and collective purposes;
- (ii) legal variations of the Community Interest Company (here abbreviated as CIC) on the basis of the legal form prescribed in the UK Companies (Audit, Investigations and Community Enterprise) Act 2004 and the CIC Regulations 2005 (supra note 110), such as for instance the CIC limited by guarantee and the CIC limited by shares; and
- (iii) legal variations of the Belgian company with a social purpose (*Vennootschap met Sociaal Oogmerk* – here abbreviated as VSO) legal label (applied on top of the cooperative legal form) that originate from different sectors, e.g. VSOs in the housing sector compared with VSOs in the micro-finance and education sectors.

See Argyrou et al. (2016); (2016b); (2017), supra note 114 and Colenbrander et al., supra note 114.

120 For comparison purposes, research extends to the Netherlands comprising the collection of data through one exploratory survey and the development of case studies concerning Dutch social enterprises which do not employ a tailor-made legal form for social enterprises. See Argyrou et al., supra note 108 and Colenbrander et al., supra note 114.

121 See Yin, supra note 43, pp. 56-62.

122 Other sampling logics developed in the social sciences discipline are: extreme or deviant case sampling, intensity sampling, maximum variation sampling, homogeneous sampling, critical case sampling, snowball or chain sampling, confirming and disconfirming sampling, stratified purposeful sampling, purposeful random sampling and others. See in M.Q. Patton, *Qualitative research & evaluation methods* (2015).

123 See Argyrou et al. (2016a); (2016b); (2017), supra note 114. See Colenbrander et al., supra note 114.

124 See Van Aeken, supra note 15, p. 76.

organisation namely, the existence of various governance layers, the composition of the governing bodies, the relevant rules pertaining to the ownership and membership of the organisation, voting procedures and the obligations of the decision-makers.

Other documents examined are annual financial and/or social accountability reports and other publications produced and published by the social enterprises, which contain information regarding stakeholders and their role in the organisational functioning. Examples of other publications include brochures, mission and vision statements, service quality statements and stakeholders' policy statements and human resources handbooks.

Each case study also includes the conducting of interviews with various respondents from the examined social enterprise. The interviews are conducted by the author. A group of senior researchers and trained research assistants also act as alternative and/or assistant data collectors.¹²⁵ The alternation of data collectors limits the chances of having biased data collected solely by a single data collector.

A minimum of four (at least one interview with a respondent from each organisational layer) and a maximum of twelve semi-structured interviews are conducted with respondents from different and multiple organisational layers in the examined social enterprise. Hence, a plurality of responses concerning participatory governance is sought. The respondents per case study include at least:

- (i) one member/shareholder: members/shareholders are asked particularly about the ownership of shares and exercised control;
- (ii) one director: directors are asked particularly about the structure, composition and activities of the decision-making processes;
- (iii) one employee: employees are asked particularly about mandatory and optional schemes of participation in decision-making, the acquisition of shares, their access to information regarding decisions and their access to decision-making processes; and finally
- (iv) one external stakeholder (e.g. supplier, customer, community representative, investors and/or clients): external stakeholders are asked, amongst other questions, about their participation in consultation processes, their access to information regarding decisions and their access to decision-making processes.

The interviews enable the collection of extensive and descriptive responses and digressions regarding participatory governance and stakeholder participation. The depth and the detail of the collected responses, including the respondents' descriptions and reflections concerning their participation in the governance processes would not otherwise be provided if other techniques of data collection were employed in the research, e.g. closed surveys, dichotomous questions or scale questions. Observations from the visits to the examined organisations are also included in the collected data to validate information retrieved from interviews. Such observations explain, for instance, the behaviour of the respondents during the interview process, e.g. any indications of emotions, such as concern or insecurity, during the interview process. These observations are considered when developing the interview reports. However, for the mitigation of bias in the interview process a similar basic questionnaire is used in every case study for each one of the categories of respondents. Hence, on a per case study level four basic questionnaires are used in total. In addition, during the interview process, the interviewees are asked to reflect on their responses based on thoughts, feelings and experiences. Some common questions posed to directors participating in this study are, 'How is the social enterprise managed?', 'How are decisions made?'. Other questions addressed to the directors and the members/shareholders include 'Are your stakeholders involved in the decision-making activities?', 'In which way?' and 'Is any input from stakeholders considered?'. Stakeholders are also asked whether they would ever want to take part in any of the social enterprise's decision-making processes and to what extent. They are also asked about the frequency of the information that they receive concerning governance decisions and/or whether they ever consider acquiring shares and becoming members.

The majority of interviews are conducted in the native language of the respondents, i.e. Greek, English, Flemish and Dutch. All the questionnaires and the interview transcriptions are translated into English. All

¹²⁵ The data collection phase involves students from the Legal Research Masters programme of Utrecht University and senior researchers from Nyenrode Business University and the University of Edinburgh.

the interviews are fully recorded, translated and transcribed by professional transcribers into verbatim transcriptions. The collection of rich and thick data as opposed to poor data, i.e. in the form of verbatim transcriptions, is preferred to the alternative, which is to maintain descriptive notes from the interviews. The verbatim transcripts and the interview reports do not allow infiltration of the personal bias of the data collector. However, both verbatim transcriptions and interview reports are subsequently sent to the interview participants for validation and review. This is an important technique used to identify and isolate the bias in the collection and analysis of data, i.e. the respondents' validation of the interview transcriptions, of the interview reports and of the case study analysis. The 'members' checking' technique allows for the validation of the collected data and the subsequent data analysis. However, such a technique requires a continual communication and engagement with the interview participants. Engaging in regular communication with the interview participants is a necessary task, but it is a time-consuming process which cannot always be successfully achieved due to the nature of everyday life.

In addition, although the respondents' revision of the verbatim transcriptions legitimises the content of the interviews, it may also entail the risk of losing data which are perceived as confidential, classified or intimate. An example of the risk of losing data can be provided from the Social Enterprise Study where the respondents are asked to edit oral mistakes, to explain quotes and to validate the content of the interview transcriptions. They are also asked to indicate parts that should remain confidential, or to clarify parts in which the response that they provided is considered insufficiently clear, or erase parts that they wish to eliminate. Confidential parts are removed from the interview transcriptions, whereas clarifications, edits and changes are inserted in the original transcriptions from the participants. The participants' feedback is collected and embodied in the final interview transcriptions and interview reports.

The collected data are triangulated, crosschecked and validated based on received feedback from the interview participants and via the use of data collected from different and multiple sources (interviews, archival data, and observations from the visits to the interview location). The use of verbatim transcriptions as well as the crosschecking of the data using multiple resources and the repeated validation of the data from the respondents reduces the chances of verbal mistakes in the transcripts. It also prevents the inclusion of unreliable data, inconsistencies in the data and any infiltration of the personal bias of the data collector into the collected data.

3.2.4 Data analysis

It was earlier mentioned in Subsection 2.2 that one of Yin's most serious considerations concerning the application of the case study qualitative method is that it often results in the collection of very extensive qualitative data that are difficult to review and analyse in their entirety.¹²⁶ In addition, the large extent of collected qualitative data may prevent their use and analysis in their entirety. Extensive qualitative data might even result in the frustration of the researcher and/or even the loss of control over the data being analysed. All data collected for the development of the qualitative case studies in the Social Enterprise Study are predominantly textual and extensive. Their analysis is based on multiple qualitative techniques of data analysis offered by the social sciences discipline and the case study methodology. The data analysis starts with a description of the case that is being studied, its background history and setting the framework of analysis by presenting the issue under examination.¹²⁷ During this stage, background facts and data, which frame the case and the issue examined, are presented to give a context to the case. This also entails the introduction of the necessary factual data regarding the problem and the organisations that are being examined; this information concerns, for instance, the structure, the size and/or the business activity of the organisation.

Before and after coding, various techniques are often applied to sort and categorise the data, for instance the division of information into arrays and matrices and/or the enumeration of the frequencies

¹²⁶ See Yin, *supra* note 43, p. 21.

¹²⁷ B.F. Crabtree & W.L. Miller, *Doing Qualitative Research* (1999), pp. 131-132.

of commonly encountered codes, responses and events.¹²⁸ To systemise the data analysis a special matrix has been developed to accommodate the analysis and the categorisation of the identified stakeholder participation mechanisms. The matrix contains the identified stakeholder participation mechanisms applied in the decision-making processes of each examined social enterprise (see Table 2).

Table 2 Matrix of stakeholder participation mechanisms with examples (X)

	Formal	Informal	Structural	Non-structural	Direct	Indirect
[Stakeholder Mechanism 1]	X		X			X
[Stakeholder Mechanism 2]		X		X	X	
[Stakeholder Mechanism 3]		X	X		X	

The Social Enterprise Study then uses the coding and the thematic analysis of data based on a template. Coding (or else the constant comparison method) entails the sorting and categorisation of the collected data based on textual codes, i.e. short terms or phrases, which provide a symbolic and summative meaning to a portion of data. The coding and analysis of rich and very extensive verbatim data is a process which requires patience and commitment and a certain level of familiarity with the special software developed for these types of processing data.

In the Social Enterprise Study, coding is performed by the author and other trained research assistants and a team of senior researchers who contribute as alternative coders,¹²⁹ using Atlas t.i software, a computer-aided tool. Subsequently, a template of pre-selected (*a priori*) codes from the legal analysis is used to drive the process of coding.¹³⁰ *In vivo* codes are developed: these are emerging codes extracted from the interview transcriptions, which are then refined to fit into the template of *a priori* codes.

Along similar lines, a template technique is applied which constantly contrasts and compares the pre-existing information (codes) that emanates deductively from the legal analysis with the real-life concepts (codes) that emerge inductively from the data. In this way, it is possible to determine the fit with the theoretical propositions from the legal and organisational domain.¹³¹ The outcome is scrutinised, integrated into meaningful patterns and finally divided into themes.¹³²

The application of triangulation in the data analysis provides a plurality of approaches and perspectives and the saturation of the analysed information. In the next stage of data analysis, which is testing and theorisation, the data analysis is connected to the legal and organisational theoretical propositions that initially led to the development of the case study. By linking these theoretical propositions with the evidence identified in the template of patterns and themes, theory is substantiated and further improved.¹³³

3.2.5 The outcome of case study research in the Social Enterprise Study

In the developed case studies, comparisons are made and theoretical propositions are examined regarding the participatory governance of social enterprises.¹³⁴ Case study research, as part of the Social Enterprise Study, offers the opportunity of closely examining participatory governance and its implementation in practice, i.e. how implementation takes place in the natural environment of a social enterprise following the legal provisions. The research indicates holistically to what extent, in which forms and by whom participation

128 See Miles & Huberman, *supra* note 100, pp. 71-72.

129 The data analysis phase involves students from the Legal Research Masters programme of Utrecht University and senior researchers from Nyenrode Business University.

130 See Yin, *supra* note 43, pp. 134-135. J. Saldana, *The coding manual for qualitative researchers* (2009), pp. 45-50. See indicatively how these techniques are implemented in Argyrou et al. (2016); (2016b); (2017), *supra* note 114. See Colenbrander et al., *supra* note 114.

131 N. King, 'Using templates in the thematic analysis of text', in C. Cassell & G. Symon (eds.), *Essential guide to qualitative methods in organizational research* (2004), p. 427. See Crabtree & Miller, *supra* note 127, p. 167.

132 See Crabtree & Miller, *supra* note 127, pp. 128-129.

133 *Ibid.*, pp. 130-131. See Mason, *supra* note 53, pp. 137-138.

134 See Mason, *supra* note 53, pp. 93-94.

is actually undertaken in the main and formal decision-making processes of social enterprises, e.g. forms of participation in the formal decision-making bodies of the social enterprises, such as for instance participation in the composition, voting or control of the governance bodies. In addition to the formal participation, the case study research identifies the types and the justifications for the development of informal means of participation in the organisational functioning of social enterprises in order to solicit the feedback, advice and consultancy of various types of stakeholders concerning decisions. An emphasis is provided to the meanings and the different approaches that decision-makers and various types of stakeholders give to the implementation of the legal requirements regarding participatory governance. There the drivers and motivations of both the decision-makers and the stakeholders to be involved in the participatory processes are revealed and explained. Furthermore, the case studies allow an in-depth investigation of the manner in which the legal requirements affect the organisational structures of social enterprises and those involved in them, i.e. decision-makers and stakeholders, when they are implemented in practice.¹³⁵

4. Conclusions

The theory suggests that the case study qualitative method can be applied as part of an interdisciplinary, empirical legal research project that is complementary and auxiliary to legal research based on a valid research question. However, the use of the case study qualitative method is widely disputed and debated by scholars. The debate has generated varying arguments from either the proponents or the opponents of the use of the case study qualitative method. The debate has resulted in the improvement of the case study qualitative methodology, which offers various tools and techniques for a more valid and rigorous use of the method. In the light of multiple perceived strengths and weaknesses related to the use of the case study qualitative method, any legal researcher who is willing to employ such a research method should be aware of the limitations but also of the opportunities and benefits relating to the method. The understanding of the different epistemological and methodological positions of the case study qualitative research is a prerequisite for the legal researcher. A training in using, dealing and understanding the empirical data is essential. The demonstration of the use of qualitative case studies indicated that there are rules and methodological processes in place that cannot be neglected. Addressing methodological choices and being able to account for each methodological step is a characteristic that is imperative while employing the case study qualitative method. That is something that needs to be seriously contemplated, due to the perceived existence of commonly occurring false steps and mistakes in qualitative research. Most importantly, the case study qualitative research requires commitment, patience, and willingness to move away from an introverted process of doing research that ‘can usually be done without leaving the hallowed precincts of our libraries and offices’.¹³⁶ Case study qualitative research is the examination and the understanding of a phenomenon in its natural environment and requires a constant engagement with those individuals or groups surrounding the examined phenomenon. It requires travelling, visits to locations and an inherent curiosity about what people think and how they understand the reality in relation to the examined phenomenon. These methods and techniques demonstrated that the methodological toolkit of the Social Enterprise Study considers and comprises several options during data collection and data analysis to safeguard the validity and reliability of the empirical study. The replication logic applied in the development of the case studies and the collection of rich and thick qualitative data concerning personal conceptions and experiences of decision-making processes – in compliance with different national tailor-made laws – generate the link between collected evidence and emerging inductive theory in relation to the participatory governance of social enterprises. ■

¹³⁵ See Argyrou et al. (2016a); (2016b); (2017), supra note 114. See Colenbrander et al., supra note 114.

¹³⁶ See Siems, supra note 1, p. 7.